

# **Comprehensive Everglades Restoration Plan**

## **Programmatic Regulations**

**Initial Draft – December 2001**

## Introduction

These programmatic regulations, once promulgated, will become part of the Code of Federal Regulations (CFR). The CFR is the foundation of the Federal Register publication system. It is an annual codification of the rules of the Federal agencies. The basic structure of the CFR consists of a hierarchy of designated CFR units. These units are Titles (broad area subject), Chapter (rules of a single issuing agency), Part (unified body of rules concerning a single function or specific subject), and Section (short presentation of one regulatory function).

The Corps of Engineers has decided to place the programmatic regulations in the CFR under Title 33 – Navigation and Navigable Waters, Chapter II – Corps of Engineers, Department of the Army, in a new part, Part 385, entitled “Programmatic Regulations for the Comprehensive Everglades Restoration Plan.”

This initial draft is being circulated to the public for discussion purposes. This initial draft is expected to be revised following coordination with agencies, groups, and the public. The Department of the Army and the Office of Management and Budget will also review the draft programmatic regulations before they are published in the Federal Register as a proposed rule.

This initial draft of the programmatic regulations uses the format required for placement of a proposed rule in the Federal Register in accordance with the Federal Register Document Drafting Handbook (October 1998 Revision) except for the addition of line numbers to the text and not being double-spaced.

Billing Code # 3710-92

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DEPARTMENT OF DEFENSE  
Department of the Army, Corps of Engineers  
33 CFR Part 385  
RIN 0710-AA49  
Programmatic Regulations for the Comprehensive Everglades Restoration Plan

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed Rule.

SUMMARY: The Army Corps of Engineers proposes to establish programmatic regulations for the Comprehensive Everglades Restoration Plan. Congress approved the Comprehensive Everglades Restoration Plan in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), which was enacted on December 11, 2000. The Act also requires the Secretary of the Army to promulgate programmatic regulations within two years to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved. We have developed this proposed rule in response to that statutory requirement. The proposed rule establishes processes and procedures that will guide the Army Corps of Engineers and its partners in the implementation of the Comprehensive Everglades Restoration Plan.

DATES: We will accept comments until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: If you wish to comment on this proposed rule, you may submit your comments by any one of several methods:

1. You may submit written comments to U.S. Army Corps of Engineers, ATTN: CESAJ-PD-R, P.O. Box 4970, Jacksonville, FL 32232-0019.

2. You may send comments by electronic mail (e-mail) to: [proregs@usace.army.mil](mailto:proregs@usace.army.mil). See the Public Comments Solicited section below for file formats and other information about electronic filing.

3. You may also submit comments through the Internet by completing a comment form on the programmatic regulations web page at:  
[http://www.evergladesplan.org/pm/program/progr\\_regs/comment\\_frm.shtml/](http://www.evergladesplan.org/pm/program/progr_regs/comment_frm.shtml/).

FOR FURTHER INFORMATION CONTACT: Stu Appelbaum, Corps of Engineers, Jacksonville District, at the above address, phone (904) 232-1877; fax (904) 232-1888. You may also access the programmatic regulations web page at:  
[http://www.evergladesplan.org/pm/program/progr\\_regs/index.shtml/](http://www.evergladesplan.org/pm/program/progr_regs/index.shtml/).

SUPPLEMENTARY INFORMATION:

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## I. Background

The purpose of these programmatic regulations is to establish a process: for the development of Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals that ensure that the goals and the objectives of the Comprehensive Everglades Restoration Plan are achieved; to ensure that new information resulting from changes or unforeseen circumstances, new scientific or technical information or information that is developed through the principles of adaptive management contained in the Plan, or future authorized changes to the Plan are integrated into the implementation of the Plan; and to ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the plan may be evaluated throughout the implementation process.

