

and conditions, he will immediately notify the SHPO. If the district engineer believes that the potentially eligible historic property meets the criteria for inclusion in the National Register and that it may be affected by the proposed undertaking then he may suspend authorization of the nationwide permit until he provides the ACHP and the SHPO the opportunity to comment in accordance with the provisions of this Appendix. Once these provisions have been satisfied, the district engineer may notify the general permittee that the activity is authorized including any special activity specific conditions identified or that an individual permit is required.

#### 14. Emergency Procedures

The procedures for processing permits in emergency situations are described at 33 CFR 325.2(e)(4). In an emergency situation the district engineer will make every reasonable effort to receive comments from the SHPO and the ACHP, when the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property and will comply with the provisions of this Appendix to the extent time and the emergency situation allows.

#### 15. Criteria of Effect and Adverse Effect

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

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

- (1) Physical destruction, damage, or alteration of all or part of the property;
- (2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;
- (3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
- (4) Neglect of a property resulting in its deterioration or destruction; and
- (5) Transfer, lease, or sale of the property.

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

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

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

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

[55 FR 27003, June 29, 1990]

## PART 326—ENFORCEMENT

Sec.

- 326.1 Purpose.
- 326.2 Policy.
- 326.3 Unauthorized activities.
- 326.4 Supervision of authorized activities.
- 326.5 Legal action.
- 326.6 Class I administrative penalties.

AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

SOURCE: 51 FR 41246, Nov. 13, 1986, unless otherwise noted.

### § 326.1 Purpose.

This part prescribes enforcement policies (§326.2) and procedures applicable to activities performed without required Department of the Army permits (§326.3) and to activities not in compliance with the terms and conditions of issued Department of the Army permits (§326.4). Procedures for initiating legal actions are prescribed in §326.5. Nothing contained in this part shall establish a non-discretionary duty on the part of district engineers nor shall deviation from these procedures give rise to a private right of action against a district engineer.

### § 326.2 Policy.

Enforcement, as part of the overall regulatory program of the Corps, is