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We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165. T07–0024 to read as follows:

§ 165.T07–0024 Safety Zone; Xterra Swim, Myrtle Beach SC.

(a) *Location.* The following is a safety zone: Certain waters of the Atlantic Intracoastal Waterway within the following two points of position and the North shore: 33°45'03" N, 78°50'47" W to 33°45'18" N, 78°50'14" W, located in Myrtle Beach, South Carolina. All coordinates are North American Datum 1983.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on from 7:00 a.m. until 9:00 a.m. on April 14, 2019.

Dated: February 19, 2019.

John W. Reed,

Captain, U.S. Coast Guard, Captain of the Port, Charleston.

[FR Doc. 2019–03646 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 60 and 63

[NPS–WASO–NHPA; PPWONRADE2, PMP00E105.YP0000]

RIN 1024–AE49

National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to revise regulations governing the listing of properties in the National Register of Historic Places. The proposed changes would implement the 2016 Amendments to the National Historic Preservation Act, extend the timeline for the Keeper to respond to appeals, and ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The rule would also make several minor, non-

substantive changes to existing regulations.

DATES: Comments on the proposed rule must be received by 11:59 p.m. EST on April 30, 2019.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by April 30, 2019.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE49, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail to:* National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

- *Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024–AE49) for this rulemaking. Comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for the RIN (1024–AE49).

Information Collection Requirements: Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or OIRA_Submission@omb.eop.gov (email).

Please provide a copy of your comments to NPS Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail). Please reference OMB Control Number 1024–0018/AE49 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Joy Beasley, Acting Associate Director, Cultural Resources Partnerships and Science & Keeper of the National Register of Historic Places, NPS (WASO), (202) 354–6991, joy_beasley@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Historic Preservation Act (NHPA), enacted in 1966, declared a national policy to preserve significant historic sites, districts, buildings, structures, and objects “for the inspiration and benefit of the people of the United States.” 54 U.S.C. 302101. It has been amended several times since 1966, with the most substantive amendments in 1980 and 1992.

The NHPA authorized the Secretary of the Interior (Secretary) to “expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.” 54 U.S.C. 302101. This authority is delegated by the NHPA to the Director of the National Park Service (NPS) and has been further delegated to the Keeper of the National Register (Keeper). 54 U.S.C. 300316; 36 CFR 60.3(f). The National Register is the official list of the Nation’s historic places worthy of preservation. As of November 26, 2018, a total of 94,364 properties (*i.e.*, districts, buildings, structures, sites, and objects) were listed in the National Register. The Keeper processes an average of 1,619 National Register actions annually that are submitted by States, Tribes, and Federal agencies.

The NHPA directed the NPS to promulgate regulations for “nominating properties for inclusion on, and removal from, the National Register” and for “notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register. . .” 54 U.S.C. 302103(2).

The State Historic Preservation Officer (SHPO) for the state in which a property is located “is responsible for identifying and nominating eligible properties to the National Register” (36 CFR 60.6(a)), and for ascertaining whether the property owner of an individual property or a majority of private property owners within a proposed district object to listing a property in the National Register. 36 CFR 60.6(g). Each Federal agency is required by the NHPA to designate a qualified official to be the agency’s Federal Preservation Officer (FPO). 54 U.S.C. 306104. FPOs are responsible for nominating properties under the jurisdiction or control of the Federal agency. Pursuant to the 1992 Amendments to the NHPA, Tribal Historic Preservation Officers (THPOs) can assume nomination responsibilities on tribal land, including nominating

eligible properties for listing in the National Register.

Prior to submitting a nomination involving privately owned property to the Keeper, SHPOs are required to notify private property owners that a nomination of their property is being considered or, in the case of a historic district, that their property is within a district considered for nomination. Any private property owner who objects to a nomination is required to submit a notarized statement to the SHPO certifying that the party is the sole or partial owner of the private property and objects to the listing. 36 CFR 60.6(g). The objections are treated as votes against listing the property. NPS regulations state that—in the case of districts that are nominated—each owner of private property in that district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district. 36 CFR 60.6(g). The SHPO is responsible for determining whether a majority of owners have objected, 36 CFR 60.6(g), though objections may also be submitted to the Keeper after a property has been nominated and prior to listing. 36 CFR 60.6(r). If a majority of owners object to listing, the property cannot be listed, but the Keeper is required to determine whether or not it is eligible for listing in the National Register. 54 U.S.C. 302105(b)–(c); 36 CFR 60.6(g) and (n).

The section of the NHPA that authorizes the Secretary to establish criteria for properties to be included in the National Register and to promulgate regulations requires “consultation with national historical and archeological associations.” 54 U.S.C. 302103. This applies to the promulgation of regulations regarding: Nominations of properties for inclusion in the National Register; removing properties from the National Register; considering appeals; making eligibility determinations; and owner notification. 54 U.S.C. 302103. After publication of the proposed rule, the NPS will consult with SHPOs, FPOs, the National Trust for Historic Preservation, and other national historical and archeological associations.

Proposed Rule

This rule proposes several changes to the regulations governing the listing of properties in the National Register of Historic Places. One group of changes would implement the 2016

Amendments to the NHPA.¹ Another group of changes would ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The rule would also extend the timeline for the Keeper to respond to appeals of the failure of a nominating authority to nominate a property for inclusion in the National Register. Finally, the rule would make a number of minor, non-substantive changes.

Implementation of the 2016 Amendments to the NHPA

The 2016 Amendments to the NHPA inserted a new subsection (c) into 54 U.S.C. 302104 that sets forth a specific process for Federal agencies to directly submit nominations of properties for inclusion in the National Register. This process applies only to properties that are under the jurisdiction or control of a Federal agency.

Specifically, subsection (c) states that the Secretary, acting through the Director of the NPS, may accept a nomination directly from a Federal agency, but only if six preconditions are satisfied. These are: (1) The FPO has sent a completed nomination to the SHPO for review and comment regarding the adequacy of the nomination, the significance of the property, and the property’s eligibility for the National Register; (2) the SHPO has been given 45 days to make a recommendation regarding the nomination to the FPO, and failure to comment within this timeframe constitutes “a recommendation to not support the nomination”; (3) the chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located have been notified and given 45 days in which to comment; (4) the FPO has forwarded the nomination to the Keeper after determining that all procedural requirements have been met, including those described in (1)–(3) above, that the nomination is adequately documented, that the nomination is technically and professionally correct and sufficient, and—at the discretion of the FPO—including an opinion as to whether the property meets the National Register criteria for evaluation; (5) notice has been provided by the Keeper in the **Federal Register** that the nominated property is being considered for listing in the National Register that includes

¹ The 2016 Amendments to the NHPA were enacted on December 16, 2016 in Title VIII—National Historic Preservation Amendment Act of the National Park Service Centennial Act (Pub. L. 114–289).

any comments and the recommendation of the SHPO and a declaration whether the SHPO has responded within the 45 day-period of review; and (6) the Keeper addresses in the **Federal Register** any comments from the SHPO that do not support the nomination of the property in the National Register before the property is included in the National Register.

The proposed rule would revise the regulations governing the process for nominations by SHPOs in 36 CFR 60.6, nominations directly by Federal agencies in 36 CFR 60.9, and concurrent State and Federal nominations in 36 CFR 60.10, all to be consistent with 54 U.S.C. 302104(c). In addition to ensuring that the six preconditions that are stated in the 2016 Amendments are also stated affirmatively in the regulations, the proposed rule would remove regulatory provisions that are inconsistent with the establishment by Congress of an exclusive process for the nomination of properties directly by Federal agencies. The rule would remove paragraph (y) in section 60.6 that provides an alternative process for the FPO to forward nominations of federal property to the Keeper that were originally submitted by a SHPO. The rule would remove a provision in paragraph (h) of section 60.9 that provides for the automatic listing of nominated Federal property within 45 days of receipt by the Keeper unless the Keeper disapproves the nomination or an appeal is filed. The proposed rule would also revise the regulations governing the publication of notice in the **Federal Register** in 36 CFR 60.13 to be consistent with the notice requirements in 54 U.S.C. 302104(c).

