

applicant, the Board will consider whether the overall policies, condition, and operation of the applicant are satisfactory and, as a whole, afford no bases for supervisory objection. Where the overall condition of the applicant is satisfactory, the Board in its discretion may waive any specific supervisory objection and approve the branch application.

- (c) Community reinvestment. \* \* \*
- (d) Protest and oral argument. \* \* \*
- (e) Basis for approval. \* \* \*
- (f) Branch openings. \* \* \*
- (g) Branch closings. \* \* \*
- (h) Name of branch office. \* \* \*
- (i) Drive-in and pedestrian offices. \* \* \*

(Sec. 5 of the Home Owners' Loan Act, 48 Stat. 132 (12 U.S.C. 1464); secs. 402, 403, and 407 of the National Housing Act, 12 U.S.C. 1725, 1726, and 1730; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR Part 1071 (1943-48 Comp.))

Dated: January 20, 1983.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,  
Acting Secretary.

[FR Doc. 83-2879 Filed 2-1-83; 8:45 am]

BILLING CODE 6720-01-M

## CIVIL AERONAUTICS BOARD

### 14 CFR Part 302

[Procedural Reg. Amdt. No. 69; Reg. PR-257]

#### Rules of Practice in Board Proceedings; Verification of Complaints in Enforcement Proceedings

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB clarifies its provisions on the institution of formal enforcement proceedings by the Associate General Counsel, Enforcement Division, to reflect the prior elimination of a requirement that Enforcement Division attorneys must verify formal complaints and other pleadings.

**DATES:** Adopted: January 27, 1983.  
Effective: February 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Nolan, Office of the General Counsel, Enforcement Division, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5943.

**SUPPLEMENTARY INFORMATION:** 14 CFR 302.206 (Rule 206 of the Board's Rules of Practice), authorizes the Associate General Counsel, Enforcement Division,

to institute formal enforcement proceedings whenever that official believes there are reasonable grounds to believe that any provision of the Federal Aviation Act or its related rules, regulations, and orders have been violated or may be violated, and the investigation of the alleged violation(s) is in the public interest. Rule 206(a) requires the Associate General Counsel to institute formal enforcement proceedings by issuing a notice that incorporates by reference a formal complaint, or by issuing a notice accompanied by a complaint that is verified by the attorney in the enforcement Division who signs the complaint.

The requirement that Enforcement Division attorneys verify the complaint and other pleadings that they sign in formal enforcement proceedings was eliminated by the Board in PR-210, 44 FR 46446, August 8, 1979. PR-210 revoked Rule 202 of the Board's Rules of Practice, 14 CFR 302.202, and the Board stated at that time that the verification requirement was unnecessary and outmoded, that verification of such pleadings was not required by the Federal Rules of Civil Procedure or by the Federal Aviation Act, and that the elimination of this requirement would simplify Board procedures and reduce paperwork. Through an oversight, PR-210 did not delete the verification requirement from Rule 206(a) of the Board's Rules of Practice. The Board is now amending Rule 206(a) to reflect the prior elimination of the verification requirement.

Since this amendment is administrative in nature, affecting agency practice and procedure, the Board finds for good cause that notice and procedure are unnecessary and that the amendment may become effective upon publication in the **Federal Register**.

#### List of Subjects in 14 CFR Part 302

Administrative practice and procedures, Air rates and fares, Authority delegations, Postal service.

#### PART 302—[AMENDED]

Accordingly, the Civil Aeronautics Board revised 14 CFR Part 302, Rules of Practice in Board Proceedings, as follows.

##### 1. The Authority for 14 CFR Part 302 is:

**Authority:** Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85-728, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 763, 770, 783, 788, 794; 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989;

E.O. 11514, Pub. L. 91-90, 42 U.S.C. 4321; 84 Stat. 772, 39 U.S.C. 5402.

2. Section 302.206(a) is revised to read:

#### § 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Associate General Counsel, Enforcement Division, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Associate General Counsel, Enforcement Division may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint by an attorney from the Enforcement Division of the Office of the General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Board to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

By the Civil Aeronautics Board.  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 83-2863 Filed 2-1-83; 8:45 am]

BILLING CODE 6320-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

#### Registration; Commission Determination To Deny Certain Requests for Exemption

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Commission determination.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has recently received numerous inquiries on behalf of (?) futures

commission merchants ("FCMs") which are either (i) not members of any contract market or (ii) not members of all the contract markets on which commodity options are currently traded and (2) agents of such FCMs who desire to enter into agency agreements with exchange-member FCMs for the purpose of offering and selling options to the public. (The term "non-member FCM" is used hereafter to encompass both FCMs which are not members of any contract market and FCMs which are not members of all the contract markets which have been designated to trade options.) The subject of these inquiries is the prohibition on dual and multiple associations by associated persons ("APs") contained in Rule 3.12(f) of the Commission's regulations, 17 CFR 3.12(f) (1982), which, absent an exemption, would generally prohibit APs associated with one FCM or agent of an FCM from also being associated with another exchange-member FCM to offer and sell options, and would thus preclude such persons and their employer FCMs or agents from soliciting or accepting option orders by forming an agency relationship with an exchange-member FCM. The Division of Trading and Markets ("Division") is hereby giving notice that upon consideration of this issue which was referred to the Commission, consistent with the Division's delegated authority, the Commission has instructed the Division in exercising such delegated authority to deny all requests for exemptions from Rule 3.12(f) on behalf of "non-member" FCMs and agents of such FCMs which seek dual or multiple associations for their APs for the purpose of offering and selling commodity options to the public.

**DATE:** Effective February 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Bruce A. Beatus, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** On November 3, 1981, the Commission published in the Federal Register final regulations governing its domestic exchange-traded commodity option pilot program.<sup>1</sup> Rule 33.3(b)(1) of those

regulations generally makes it unlawful for any person to solicit or accept orders for the purchase or sale of a commodity option unless that person is (1) a registered FCM which either is a member of (i) the contract market on which the option is traded or (ii) a registered futures association which provides for the regulation of the option-related activities of its members in a manner equivalent to that required of contract markets by the Commission's option regulations or (2) an individual registered as an AP of a specified FCM of the type described above.<sup>2</sup> In the preamble of the Federal Register release announcing the adoption of the final regulations governing the option pilot program, the Commission, however, interpreted Rule 33.3(b)(1)(ii) to permit an AP associated with an exchange-member FCM, through an agent, to offer and sell options.<sup>3</sup>

This interpretation was premised on the Commission's longstanding view that "an agent of an FCM [is] the functional equivalent of an associated person." *Id.* (Similarly, a person associated with an agent of an FCM as an AP is necessarily an AP of that FCM.) As such, the Commission emphasized that "[a]n FCM is fully responsible for the acts of its agents and, in particular, must supervise the option sales practices of its agents." *Id.* In this connection, the Commission made clear that the sales practice audits of member FCMs which a contract market designated to trade options (or the designated self-regulatory organization for such contract market) is required to conduct pursuant to Rule 33.4(c), 17 CFR 33.4(c) (1982), must include the activities of the agents of member FCMs and of their APs. *Id.* Consistent with this view, the Commission also indicated at that time that this interpretation was not intended to broaden the scope of the option pilot program by modifying the "members only" restriction which presently limits FCM participation in the offer and sale of commodity options to only those FCMs which are members of the exchange on which the option is traded.

