

*WRDA 2000* means the Water Resources Development Act of 2000, Public Law 106-541, which was enacted on December 11, 2000.

**§ 385.4 Limitation on applicability of programmatic regulations.**

In accordance with section 601(h)(3)(c)(ii) of WRDA 2000, this part expressly prohibits “the requirement for concurrence by the Secretary of the Interior or the Governor on Project Implementation Reports, Project Cooperation Agreements, Operating Manuals for individual projects undertaken in the Plan, and any other documents relating to the development, implementation, and management of individual features of the Plan, unless such concurrence is provided for in other Federal or State laws.”

**§ 385.5 Guidance memoranda.**

(a) *General.* (1) Technical guidance for internal management of Corps of Engineers personnel during Plan implementation will be normally issued in the form of Engineer Regulations, Circulars, Manuals, or Pamphlets, or other appropriate form of guidance.

(2) Guidance on the following six program-wide subjects shall be promulgated in accordance with paragraphs (b) and (c) of this section:

(i) General format and content of Project Implementation Reports (§ 385.26(a));

(ii) Instructions for formulation and evaluation of alternatives developed for Project Implementation Reports, their cost effectiveness and impacts (§ 385.26(b));

(iii) General content of operating manuals (§ 385.28(a));

(iv) General directions for the conduct of the assessment activities of RECOVER (§ 385.31(b));

(v) Instructions relevant to Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system (§ 385.35(b)); and

(vi) Instructions relevant to Project Implementation Reports for identifying if an elimination or transfer of existing legal sources of water will occur as a result of implementation of the Plan (§ 385.36(b)).

(b) *Special processes for development of six program-wide guidance memoranda.* The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop the six guidance memoranda described in paragraph (a) of this section for approval by the Secretary of the Army. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in the development of these guidance memoranda. The following procedures shall apply to the specific guidance memoranda described in paragraph (a) of this section:

(1) Guidance memoranda shall be consistent with this part, applicable law, and achieving the goals and purposes of the Plan.

(2) The Secretary of the Army shall afford the public an opportunity to comment on each guidance memorandum prior to approval through the issuance of a notice of availability in the FEDERAL REGISTER.

(3) Approved guidance memoranda shall be made available to the public.

(4) The guidance memoranda specifically referenced in this part shall be developed by December 13, 2004.

(5) The six guidance memoranda described in paragraph (a) of this section shall be developed with the concurrence of the Secretary of the Interior and the Governor. Within 180 days after being provided with the final guidance memorandum, or such shorter period that the Secretary of the Interior and the Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or non-concurrence with the proposed guidance memorandum. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency requirements of this section. A copy of any concurrency or nonconcurrency

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statements shall be made a part of the administrative record and referenced in the final guidance memorandum. Any nonconcurrency statement shall specifically detail the reason or reasons for the non-concurrence. If the six guidance memoranda described in paragraph (a) of this section create a special procedure for any individual Project Implementation Report, a specific Project Cooperation Agreement, an Operating Manual for a specific project component, or any other document relating to the development, implementation, and management of one specific individual feature of the Plan, this section does not require concurrence or non-concurrence on that special procedure. In lieu of concurrence or non-concurrence on such a special procedure, the Secretary of the Army shall consult with the Secretary of the Interior and the Governor.

(6) The Secretary of the Army shall consider incorporating into the regulations of this part the guidance memoranda specifically referenced in this section during future reviews and revisions of the regulations of this part.

(c) *Revisions to six Program-wide guidance memoranda.* The Secretary of the Army may, whenever the Secretary believes it is necessary, and in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the South Florida Water Management District, the Florida Department of Environmental Protection, other Federal, State, and local agencies, and the public, revise guidance memoranda that have been completed. Such revisions shall be developed and approved consistent with the provisions of paragraph (b) of this section. Revisions to the six guidance memoranda described in paragraph (a) of this section shall be made following the same concurrence process as in paragraph (b)(5) of this section.

(d) *Other guidance.* Nothing in this part shall be considered or construed to preclude the ability of the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors from issuing other guidance or policy to assist in imple-

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menting the Plan. Any such guidance or policy shall be consistent with applicable law, policy, and regulations.

#### § 385.6 Review of programmatic regulations.

(a) The Secretary of the Army shall review, and if necessary revise, the regulations of this part at least every five years. In addition, the Secretary of the Army may review and revise the regulations of this part whenever the Secretary believes that such review and revision is necessary to attain the goals and purposes of the Plan. The Secretary of the Army shall place appropriate notice in the FEDERAL REGISTER upon initiating review of the regulations of this part.

(b) Upon completing the review of the regulations of this part, the Secretary shall promulgate any revisions to the regulations after notice and opportunity for public comment in accordance with applicable law, 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, and other Federal, State, and local agencies.

(c) Within 180 days after being provided with the final revisions to the programmatic regulations of this part, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or non-concurrence with the revisions. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency process of paragraph (b) of this section. A copy of any concurrency or nonconcurrency statements shall be made a part of the administrative record and referenced in the final revised programmatic regulations. Any non-concurrency statement shall specifically detail the reason or reasons for the non-concurrence.

#### § 385.7 Concurrency statements.

The administrative record of the programmatic regulations in this part