The proposed rule would revise paragraphs (a) and (c) of 36 CFR 63.4 in response to the 2016 Amendments. The rule would revise paragraph (a) to clarify that the Keeper will not make eligibility determinations for properties if the Keeper returns the nomination to the Federal agency for technical or professional revision, or because of procedural requirements. The NPS believes this change is required by the 2016 Amendments because nominations can only be accepted by the Keeper if all procedural requirements have been met, including that the nomination is technically and professionally correct and sufficient. If a nomination is not accepted by the Keeper, the Keeper cannot make an eligibility determination. The NPS seeks comment from the public on this interpretation of the 2016 Amendments or, in contrast, whether the NPS could interpret the 2016 Amendments to allow the Keeper to make eligibility determinations for

properties whose nominations have been returned to the Federal Agency.

Outside of the nomination process for listing properties in the National Register, SHPOs and FPOs sometimes request that the Keeper determine whether a property is eligible for listing in the National Register. This usually occurs as part of compliance with section 106 of the NHPA, which requires Federal agencies to take into account the effects of their undertakings on historic properties. Paragraph (c) of 36 CFR 63.4 allows the Keeper to make eligibility determinations for properties that have not been nominated if necessary to assist in the protection of historic resources. The proposed rule would revise paragraph (c) to clarify that the Keeper may only determine the eligibility of properties for listing in the National Register after consultation with and a request from the appropriate SHPO and concerned Federal agency, if any. The NPS believes this change is consistent with the 2016 Amendments and other provisions in the NHPA that dictate the roles and responsibilities of SHPOs and FPOs. See 54 U.S.C. 302104(a); 54 U.S.C. 306101(a) and (c).

Subsection (d)(2) of 54 U.S.C. 302104, unchanged by the 2016 Amendments, provides in pertinent part that “Any person or local government may appeal to the Secretary . . . the failure of a nominating authority to nominate a property in accordance with this chapter.” The proposed rule would clarify that the Keeper cannot hear an appeal of a Federal agency’s failure to nominate a property unless all of the conditions precedent listed in 54 U.S.C. 302104(c) are met, including a requirement that the FPO forwards the nomination to the Keeper. If all of the criteria are not satisfied, the nomination is not properly before the Secretary and therefore the Secretary does not have jurisdiction to hear an appeal under 54 U.S.C. 302104(d)(2).

Related to appeals but unrelated to the 2016 Amendments, the proposed rule would extend the timeline for the Keeper to respond to the appellant and the applicable SHPO or FPO from 45 days to 60 days. The rule would also allow the Keeper to extend the initial 60-day period for an additional 30 days, upon the request of the appellant or the applicable SHPO or FPO. Upon receipt of an appeal, the Keeper routinely provides the applicable SHPO or FPO an opportunity to submit information and provide comment regarding the appeal, and these officials often request extensions of time in order to submit relevant information. These changes would provide SHPOs and FPOs with additional time to respond to the issues

raised by appellants and to explain their position, and would provide the Keeper with additional time to resolve complex issues that are sometimes raised by appellants regarding the nomination of properties to the National Register.

Owner Objections to Nominations

In some cases, a property that is nominated for listing in the National Register will have more than one owner. This happens most often in the case of a proposed historic district, which is identified in the NHPA as a type of historic property that can be listed in the National Register. 54 U.S.C. 300308. Under the NHPA, if a majority of the owners of privately owned property object to the inclusion of the property in the National Register prior to listing, the property cannot be listed until the objection is withdrawn, but its eligibility must still be determined. 54 U.S.C. 302105. Owners are defined under regulations as individuals, corporations or partnerships that hold fee simple title to real property. 36 CFR 60.3(k). Owners are required to submit notarized objections prior to listing.

The proposed rule would revise 36 CFR 60.6 and 60.10 to provide that a property shall not be listed in the National Register if objections are received from either (i) a majority of the land owners, as existing regulations provide; or (ii) owners of a majority of the land area of the property. This proposal would ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The NPS seeks comment on whether it should remove the requirement that objecting property owners submit notarized statements certifying that they are the sole or partial owner of the property in order to submit an objection. The NPS seeks comment on whether there is an alternative way to certify ownership, or otherwise object to the listing of a property, that is less burdensome on the property owner but maintains or improves the fidelity of the objection process.

The proposed rule would also revise 36 CFR 60.6(g) to clarify that if the SHPO receives information that calls into question the accuracy of the owner or objector count, it is the SHPO’s duty to exercise due diligence to ensure the accuracy of the owner and objector count prior to submitting a nomination to the Keeper. This proposed change is intended to prevent situations in which a nomination must be returned to the SHPO due to potential inaccuracies in the owner or objector count. The SHPO, not the Keeper, is in the best position to

determine the ownership of nominated properties, the number of owners within a nominated historic district, and the number of objections received with respect to a nominated property.

Paragraph (i) of section 60.9 allows any person or organization to petition the Keeper during the nomination process to accept or reject the nomination of a property by a FPO.

Similarly, paragraph (t) of section 60.6 allows any person or organization to petition the Keeper during the nomination process to accept or reject the nomination of a property by a SHPO. The NPS seeks comment on whether these provisions are redundant with the requirement in section 60.13 that the NPS publish notice in the **Federal Register** asking for public

comment on the significance of properties nominated for listing in the National Register.

Minor, Non-Substantive Changes

The NPS proposes to make several minor, non-substantive changes in order to remove outdated provisions and clarify existing regulations. The changes are identified in the table below.

Section	Proposed change	Purpose
§ 60.1(a)	Replace the citation to "16 U.S.C. 470 <i>et seq.</i> " with a citation to 54 U.S.C. 300101 <i>et seq.</i> "	These sections of Title 16 U.S. Code were recodified in Title 54.
§ 60.2(b)	Note that owners of property listed in the National Register may be considered for Federal grants for historic preservation "when available."	Clarify that these grants are subject to availability and not automatically given to property owners.
§ 60.2(c)	Replace the paragraph with an updated description of current tax incentives that may apply to listed properties.	Remove outdated references to provisions of the tax code that have been removed or substantially amended.
§ 60.3(a), (d), (j), (k), and (p)	Add updated and more diverse examples of historic districts, objects, sites, and structures.	Give the public better examples of the types of properties that are listed in the National Register.
§ 60.3(g)	Change the term "Multiple Resource Format submission" to "Multiple Property Submission/Multiple Property Documentation Form" and replace the definition of that submission/form.	The documents used to nominate multiple properties that share historical context and significance have changed.
§ 60.3(i)	Replace the title of the reference document from "How to Complete National Register Forms" to "How to Complete the National Register Registration Form".	The title of the document has changed.
§ 60.3(q)	Delete the definition of "Thematic Group Format submission".	This submission type has been superseded by the Multiple Property Submission/Multiple Property Documentation Form.
§ 60.4	In the last paragraph, update the reference to the guidance document further explaining the exception for properties that have achieved significance within the past 50 years.	The title of the document has changed.
§ 60.5(a)	Delete the sentence "For archival reasons, no other forms, photocopied or otherwise, will be accepted"	The sentence is obsolete because this is no longer a valid concern.
§ 60.6(e)	Change the term "Multiple Resource Format submission" to "Multiple Property Submission/Multiple Property Documentation Form".	The title of the documents used to nominate multiple properties that share historical context and significance has changed.
§ 60.6(h)	Delete paragraph	This paragraph is obsolete because it only applied to properties nominated prior to the effective date of the regulations.
§ 60.6(j)	Delete the phrase "on the nomination forms" in the second sentence.	This edit removes redundant language.
§ 60.6(o)	Update the references to the nomination form by replacing "block 12" with "Section 3". Update the certification by the SHPO in Section 3 to include an identification of the applicable criteria and level of significance for the property.	The nomination form has changed. No new information is being collected; information contained within the form has been moved to the cover page.
§ 60.6(w)	Replace the reference to nominations "rejected" by the Keeper with the term "returned" instead.	More accurately refer to nominations returned for correction and resubmission.
§ 60.14(b)(3)(iii)	Remove the requirement that the SHPO submit U.S. Geological Survey maps of moved properties.	With the advent of GPS and readily available online mapping sources, USGS quadrangle maps are no longer the required mapping form.
§ 60.14(b)(3)(iv) and (v)	Replace the requirements that the SHPO submit acreage and a verbal boundary description of moved properties with a requirement that the SHPO submit a "Continuation sheet with up-to-date Sections 2, 5, 7, and 10."	The level of specificity in the continuation sheet assists the preparers in providing the requisite information for the Keeper.