The south Florida ecosystem is a nationally and internationally unique and important natural resource. It is also a resource in peril, having been severely impacted by human activities for over a hundred years. The Central & Southern Florida Project extends from south of Orlando to the Florida Keys and is composed of a regional network of canals, levees, storage areas, and water control structures. First authorized by Congress in 1948, the project serves multiple purposes. The authorized purposes of the project include flood control, regional water supply for agricultural and urban areas, prevention of salt water intrusion, water supply to Everglades National Park, preservation of fish and wildlife, recreation, and navigation. For over 50 years, the Central & Southern Florida Project has performed its authorized functions well. However, the project also has had unintended adverse effects on the unique natural environment that constitutes the Everglades and south Florida ecosystem. In 1992, the Army Corps of Engineers was directed to develop a comprehensive plan to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. The resulting plan, which was submitted to Congress on July 1, 1999, is called the Comprehensive Everglades Restoration Plan. The overarching goal of the Comprehensive Everglades Restoration Plan (the Plan) is the restoration, preservation and protection of the south Florida ecosystem while providing for other water-related needs of the region such as flood protection and water supply. The Plan contains 68 major components that involve creation of approximately 217,000 acres of reservoirs and wetland-based water treatment areas, wastewater reuse plants, seepage management, and removal of levees and canals in natural areas. These components vastly increase storage and water supply for the natural system, as well as for urban and agricultural needs, while maintaining existing Central and Southern Florida Project purposes. The Comprehensive Everglades Restoration Plan will restore more natural flows of water, including sheet flow; improve water quality; and establish more natural hydroperiods in the south Florida ecosystem. Improvements to native flora and fauna, including threatened and endangered species, are expected to occur as a result of the restoration of hydrologic conditions.

Section 601 of Public Law 106-541, the Water Resources Development Act of 2000 (114 Stat. 2680) approved the Comprehensive Everglades Restoration Plan as a framework for

1 modifications to the Central and Southern Florida Project. Section 601 also authorized  
2 four pilot projects and ten initial projects of the Comprehensive Everglades Restoration  
3 Plan and contains other provisions associated with implementation of the Comprehensive  
4 Everglades Restoration Plan.

5  
6 Section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688)  
7 requires that the Secretary of the Army, after notice and opportunity for public comment,  
8 and with the concurrence of the Governor of Florida and the Secretary of the Interior, and  
9 consultation with the Seminole Tribe of Indians of Florida, the Miccosukee Tribe of  
10 Indians of Florida, the Administrator of the Environmental Protection Agency, the  
11 Secretary of Commerce, and other Federal, State, and local agencies, promulgate  
12 programmatic regulations to ensure that the goals and purposes of the Plan are achieved.  
13 This proposed rule is in response to the requirements of the Water Resources  
14 Development Act of 2000.

## 15 16 II. Process for Developing the Proposed Rule

17  
18 We developed the proposed rule through an open and inclusive process that involved  
19 numerous meetings, briefings, and discussions with other Federal, State, and local  
20 agencies; the Miccosukee and Seminole Tribes; agricultural, environmental, urban  
21 utilities, recreational, and urban interest groups; and the public. Briefings on the  
22 programmatic regulations were provided to the Governing Board of the South Florida  
23 Water Management District and its Water Resources Advisory Commission and the  
24 South Florida Ecosystem Restoration Working Group. In addition, programmatic  
25 regulations web pages were developed and posted on the Comprehensive Everglades  
26 Restoration Plan web site ([www.evergladesplan.org](http://www.evergladesplan.org)). The web site was used to post  
27 information about the programmatic regulations and to provide a place for individuals  
28 and organizations to submit comments electronically during the development of the  
29 programmatic regulations. The process we used to develop the programmatic regulations  
30 was designed to identify the major concerns of the agencies and the various groups and to  
31 find middle ground to the greatest extent possible prior to publishing the proposed rule  
32 and soliciting formal public comment.

33  
34 We held an initial round of meetings with agencies, agricultural, environmental, urban  
35 utilities, recreational, and urban interest groups, and the public in May and June 2001.  
36 The purpose of these meetings was to discuss the process that would be used to develop  
37 the programmatic regulations and to solicit comments on the major issues and concerns  
38 that should be addressed in developing the regulations.

