



# Modernize Civil Works Federal Register Notice Comments Summary

33 CFR 325, Appendix C  
Summer 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



- Majority of commenters supported rescission of Appendix C
- Inappropriate Definition of Undertaking
- Non-compliance with National Historic Preservation Act
- Lack of Consistency
- Lack of Consultation Requirements
- Inadequate 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



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





# Comments Received Permit Process



- A few commenters expressed support for Appendix C
- A few expressed that Appendix C resulted in proper application of Section 106 to the Regulatory Program and changes would result in uncertainties, inefficiencies, and increased Corps workload.