Compliance With Other Laws, Executive Orders and Department Policy. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and

Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty,

and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory

objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information in the report entitled “Cost-Benefit and Regulatory Flexibility Threshold Analyses: General Revisions to Regulations Governing the Listing of Properties in the National Register of Historic Places” which is available online at www.regulations.gov.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal

governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule pertains to procedures governing the listing of properties in the National Register of Historic Places and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and

under the Department’s tribal consultation policy and has determined that tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with nominations for listing of historic properties in the National Register and assigned OMB Control Number 1024–0018 (expires 2/28/19, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB).

The information collection requiring OMB approval is the requirement for property owners to submit notarized letters to the SHPO objecting to the property being listed in the National Register. Additionally, we updated the name of Form 10–900–b to be “Multiple Property Submission/Multiple Property Documentation Form” (MPDF).

Title of Collection: Nomination of Properties for Listing in the National Register of Historic Places, 36 CFR 60 and 63.

OMB Control Number: 1024–0018.
Form Numbers: NPS Forms 10–900, 10–900a, and 10–900b.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$500 for costs associated with notarizing objection letters.

Activity	Annual number of responses	Estimated time per response (hours)	Total annual burden hours
Preparation and Submission of Nomination Forms (individuals) NPS Forms 10–900, 10–900–a, 10–900–b	90	250	22,500
Preparation and Submission of Nomination Forms (private sector) NPS Forms 10–900, 10–900–a, 10–900–b	5	250	1,250
Preparation and Submission of Nomination Forms (govt) NPS Forms 10–900, 10–900–a, 10–900–b	5	250	1,250
Review of Nomination Forms and Submission to NPS (govt)	1,282	6	7,692

Activity	Annual number of responses	Estimated time per response (hours)	Total annual burden hours
National Register Nominations Prepared by Consultants (individuals) NPS Forms 10-900, 10-900-a	635	120	76,200
Existing Multiple Property Submission by Consultants NPS Forms 10-900, 10-900-a	75	100	7,500
Newly Proposed MPS Cover Document Prepared by Consultants NPS Forms 10-900-a, 10-900-b	36	280	10,080
New Nominations Prepared and Submitted by Consultants (individuals) NPS Forms 10-900, 10-900-a	1	150	150
National Register District Nominations Prepared by Consultants (govt) NPS Forms 10-900-a, 10-900-b	435	230	100,050
Notarized Statement of Owner Objections	50	1	50
Total	2,614		226,722

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_Submission@omb.eop.gov (email). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. Please provide a copy of your comments to Phadrea D. Ponds,

Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email to phadrea_ponds@nps.gov. Please reference OMB Control Number 1024-0018/AE49 in the subject line of your comments.

National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. NPS NEPA Handbook (2015) Section 3.2.H allows for the following to be categorically excluded: “policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature.” The

NPS has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever

If you feel that the NPS has not met these requirements, send the NPS comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods

listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

List of Subjects in 36 CFR Parts 60 and 63

Historic preservation.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 60 and 63 as set forth below:

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

- 1. The authority citation for part 60 is revised to read as follows:

Authority: 54 U.S.C. 300101 *et seq.*

§ 60.1 [Amended]

- 2. In § 60.1(a), remove “16 U.S.C. 470 *et seq.*” and add in its place “54 U.S.C.

- 3. Amend § 60.2 by:
 - a. In paragraph (b) adding the phrase “when available” to the end of the sentence; and
 - b. Revising paragraph (c) to read as follows:

§ 60.2 Effects of listing under Federal law.

* * * * *

(c) If a property is listed in the National Register, certain provisions of the Internal Revenue Code that encourage historic preservation may apply. These may include an investment tax credit for the rehabilitation of depreciable historic structures or other tax incentives relating to conservation easements.

* * * * *

- 5. In § 60.3:
 - a. Revise the examples in paragraphs (a) and (d);

- b. Revise paragraph (g).
- c. In paragraph (i), remove the phrase “How to Complete National Register Forms” and add in its place “How to Complete the National Register Registration Form”.
- d. Revise the examples in paragraphs (j), (l), and (p).
- e. Remove and reserve paragraph (q). The revisions to read as follows:

§ 60.3 Definitions.

(a) * * *

Examples to Paragraph (a)

Carolina, Clinchfield & Ohio Railroad Station and Depot, Johnson City, TN
E.E. Haugen House, Brookings, SD
St. Joseph’s Roman Catholic Church, Massillon, OH

* * * * *

(d) * * *

Examples to Paragraph (d)

Capitol View Historic District, Atlanta, GA
Saratoga National Historical Park, Saratoga County, NY
Rockland Rural Historic District, Front Royal, VA

* * * * *

(g) *Multiple Property Submission/ Multiple Property Documentation Form.* A Multiple Property Submission is the assembled individual registration forms together with the information common to the group of properties that serves as the historic context(s) and outlines the registration requirements for listing properties under that cover document, known as the Multiple Property Documentation Form (MPDF). The MPDF is a cover document and is not a nomination form in its own right. However, given that it serves as the basis for evaluating the National Register eligibility of individual properties associated with it, it is submitted by nominating authorities to the Keeper for approval.

* * * * *

(j) * * *

Examples to Paragraph (j)

Mural “La Familia,” San Juan, Puerto Rico
“Spirit of the American Doughboy” Statue, Muskogee, OK
Hinckley State Line Marker, Ogema, MN

* * * * *

(l) * * *

Examples to Paragraph (l)

Bell Witch Cave, Adams, TN
Minertown, Carter, WI
Dunlap Colored Cemetery, Dunlop, KS
Port Gibson Battle Site, Port Gibson, MS

* * * * *

(p) * * *

Examples to Paragraph (p)

Marion Steam Shovel, LeRoy, NY
Ross Grain Elevator, Audubon, IA
Albion River Bridge, Albion, CA

* * * * *

- 6. Amend § 60.4(g) by revising the last sentence to read as follows:

§ 60.4 Criteria for evaluation.

* * * * *

(g) * * * Criterion consideration (g) is further described and addressed in NPS guidance entitled “Guidelines for Evaluating and Nominating Properties that Have Achieved Significance within the Past Fifty Years.”

§ 60.5 [Amended]

- 7. Amend § 60.5 by removing the last sentence of paragraph (a).
- 8. In § 60.6:

■ a. In paragraph (e), remove the phrase “Multiple Resource and Thematic Group Format” and add in its place “Multiple Property Submission/ Multiple Property Documentation Format”.

- b. Remove and reserve paragraph (h);
- c. Revise paragraph (g);
- d. In paragraph (j), revise the second sentence;
- e. Revise paragraphs (n), (o), (r), (s), and (v);
- f. In paragraph (w), revise the first sentence; and
- g. Remove and reserve paragraph (y).

The revisions to read as follows:

§ 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation Programs.

* * * * *

(g) Upon notification, any owner or owners of a private property proposed to be nominated for listing who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of private property proposed for listing and objects to the listing. With respect to historic districts, owners may object regardless of whether the owner’s individual property contributes to the significance of the district. For nominations with more than one owner of a property, the property will not be listed if either a majority of the owners object to listing; or the owners of a majority of the land area of the property object to listing. Upon receipt of notarized objections respecting a property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners, or owners of a majority of the land area, have objected. If an owner whose name

did not appear on the list of owners certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property, such owner should be counted by the State Historic Preservation Officer in determining whether a majority of owners, or owners of a majority of the land area, have objected. If the State Historic Preservation Officer receives other information that would call into question the accuracy of the owner or objector count, the State Historic Preservation Officer shall exercise due diligence to determine whether a majority of owners, or owners of a majority of the land area, have objected.

* * * * *

(j) * * * The State Review Board shall review the nomination forms or documentation proposed for submission and any comments concerning the property’s significance and eligibility for the National Register. * * *

* * * * *

(n) If the owner of a private property has objected or, for a district or single property with multiple owners, the majority of owners or the owners of a majority of the land area have objected, to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to paragraph (s) of this section.