39  
40 Following the initial round of meetings, we developed a draft outline of the programmatic  
41 regulations. We then held a second round of meetings in September and October 2001  
42 with agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
43 groups, and the public to solicit comments on the draft outline.

44  
45 After the second round of meetings were held, we developed an initial draft of the  
46 programmatic regulations and distributed this initial draft to the public in December

1 2001. We then held numerous discussions and meetings with agencies, governments, and  
2 agricultural, environmental, urban utilities, recreational, and urban interest groups, to  
3 discuss the initial draft.

4  
5 Finally, we developed the proposed rule after considering all the information received at  
6 the meetings that were held as well as written comments that were received.

### 7 8 III. Major Issues Addressed in Developing the Programmatic Regulations

#### 9 10 A. General

11 As described in the previous section, we held numerous meetings with agencies,  
12 governments, agricultural, environmental, urban utilities, recreational, and urban interest  
13 groups, and the public. They raised a number of issues and concerns that were considered  
14 in the development of the proposed rule.

#### 15 16 B. Partnership with the State of Florida

17 Implementation of the Comprehensive Everglades Restoration Plan requires a partnership  
18 between the Federal and State governments. The South Florida Water Management  
19 District will be the non-Federal sponsor for many of the projects of the Plan. The State of  
20 Florida has established a funding mechanism, the Save Our Everglades Trust Fund, to  
21 fund the State's share of implementation of the Plan. Section 601 of the Water Resources  
22 Development Act of 2000 recognizes and encourages this partnership and the proposed  
23 rule is consistent with this intent. The report of the Senate Committee on Environment  
24 and Public Works on the Water Resources Development Act of 2000 (Senate Report No.  
25 106-362) describes this partnership: "Subsection (h) does more than provide the  
26 necessary assurances. It also defines the relation among the various Federal, State and  
27 local governmental entities charged with Plan implementation responsibilities. The  
28 subsection places procedural and substantive requirements on both the Federal  
29 Government and the State of Florida. Most importantly, subsection (h) strikes a careful  
30 balance between the Federal interest in ensuring that predicted Plan benefits, including  
31 benefits to Federal lands, are attained, and the State's interest in: ensuring that State-  
32 owned or managed lands also receive predicted Plan benefits; and preserving its  
33 traditional sovereignty over the reservation and allocation of water within the State's  
34 boundaries."

35  
36 The proposed rule provides a framework for the implementation of the Comprehensive  
37 Everglades Restoration Plan by defining the processes and procedures needed to  
38 accomplish the necessary planning, design, construction, and operation of the projects of  
39 the Plan. The processes and requirements included in the proposed rule were also  
40 developed to compliment, but not interfere with the rights and responsibilities of the  
41 South Florida Water Management District, the State of Florida, or other non-Federal  
42 sponsors in implementing the Plan. The proposed rule also recognizes that the non-  
43 Federal sponsor for some projects will be governmental entities other than the South  
44 Florida Water Management District.

#### 45 46 C. Consultation

1 Successful implementation of the Comprehensive Everglades Restoration Plan requires  
2 not just the involvement of the implementing agencies, but extensive involvement by  
3 other Federal, State, and local agencies and the tribes. Although implementation of the  
4 Plan is the responsibility of the Corps of Engineers and the non-Federal sponsor, the  
5 proposed rule provides that the implementing agencies consult with the Department of  
6 the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe  
7 of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local  
8 agencies as part of the implementation process. The consultation provisions ensure that  
9 these agencies and governments are integrally involved with the Corps of Engineers and  
10 the non-Federal sponsor in implementing the Plan.

