



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:
CECW-CO

JAN 31 2007

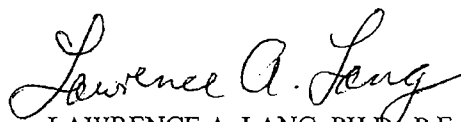
MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Clarification of Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the revised Advisory Council on Historic Preservation (ACHP) Regulations at 36 CFR Part 800 dated 25 April 2005

1. The Headquarters Regulatory Community of Practice is continuing the process of revising its procedures for compliance with Section 106 of the National Historic Preservation Act (NHPA) and other cultural resource laws and executive orders. On 25 April 2005 Interim Guidance was issued to address amendments to the NHPA and the ACHP implementing regulations at 36 CFR 800 (enclosure 1). This Interim Guidance is used in conjunction with Appendix C of 33 CFR 325.
2. The purpose of this memorandum is to provide clarification with respect to the Interim Guidance. The Interim Guidance applies to all DA requests for authorization/verification, including individual permit (standard permits and letters of permission) and all regional general permits and nationwide permits.
3. Paragraph 6n. General Permits provide districts with options for ensuring compliance with Section 106 while affording appropriate consideration, coordination, and resolution of an activity's effect on historic properties. However, districts must comply with the provisions contained in paragraph j(2) of the interim guidance and afford the State or Tribal Historic Preservation Officer (SHPO/THPO) an opportunity to comment on no effect determinations.
 - a. If a district determines that a proposed activity, that otherwise qualifies for a NWP or RGP, has no effect or no adverse effect on an historic property, the district must adequately document that determination and coordinate this determination with the SHPO/THPO, in accordance with paragraph 6j(2) of the Interim Guidance. The SHPO/THPO has 30 days to provide their response (i.e., concur with determination or disagree with determination). If the SHPO/THPO disagrees with the district's documented effect determination, the district may work with the SHPO/THPO to resolve the disagreement or request an opinion from the ACHP.
 - b. If no response or no objection is received from the SHPO/THPO within 30 days of notification, the district may proceed with the verification.
4. Provisional permits are not appropriate for activities that may affect historic properties. Paragraph 6n of the Interim Guidance offers districts options for ensuring compliance with Section 106. However, if consultation is required under Section 106 of the National Historic Preservation Act, an authorization or verification may not be issued until the Section 106 process is complete (see paragraph 6h of the Interim Guidance).

FOR THE COMMANDER:

Encl


LAWRENCE A. LANG, PH.D., P.E.
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Directorate of Civil Works