(o) The State Historic Preservation Officer signs Section 3 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer’s signature in Section 3 certifies that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient; and
- (4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation, The State Historic Preservation Officer must identify the applicable criteria and indicate the property’s level of significance.

* * * * *

(r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners, or the owners of a majority of the land area, for a district or single property with multiple owners) objects by notarized statements received by the

Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(s) If the owner of private property (or the majority of such owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that constituted the objection that the owner(s) no longer object to listing.

* * * * *

(v) In the case of nominations where the owner of private property (or the majority of such owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in § 60.6(d) or the State Historic Preservation Officer may notify the owners individually.

(w) If subsequent to nomination a State makes major revisions to a nomination or re-nominates a property returned by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the revisions or re-nomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. * * *

* * * * *

■ 9. Amend § 60.9 by revising paragraphs (c) through (j) to read as follows:

§ 60.9 Nominations by Federal agencies.

* * * * *

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the

National Register. Within 45 days of receiving the completed nomination, the State Historic Preservation Officer shall make a recommendation regarding the nomination to the appropriate Federal Preservation Officer. The State Historic Preservation Officer signs Section 3 of the nomination form with his/her recommendation. Failure to meet the 45-day deadline shall constitute a recommendation to not support the nomination.

(d) At the same time completed nominations are submitted to the appropriate State Historic Preservation Officer under paragraph (c) of this section, the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified by the Federal Preservation Officer and given 45 days in which to comment.

(e) After receiving the comments of the State Historic Preservation Officer and chief elected local officials, or if there has been no response within 45 days, the Federal Preservation Officer may approve the nomination if in his or her opinion the property meets the National Register criteria for evaluation and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, DC 20240. Prior to forwarding the nomination to the Keeper, the Federal Preservation Officer signs Section 3 of the nomination form certifying that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient; and
- (4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

(f) When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the property and certifying that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented; and
- (3) The nomination form is technically and professionally correct and sufficient.

(g) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination,

or, if there are no comments from the State Historic Preservation Officer, an explanation is attached. Concurrent nominations (see § 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with § . 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(h) Notice will be provided in the **Federal Register** that the nominated property is being considered for listing in the National Register of Historic Places in accord with § 60.13.

(i) Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(j) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

■ 10. In § 60.10, revise paragraphs (a) and (d) to read as follows:

§ 60.10 Concurrent State and Federal nominations.

(a) State Historic Preservation Officers and Federal Preservation Officers are encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under their jurisdiction or control. All Federal nominations, including concurrent State and Federal nominations, must satisfy the procedural requirements in § 60.9, including:

(1) Providing the appropriate State Historic Preservation Officer with notice of the proposed nomination and 45-days in which to respond;

(2) Providing the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located notice of the

proposed nomination and 45 days in which to comment; and

(3) Certifying that all procedural requirements have been met, the nomination form is adequately documented, and the nomination form is technically and professionally correct and sufficient.

* * * * *

(d) If the owner of any privately owned property (or a majority of the owners, or the owners of a majority of the land area for a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility. Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

* * * * *

■ 11. Revise § 60.12 to read as follows:

§ 60.12 Nomination appeals.

(a) *Appeal Procedures for Nominations by State Historic Preservation Officers.* (1) Any person or local government may appeal to the Keeper the failure or refusal of a State Historic Preservation Officer to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a State Historic Preservation Officer to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may “petition the Keeper during the nomination process,” as specified in § 60.6(t). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer.

(3) The Keeper will respond to the appellant and the State Historic Preservation Officer with a written explanation either denying or sustaining the appeal within 60 days of receipt.

Upon the request of the State Historic Preservation Officer, the Keeper may extend this period for an additional 30 days. If the appeal is sustained, the Keeper will:

(i) Request the State Historic Preservation Officer to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in § 60.6 except that concurrence of the State Review Board or State Historic Preservation Officer is not required; or

(ii) If the nomination has not completed these procedural requirements, request the State Historic Preservation Officer to promptly process the nomination pursuant to § 60.6 and submit the nomination to the Keeper without delay.

(4) State Historic Preservation Officers shall process and submit such nominations if so requested by the Keeper pursuant to this section. The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his/her own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.

(5) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(b) *Appeal Procedures for Nominations by Federal Preservation Officers.* (1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property under the jurisdiction or control of a Federal agency for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). (This action differs from the procedure for appeals during the Keeper’s review of a nomination where an individual or organization may “petition the Keeper during the nomination process,” as specified in § 60.9(j). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.) The Keeper of the National Register shall only have jurisdiction to hear appeals if the following criteria are satisfied:

(i) A completed nomination has been sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the

nomination, the significance of the property, and its eligibility for the National Register;

(ii) The State Historic Preservation Officer has been given 45 days to make a recommendation regarding the nomination to the Federal Preservation Officer;

(iii) The chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located have been notified and given 45 days in which to comment;

(iv) The Federal Preservation Officer has forwarded the nomination to the Keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs (b)(i) through (iii) of this section; the nomination is adequately documented; the nomination is technically and professionally correct and sufficient;

(v) Notice has been provided in the **Federal Register** that the nominated property is being considered for listing in the National Register that includes any comments and the recommendation of the State Historic Preservation Officer and a declaration whether the State Historic Preservation Officer has responded within the 45 day-period of review described in paragraph (b)(ii) of this section; and

(vi) The Keeper addresses in the **Federal Register** any comments from the State Historic Preservation Officer that do not support the nomination of the property in the National Register before the property is listed in the National Register.

(2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the Federal Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section, and shall include all pertinent correspondence from the State Historic Preservation Officer and/or Federal Preservation Officer.

(3) The Keeper will respond to the appellant and the Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 60 days of receipt. Upon request of the Federal Preservation Officer, the Keeper may extend this period for an additional 30 days.

(4) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(c) *Appeal Procedures for Concurrent State and Federal Nominations.* (1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property that is properly considered a concurrent state and federal nomination under § 60.10 for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). Appeals relating to concurrent state and federal nominations are subject to the appeal procedures for nominations by Federal Preservation Officers in paragraph (b) of this section.

■ 12. In § 60.13:

■ a. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d).

■ b. Add a new paragraph (b).

■ c. Revise newly re-designated paragraph (d).

The revisions and additions to read as follows:

§ 60.13 Publication in the Federal Register and other NPS notification.

* * * * *

(b) For all nominations that include property under the jurisdiction or control of a Federal agency, the NPS shall include any comments and the recommendation of the State Historic Preservation Officer with respect to the nomination and a declaration whether the State Historic Preservation Officer has responded within the 45-day period of review provided by 54 U.S.C. 302104(c)(2) (see also § 60.9(c)) in a notice published in the **Federal Register**. The NPS shall further address in the **Federal Register** any comments from the State Historic Preservation Officer that do not support the nomination of the property.

* * * * *

(d) In nominations where the owner of any privately owned property (or a majority of the owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected and the Keeper has determined the property eligible for listing in the National Register, NPS shall notify the State Historic Preservation Officer, the Federal Preservation Officer (for Federal or concurrent nominations), the person or local government where there is no approved State Historic Preservation Program, and the Advisory Council on Historic Preservation. NPS will publish notice of the determination of eligibility in the **Federal Register**.

■ 13. In § 60.14:

■ a. Revise the third sentence of paragraph (a)(1).

■ b. Revise paragraphs (b)(3)(iii) and (b)(3)(iv).

■ c. Remove paragraph (b)(3)(v).

The revisions to read as follows:

§ 60.14 Changes and revisions to properties listed in the National Register.

(a) * * * (1) * * * In the case of boundary enlargements only those owners in the newly nominated as yet unlisted area need be notified and will be counted in determining whether a majority of private owners or owners of a majority of the land area of a property of district object to listing. * * *

(b) * * *

(3) * * *

(iii) Revised maps.

(iv) Continuation sheet with up to date Sections 2, 5, 7, and 10.

* * * * *

PART 63—DETERMINATIONS OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES

■ 14. The authority citation for part 63 is revised to read as follows:

Authority: 54 U.S.C. 320102, 302103, 302105.

■ 15. In § 63.4, revise paragraphs (a) and (c) to read as follows:

§ 63.4 Other properties on which determinations of eligibility may be made by the Secretary of the Interior.