#### 11 12 D. Amount of Detail in the Proposed Rule

13 Many agencies, agricultural, environmental, urban utilities, recreational, and urban  
14 interest groups, and the public were concerned about the amount of detail in the  
15 regulations. Some believed that the programmatic regulations should be very detailed,  
16 specific, and prescriptive. Others believed that the programmatic regulations should only  
17 define the “rules of engagement” between the Corps of Engineers and its non-Federal  
18 project sponsors. In addition, some were concerned that these Federal regulations not  
19 infringe on the sovereignty of the State of Florida or interfere with the State’s right to  
20 allocate its water resources. Others were concerned that the programmatic regulations  
21 ensure that the Federal interest and investment in restoration, preservation, and protection  
22 of the south Florida ecosystem, including Federal properties such as national parks and  
23 wildlife refuges be protected. The proposed rule attempts to balance these differing  
24 concerns and interests. The proposed rule includes a number of processes that are  
25 necessary to guide the implementation process. We recognize that more detailed  
26 protocols and procedures are needed as well to assist implementation. We believe that,  
27 because for the most part the protocols and procedures will be very detailed and  
28 technical, they should not be included in the programmatic regulations. Additionally, if  
29 protocols and procedures were included in the programmatic regulations, any revision to  
30 them would require us to initiate a formal rulemaking process even for minor revisions.  
31 However, given the importance of protocols and procedures and the impact that they will  
32 have on implementation, we believe that the public should have the opportunity to review  
33 and comment on the protocols and procedures before they are adopted. The proposed rule  
34 provides that opportunities for public comment be provided before any protocols and  
35 procedures are adopted. The proposed rule also provides for the development of certain  
36 protocols and provides guidance for their development.

#### 37 38 E. Implementation Principles

39 Section 601 of the Water Resources Development Act of 2000 states that the overarching  
40 objective of the Comprehensive Everglades Restoration Plan is the restoration,  
41 preservation, and protection of the south Florida ecosystem while providing for other  
42 water-related needs of the region, including water supply and flood protection. Some  
43 agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
44 groups, and the public were concerned about having a set of goals to guide  
45 implementation of the Plan. They rely on the report of the Senate Committee on  
46 Environment and Public Works on the Water Resources Development Act of 2000

1 (Senate Report No. 106-362) which states, “Further, the committee expects that the  
2 implementing agencies will make every effort to accelerate the delivery of Plan benefits  
3 to the natural system to the extent practicable. It is estimated that 3 to 5 acres of land in  
4 the South Florida ecosystem are lost per day under current conditions. Time is of the  
5 essence in this restoration effort.”  
6

7 The proposed rule establishes a number of implementation principles such as sequencing  
8 and scheduling projects to accelerate system-wide restoration, preservation, and  
9 protection benefits that are intended to guide the implementation process consistent with  
10 the overarching objective of the Plan.  
11

#### 12 F. Restoration Coordination and Verification (RECOVER)

13 Some agencies, agricultural, environmental, urban utilities, recreational, and urban  
14 interest groups, and the public were concerned about integration of the individual projects  
15 that comprise the Plan to ensure that the goals and purposes of the Plan are achieved.  
16 They were concerned that there be a system-wide focus during implementation and that  
17 there be a way to ensure that the best scientific information on restoration is used. Some  
18 agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
19 groups, and the public were concerned that there be a focus on achieving the other water-  
20 related benefits of the Plan, in addition to the restoration benefits. The proposed rule  
21 provides that the Corps of Engineers and the South Florida Water Management District  
22 establish the Restoration Coordination and Verification (RECOVER) team, a team that is  
23 functioning already. RECOVER is an interdisciplinary, interagency team that will ensure  
24 that a system-wide perspective is maintained throughout the implementation process.  
25 Specifically, RECOVER will be responsible for developing system-wide performance  
26 measures for restoration as well as other water-related needs, evaluating projects from a  
27 system-wide perspective in the preparation of Project Implementation Reports,  
28 conducting adaptive assessment activities, developing and evaluating proposed revisions  
29 to the Plan, and developing recommendations for interim goals. The proposed rule  
30 formalizes many of the activities already underway by RECOVER.  
31