The Commission has recently received numerous inquiries concerning the effect of this interpretation upon the prohibition on dual and multiple associations contained in § 3.12(f) of the Commission regulations, which, absent an exemption, would generally prohibit APs associated with a non-member FCM

or agent of such an FCM from also being associated with another exchange-member FCM to offer and sell options and would thus preclude such persons and their employer FCMs or agents from soliciting or accepting option orders by forming an agency relationship with an exchange-member FCM. The Commission, of course, as indicated above, did not intend that persons otherwise precluded from participation in the pilot program by the "members only" restriction could solicit and accept option orders by becoming agents of member firms.

In response to the Division's referral of these recent inquiries to the Commission, which was done pursuant to delegated authority granted by Rule 3.12(g)(2)(ii), 17 CFR 3.12(g)(2)(ii)(1982), the Commission has directed its staff to deny generally requests for exemption from Rule 3.12(f) on behalf of non-member FCMs and agents of such FCMs which seek dual or multiple associations for their APs with exchange-member FCMs for the purpose of offering options to the public. Such requests will be denied because (1) the Commission specifically excluded non-member FCMs and agents of such non-member FCMs from soliciting or accepting option orders when the final regulations for the pilot program were adopted; (2) the Commission has represented to Congress on numerous occasions that the pilot program would be so limited and that its ability to regulate the program successfully depended on such a limitation; (3) the status of non-member FCMs as independent business entities may be construed to limit the extent of a member FCM's liability for the acts of an affiliated non-member FCM's sales personnel; (4) the granting of such an exemption would materially complicate the Commission's ability to keep accurate records as to the registration status of individual APs; and (5) obvious difficulties of supervision and inherent possibilities for conflicts of interest would arise if the APs of non-member FCMs or agents of such FCMs were to have more than one sponsor. The limitation on participation in the pilot program to member FCMs and their APs was intended as an integral component of the Commission's regulatory framework for options trading and has been designed to assure the public sufficient protection during the pilot program period.

The Commission believes that this disposition of requests for exemptions from Rule 3.12(f) is entirely consistent with its regulatory program for options trading as well as its previous interpretative positions. Although the

<sup>1</sup>46 FR 54500. The Commission recently has published regulations in the Federal Register which would modify the pilot program to permit the trading of options on physical commodities and also would amend certain other rules which pertain to futures contracts and to options on futures contracts, for purposes of clarification as well as to include appropriate references to option transactions. See 47 FR 58996 (December 22, 1982.)

<sup>2</sup>17 CFR 33.3(b)(1)(1982).

<sup>3</sup>46 FR 54504 (November 3, 1981). The amendments which the Commission has adopted to govern the trading of options on physicals would not substantively affect this provision.

offer and sale of commodity options is currently limited to member FCMs and their APs, as already noted, Rule 33.3(b) expressly allows non-member FCMs and their APs to engage in the offer and sale of commodity options if they are members of a registered futures association which regulates the option-related activities of its members in a manner equivalent to that required of contract markets under the Commission's rules. In this connection, the National Futures Association ("NFA") has submitted, pursuant to Section 17(j) of the Commodity Exchange Act, as amended, 7 U.S.C. 21(j)(1976), proposed compliance rules governing the solicitation and handling of option accounts by NFA-member FCMs and their sales personnel and option sales practice audit procedures. The Division staff is currently reviewing NFA's submission and anticipates completion of the review process shortly.<sup>4</sup> At such time as NFA rules governing options and the requisite joint audit agreements are approved by the Commission, and NFA implements its program to regulate the option-related activities of its members in a manner equivalent to that required of contract markets under the Commission's rules, any person adversely affected by this decision will be able to solicit and accept option orders as an NFA member. Thus, the restrictions imposed by this determination may be expected to be mitigated in the near future.<sup>5</sup>

<sup>4</sup>The NFA proposal, however, also relies upon the execution of joint audit agreements between the NFA and those exchanges designated or applying for designation to trade options. Although those joint audit agreements must also be approved by the Commission before NFA's option program can become effective, NFA and the participant exchanges have not yet submitted the agreements for Commission review.

<sup>5</sup>Consistent with the Commission's prior interpretation of Rule 33.3, the Commission also notes that a member FCM may decide whether to accept option orders solicited and accepted by the APs of its agents (except by agents which are non-member FCMs or agents of such FCMs), so long as the rules of the relevant contract market permit. In this regard, the Commission wishes to reemphasize the obligations of a member FCM which makes an affirmative decision on this issue, as originally expressed at the time the final option rules were adopted. Specifically, an FCM must assume full responsibility for the acts of such agents and, in particular, must supervise the option sales practices of their APs. Further, a member FCM may not accept option orders from non-member FCMs or agents of non-member FCMs which were solicited and accepted in violation of Rule 33.3(b)(1), as interpreted by the Commission. Similarly, contract markets which have option sales practices audit programs are reminded that they have represented that they will carefully monitor participation by agents of member FCMs in the pilot program to ensure that their activities are conducted in conformity with the foregoing limitations and obligations.

Issued in Washington, D.C. on January 26, 1983, by the Commission.

Jane K. Stuckey,  
Secretary of the Commission.  
[FR Doc. 83-2082 Filed 2-1-83; 8:45 am]  
BILLING CODE 8351-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 6a

[T.D. 7832]

#### Income Tax; Temporary Income Tax Regulations Under Subtitle C of Title XI of the Omnibus Reconciliation Act of 1980; Foreign Investment in United States Real Property

##### Correction

In FR Doc. 82-25829, beginning on page 41532, in the issue of Tuesday, September 21, 1982, on page 41536, in the first column, in the second line, "June 21, 1982." should read "June 21, 1983."

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 65

#### National Historic Landmarks Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

**SUMMARY:** These regulations set forth the Secretary of the Interior's criteria for national significance and the process used to identify, designate, recognize and monitor the integrity of National Historic Landmarks. This final rule incorporates revisions required by the National Historic Preservation Act Amendments of 1980 Pub. L. 96-515 ("Amendments"), and updates and revises in other minor respects the National Historic Landmark procedures based in part on comments received in response to publication of prior regulations. The regulations make available to Federal agencies, State and local governments, private organizations, and individuals information necessary for understanding of and participation in the National Historic Landmarks Program.