(a) The Keeper of the National Register will not make determinations of eligibility on properties nominated by Federal agencies prior to returning the nominations for such properties to the agency for technical or professional revision or because procedural requirements have not been met.

* * * * *

(c) If necessary to assist in the protection of historic resources, the Keeper, upon consultation with and request from the appropriate State Historic Preservation Officer and concerned Federal agency, if any, may determine properties to be eligible for listing in the National Register under the Criteria established in part 60 of this chapter and shall publish such determinations in the **Federal Register**. Such determinations will be made after an investigation and an onsite inspection of the property in question.

Andrea Travnicek,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019-03658 Filed 2-28-19; 8:45 am]

BILLING CODE 4310-EJ-P

POSTAL SERVICE

39 CFR Part 111

Forms of Identification

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®)* for clarity and consistency in the standards regarding forms of identification.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260-5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov*, with a subject line of "Forms of Identification". Faxed comments are not accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.—4 p.m., by calling 202-268-2906.

FOR FURTHER INFORMATION CONTACT:

Karen Key at (202) 268-7492, Catherine Knox at (202) 268-5636, or Garry Rodriguez at (202) 268-7281.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to amend the DMM in various sections for clarity and consistency in the standards regarding forms of identification.

The Postal Service is proposing to add a new section 608.10.0, *Forms of Identification*. This new section will act as the primary source for consistent standards on forms of acceptable and unacceptable identification. DMM section 608.10.0 will include subsections that: (1) Provide a table of the products and services that require forms of acceptable identification and the number of forms (primary and secondary) required, (2) provide a description of "primary" forms of acceptable identification and include a table of which "primary" forms are acceptable for each product and service, (3) provide a description of "secondary" forms of acceptable identification, and

§ 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.

(a) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the National Register. Nomination forms are prepared under the supervision of the State Historic Preservation Officer. The reestablishes statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria for evaluation within the State. All nominations from the State shall be submitted in accord with the State priorities, which shall be consistent with an approved State historic preservation plan.

(b) The State shall consult with local authorities in the nomination process. The State provides notice of the intent to nominate a property and solicits written comments especially on the significance of the property and whether or not it meets the National Register criteria for evaluation. The State notice also gives owners of private property an opportunity to concur in or object to listing. The notice is carried out as specified in the subsections below.

(c) As part of the nomination process, each State is required to notify in writing the property owner(s), except as specified in paragraph (d) of this section, of the State's intent to bring the nomination before the State Review Board. The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate. If in any State the land recordation or tax records is not the most appropriate list from which to obtain owners that State shall notify the Keeper in writing and request approval that an alternative source of owners may be used.

The State is responsible for notifying only those owners whose names appear on the list consulted. Where there is more than one owner on the list, each separate owner shall be notified. The State shall send the written notification at least 30 but not more than 75 days before the State Review Board meeting. Required notices may vary in some details of wording as the States prefer, but the content of notices must be approved by the National Register. The notice shall give the owner(s) at least 30 but not more than 75 days to submit written comments and concur in or object in writing to the nomination of such property. At least 30 but not more than 75 days before the State Review Board meeting, the States are also required to notify by the above mentioned National Register approved notice the applicable chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located. The National Register nomination shall be on file with the State Historic Preservation Program during the comment period and a copy made available by mail when requested by the public, or made available at a location of reasonable access to all affected property owners, such as a local library courthouse, or other public place, prior to the State Review Board meeting so that written comments regarding the nomination can be prepared.

(d) For a nomination with more than 50 property owners, each State is required to notify in writing at least 30 but not more than 75 days in advance of the State Review Board meeting the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property or district is located. The State shall provide general notice to property owners concerning the State's intent to nominate. The general notice shall be published at least 30 days but not more than 75 days before the State Review Board meeting and provide an opportunity for the submission of written comments and provide the owners of private property or a majority of such owners for districts an opportunity to concur in or object in writing to the nomination. Such general notice must be published in one or more local newspapers of general circulation in the area of the nomination. The content of the notices shall be approved by the National Register. If such general notice is used to notify the property owners for a nomination containing more than 50 owners, it is suggested that a public information meeting be held in the immediate area prior to the State Review Board meeting. If the State wishes to individually notify all property owners, it may do so, pursuant to procedures specified in subsection 60.6(c), in which case, the State need not publish a general notice.

(e) For Multiple Resource and Thematic Group Format submission, each district, site, building, structure and object included in the submission is treated as a separate nomination for the purpose of notification and to provide owners of private property the opportunity to concur in or object in writing to the nomination in accord with this section.

(f) The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver.

(g) Upon notification, any owner or owners of a private property proposed to be nominated for listing who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, ~~as appropriate, proposed for listing~~ and objects to the listing. With respect to historic districts, owners may object regardless of whether the owner's individual property contributes to the significance of the district. In nominations with multiple ownership of a single private property or of districts~~For nominations with more than one owner of a property,~~ the property will not be listed if either a majority of the owners object to listing; or the owners of a majority of the land area object to listing. Upon receipt of notarized objections respecting a ~~district or single private~~ property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners, or owners of a majority of the land area, ~~of private property~~ have objected. If an owner whose name did not appear on the list of owners certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners, or owners of a majority of the land area, ~~have has~~ objected. If the State Historic Preservation Officer receives other information that would call into question the accuracy of the owner or objector count, the State Historic Preservation Officer shall exercise due diligence to determine whether a majority of owners, or owners of a majority of the land area, have objected. ~~Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.~~

Commented [EH1]: Land Area. Not only does this run counter to generally accepted democratic principle of one man one vote, it introduces a second calculation. Acres? Square Feet? What about boundary disputes? Condos or fractional ownership? How do you quantify?

Commented [EH2]: Land area

Commented [EH3]: Land area

Commented [EH4]: What does this mean? Adds more heft to SHPO examination of technical ownership documents.

(h) If a property has been submitted to and approved by the State Review Board for inclusion in the National Register prior to the effective date of this section, the State Historic Preservation Officer need not resubmit the property to the State Review Board; but before submitting the nomination to the NPS shall afford owners of private property the opportunity to concur in or object to the property's inclusion in the Register pursuant to applicable notification procedures described above.

(i) [Reserved]

(j) Completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register are submitted to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission ~~on the nomination forms~~ and any comments concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination.

(k) Nominations approved by the State Review Board and comments received are then reviewed by the State Historic Preservation Officer and if he or she finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the nominations are submitted to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by a State and notarized statements of objection to listing are submitted with a nomination.

(l) If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the State Historic Preservation Officer, if he or she chooses, may submit the nomination with his or her opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The opinion of the State Review Board may be the minutes of the Review Board meeting. The State Historic Preservation Officer shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the local, county or municipal political subdivision in which the property is located but need not otherwise do so. Such nominations will be substantively reviewed by the Keeper.

(m) The State Historic Preservation Officer shall also submit to the Keeper nominations if so requested under the appeals process in § 60.12.

(n) If the owner of a private property ~~or the majority of such owners for a district or single property with multiple owners has objected or, for a district or single property with multiple owners, the majority of owners or the owners of a majority of the land area~~ have objected, to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to subsection (s) of this section.

Commented [EH5]: Land area

(o) The State Historic Preservation Officer signs ~~block 12~~Section 3 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer's signature ~~in block 12~~Section 3 certifies that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation. ~~[The State Historic Preservation Officer must identify the applicable criteria and indicate the property's level of significance.]~~

Commented [EH6]: This section describes the items that are considered certified by signature. This sentence is odd. The nomination itself covers which criteria it meets and level of significance. Is the intention that the signature certifies this – or is this some additional document that must be prepared? Might be better phrased as “, and the State Historic Preservation Officer has identified the applicable criteria and level of significance.”

(p) When a State Historic Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the State Historic Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the property and certifying that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient.

(q) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places as specified in § 60.13.

(r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners, ~~or the owners of a majority of the land area~~, for a district or single property with multiple owners) objects by notarized statements received by the Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

Commented [EH7]: Land area

(s) If the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that the owner(s) no longer object to listing.

