



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

CECW-CO

JAN 06 2009

MEMORANDUM FOR REGULATORY CHIEFS

SUBJECT: Headquarters Regulatory Community of Practice Guidance on the Continued Use and Applicability of 33 CFR 325, Appendix C

1. Purpose: To provide clear guidance with respect to the applicability and implementation of 33 CFR 325, Appendix C – Procedures for the Protection of Historic Properties, within the Context of the Regulatory Program.

2. Background:

a. The Corps of Engineers Regulatory Program's implementing procedures for the protection of historic properties can be found at 33 CFR 325, Appendix C. These regulations are further supplemented by Interim Guidance, dated 25 April 2005 and 31 January 2007. Appendix C remains in full force and effect as the regulation governing Corps compliance with Section 106 of the National Historic Preservation Act vis-à-vis issuance of Department of the Army permits.

b. In 2004, the Corps began the process of revising its procedures for compliance with Section 106 of the National Historic Preservation Act. Unfortunately, after a protracted coordination and consultation effort with the Advisory Council on Historic Preservation (the "Council"), the Corps and the Council were unable to reach consensus on several fundamental policy issues. As a result, the Corps suspended its efforts to revise the procedures.

c. In November 2008, the Council disseminated a mass email that was intended to provide closure with respect to the Council's and the Corps efforts to revise the procedures. This email message improperly characterizes the status of Appendix C, implying that Appendix C is not a valid process for complying with the Corps' responsibilities under Section 106 of the National Historic Preservation Act. The Corps' Appendix C regulations were properly promulgated as stand alone regulations establishing the process by which the Corps fulfills the requirements of the National Historic Preservation Act. Appendix C was not established as a "counterpart regulation," and, as such, did not require the approval of the Council. Appendix C has been effectively implemented for nearly two decades, and the process prescribed by Appendix C has been found to be in compliance with the requirements of Section 106 on numerous occasions.


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3. Current Status: While the Corps regrets that new, revised regulations were not achieved, the Corps maintains that Appendix C and the Interim Guidance fully comply with Section 106 of the Historic Preservation Act. While the Council may not agree with the substance of these procedures, Appendix C remains a valid regulation. Therefore, the Corps should continue to follow the procedures found at 33 CFR 325, Appendix C unless otherwise directed by this office.

4. Any questions should be directed to Kim McLaughlin at 202-761-4663.

FOR THE COMMANDER:



for JAMES R. HANNON
Acting Chief, Operations
Directorate of Civil Works

Attachments:

Appendix A (33 CFR 325, Appendix C)

Appendix B (Interim Guidance 25 April 2005)

Appendix C (Clarification to the Interim Guidance 31 January 2007)

Appendix D (Statement from OASA CW Concerning Appendix C)