**DATES:** Final rule effective February 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Edwin C. Bearss, Chief, History Division (202) 523-0089. Address: Chief, History

Division, National Park Service, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The National Historic Landmarks Program, administered by the National Park Service, is the program of the Department of the Interior for identifying, designating, recognizing, listing, and monitoring National Historic Landmarks. Two offices in the national Park Service cooperate in managing the program: the Office of the Associate Director, Cultural Resources Management, through the History Division, manages the functions of identifying, designating and recognizing landmarks; the Office of the Associate Director for National Register Programs lists landmarks on the National Register of Historic Places and monitors their condition. The program provides limited protection to historic properties and assists the planning needs of Federal, State and local agencies and private organizations and individuals because it is the primary Federal means of assessing the national level of significance of historic properties, including those proposed for inclusion in the National Park System and for addition to the World Heritage List. Authority for the National Historic Landmarks Program is derived from the historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 *et seq.*), which established a national policy to preserve "historic sites, buildings, and objects of national significance," and the National Historic Preservation Act Amendments of 1980 (Amendments).

Interim rules for the National Historic Landmarks Program were published in the Federal Register on December 18, 1979, 44 FR 74826, with a request for comments. The December 18, 1979 interim rules are replaced by the final rules published today. Responses to the publication of the December 18, 1979 interim rules indicate the wide range of parties participating in the Landmarks Program, including State Historic Preservation Officers, other State and Federal agencies, university faculties, business firms, private organizations and individuals. On December 12, 1980, the Amendments became law necessitating revisions in the National Historic Landmark designation process. The Amendments require the Secretary of the Interior to promulgate or revise regulations for the following:

- (a) Establishing and revising criteria for National Historic Landmarks;
- (b) Designating properties as National Historic Landmarks and removing such designations;

(c) Considering appeals from such nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(d) Notifying the owner of a property, appropriate local governments and the general public, when the property is being considered for designation as a National Historic Landmark;

(e) Notifying the owners of private property and providing them an opportunity (including a reasonable period of time) to concur in or object to the nomination of the property or district for designation;

(f) Reviewing the nomination of the property or district where any such objection has been made, determining whether or not the property or district is eligible for designation, and informing the Advisory Council on Historic Preservation, the appropriate State official, the appropriate chief elected local official and the owner or owners of such property of the Secretary's determination; and,

(g) In the case of National Historic Landmark districts for which no boundaries have been established, publishing proposed boundaries in the *Federal Register* and submitting them to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

The Amendments require the Secretary to send any proposed regulations published thereunder to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate before publication in the *Federal Register* for comment, and to send final regulations to Congress before publication.

In addition to the changes required by the Amendments, these final regulations reflect comments made in response to the December 18, 1979 interim regulations. Since the issuance of the December 18, 1979 interim regulations, the Heritage Conservation and Recreation Service (HCRS) has been abolished and the National Historic Landmarks Program transferred to the National Park Service (NPS). Comments received often refer to the Consulting Committee which was a review board proposed to examine and make professional recommendations to the Director (HCRS) and the Secretary of the Interior regarding the qualifications of nominated National Historic Landmarks. With the transfer of the program to the National Park Service, these regulations substitute the National

Park System Advisory Board for the Consulting Committee.

Summary of comments and response to comments on the December 18, 1979 interim regulations:

One State urged that a specific system be established for nominations by State Historic Preservation Officers. The National Park Service also emphasized that National Historic Landmarks should be selected primarily on the basis of theme studies because of the importance of comparative analysis. Both of these concerns are incorporated into the priorities for selecting studies established in these regulations.

Several comments were received concerning the composition of the Consulting Committee and the role of the Committee. One comment suggested that designation by the Secretary without Consulting Committee review should be provisional and should require Committee concurrence within a specified period of time. Another comment recommended that the Committee include expertise in both historic and prehistoric archeology. As a result, the regulations have been made more specific concerning when and how the Secretary may designate National Historic Landmarks without National Park System Advisory Board review.

Several private companies expressed concerns about the effects of designation. One company interpreted the Historic Sites Act to mean that the Department of the Interior must obtain an interest in a property before designation. The Department does not agree with this interpretation of the act. The same company expressed concern that the owners were giving up some right in their property. Under Federal law, National Historic Landmark designation of a private property does not prohibit any actions which may otherwise be taken by the owner with respect to the property.

Others suggested that the role of the Director in the designation process should be clarified. This has been done in the regulations. One comment also urged that NPS should assure that all National Historic Landmark studies, public meetings, etc., should be carried out by NPS or with an NPS representative present. While this concern is not addressed in the regulations, NPS will assure that there is adequate NPS oversight of all aspects of the program.

One comment expressed concern that some aspects of the National Historic Landmark criteria are too broad, for example, the references to movements, ideals, beliefs and phenomena. The regulations make clear that the criteria are the general standards for evaluation

of national significance; however, NPS emphasizes that the significance of each property must be evaluated on the basis of a thorough and detailed scholarly study.

The notification procedures before designation were the subject of a number of comments. One State Historic Preservation Officer recommended that State Historic Preservation Officers always participate in public meetings. Although this is not addressed in the regulations, NPS always welcomes State Historic Preservation Officers' participation in public meetings as well as in other aspects of the program.

Other comments recommended that additional parties be notified, as well as those included in the interim regulations. Because notice is costly, NPS can routinely notify only a certain number of parties as part of the nomination process.

A number of comments recommended revising the registration section. Some comments recommended that certificates be presented to all National Historic Landmarks. This has been included. Others recommended that plaques not be presented unless the recipients are willing to publicly display them. This has been included. Another comment questioned getting owners to sign a preservation agreement which is not binding. Based on these comments the registration aspect of the program has been substantially revised.

To fulfill the requirements of the Amendments and on the basis of the comments received on the December 18, 1979 interim regulations, substantive revisions have been made in the sections of the regulations listed below:

*Section 65.2.* A new section on the effects of designation has been added.

*Section 65.4.* The National Historic Landmark Criteria, Section 1205.9 in the December 18, 1979 interim rules (reprinted as 36 CFR Part 65 in 1981 to reflect the reorganization of HCRS into NPS) have been moved to a new position to emphasize their importance as the basis for all decisions on landmark designation. These criteria were revised following consultation with historical and archeological associations, the History Areas Committee of the National Park System Advisory Board and the National Register. As a result, the revised criteria herein have been substituted for those of the 1979 rules. With some changes, these are the criteria used by the National Historic Landmarks Program before the 1979 rules. They are less cumbersome and more closely parallel with the criteria of the National Register (36 CFR Part 60).

*Section 65.5.* New language has been inserted to clarify the method and priorities used to identify prospective landmarks, to assure general understanding of how National Historic Landmark studies are scheduled, and to define the role of the appropriate State officials, Federal agencies and other parties in that process.

The Department receives numerous requests to designate properties as National Historic Landmarks from State officials, property owners and others. The requests to study and designate such properties far exceed the funds and staff available to the Department for the conduct of the program. National Historic Landmarks will, with rare exceptions, be identified on the basis of theme studies which provide the contextual framework to evaluate the relative significance of properties. The theme studies, which organize the study of American history, and special studies for properties not in active theme studies will be conducted according to priorities established herein.

