

decision in such form as such Corps official in his or her discretion deems appropriate. The Corps official may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the responsible Corps official informs the single point of contact that:

(1) The Corps of Engineers will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) The Assistant Secretary of the Army (Civil Works), or the next higher level responsible Corps official, has reviewed the case and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

**§384.11 What are the Corps of Engineers obligations in interstate situations?**

(a) The responsible Corps official is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Corps of Engineers program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Corps of Engineers program or activity;

(4) Responding pursuant to §384.10 of this part if the responsible Corps official receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Corps of Engineers has been delegated.

(b) The responsible Corps official uses the procedures in §384.10 if a state process provides a state process recommendation to such official through a single point of contact.

**§384.12 [Reserved]**

**§384.13 May the Corps of Engineers waive any provision of these regulations?**

(a) Emergency and disaster recovery actions performed under Pub. L. 99, 84th Congress, are excluded from the requirements of the Order and this regulation.

(b) In other emergencies, the Division Engineer may waive any provision of these regulations.

**PART 385—PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN**

**Subpart A—General Provisions**

Sec.

385.1 Purpose of the programmatic regulations.

385.2 Applicability of the programmatic regulations.

385.3 Definitions.

385.4 Limitation on applicability of programmatic regulations.

385.5 Guidance memoranda.

385.6 Review of programmatic regulations.

385.7 Concurrency statements.

**Subpart B—Program Goals and Responsibilities**

385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.

385.9 Implementation principles.

385.10 Implementation responsibilities, consultation, and coordination.

**Subpart C—CERP Implementation Processes**

385.11 Implementation process for projects.

385.12 Pilot projects.

385.13 Projects implemented under additional program authority.

385.14 Incorporation of NEPA and related considerations into the implementation process.

385.15 Consistency with requirements of the State of Florida.

385.16 Design agreements.

385.17 Project Delivery Team.

385.18 Public outreach.

385.19 Environmental and economic equity.

## § 385.1

- 385.20 Restoration Coordination and Verification (RECOVER).
- 385.21 Quality control.
- 385.22 Independent scientific review and external peer review.
- 385.23 Dispute resolution.
- 385.24 Project Management Plans.
- 385.25 Program Management Plans.
- 385.26 Project Implementation Reports.
- 385.27 Project Cooperation Agreements.
- 385.28 Operating Manuals.
- 385.29 Other project documents.

### Subpart D—Incorporating New Information into the Plan

- 385.30 Master Implementation Sequencing Plan.
- 385.31 Adaptive management program.
- 385.32 Comprehensive Plan Modification Report.
- 385.33 Revisions to models and analytical tools.
- 385.34 Changes to the Plan.

### Subpart E—Ensuring Protection of the Natural System and Water Availability Consistent With the Goals and Purposes of the Plan

- 385.35 Achievement of the benefits of the Plan.
- 385.36 Elimination or transfer of existing legal sources of water.
- 385.37 Flood protection.
- 385.38 Interim goals.
- 385.39 Evaluating progress towards other water-related needs of the region provided for in the Plan.
- 385.40 Reports to Congress.

#### APPENDIX A TO PART 385—ILLUSTRATIONS TO PART 385

AUTHORITY: Section 601, Pub. L. 106-541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.

SOURCE: 68 FR 64220, Nov. 12, 2003, unless otherwise noted.

### Subpart A—General Provisions

#### § 385.1 Purpose of the programmatic regulations.

(a) The programmatic regulations of this part implement the provisions of section 601(h)(3) of the Water Resources Development Act of 2000, Public Law 106-541, 114 Stat. 2688 (hereinafter “WRDA 2000”), which was enacted on December 11, 2000.