(t) Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

(u) State Historic Preservation Officers are required to inform the property owners and the chief elected local official when properties are listed in the National Register. In the case of a nomination where there

are more than 50 property owners, they may be notified of the entry in the National Register by the same general notice stated in § 60.6(d). States which notify all property owners individually of entries in the National Register need not publish a general notice.

(v) In the case of nominations where the owner of private property (or the majority of such owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in § 60.6(d) or the State Historic Preservation Officer may notify the owners individually.

Commented [EH8]: Land area

(w) If subsequent to nomination a State makes major revisions to a nomination or renominates a property ~~rejected~~ returned by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the revisions or renomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. Comments received and notarized statements of objection must be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer also certifies by the resubmittal that the affected property owner(s) and the chief elected local official have been renotified. "Major revisions" as used herein means revisions of boundaries or important substantive revisions to the nomination which could be expected to change the ultimate outcome as to whether or not the property is listed in the National Register by the Keeper.

(x) Notwithstanding any provision hereof to the contrary, the State Historic Preservation Officer in the nomination notification process or otherwise need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments) specific information relating to the location of properties proposed to be nominated to, or listed in, the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.

~~(y) With regard to property under Federal ownership or control, completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment. The Federal Preservation Officer, may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240.~~

[46 FR 56187, Nov. 16, 1981, as amended at 48 FR 46308, Oct. 12, 1983]

Commented [EH9]: Removes ability for SHPOs to prepare and submit nominations to agencies. This is important – because in the narrative, they explain they have interpreted the amendments to mean they can only accept a nomination from a federal agency should all technical requirements be met. This would be less of a deal if a nomination could still originate through a SHPO. They appear to be saying that a nomination of a federal property can only happen if the federal agency originates and pursues it. Additionally, here, it originally stated the FPO "may" approve the nomination and send it to the Keeper. It doesn't say they have to – and it doesn't seem to prohibit the nomination from going from the SHPO to the Keeper if the FPO failed to proceed. In later sections, should the FPO fail to nominate, the Keeper can only hear an appeal of that failure if the FPO capitulates and nominates.

They appear to be conflating nomination by federal agencies and nominations of federal property – creating a singular process for federal property only by agencies. This was never the intent.

§ 60.9 Nominations by Federal agencies.

(a) The National Historic Preservation Act of 1966, as amended, requires that, with the advice of the Secretary and in cooperation with the State Historic Preservation Officer of the State involved, each Federal agency shall establish a program to locate, inventory and nominate to the Secretary all properties under the agency's ownership or control that appear to qualify for inclusion on the National Register. Section 2(a) of Executive Order 11593 provides that Federal agencies shall locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places. Additional responsibilities of Federal agencies are detailed in the National Historic Preservation Act of 1966, as amended, Executive Order 11593, the National Environmental Policy Act of 1969, the Archeological and Historic Preservation Act of 1974, and procedures developed pursuant to these authorities, and other related legislation.

(b) Nomination forms are prepared under the supervision of the Federal Preservation Officer designated by the head of a Federal agency to fulfill agency responsibilities under the National Historic Preservation Act of 1966, as amended.

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. Within 45 days of receiving the completed nomination, the State Historic Preservation Officer shall make a recommendation regarding the nomination to the appropriate Federal Preservation Officer. The chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment. The State Historic Preservation Officer signs ~~block 12~~ Section 3 of the nomination form with his/her recommendation. Failure to meet the 45-day deadline shall constitute a recommendation to not support the nomination.

(d) At the same time completed nominations are submitted to the appropriate State Historic Preservation Officer under paragraph (c) of this section, the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified by the Federal Preservation Officer and given 45 days in which to comment.

~~(de)~~ After receiving the comments of the State Historic Preservation Officer, and chief elected local official, or if there has been no response within 45 days, the Federal Preservation Officer may approve the nomination if in his or her opinion the property meets the National Register criteria for evaluation and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. Prior to forwarding the nomination to the Keeper, the Federal Preservation Officer signs ~~block 12~~ Section 3 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The Federal Preservation Officer's signature in block 12 certifies that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient;
- (4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

~~(ef)~~ When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the property and certifying that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented; and

Commented [EH1]: It is important to note that although the amendments covered changes to the nomination process by Federal Agencies – it, in our opinion, was not meant to serve as the only means a federally owned or controlled property could be nominated. The language states "...the Secretary may accept a nomination directly by a Federal Agency for inclusion of property on the National Register only if..." and then spells out a number of conditions. The proposed revised regulations, as written, seem to veer into the prevention of any nomination or determination of eligibility of federally owned or controlled property unless it is done so by a federal agency – and then only if they follow these procedures.

(3) The nomination form is technically and professionally correct and sufficient.

(fg) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination, or, if there are no comments from the State Historic Preservation Officer an explanation is attached. Concurrent nominations (see § 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with Sec. 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(gh) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places in accord with § 60.13.

~~(hi) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves such nomination or an appeal is filed.~~ Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(ij) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

Commented [EH2]: This removes the timetable for a Keeper's approval of a nomination. States, however, have a 45-day review period – and their failure to respond constitutes no support for the nomination.

§ 60.10 Concurrent State and Federal nominations.

(a) State Historic Preservation Officers and Federal Preservation Officers are encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under ~~Federal ownership~~their jurisdiction or control. All Federal nominations, including concurrent State and Federal nominations, must satisfy the procedural requirements in § 60.9 including:

(1) Providing the appropriate State Historic Preservation Officer with notice of the proposed nomination and 45-days in which to respond;

(2) Providing the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located notice of the proposed nomination and 45 days in which to comment; and

(3) Certifying that all procedural requirements have been met, the nomination form is adequately documented, and the nomination form is technically and professionally correct and sufficient.

(b) When a portion of the area included in a Federal nomination is not located on land under the ownership or control of the Federal agency, but is an integral part of the cultural resource, the completed nomination form shall be sent to the State Historic Preservation Officer for notification to property owners, to give owners of private property an opportunity to concur in or object to the nomination, to solicit written comments and for submission to the State Review Board pursuant to the procedures in § 60.6.

(c) If the State Historic Preservation Officer and the State Review Board agree that the nomination meets the National Register criteria for evaluation, the nomination is signed by the State Historic Preservation Officer and returned to the Federal agency initiating the nomination. If the State Historic Preservation Officer and the State Review Board disagree, the nomination shall be returned to the Federal agency with the opinions of the State Historic Preservation Officer and the State Review Board concerning the adequacy of the nomination and whether or not the property meets the criteria for evaluation. The opinion of the State Review Board may be the minutes of the State Review Board meeting. The State Historic Preservation Officer's signed opinion and comments shall confirm to the Federal agency that the State nomination procedures have been fulfilled including notification requirements. Any comments received by the State shall be included with the letter as shall any notarized statements objecting to the listing of private property.

(d) If the owner of any privately owned property, (or a majority of the owners, or the owners of a majority of the land area of such properties within for a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility. Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

(e) The State Historic Preservation Officer shall notify the non-Federal owners when a concurrent nomination is listed or determined eligible for the National Register as required in § 60.6.

§ 60.12 Nomination appeals.

(a) Appeal Procedures for Nominations by State Historic Preservation Officers.

(1) Any person or local government may appeal to the Keeper the failure or refusal of a ~~nominating authority~~ State Historic Preservation Officer to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a ~~nominating authority~~ State Historic Preservation Officer to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may "petition the Keeper during the nomination process," as specified in §§ 60.6(t) ~~and 60.9(i)~~. Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(b2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer ~~or Federal Preservation Officer~~, an explanation of why the applicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer ~~or Federal Preservation Officer~~.

(c3) The Keeper will respond to the appellant and the State Historic Preservation Officer ~~or Federal Preservation Officer~~ with a written explanation either denying or sustaining the appeal within ~~45-60~~ days of receipt. Upon request of the State Historic Preservation Officer, the Keeper may extend this period for an additional 30 days. If the appeal is sustained, the Keeper will:

(4i) Request the State Historic Preservation Officer ~~or Federal Preservation Officer~~ to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in §§ 60.6 ~~or 60.9~~ except that concurrence of the State Review Board, State Historic Preservation Officer ~~or Federal Preservation Officer~~ is not required; or

(2ii) If the nomination has not completed these procedural requirements, request the State Historic Preservation Officer ~~or Federal Preservation Officer~~ to promptly process the nomination pursuant to §§ 60.6 ~~or 60.9~~ and submit the nomination to the Keeper without delay.