State and Federal agencies evaluate, document, and nominate significant historic properties to the National Register of Historic Places, under the authorities of the National Historic Preservation Act of 1966, as amended, and Executive Order 11593. Their efforts are one basis for establishing National Historic Landmark Program priorities and assist in avoiding duplication of effort.

*Section 65.5(c)(2).* This paragraph has been modified to state that onsite visits will be required unless NPS determines such a visit is not necessary and to indicate that NPS may conduct a public information meeting for properties with more than 50 owners and will do so for such a property upon request by the chief elected official of the local, county or municipal political jurisdiction in which the property is located. This section also provides that properties on which the onsite visit was conducted before the effective date of these regulations are not subject to the notice provisions announcing that a study is being conducted.

*Section 65.5(c)(4).* New language has been added to identify minimum requirements for the study report or nomination for each prospective landmark.

*Section 65.5(d)(5).* This paragraph has been modified to provide owners an opportunity to concur in or object to designation and to specify how a statement of objection shall be transmitted to NPS.

*Section 65.5(e)(2).* New language has been added to provide that studies submitted to the Consulting Committee

or National Park System Advisory Board before the effective date of these regulations need not be resubmitted to the National Park System Advisory Board. In such instances, if a property appears to qualify for designation, NPS will provide at least 30 days notice, a copy of the study report, and an opportunity to comment, and, for owners, an opportunity to concur in or object to the designation as specified in § 65.5(d) (2) and (3), before submitting a property to the Secretary for designation.

*Section 65.5(e)(3).* New language has been added to clarify the role of the Director in the evaluation and designation of landmarks.

*Section 65.5(f).* New language has been added to provide that if the owners of private property or for a district the majority of such owners have objected to the designation, the Secretary shall make a determination of a property's eligibility for National Historic Landmark designation, as required by the Amendments. The paragraph also establishes that the Keeper may list in the National Register properties considered for National Historic Landmark designation which do not meet the National Historic Landmark criteria but do meet the National Register criteria for State or local significance or determine such properties eligible for listing if the private owners or a majority of such owners object to listing.

*Section 65.5(g).* This paragraph describes the notices which NPS will provide concerning designations, determinations of eligibility for designation or other actions taken by the Secretary.

*Section 65.5(h).* New language has been added to clarify when the Secretary may designate National Historic Landmarks without review by the National Park System Advisory Board and to identify notification procedures and other procedural steps to be followed in the designation of landmarks without Advisory Board review.

*Section 65.6.* Landmark Registration has been redefined as Landmark Recognition; this change will eliminate potential confusion between "Registered" Landmarks and National Register properties.

*Section 65.8(d)(1).* A new provision is added that in the case of National Historic Landmark districts for which no boundaries have been established, proposed boundaries shall be published in the Federal Register for comment and submitted to the Committee on Energy and Natural Resources of the United States Senate and the Committee on

Interior and Insular Affairs of the United States House of Representatives to allow not less than 30 nor more than 60 days to comment on the proposed boundaries.

*Section 65.9(a).* New language expands the potential justification for withdrawals of landmark designation from three to four, including alternation of kind or degree of significance because of previously undiscovered information and reevaluation of the theme under which the designation was originally granted.

*Section 65.9(b).* This section specifies that properties designated as National Historic Landmarks before enactment of the Amendments, December 13, 1980, can only be designated if they have ceased to meet the criteria for designation because the qualities which caused them to be originally designated have been lost or destroyed. This provision is consistent with the Amendments' "grandfathering" all historic properties listed as National Historic Landmarks in the Federal Register of February 8, 1979 or thereafter prior to the effective date of the Amendments, and with the Congressional committee reports on the Amendments which recognize that the Secretary may dedesignate properties which have lost the historic qualities for which they were designated.

*Section 65.9(c).* A process is established for appeals for dedesignation.

*Section 65.9(e).* New language provides for possible continued National Register listing when a landmark designation is withdrawn and automatic National Register eligibility when designation is withdrawn because of procedural error.

*Section 65.10.* A new section has been added which establishes a formal process for appealing decisions not to designate a property a National Historic Landmark.

These substantive revisions are accompanied by minor changes in language throughout the regulations for purposes of clarity and consistency. The Department of the Interior emphasizes that the National Historic Landmark criteria constitute the standards against which all prospective landmarks are measured. These criteria do not contain a specific definition of significance. Instead, they are purposely worded to create a qualitative framework that can be applied to the wide variety of properties of national significance. The basis for designation of properties as landmarks is a scholarly, professional analysis of the historical documentation for each property and of the property's

relative significance within a major field or theme of American history or prehistory.

The Department of the Interior has given particular attention to the need for expanded public participation in the National Historic Landmark designation process. Notification requirements have been set which will insure that property owners, appropriate State officials, local governments, Members of Congress, and other interested parties will have ample opportunity to participate in the National Historic Landmarks Program.

**Authority:** This rulemaking is developed under the authority of the Historic Sites Act of 1935, 16 U.S.C. 461 *et seq.*, and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These revisions are procedural, not substantive. They tell the public how properties are nominated for designation as National Historic Landmarks and because they are procedural only they have no significant economic effect on small entities.

#### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Since this rule has to do only with the procedural aspects of the National Historic Landmarks Program and does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 an environmental impact statement is not required.

#### List of Subjects in 36 CFR Part 65

Historic preservation.

The originator of these procedures is Benjamin Levy, History Division, National Park Service.

Dated: October 19, 1982.

Ric Davidge,

Acting Assistant Secretary, Fish and Wildlife and Parks.

(16 U.S.C. 461 *et seq.*; 16 U.S.C. 470 *et seq.*)

Accordingly 36 CFR Part 65 is revised to read as follows:

### PART 65—NATIONAL HISTORIC LANDMARKS PROGRAM

Sec.

- 65.1 Purpose and authority.  
65.2 Effects of designation.

Sec.

- 65.3 Definitions.  
65.4 National Historic Landmark Criteria.  
65.5 Designation of National Historic Landmarks.  
65.6 Recognition of National Historic Landmarks.  
65.7 Monitoring National Historic Landmarks.  
65.8 Alteration of National Historic Landmark Boundaries.  
65.9 Withdrawal of National Historic Landmark Designation.  
65.10 Appeals for designation.

**Authority:** 16 U.S.C. 461 *et seq.*, 16 U.S.C. 470 *et seq.*

#### § 65.1 Purpose and authority.

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

(a) In the Historic Sites Act of 1935 (45 Stat. 666, 16 U.S.C. 461 *et seq.*) the Congress declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States and

(b) To implement the policy, the Act authorizes the Secretary of the Interior to perform the following duties and functions, among others:

(1) To make a survey of historic and archeological sites, buildings and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States;

(2) To make necessary investigations and researches in the United States relating to particular sites, buildings or objects to obtain true and accurate historical and archeological facts and information concerning the same; and

(3) To erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archeological significance.