#### 32 G. Independent Scientific Review

33 Some agencies, agricultural, environmental, urban utilities, recreational, and urban  
34 interest groups, and the public were concerned that the implementation process needs to  
35 include independent scientific review. Section 601(j) of the Water Resources  
36 Development Act of 2000 requires the establishment of an independent scientific review  
37 panel. The proposed rule does not establish the panel, but it does include provisions for  
38 cooperating with the panel and considering the advice and recommendations made by the  
39 panel.  
40

#### 41 H. Project Implementation Reports

42 Section 601 of the Water Resources Development Act of 2000 establishes a new type of  
43 reporting document called a Project Implementation Report to bridge the gap between the  
44 conceptual level of detail in the Comprehensive Everglades Restoration Plan and the  
45 detail needed for project design. Agencies, agricultural, environmental, urban utilities,  
46 recreational, and urban interest groups, and the public were concerned that a clearly  
47 defined process was needed for the development of Project Implementation Reports, and

1 in particular the formulation and evaluation of projects. The report of the Senate  
2 Committee on Environment and Public Works on the Water Resources Development Act  
3 of 2000 (Senate Report No. 106-362) defines Project Implementation Reports: “The  
4 project implementation report is a new type of reporting document, similar to a General  
5 Reevaluation Report in that it will contain additional project formulation and evaluation.  
6 The project implementation report also will contain General Design Memorandum level  
7 of detail, or higher, for engineering and design. Some of the tasks associated with the  
8 preparation of the project implementation report will include: surveys and mapping;  
9 geotechnical analyses; flood damage assessment; real estate analyses; and preparation of  
10 supplemental National Environmental Policy Act documents. The project implementation  
11 reports will bridge the gap between the programmatic- level design contained in the Plan  
12 and the detailed design necessary to proceed to construction. Furthermore, each project  
13 implementation report will be accompanied by a project Management Plan, which will  
14 detail schedules, funding requirements, and resource needs for final design and  
15 construction of the project.”  
16

17 The proposed rule provides guidance for the development of Project Implementation  
18 Reports. The proposed rule provides for development and adoption of a protocol that  
19 describes the major tasks to develop a Project Implementation Report and a protocol that  
20 provides an outline for the content of the Project Implementation Report. The proposed  
21 rule also provides for development and adoption of a protocol for the formulation and  
22 evaluation of projects.  
23

#### 24 I. Project Cooperation Agreements

25 The Project Cooperation Agreement is the legal agreement between the Department of  
26 the Army and the non-Federal sponsor that must be executed before a project can be  
27 constructed. Section 601(h) of the Water Resources Development Act of 2000 requires  
28 that the agreement not be executed until the State has reserved or allocated water for the  
29 natural system as described in the Project Implementation Report. A number of agencies,  
30 agricultural, environmental, urban utilities, recreational, and urban interest groups, and  
31 the public were concerned about how to make sure that the reservation or allocation is  
32 made in accordance with the Project Implementation Report. The proposed rule provides  
33 that the District Engineer verify that this reservation or allocation has been made by the  
34 State as identified in the Project Implementation Report. This will provide the assurances  
35 that Congress intended without infringing on the State’s right to reserve or allocate water  
36 under State law.  
37

38 The proposed rule also establishes that the Project Cooperation Agreement include a  
39 provision that the reservation or allocation remain in effect and not be diminished, unless  
40 the Secretary of the Army agrees, for as long as the Plan is authorized. This provision is  
41 intended to protect the Federal interest and investment in the Plan and the need to ensure  
42 that the goals and purposes of the Plan are achieved.  
43

44 The proposed rule provides that the Project Cooperation Agreement include a provision  
45 that prohibits the Corps of Engineers or the non-Federal sponsor from eliminating or  
46 transferring existing legal sources of water until a new source of comparable quantity and

1 quality is available. This provision implements the Savings Clause provisions of section  
2 601 of the Water Resources Development Act of 2000. It is designed to prevent harm to  
3 existing legal sources of water including those for agricultural or urban water supply, the  
4 Miccosukee or Seminole Tribes, water supply for Everglades National Park, and water  
5 supply for fish and wildlife. Also in compliance with the Savings Clause provisions, the  
6 proposed rule provides that the Project Cooperation Agreement include a provision that  
7 existing levels of flood protection not be reduced.