(d4) State Historic Preservation Officers ~~and Federal Preservation Officers~~ shall process and submit such nominations if so requested by the Keeper pursuant to this section. ~~The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his/her own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.~~

(e5) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(b) Appeal Procedures for Nominations by Federal Preservation Officers

(1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property under the jurisdiction or control of a Federal Agency for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). (This action differs from the procedure for appeals during the Keeper's review of a nomination where an individual or organization may "petition the Keeper during the nomination process," as specified in § 60.9(j). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.) The

Commented [EH1]: Takes unified appeals process and separates it into three sections: Nominations by SHPOs, Nominations by FPOs and Concurrent.

Commented [EH2]: Because SHPO, FPO and Concurrent nominations have been separated, this section now only seems to apply to properties that the SHPO has failed or refused to nominate. NOT Agencies. This fundamentally removes the Secretary from making determinations of eligibility if an agency fails or refuses to nominate.

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Keeper of the National Register shall only have jurisdiction to hear appeals if the following criteria are satisfied:

- (i) A completed nomination has been sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property, and its eligibility for the National Register;
 - (ii) The State Historic Preservation Officer has been given 45 days to make a recommendation regarding the nomination to the Federal Preservation Officer;
 - (iii) The chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located have been notified and given 45 days in which to comment;
 - (iv) The Federal Preservation Officer has forwarded the nomination to the Keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs (b)(i) through (ii) of this section; the nomination is adequately documented; the nomination is technically and professionally correct and sufficient;
 - (v) Notice has been provided in the Federal Register that the nominated property is being considered for listing in the National Register that includes any comments and the recommendation of the State Historic Preservation Officer and a declaration whether the State Historic Preservation Officer has responded within the 45 day-period of review described in paragraph (b)(ii) of this section; and
 - (vi) The Keeper addresses in the Federal Register any comments from the State Historic Preservation Officer that do not support the nomination of the property in the National Register before the property is listed in the National Register.
- (2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the Federal Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section, and shall include all pertinent correspondence from the State Historic Preservation Officer and/or Federal Preservation Officer.
- (3) The Keeper will respond to the appellant and the Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 60 days of receipt. Upon request of the Federal Preservation Officer, the Keeper may extend this period for an additional 30 days.
- (4) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(c) Appeal Procedures for Concurrent State and Federal Nominations

- (1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property that is properly considered a concurrent state and federal nomination under §60.10 for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). Appeals relating to concurrent state and federal nominations are subject to the appeal procedures for nominations by Federal Preservation Officers in paragraph (b) of this section.

Commented [EH3]: ****The Keeper will only hear appeals of an agency refusal or failure to nominate if said agency actually prepares a nomination, and gives it to the SHPO for comment****

Commented [EH4]: Even if the agency prepares a nomination and gives it to the SHPO for comment, and to local officials, they still have to actually forward it to the Keeper. How can an appeal of a refusal to nominate require the agency to nominate????

If Agencies actually fulfilled their 110 responsibilities and nominated properties as they are supposed to, this would be less of a problem – but it is still a problem. It is an accepted practice of agencies to refuse to nominate something – instead only seeking eligibility determinations – since that satisfies their Section 106 consultation needs, and saves them the time and expense of a full nomination. That said, further proposed revisions would seem to also eliminate the Keeper’s ability to make a determination of eligibility unless a nomination is submitted.

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§ 63.2 Determination of eligibility process.

The Department of the Interior will respond within 45 days of receipt of a documented request for a determination of eligibility from a Federal agency when it is submitted in accordance with the following regulations and is accompanied by documentation that clearly portrays the nature and significance of the property.

(a) The agency shall consult the State Historic Preservation Officer as the first step in identifying historic properties for information concerning:

- (1) Properties listed in the National Register.
- (2) Properties in the process of nomination to the National Register.
- (3) Properties determined eligible by the Secretary of the Interior for listing in the National Register.
- (4) Any other available information that would assist in identifying properties in the area affected by the proposed action.

(b) If the State Historic Preservation Officer has inadequate information to document the presence or absence of historic properties in the project area, the Federal agency should refer to the Department of the Interior's criteria for the identification of historic properties and the guidelines for level of documentation to accompany requests for determinations of eligibility for inclusion in the National Register published as a notice in the FEDERAL REGISTER.

(c) The agency shall, in consultation with the State Historic Preservation Officer, apply the National Register Criteria for Evaluation contained in 36 CFR 60.6 to all potentially eligible properties that may be affected by the proposed action. If a property appears to meet the Criteria and the State Historic Preservation Officer agrees, the agency should follow the procedures in § 63.3. If there is a question whether the Criteria are met, the agency shall complete the procedures in § 63.3(d). A question on whether a property meets the Criteria exists when the agency and the State Historic Preservation Officer disagree or when the agency determines that a question exists. The Department of the Interior will provide general and specific advice concerning the identification of historic properties and will bring to the attention of a Federal agency any information received from the public regarding potential historic properties in the area affected by its plans or projects.

(d) The agency shall submit a letter of request for a determination of eligibility with a description, statement of significance, photographs, and a map, or a statement in accord with § 63.3 below, if applicable, directly to the Keeper of the National Register, National Park Service, Department of the Interior, Washington, D.C. 20240. If available, the opinion of the State Historic Preservation Officer on the eligibility of the property should also be forwarded with the request.

(e) The Keeper, National Register, will respond in writing to the agency's request within 45 days of receipt of a documented request submitted in accord with § 63.2(d) of these procedures. If the opinion of the State Historic Preservation Officer is not included with the request, the Keeper of the National Register will provide to the State Historic Preservation Officer a copy of the request and will ask for his opinion on the property. If the Keeper does not receive the State Historic Preservation Officer's response within three weeks of the State Historic Preservation Officer's receipt of a letter from the Keeper requesting an opinion, the Keeper will proceed with the determination and will inform the agency that the State Historic Preservation Officer did not give an opinion. If the Keeper of the National Register determines that documentation submitted with the request is not sufficient to make a professional evaluation of the significance of the property, he will advise the agency in writing of the additional information needed. The Keeper of the National Register will respond to the agency's request within 45 days of receipt of documentation on the property requested by the Keeper.

Commented [EH1]: This section was not changed. It is included because of the language on DOEs at the bottom. It is unclear in language changes in other sections whether they will actually do DOEs for Federal Agencies unless they submit a complete nomination.

§ 63.4 Other properties on which determinations of eligibility may be made by the Secretary of the Interior.

(a) The Keeper of the National Register will ~~not~~ make determinations of eligibility on properties nominated by Federal agencies ~~prior to returning the nominations for such properties to the agency for technical or professional revision or because procedural requirements have not been met, under section 2(a) of Executive Order 11593 prior to returning the nominations for such properties to the agency for technical or professional revision or because of procedural requirements. Such determinations of eligibility will be made only if sufficient information exists to establish the significance of the property and its eligibility for the National Register~~

(b) Any property or district removed from the National Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the National Register without further action and will be published as such in the FEDERAL REGISTER.

(c) If necessary to assist in the protection of historic resources, the Keeper, upon consultation with ~~and request from~~ the appropriate State Historic Preservation Officer and concerned Federal agency, if any, may determine properties to be eligible for listing in the National Register under the Criteria established ~~by 36 CFR part 60 in part 60 of this chapter~~ and shall publish such determinations in the FEDERAL REGISTER. Such determinations may be made ~~without a specific request from the Federal agency or, in effect, may reverse findings on eligibility made by a Federal agency and State Historic Preservation Officer. Such determinations will be made~~ after an investigation and an onsite inspection of the property in question.

Commented [EH1]: Keeper will now only make eligibility determinations (on properties nominated by federal agencies) once the nomination is completely finished and the submission procedures are completed. This conflates national register nominations and DOEs into the same technical process. The stricken reference to the EO is interesting. This is the EO issued in 1972 that states "no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places." This new language directly conflicts with 63.2, which preserves the Keeper's ability to make a DOE, if asked, but enables them to request additional information. Is that additional information now supposed to in fact be a full nomination?