(c) The National Park Service (NPS) administers the National Historic Landmarks Program on behalf of the Secretary.

#### § 65.2 Effects of designation.

(a) The purpose of the National Historic Landmarks Program is to focus attention on properties of exceptional value to the nation as a whole rather than to a particular State or locality. The program recognizes and promotes the

preservation efforts of Federal, State and local agencies, as well as of private organizations and individuals and encourages the owners of landmark properties to observe preservation precepts.

(b) Properties designated as National Historic Landmarks are listed in the National Register of Historic Places upon designation as National Historic Landmarks. Listing of private property on the National Register does not prohibit under Federal law or regulations any actions which may otherwise be taken by the property owner with respect to the property.

(c) Specific effects of designation are:

(1) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended. The Advisory Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR Part 800.

(2) Section 110(f) of the National Historic Preservation Act of 1966, as amended, requires that before approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on the undertaking.

(3) Listing in the National Register makes property owners eligible to be considered for Federal grants-in-aid and loan guarantees (when implemented) for historic preservation.

(4) If a property is listed in the National Register, certain special Federal income tax provisions may apply to the owners of the property pursuant to Section 2124 of the Tax Reform Act of 1976, the Economic Recovery Tax Act of 1981 and the Tax Treatment Extension Act of 1980.

(5) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in determining issuance of a surface coal mining permit.

(6) Section 8 of the National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1-5), directs the Secretary to prepare an

annual report to Congress which identifies all National Historic Landmarks that exhibit known or anticipated damage or threats to the integrity of their resources. In addition, National Historic Landmarks may be studied by NPS for possible recommendation to Congress for inclusion in the National Park System.

(7) Section 9 of the Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980) directs the Secretary of the Interior to submit to the Advisory Council a report on any surface mining activity which the Secretary has determined may destroy a National Historic Landmark in whole or in part, and to request the advisory Council's advice on alternative measures to mitigate or abate such activity.

#### § 65.3 Definitions.

As used in this rule:

(a) "Advisory Council" means the Advisory Council on Historic Preservation, established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*). Address: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW, Washington, DC 20005.

(b) "Chief elected local official" means the mayor, county judge or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) "Advisory Board" means the National Park System Advisory Board which is a body of authorities in several fields of knowledge appointed by the Secretary under authority of the Historic Sites Act of 1935, as amended.

(d) "Director" means Director, National Park Service.

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

(f) "Endangered property" means a historic property which is or is about to be subjected to a major impact that will destroy or seriously damage the resources which make it eligible for National Historic Landmark designation.

(g) "Federal Preservation Officer" means the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, including nominating properties under that

agency's ownership or control to the National Register.

(h) "Keeper" means the Keeper of the National Register of Historic Places.

(i) "Landmark" means National Historic Landmark and is a district, site, building, structure or object, in public or private ownership, judged by the Secretary to possess national significance in American history, archeology, architecture, engineering and culture, and so designated by him.

(j) "National Register" means the National Register of Historic Places, which is a register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture, maintained by the Secretary. (Section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and Section 101(a)(1) of the National Historic Preservation Act of 1966 (80 Stat. 915; 16 U.S.C. 470), as amended.) (Address: Chief, Interagency Resource Management Division, 440 G Street NW, Washington, DC 20243.)

(k) "National Historic Landmarks Program" means the program which identifies, designates, recognizes, lists, and monitors National Historic Landmarks conducted by the Secretary through the National Park Service. (Address: Chief, History Division, National Park Service, Washington, DC 20240; addresses of other participating divisions found throughout these regulations.)

(l) "Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(m) "Owner" or "owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(n) "Property" means a site, building, object, structure or a collection of the above which form a district.

(o) "Secretary" means the Secretary of the Interior.

(p) "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

(q) "State official" means the person who has been designated in each State to administer the State Historic Preservation Program.

(r) "Structure" means a work made by human beings and composed of interdependent and interrelated parts in a definite pattern of organization.

#### § 65.4 National Historic Landmark criteria.

The criteria applied to evaluate properties for possible designation as National Historic Landmarks or possible determination of eligibility for National Historic Landmark designation are listed below. These criteria shall be used by NPS in the preparation, review and evaluation of National Historic Landmark studies. They shall be used by the Advisory Board in reviewing National Historic Landmark studies and preparing recommendations to the Secretary. Properties shall be designated National Historic Landmarks only if they are nationally significant. Although assessments of national significance should reflect both public perceptions and professional judgments, the evaluations of properties being considered for landmark designation are undertaken by professionals, including historians, architectural historians, archeologists and anthropologists familiar with the broad range of the nation's resources and historical themes. The criteria applied by these specialists to potential landmarks do not define significance nor set a rigid standard for quality. Rather, the criteria establish the qualitative framework in which a comparative professional analysis of national significance can occur. The final decision on whether a property possesses national significance is made by the Secretary on the basis of documentation including the comments and recommendations of the public who participate in the designation process.

(a) Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

(b) Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

#### § 65.5 Designation of National Historic Landmarks.

Potential National Historic Landmarks are identified primarily by means of theme studies and in some instances by special studies. Nominations and recommendations made by the appropriate State officials, Federal Preservation Officers and other interested parties will be considered in scheduling and conducting studies.

(a) *Theme studies.* NPS defines and systematically conducts organized theme studies which encompass the major aspects of American history. The theme studies provide a contextual framework to evaluate the relative significance of historic properties and determine which properties meet National Historic Landmark criteria. Theme studies will be announced in advance through direct notice to appropriate State officials, Federal Preservation Officers and other interested parties and by notice in the *Federal Register*. Within the established thematic framework, NPS will schedule and conduct National Historic Landmark theme studies according to the following priorities. Themes which meet more of these priorities ordinarily will be studied before those which meet fewer of the priorities:

(1) Theme studies not yet begun as identified in "History and Prehistory in the National Park System," 1982.

(2) Theme studies in serious need of revision.

(3) Theme studies which relate to a significant number of properties listed in the National Register bearing opinions of State Historic Preservation Officers and Federal Preservation Officers that such properties are of potential national significance. (Only those recommendations which NPS determines are likely to meet the landmarks criteria will be enumerated in determining whether a significant number exists in a theme study.)

(4) Themes which reflect the broad planning needs of NPS and other

Federal agencies and for which the funds to conduct the study are made available from sources other than the regularly programmed funds of the National Historic Landmarks Program.

(b) *Special Studies.* NPS will conduct special studies for historic properties outside of active theme studies according to the following priorities:

(1) Studies authorized by Congress or mandated by Executive Order will receive the highest priority.

(2) Properties which NPS determines are endangered and potentially meet the National Historic Landmarks criteria, whether or not the theme in which they are significant has been studied.

(3) Properties listed in the National Register bearing State or Federal agency recommendations of potential national significance where NPS concurs in the evaluation and the property is significant in a theme already studied.

