



Modernize Civil Works Federal Register Notice Comments Briefing

33 CFR 325, Appendix C
September 6, 2022



Overview of FRN and Virtual Meetings

- Background and brief history
- 33 CFR 325, Appendix C
 - Promulgated through rulemaking in 1990
 - Advance Notice of Proposed Rulemaking (ANPRM) 2004
 - Interim guidance
 - 2005-Revised Interim Guidance
 - 2007-Clarification Interim Guidance
- Four virtual meetings held with ~300 total attendees
- Summary of written comment statistics for Appendix C
 - 127 written comments and/or letters received
 - 29 Tribes provided comment letters
 - 98 comment letters received from stakeholders, that include state and federal governments, industry, historical societies, and citizens



Overarching Comments



- Definition of Undertaking
- *Non-compliance with National Historic Preservation Act*
- *Consistency*
- Consultation
- Staffing and Training



Comments Received Undertaking, Scope

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- *Definition of undertaking*
- *Area of Potential Affect (APE) vs. Permit Area*
- *Improper Narrow scope approach*

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Comments Received

Non compliance with NHPA

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- *Appendix C is Illegal, not approved by ACHP*
- **Direct and Indirect effects not addressed by the Corps**
- *Consultation with SHPO could improve*

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Comments Received Consistency

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- *Varied approach and inconsistency among Corps districts*
- *Inconsistent with other Federal agencies*
- *Is not consistent with Corps civil works*

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Comments Received Consultation

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- *Appendix C does not properly address consultation and Corps should be committed to meaningful consultation*
- *Consultation should be mandatory for all permit actions*
- *Timing of Consultation*
- *Consideration of input*

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Comments Received Staffing and Training

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- Secretary of the Interior qualified archaeologists
- Corps Staff should be trained in local tribal culture and issues
- *Establish productive relationships*

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2004 Advance Notice of Proposed Rulemaking (ANPRM) Options

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The Army had previously identified options which include:

- **Revise Appendix C to incorporate the current requirements and procedures at 36 CFR part 800.**
- **Revoke Appendix C and use 36 CFR part 800, for all permit applications.**
- **Revoke Appendix C and use 36 CFR part 800, for individual permit applications, and an ACHP program alternative for general permits.**
- **Revoke Appendix C and develop non-regulation alternative procedures in accordance with 36 CFR 800.**

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Federal Register Notice – Options Provided



The Army posed a series of questions to assist in receiving input for this effort which include:

1. What is the best approach to modernize Appendix C, including consideration of the options provided in the 2004 ANPRM?
2. Should the Corps rely on the ACHP's 800 regulations and rescind Appendix C? If so, is clarifying guidance needed on the scope of the area of potential effects for the Corps' Regulatory Program?
3. Would development of a Program Alternative allow for clear and consistent implementation procedures, as well as improved Tribal consultation?