#### 8 9 J. Operating Manuals

10 Operating Manuals provide rules and procedures on how to operate the completed  
11 projects. To achieve the goals and purposes of the Plan, individual projects must be  
12 operated as part of a system. Operating manuals encompass both individual projects and  
13 the entire system. Agencies, agricultural, environmental, urban utilities, recreational, and  
14 urban interest groups, and the public were concerned with ensuring that operating  
15 manuals be consistent with the goals and purposes of the Plan. The proposed rule  
16 establishes the development of two different types of Operating Manuals. A System  
17 Operating Manual will be developed to provide a system-wide water control plan that  
18 ensures that the operation of individual projects is linked together into a system-wide  
19 framework.

20  
21 A Project Operating Manual will be developed for each project. The draft Project  
22 Operating Manual will be incorporated into the Project Implementation Report. This  
23 connects operation of the project to the expected benefits of the project recommended in  
24 the Project Implementation Report. The Project Operating Manual should be consistent  
25 with the System Operating Manual. The final Project Operating Manual will be prepared  
26 before completion of the operational testing and monitoring phase.

#### 27 28 K. Sequencing and Scheduling of Projects

29 The Plan consists of 68 components that will be implemented as approximately 45  
30 separate projects, including pilot projects. The “Final Integrated Feasibility Report and  
31 Programmatic Environmental Impact Statement” dated April 1, 1999, included a  
32 sequence and schedule for the Plan. In July 2001, the Corps of Engineers and the South  
33 Florida Water Management District updated the sequence and schedule to include  
34 updated information and requirements from Congress and the Florida legislature.  
35 Agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
36 groups, and the public were concerned about how projects would be sequenced and  
37 scheduled. Some were concerned that the sequencing and schedule ensure that restoration  
38 benefits occur early in the implementation process. Others were concerned that other  
39 benefits of the Plan would be postponed until very late in the implementation process.  
40 The proposed rule establishes a process for developing a Master Implementation  
41 Sequencing Plan. The Master Implementation Sequencing Plan will include the schedule  
42 and sequencing of projects based on the best funding, technical, contracting, and other  
43 information available.

44  
45 The proposed rule provides that projects will be sequenced and scheduled to accelerate  
46 system-wide restoration, preservation, and protection benefits while providing for the

1 other water-related needs of the region, including water supply and flood protection.  
2 However, funding, technical, and other constraints could affect the sequence and  
3 schedule of projects.  
4

5 The proposed rule provides that the Master Implementation Sequencing Plan be revised  
6 as necessary to incorporate new information such as updated schedules from approved  
7 Project Management Plans, the results of pilot projects and other studies, updated funding  
8 information, revisions to the Plan, Congressional or other authorization and direction, or  
9 information from the adaptive assessment program. It may also be necessary to revise the  
10 Master Implementation Sequencing Plan to better achieve the interim goals.  
11

#### 12 L. Adaptive Assessment Program

13 One of the key aspects of implementation of the Plan is adaptive assessment. Adaptive  
14 assessment provides the flexibility needed to modify the plan based on new information.  
15 The report of the Senate Committee on Environment and Public Works on the Water  
16 Resources Development Act of 2000 (Senate Report No. 106-362) describes the intent of  
17 the adaptive assessment program: "The committee does not expect rigid adherence to the  
18 Plan as it was submitted to Congress. This result would be inconsistent with the adaptive  
19 assessment principles in the Plan. Restoration of the Everglades is the goal, not adherence  
20 to the modeling on which the April, 1999 Plan was based. Instead, the committee expects  
21 that the agencies responsible for project implementation report formulation and Plan  
22 implementation will seek continuous improvement of the Plan based upon new  
23 information, improved modeling, new technology and changed circumstances."  
24