(c)(1) When a property is selected for study to determine its potential for designation as a National Historic Landmark, NPS will notify in writing, except as provided below, (i) the owner(s), (ii) the chief elected local official, (iii) the appropriate State official, (iv) the Members of Congress who represent the district and State in which the property is located, and, (v) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, that it will be studied to determine its potential for designation as a National Historic Landmark. This notice will provide information on the National Historic Landmarks Program, the designation process and the effects of designation.

(2) When the property has more than 50 owners, NPS will notify in writing (i) the chief elected local official, (ii) the appropriate State official, (iii) the Members of Congress who represent the district and State in which the property is located, and, (iv) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, and (v) provide general notice to the property owners. This general notice will be published in one or more local newspapers of general circulation in the area in which the potential National Historic Landmark is located and will provide information on the National Historic Landmarks Program, the designation process and the effects of designation. The researcher will visit each property selected for study unless it is determined that an onsite investigation is not necessary. In the case of districts with more than 50 owners NPS may conduct a public information meeting if widespread

public interest so warrants or on request by the chief elected local official.

(3) Properties for which a study was conducted before the effective date of these regulations are not subject to the requirements of paragraph (c) (1) and (2) of this section.

(4) The results of each study will be incorporated into a report which will contain at least (i) a precise description of the property studied; and (ii) an analysis of the significance of the property and its relationship to the National Historic Landmark criteria.

(d)(1) Properties appearing to qualify for designation as National Historic Landmarks will be presented to the Advisory Board for evaluation except as specified in subsection (h) of this section.

(2) Before the Advisory Board's review of a property, NPS will provide written notice of this review, except as provided below, and a copy of the study report to (i) the owner(s) of record; (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the property is located; and, (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe. The list of owners shall be obtained from official land or tax record, whichever is most appropriate, within 90 days prior to the notification of intent to submit to the Advisory Board. If in any State the land or tax record is not the appropriate list an alternative source of owners may be used. NPS is responsible for notifying only those owners whose names appear on the list. Where there is more than one owner on the list each separate owner shall be notified.

(3) In the case of a property with more than 50 owners, NPS will notify, in writing, (i) the appropriate State official; (ii) the chief elected local official; (iii) the Members of Congress who represent the district and State in which the property is located; (iv) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe; and, (v) will provide general notice to the property owners. The general notice will be published in one or more local newspapers of general circulation in the area in which the property is located. A copy of the study report will be made available on request. Notice of Advisory Board review will also be published in the Federal Register.

(4) Notice of Advisory Board review will be given at least 60 days in advance of the Advisory Board meeting. The notice will state date, time and location of the meeting; solicit written comments and recommendations on the study

report; provide information on the National Historic Landmarks Program, the designation process and the effects of designation and provide the owners of private property not more than 60 days in which to concur in or object in writing to the designation. Notice of Advisory Board meetings and the agenda will also be published in the Federal Register. Interested parties are encouraged to submit written comments and recommendations which will be presented to the Advisory Board. Interested parties may also attend the Advisory Board meeting and upon request will be given an opportunity to address the Board concerning a property's significance, integrity and proposed boundaries.

(5) Upon notification, any owner of private property who wishes to object shall submit to the Chief, History Division, a notarized statement that the party is the sole or partial owner of record of the property, as appropriate, and objects to the designations. Such notice shall be submitted during the 60-day commenting period. Upon receipt of notarized objections respecting a district or an individual property with multiple ownership it is the responsibility of NPS to ascertain whether a majority of owners have so objected. If an owner whose name did not appear on the list 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 NPS in determining whether a majority of owners has 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.

(6) The commenting period following notification can be waived only when all property owners and the chief elected local official have agreed in writing to the waiver.

(e)(1) The Advisory Board evaluates such factors as a property's significance, integrity, proposed boundaries and the professional adequacy of the study. If the Board finds that these conditions are met, it may recommend to the Secretary that a property be designated or declared eligible for designation as a National Historic Landmark. If one or more of the conditions are not met, the Board may recommend that the property not be designated a landmark or that consideration of it be deferred for further study, as appropriate. In making its recommendation, the Board shall state, if possible, whether or not it finds that the criteria of the landmarks program have been met. A simple

majority is required to make a recommendation of designation. The Board's recommendations are advisory.

(2) Studies submitted to the Advisory Board (or the Consulting Committee previously under the Heritage Conservation and Recreation Service) before the effective date of these regulations need not be resubmitted to the Advisory Board. In such instances, if a property appears to qualify for designation, NPS will provide notice and a copy of the study report to the parties as specified in subsections (d)(2) and (3) of this section and will provide at least 30 days in which to submit written comments and to provide an opportunity for owners to concur in or object to the designation.

(3) The Director reviews the study report and the Advisory Board recommendations, certifies that the procedural requirements set forth in this section have been met and transmits the study reports, the recommendations of the Advisory Board, his recommendations and any other recommendations and comments received pertaining to the properties to the Secretary.

(f) The Secretary reviews the nominations, recommendations and any comments and, based on the criteria set forth herein, makes a decision on National Historic Landmark designation. Properties that are designated National Historic Landmarks are entered in the National Register of Historic Places, if not already so listed.

(1) If the private owner or, with respect to districts or individual properties with multiple ownership, the majority of such owners have objected to the designation by notarized statements, the Secretary shall not make a National Historic Landmark designation but shall review the nomination and make a determination of its eligibility for National Historic Landmark designation.

(2) The Secretary may thereafter designate such properties as National Historic Landmarks only upon receipt of notarized statements from the private owner (or majority of private owners in the event of a district or a single property with multiple ownership) that they do not object to the designation.

(3) The Keeper may list in the National Register properties considered for National Historic Landmark designation which do not meet the National Historic Landmark criteria but which do meet the National Register criteria for evaluation in 36 CFR Part 60 or determine such properties eligible for the National Register if the private owners or majority of such owners in

the case of districts object to designation. A property determined eligible for National Historic Landmark designation is determined eligible for the National Register.

(g) Notice of National Historic Landmark designation, National Register listing, or a determination of eligibility will be sent in the same manner as specified in subsections (d)(2) and (3) of this section. For properties which are determined eligible the Advisory Council will also be notified. Notice will be published in the Federal Register.

(h)(1) The Secretary may designate a National Historic Landmark without Advisory Board review through accelerated procedures described in this section when necessary to assist in the preservation of a nationally significant property endangered by a threat of imminent damage or destruction.

(2) NPS will conduct the study and prepare a study report as described in subsection (c)(4) of this section.

(3) If a property appears to qualify for designation, the National Park Service will provide notice and a copy of the study report to the parties specified in subsections (d)(2) and (3) and will allow at least 30 days for the submittal of written comments and to provide owners of private property an opportunity to concur in or object to designation as provided in subsection (d)(5) of this section except that the commenting period may be less than 60 days.

(4) The Director will review the study report and any comments, will certify that procedural requirements have been met, and will transmit the study report, his and any other recommendations and comments pertaining to the property to the Secretary.

