

From: [Klein, Amy S HQ02](#)
To: [CDL-REG-CHIEFS](#); [CDL-REG-MSC](#)
Cc: [Moyer, Jennifer A HQ02](#)
Subject: RE: Validity of Appendix C (UNCLASSIFIED)
Date: Tuesday, March 24, 2015 9:20:00 AM

Classification: UNCLASSIFIED
Caveats: NONE

Good Morning, Everyone-

Small correction to the Talking Points to clarify that it was other sections of NHPA that were amended, not Section 106 specifically- Please use the following instead:

When promulgating regulations, agencies must follow the Administrative Procedures Act (APA), which includes soliciting public and agency comments and addressing any identified issues. The Administration's Office of Management and Budget (OMB) is closely involved and only approves proposed regulations when all issues are resolved and compliance with all other laws and regulations is demonstrated.

Because of the unique nature of the Regulatory Program, the Corps promulgated its own regulations (33 CFR 325 Appendix C) to comply with Section 106 of the NHPA. The Corps followed the required rulemaking processes discussed above and received OMB's approval, finalizing the regulations in 1990. Appendix C is, therefore, both a valid and legal regulation.

Failing to utilize Appendix C in response to the non-judicial opinions of others would result in the Corps being in violation of its own regulations and the APA. We recognize that the NHPA has been amended since Appendix C was finalized so Appendix C alone is no longer sufficient to comply with Section 106. Districts must continue to use Appendix C and the 2005 and 2007 interim guidance which rely in part on the regulations at 36 CFR 800 to ensure Corps-regulated activities comply with Section 106.

Thank you,
Amy

Amy Klein
USACE HQ - Regulatory Program Manager
(202) 761-4559

-----Original Message-----

From: Moyer, Jennifer A HQ02
Sent: Monday, March 23, 2015 12:08 PM
To: CDL-REG-CHIEFS; CDL-REG-MSC
Cc: Klein, Amy S HQ02
Subject: Validity of Appendix C (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Chiefs,

It has come to Headquarters attention that there is a resurgence of assertions by others that the Corps Regulatory Program's use of Appendix C is inappropriate for compliance with Section 106 of the National Historic Preservation Act. Such entities are often of the belief that Appendix C is somehow "illegal" or "invalid." This is simply not true. Outlined below is information that may help you address these allegations in hopes that you can move beyond them and focus on what is important: ensuring impacts to historic properties from activities requiring DA authorization are evaluated, avoided, minimized, and

mitigated, as appropriate and within the Regulatory Program's authority.

Discussion: When promulgating regulations, agencies must follow the Administrative Procedures Act (APA), which includes soliciting public and agency comments and addressing any identified issues. The Administration's Office of Management and Budget (OMB) is closely involved and only approves proposed regulations when all issues are resolved and compliance with all other laws and regulations is demonstrated.

Because of the unique nature of the Regulatory Program, the Corps promulgated its own regulations (33 CFR 325 Appendix C) to comply with Section 106 of the NHPA. The Corps followed the required rulemaking processes discussed above and received OMB's approval, finalizing the regulations in 1990. Appendix C is, therefore, both a valid and legal regulation.

Failing to utilize Appendix C in response to the non-judicial opinions of others would result in the Corps being in violation of its own regulations and the APA. We recognize that Section 106 has been amended since Appendix C was finalized so Appendix C alone is no longer sufficient to comply with Section 106. Districts must continue to use Appendix C and the 2005 and 2007 interim guidance which rely in part on the regulations at 36 CFR 800 to ensure Corps-regulated activities comply with Section 106.

Amy Klein is the HQ Regulatory Program POC for this matter. She can be reached at 202-761-4559 if you have any questions or concerns.

Respectfully,

Jennifer

Jennifer Moyer
Chief, Regulatory Program
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314-1000
202-761-4598 (office)
703-589-5746 (mobile)
jennifer.a.moyer@usace.army.mil

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