(b) The purpose of the programmatic regulations of this part is to ensure that the goals and purposes of the Comprehensive Everglades Restoration

## 33 CFR Ch. II (7-1-04 Edition)

Plan (the Plan) are achieved and to establish the processes necessary for implementing the Plan. Some of these processes are project specific, including, but not limited to, development of Project Implementation Reports, Project Cooperation Agreements, plans and specifications, Pilot Project Technical Data Reports, and Operating Manuals. Other processes are of more general applicability, including, but not limited to, development of program-wide guidance memoranda, interim goals, interim targets, and the Master Implementation Sequencing Plan. Taken together, these processes will ensure that the restoration purposes and other goals of the Plan are achieved. The regulations of this part also describe the relationship among the various entities responsible for implementation of the Plan.

(c) Section 601(h) of WRDA 2000 establishes an integrated framework for assuring that the goals and purposes of the Plan are achieved. This framework includes tools for planning, implementation, and evaluation; a process for developing these tools in an open public process, with input from other Federal, State, and local agencies; and an enforcement mechanism to ensure that the requirements of the statute are carried out.

(1) *Tools.* (i) The specific planning tool established by section 601(h) is the Project Implementation Report.

(ii) The specific implementation tools established by section 601(h) are Project Cooperation Agreements and Operating Manuals.

(iii) The specific evaluation tool established by section 601(h) is the interim goals for evaluating the restoration success of the Plan.

(iv) In addition to the specific planning, implementation, and evaluation tools established by section 601(h), the regulations of this part establish additional tools, including but not limited to, Project Management Plans, Program Management Plans, Comprehensive Plan Modification Reports, the Master Implementation Sequencing Plan, and interim targets for evaluating progress towards achieving the other water related needs of the region.

(2) *Processes.* The regulations of this part establish the processes for developing these tools. Consistent with section 601(h), these regulations have been developed, after notice and opportunity for public content, with the concurrence of the Secretary of the Interior and the Governor, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(3) *Enforcement mechanism.* The specific enforcement mechanism established by Section 601(h) is the “Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,” dated January 9, 2002, between the President and the Governor, under which the State shall ensure, by regulation or other appropriate means, that water made available by each project in the Plan shall not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for the restoration of the natural system are made under State law in accordance with the project implementation report and consistent with the Plan.

(4) *Public information.* The Secretary of the Army shall ensure that the public understands the linkage between the processes, tools, and enforcement mechanism and can monitor the effectiveness of this integrated framework in assuring that the goals and purposes of the Plan are achieved, as provided for in the regulations of this part, by:

(i) Providing for public notice and comment in the development of planning, implementation, and evaluation tools;

(ii) Providing notice of final action on planning, evaluation, and implementation tools;

(iii) Making available to the public on a web site or by other appropriate means final, and where appropriate draft, copies of all planning, evaluation, and implementation tools; and

(iv) Explaining through the regulations of this part and by other appropriate means the process for developing

the tools, the linkage between the process, tools, and enforcement mechanism, and the means by which these elements constitute an integrated framework for assuring that the goals and purposes of the Plan are achieved.

**§ 385.2 Applicability of the programmatic regulations.**

(a) This part applies to all activities conducted to implement the Comprehensive Everglades Restoration Plan.

(b) As used in this part, the Secretary of the Army acts through the Assistant Secretary of the Army for Civil Works with respect to the Army’s civil works program pursuant to 10 U.S.C. 3016.

(c) Nothing in this part shall be interpreted to amend, alter, diminish, or otherwise affect:

(1) The rights, powers and duties provided under the “Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,” dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000; or

(2) Any existing legal water rights of the United States, the State of Florida, the Miccosukee Tribe of Indians of Florida, or the Seminole Tribe of Florida, including rights under the compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District, defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

(d) This part is intended to aid the internal management of the implementing agencies and is not intended to create any right or benefit enforceable at law by a party against the implementing agencies or their officers. Nothing in this part shall create a right or expectation to benefits or enhancements, temporary or permanent, in third parties that are not specifically authorized by Congress in section 601 of WRDA 2000.

(e) Nothing in this part is intended to, or shall be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nor is this part intended to, nor