(5) The Secretary will review the nomination and recommendations and any comments and, based on the criteria set forth herein, make a decision on National Historic Landmark designation or a determination of eligibility for designation if the private owners or a majority of such owners of historic districts object.

(6) Notice of National Historic Landmark designation or a determination of eligibility will be sent to the same parties specified in subsections (d)(2) and (3) of this section.

#### § 65.6 Recognition of National Historic Landmarks.

(a) Following designation of a property by the Secretary as a National Historic Landmark, the owner(s) will receive a certificate of designation. In the case of a district, the certificate will be delivered to the chief elected local

official or other local official, or to the chief officer of a private organization involved with the preservation of the district, or the chief officer of an organization representing the owners of the district, as appropriate.

(b) NPS will invite the owner of each designated National Historic Landmark to accept, free of charge, a landmark plaque. In the case of a district, the chief elected local official or other local official, or the chief officer of an organization involved in the preservation of the district, or chief officer of an organization representing the owners of the district, as appropriate, may accept the plaque on behalf of the owners. A plaque will be presented to properties where the appropriate recipient(s) (from those listed above) agrees to display it publicly and appropriately.

(c) The appropriate recipient(s) may accept the plaque at any time after designation of the National Historic Landmark. In so doing owners give up none of the rights and privileges of ownership or use of the landmark property nor does the Department of the Interior acquire any interest in property so designated.

(d) NPS will provide one standard certificate and plaque for each designated National Historic Landmark. The certificate and plaque remain the property of NPS. Should the National Historic Landmark designation at any time be withdrawn, in accordance with the procedures specified in § 65.9 of these rules, or should the certificate and plaque not be publicly or appropriately displayed, the certificate and the plaque, if issued, will be reclaimed by NPS.

(e) Upon request, and if feasible, NPS will help arrange and participate in a presentation ceremony.

#### § 65.7 Monitoring National Historic Landmarks.

(a) NPS maintains a continuing relationship with the owners of National Historic Landmarks. Periodic visits, contacts with State Historic Preservation Officers, and other appropriate means will be used to determine whether landmarks retain their integrity, to advise owners concerning accepted preservation standards and techniques and to update administrative records on the properties.

(b) Reports of monitoring activities form the basis for the annual report submitted to Congress by the Secretary of the Interior, as mandated by Section 8, National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1a-5). The Secretary's annual report will identify those National Historic Landmarks

which exhibit known or anticipated damage or threats to their integrity. In evaluating National Historic Landmarks for listing in the report, the seriousness and imminence of the damage or threat are considered, as well as the integrity of the landmark at the time of designation taking into account the criteria in Section 65.4.

(c) As mandated in Section 9, Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980), whenever the Secretary of the Interior finds that a National Historic Landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for, removal or production of minerals or materials, the Secretary shall (1) notify the person conducting such activity of that finding; (2) submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a National Historic Landmark, to the Advisory Council; and (3) request from the Council advice as to alternative measures that may be taken by the United States to mitigate or abate such activity.

(d) Monitoring activities described in this section, including the preparation of the mandated reports to Congress and the Advisory Council are carried out by NPS regional offices under the direction of the Preservation Assistance Division, NPS [Address: Chief, Resource Assistance Division, National Park Service, 440 G Street NW, Washington, DC 20243] in consultation with the History Division, NPS.

#### § 65.8 Alteration of National Historic Landmark boundaries.

(a) *Two justifications exist for enlarging the boundary of a National Historic Landmark:* Documentation of previously unrecognized significance or professional error in the original designation. Enlargement of a boundary will be approved only when the area proposed for addition to the National Historic Landmark possesses or contributes directly to the characteristics for which the landmark was designated.

(b) *Two justifications exist for reducing the boundary of a National Historic Landmark:* Loss of integrity or professional error in the original designation. Reduction of a boundary will be approved only when the area to be deleted from the National Historic Landmark does not possess or has lost the characteristics for which the landmark was designated.

(c) A proposal for enlargement or reduction of a National Historic Landmark boundary may be submitted

to or can originate with the History Division, NPS. NPS may restudy the National Historic Landmark and subsequently make a proposal, if appropriate, in the same manner as specified in § 65.5 (c) through (h). In the case of boundary enlargements only those owners in the newly nominated but as yet undesignated area will be notified and will be counted in determining whether a majority of private owners object to listing.

(d)(1) When a boundary is proposed for a National Historic Landmark for which no specific boundary was identified at the time of designation, NPS shall provide notice, in writing, of the proposed boundary to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located, and (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe, and shall allow not less than 30 nor more than 60 days for submitting written comments on the proposal. In the case of a landmark with more than 50 owners, the general notice specified in § 65.5(d)(3) will be used. In the case of National Historic Landmark districts for which no boundaries have been established, proposed boundaries shall be published in the *Federal Register* for comment and be submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives and not less than 30 nor more than 60 days shall be provided for the submittal of written comments on the proposed boundaries.

(2) The proposed boundary and any comments received thereon shall be submitted to the Associated Director for National Register Programs, NPS, who may approve the boundary without reference to the Advisory Board or the Secretary.

(3) NPS will provide written notice of the approved boundary to the same parties specified in subsection (d)(1) of this section and by publication in the *Federal Register*.

(4) Management of the activities described in (d)(1), (2), and (3) is handled by the National Register of Historic Places, NPS, [Address: National Register of Historic Places, National Park Service, Department of the Interior, Washington, DC 20240].

(e) A technical correction to a boundary may be approved by the Chief, History Division, without Advisory Board review or Secretarial approval. NPS will provide notice, in writing, of any technical correction in a

boundary to the same parties specified in (d)(1).

#### § 65.9 Withdrawal of National Landmark designation.

(a) National Historic Landmarks will be considered for withdrawal of designation only at the request of the owner or upon the initiative of the Secretary.

(b) Four justifications exist for the withdrawal of National Historic Landmark designation:

(1) The property has ceased to meet the criteria for designation because the qualities which caused it to be originally designated have been lost or destroyed, or such qualities were lost subsequent to nomination, but before designation;

(2) Additional information shows conclusively that the property does not possess sufficient significance to meet the National Historic Landmark criteria;

(3) Professional error in the designation; and

(4) Prejudicial procedural error in the designation process.

(c) Properties designated as National Historic Landmarks before December 13, 1980, can be dedesignated only on the grounds established in subsection (a)(1) of this section.

(d) The owner may appeal to have a property dedesignated by submitting a request for dedesignation and stating the grounds for the appeal as established in subsection (a) to the Chief, History Division, National Park Service, Department of the Interior, Washington, DC 20240. An appellant will receive a response within 60 days as to whether NPS considers the documentation sufficient to initiate a restudy of the landmark.

(e) The Secretary may initiate a restudy of a National Historic Landmark and subsequently a proposal for withdrawal of the landmark designation as appropriate in the same manner as a new designation as specified in § 65.5 (c) through (h). Proposals will not be submitted to the Advisory Board if the grounds for removal are procedural, although the Board will be informed of such proposals.

