

(f) The factors of §336.1(c) of this chapter should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with §337.6.

[53 FR 14920, Apr. 26, 1988]

**PART 384—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PROGRAMS AND ACTIVITIES**

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AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29153, June 24, 1983, unless otherwise noted.

**§384.1 What is the purpose of these regulations?**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations

also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Corps of Engineers, and are not intended to create any right or benefit enforceable at law by a party against the Corps of Engineers or its officers.

**§384.2 What definitions apply to these regulations?**

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

*Responsible Corps official* means a District Engineer, Division Engineer, or the Chief of Engineers, or a designated representative, who is considering a decision or recommendation on a proposed Federal action and is responsible for coordinating such action with the state process under the provisions of this regulation.

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

**§384.3 What programs and activities of the Corps of Engineers are subject to these regulations?**

The Chief of Engineers publishes in the FEDERAL REGISTER a list of the Corps of Engineers Civil Works programs and activities that are subject to these regulations.

**§384.4 [Reserved]**

**§384.5 What is the Corps of Engineers' obligation with respect to Federal interagency coordination?**

Responsible Corps officials, to the extent practicable, consult with and seek

advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Corps of Engineers regarding programs and activities covered under these regulations.

**§384.6 What procedures apply to the selection of programs and activities under these regulations?**

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with §384.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the appropriate Division Engineer of the programs and activities selected for that process.

(c) A state may notify the appropriate Division Engineer of changes in its selections at any time. For each change, the state shall submit to the Division Engineer an assurance that the state has consulted with local elected officials regarding the change. The Division Engineer may establish deadlines by which states are required to inform the Corps of Engineers of changes in their program selections.

(d) The Corps of Engineers uses a state's process as soon as feasible, depending on individual programs and activities, after the Division Engineer is notified of its selections.

**§384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?**

(a) For those programs and activities covered by a state process under §384.6, the responsible Corps official, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The District Engineer provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial

assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the District Engineer in his discretion deems appropriate.

**§384.8 How does the Corps of Engineers provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?**

(a) Except in unusual circumstances, the responsible Corps official gives state processes or directly affected state, areawide, regional and local officials and entities at least 60 days from the date established by such official to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Corps of Engineers have been delegated.

**§384.9 How does the Corps of Engineers receive and respond to comments?**

(a) The responsible Corps official follows the procedures in §384.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under §384.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials