



4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 60 and 63

[NPS-WASO-NHPA; PPWONRADE2, PMP00EI05.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 PM EST on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 [INSERT DATE 60 DAYS

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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 (Public Law 114-289).

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 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 sections 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
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§ 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	The title of the documents used to nominate multiple properties that share

	Property Submission/Multiple Property Documentation Form”	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
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, Information Collection Clearance 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 possible.

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, e-mail 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

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. 300101 *et seq.*”

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, Dunlap, 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, D.C.

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.
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