(f)(1) The property will remain listed in the National Register if the Keeper determines that it meets the National Register criteria for evaluation in 36 CFR 60.4, except if the property is redesignated on procedural grounds.

(2) Any property from which designation is withdrawn because of a procedural error in the designation process shall automatically be considered eligible for inclusion in the National Register as a National Historic Landmark without further action and

will be published as such in the *Federal Register*.

(g)(1) The National Park Service will provide written notice of the withdrawal of a National Historic Landmark designation and the status of the National Register listing, and a copy of the report on which those actions are based to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located; and (v) if the landmark is located on an Indian reservation, the chief executive officer of the Indian tribe. In the case of a landmark with more than 50 owners, the general notice specified in § 65.5(d)(3) will be used.

(2) Notice of withdrawal of designation and related National Register listing and determinations of eligibility will be published periodically in the *Federal Register*.

(h) Upon withdrawal of a National Historic Landmark designation, NPS will reclaim the certificate and plaque, if any, issued for that landmark.

(i) An owner shall not be considered as having exhausted administrative remedies with respect to dedesignation of a National Historic Landmark until after submitting an appeal and receiving a response from NPS in accord with these procedures.

#### § 65.10 Appeals for designation.

(a) Any applicant seeking to have a property designated a National Historic Landmark may appeal, stating the grounds for appeal, directly to the Director, National Park Service, Department of the Interior, Washington, DC 20240, under the following circumstances.

Where the applicant—

(1) Disagrees with the initial decision of NPS that the property is not likely to meet the criteria of the National Historic Landmarks Program and will not be submitted to the Advisory Board; or

(2) Disagrees with the decision of the Secretary that the property does not meet the criteria of the National Historic Landmarks Program.

(b) The Director will respond to the appellant within 60 days. After reviewing the appeal the Director may: (1) deny the appeal; (2) direct that a National Historic Landmark nomination be prepared and processed according to the regulations if this has not yet occurred; or (3) resubmit the nomination to the Secretary for reconsideration and final decision.

(c) Any person or organization which supports or opposes the consideration of a property for National Historic

Landmark designation may submit an appeal to the Director, NPS, during the designation process either supporting or opposing the designation. Such appeals received by the Director before the study of the property or before its submission to the National Park System Advisory Board will be considered by the Director, the Advisory Board and the Secretary, as appropriate, in the designation process.

(d) No person shall be considered to have exhausted administrative remedies with respect to failure to designate a property a National Historic Landmark until he or she has complied with the procedures set forth in this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 123

[SW-2-FRL 2295-6]

#### Hazardous Waste Management Program; Phase I Interim Authorization

**AGENCY:** Environmental Protection Agency (EPA), Region II.

**ACTION:** Granting of phase I interim authorization to State hazardous waste program.

**SUMMARY:** The State of New Jersey has applied for Interim Authorization of its hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, and EPA guidelines for the approval of State hazardous waste programs (40 CFR Part 123, Subpart F). EPA has reviewed New Jersey's hazardous waste program and has determined that the program is substantially equivalent to the Federal program. EPA is hereby granting Phase I Interim Authorization to New Jersey to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program in its jurisdiction.

**EFFECTIVE DATE:** February 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Deborah Craig, Solid Waste Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, 212/264-5166.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Subtitle C of RCRA, requires EPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a Federal program is established, EPA is

authorized under Section 3006 of RCRA to approve State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State programs approvals are authorized under RCRA: "Final Authorization" is a permanent approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal program and provide adequate enforcement; "Interim Authorization" is a temporary approval for States which might not meet the requirements of Final Authorization but whose programs are at least "substantially equivalent" to the Federal program. RCRA contemplates that States receiving Interim Authorization will use the Interim Authorization period to make the changes in their regulations and statutes necessary to qualify for Final Authorization.

On May 19, 1980, EPA published the first phase of the Federal hazardous waste program regulations (40 CFR Parts 260-263 and 265) including guidelines for authorizing State hazardous waste program under Section 3006 (40 CFR Part 123). These guidelines set forth the requirements for Interim Authorization and the procedures which EPA will follow in acting on State applications for Interim Authorization. They also provide that EPA will grant Interim Authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program.

On January 11, 1982, the State of New Jersey submitted to EPA its complete application for Phase I Interim Authorization (IA application). In the February 11, 1982 Federal Register (47 FR 6298), EPA announced the availability for public review of the New Jersey application. EPA also indicated that a public hearing would be held on March 24, 1982, with the public record open until March 31, 1982. At the public hearing, the New Jersey Department of Environmental Protection (DEP) made available copies of draft amendments to its hazardous waste regulations which were subsequently proposed in the October 18, 1982 State Register. These and other amendments were initially requested by EPA when it commented on an earlier draft version of the State's IA application. On May 10, 1982, DEP requested that EPA delay making a final determination on the State's IA application until after the State had an opportunity to solicit public comment on the regulatory amendments requested by EPA. EPA granted DEP's request. Presented below in Section II of this notice is a synopsis of the public

comments on the State's IA application and EPA's responses.

After detailed review of the final New Jersey IA application, EPA transmitted comments to DEP on June 1, 1982. These comments requested additions and revisions to the Program Description, Attorney General's Statement, Memorandum of Agreement and Authorization Plan portions of the IA application, including the State's hazardous waste regulations. On December 17, 1982, the State submitted amendments to the above mentioned portions of the IA application.

The major issue raised by EPA concerned the confidentiality of information obtained by inspection. New Jersey law may restrict the State's ability to use confidential information collected during inspections in enforcement proceedings or in court, and to share such information with EPA. DEP satisfied this area of concern by amending the Attorney General's Statement so as to commit the State to rely upon RCRA Section 3007(a) to support its inspection authority. As a result of such reliance on Section 3007(a), Section 3007(b) of RCRA would govern the use of information gained through inspections. Thus, there would be no unacceptable restrictions upon the use of information obtained through inspections.

The minor comments in EPA's June 1, 1982 letter were also addressed by DEP in its December 17, 1982 submission. The following summarizes the most significant of these comments and the State's responses:

(1) A Deputy Attorney General signed the Attorney General's Statement in lieu of the Attorney General. Under 40 CFR 123.125, this certification must be made by the Attorney General. In a letter dated August 18, 1982, the Assistant Attorney General demonstrated that the Deputy had the authority to perform this duty for the Attorney General.

(2) New Jersey's statutory definition of "solid waste" excludes from regulation, industrial sewage treated at publicly-owned treatment works (POTWs) devoted exclusively to the treatment of industrial wastes. This exclusion is not provided for under the RCRA definition. DEP satisfied this area of concern by amending the Program Description to include a demonstration that no existing POTWs in the State treated exclusively industrial wastes. Therefore, the statutory exemption could not be utilized by any existing POTWs.

(3) Pursuant to 40 CFR 123.127, the State must identify those statutory and regulatory changes needed to make the State program equivalent to the Federal