Commented [EH2]: As originally written, Keeper has to consult with SHPO and any concerned Agencies in making eligibility determinations. Now, SHPO and concerned Agencies have to both request determination. They specifically deleted language that allowed the Keeper to make determinations without request by the Agency.

Is this all assuming that agencies will suddenly start completing NR nominations instead of relying on eligibility determinations? Again, what if an agency refuses to nominate?

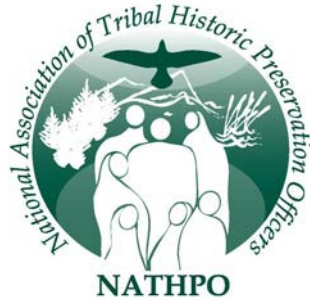
Department of Interior Proposed Rule

On March 1st the Department of the Interior released a proposed rule that contradicts the intention of both the National Historic Preservation Act of 1966 (NHPA) and a 2016 amendment to the law. Both the law and amendment were a reaction by lawmakers to what they saw as overreach by the federal government and were intended to put safeguards in place to prevent the federal government from ignoring the concerns of state and local officials and the general public.

The proposed rule turns the NHPA on its head and gives federal agencies virtually unilateral power to determine if historic resources on federal lands should be afforded protection and inexplicably establishes a feudal voting system affording rights to individuals based upon how much land they own.

QUICK FACTS

- The proposed rule is based on language amending the NHPA that was included in the National Parks Centennial Act (H.R. 4680, P.L. 114-289). The amendment was intended to require input and comment from State Historic Preservation Officers (SHPOs) on National Register nominations by federal agencies.
- The proposed rule turns the amendment on its head and rather than requiring SHPOs to weigh in on National Register nominations by federal agencies, it instead gives federal agencies the ability to block the listing or even a determination of eligibility for listing of historic properties on federal lands.
- **Under current rules, communities and organizations can prepare nominations to SHPOs, who in turn can nominate historic properties on federal lands for listing in the National Register of Historic Places. This proposed rule would place the power to identify or nominate historic properties on federal lands solely in the hands of federal agencies.**
- If an agency refuses to nominate a property, or to seek an eligibility determination, the proposed rule establishes a circular process for appeal – only if the agency actually submits a nomination.
- Many federally owned properties contain historic resources that are significant to tribes, yet this rule explicitly presumes that there will be no impact on tribes.
- Besides giving federal agencies virtually total control over determining which historic resources on federal lands should be protected, the proposed rule would also create a feudal National Register voting system.
- The proposed rule “provide(s) that a property shall not be listed in the National Register if objections are received from either (i) a majority of the land owners, as existing regulations provide; or (ii) owners of a majority of the land area of the property.”
- **By changing the requirement from the “majority of property owners” to both “majority of owners” and “owners of a majority of the land area of the property,” the Department of the Interior has both overstepped its authority and made a mockery of the American ideal of one person one vote.**
- The concept of “land area” in determining owner objection does not appear in the NHPA. Furthermore, there is nothing in the NHPA that gives the Secretary of the Interior the authority to make this change.
- This proposal is unworkable. It places the onus for defining, evaluating and quantifying land area ownership on SHPOs, who do not even have reliable access to the data necessary to make these determinations. It also falsely presumes that accurate property area data exists in all communities.



P.O. BOX 19189 • Washington, D.C. 20036-9189 • 202.628.8476 • nathpo.org

The National Park Service is seeking to revise Title 36 of the Code of Federal Regulations, Parts 60 and 63, governing the listing of properties in the National Register of Historic Places (NRHP). This proposed rule, published in the Federal Register on March 1, 2019 with a public comment period ending April 30, 2019, proposes significant changes to the NRHP. Part of the proposed rule is based on language amending the National Historic Preservation Act (NHPA) that was included in the National Parks Centennial Act (H.R. 4680, P.L. 114-289), which included a seven-year reauthorization of the Historic Preservation Fund.

The proposed rule goes far beyond the amendment and the intent of the NHPA, proposing changes that would inappropriately and negatively impact the role of the Keeper of the NRHP, State Historic Preservation Officers (SHPOs), Indian tribes, and indeed historic properties and the public interest. Two proposed provisions are especially problematic:

1. The proposed rule specifies that the Keeper may only determine the eligibility of properties for listing in the NRHP after consultation with and a request from the appropriate SHPO and concerned Federal agency. This could allow federal agencies to effectively block the Keeper from opining on consensus determinations in the NHPA Section 106 process without agency approval, changing the Keeper's role in a way the NPS does not have the authority to do. This would allow a federal agency to leave a nomination in regulatory purgatory, thereby effectively vetoing a nomination.
2. The proposed rule "provide(s) that a property shall not be listed in the National Register if objections are received from either (i) a majority of the land owners, as existing regulations provide; or (ii) owners of a majority of the land area of the property." This was in no way part of the amendments to the NHPA, and places the full onus on the SHPO "to ensure the accuracy of the owner and objector count prior to submitting a nomination to the Keeper." This is clearly intended to give a large ranch or mine owner or energy developer with an interest in a proposed historic district or landscape a greater say in the nomination.

The proposed changes have serious implications for tribes. Agencies are already challenged by identification of properties of religious and cultural significance to tribes. A new requirement for agencies to request an eligibility determination from the Keeper (especially where states, tribes, and others may have reached consensus) would impact tribes' ability to participate in consultations, especially off tribal land, where many culturally important sites are located.

This may also affect how/whether a property's tribal significance is considered. Agencies unreceptive to tribal perspectives would be able to circumvent established policies and processes for consultation to identify sites and mitigate effects. They could also demand additional justification from tribes to submit eligibility determinations, implicating potentially sensitive information.

The federal pocket veto could also create significant delays in the Section 106 review process. This provision would prevent parties other than the federal agency from submitting National Register nominations (or appeals) for federal properties. Accordingly, if there are differences of opinion on whether a federal property is National Register-eligible, the proposed regulations would provide no mechanism for resolving that disagreement, because the federal agency could prevent the issue from being referred to the Keeper. The result would be delays and uncertainty in the Section 106 review process – the antithesis of the stated goal of streamlining.

Further, giving undue weight to the opinions of land and private property owners poses an existential threat to properties of religious and cultural significance to tribes. Placing the burden on SHPOs to evaluate whether owners of a majority of the land area support a nomination is not feasible and is contrary to the statutory language of the NHPA. It also contradicts and precludes the requirement for federal government-to-government consultation with Indian Tribes. This provision is above all contrary to the fundamental principles of American democracy, where citizens who have more property or wealth do not get to out-vote the majority.

NPS has stated that DOI has determined that this proposed rule will have no direct effects on tribes, and therefore no consultation is required. This rationale fails to recognize that tribes often have substantial traditional cultural and ancestral connections to federal lands, and the proposed changes in the regulations could adversely affect the tribes' ability to protect sacred and cultural sites with enormous significance to tribes.

The current Department of the Interior Policy on Consultation with Indian Tribes requires government-to-government consultation between appropriate Tribal Officials and Departmental officials on departmental actions with tribal implications, defined as, "any Departmental regulation, **rulemaking**, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial **direct effect** on an Indian Tribe on matters including, but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance **on federally managed lands**;
2. The ability of an Indian Tribe to govern or provide services to its members;
3. An **Indian Tribe's formal relationship with the Department**; or
4. The consideration of the **Department's trust responsibilities to Indian Tribes.**"
[emphasis added by NATHPO]

This action is a rulemaking, although DOI seems to be interpreting "direct effect" narrowly as being limited to properties on federally managed lands, which is inappropriate at best. Current Tribal ownership and management of land/properties has little relationship to areas of tribal significance (due to past and current policies and practices of the federal government), and limiting the scope of the proposed rule in this way implicates both Tribes' relationship with the Department and the Department's trust responsibilities to Tribes.

The National Association of Tribal Historic Preservation Officers (NATHPO), its members, stakeholders, and partners, request two things at this time: an extension of the public comment period, and acknowledgement that tribal consultation is required under federal and DOI policy and will be initiated by DOI before this rulemaking proceeds further. A public comment period does not constitute government-to-government consultation and will not be considered as such by the sovereign Indian Nations to whom DOI holds trust responsibilities.