25 The flexibility offered by the adaptive assessment program is crucial for dealing with the  
26 uncertainties of the ecological responses that will occur as the Plan is implemented. The  
27 proposed rule establishes an adaptive assessment program to guide implementation.  
28 RECOVER will be responsible for carrying out adaptive assessment tasks and for  
29 developing necessary procedures to guide adaptive assessment. If undesirable responses  
30 are detected, RECOVER will prepare a report with recommendations for correcting the  
31 problem. These recommendations could include changes to operations, changes to the  
32 Plan, changes to the implementation sequencing or scheduling, or some combination of  
33 these.  
34

#### 35 M. Revisions to the Comprehensive Everglades Restoration Plan

36 We anticipate that the Plan will need to be revised periodically to reflect new information  
37 or to improve performance based on the results of adaptive assessment. The proposed  
38 rule provides that a Comprehensive Plan Modification Report be prepared whenever  
39 significant revisions to the Plan are necessary to ensure that the goals and purposes of the  
40 Plan are achieved. Therefore, the Comprehensive Plan Modification Report will be an  
41 update or supplement to the "Final Integrated Feasibility Report and Programmatic  
42 Environmental Impact Statement" dated April 1, 1999. After the Comprehensive Plan  
43 Modification Report is reviewed and approved by the Assistant Secretary of the Army for  
44 Civil Works, it will be transmitted to Congress for approval.  
45

#### 46 N. Ensuring Achievement of Project Benefits

1 Section 601(f) of the Water Resources Development Act of 2000 (114 Stat. 2686)  
2 requires the preparation and approval of Project Implementation Reports prior to  
3 implementation of Comprehensive Everglades Restoration Plan projects. The Act  
4 specifies a number of items required to be in a Project Implementation Report, including  
5 identification of the appropriate quantity, timing, and distribution of water dedicated and  
6 managed for the natural system, and the identification of the amount of water to be  
7 reserved or allocated for the natural system. The reservation or allocation of water for the  
8 natural system will be implemented under State law. The Secretary of the Army cannot  
9 execute a Project Cooperation Agreement for the project until the reservation or  
10 allocation is made under State law. "State law" includes reservations or allocations of  
11 water made by Florida's Water Management Districts under authority of state law.  
12

13 Some groups expressed a view that the Plan required that water be reserved for the  
14 natural system on an 80%-20% basis. These groups rely on the report of the Senate  
15 Committee on Environment and Public Works on the Water Resources Development Act  
16 of 2000 (Senate Report No. 106-362) that states, "The Plan contains a general outline of  
17 the quantities of water to be produced by each project. According to the Army Corps, 80  
18 percent of the water generated by the Plan is needed for the natural system in order to  
19 attain restoration goals, and 20 percent of the water generated for use in the human  
20 environment.... Subject to future authorizations by Congress, the committee fully expects  
21 that the water necessary for restoration, *currently estimated* at 80 percent of the water  
22 generated by the Plan, will be reserved or allocated for the benefit of the natural system"  
23 (Emphasis added). Although those percentages were appropriate as an initial estimate for  
24 the purpose of developing the Plan, the regulations anticipate that each Project  
25 Implementation Report will evaluate and identify water to be reserved for the natural  
26 system, and that the Plan itself will be continually evaluated through adaptive assessment.  
27 The needs of the natural system and the water required to be allocated under the Savings  
28 Clause may be a greater or less percentage than the initial Plan estimate. Therefore, these  
29 regulations do not require that water for each project be strictly allocated on an 80% -  
30 20% basis. For the same reasons, it is not appropriate to establish a fixed allocation of  
31 water as an interim goal.  
32

33 Agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
34 groups, and the public expressed a number of concerns about the identification of water  
35 to be reserved or allocated for the natural system. These concerns were mostly focused on  
36 how the identification of water to be reserved or allocated for the natural system, which is  
37 a requirement of the Project Implementation Report, would be coordinated with the  
38 actual reservation or allocation process which is conducted under State law.  
39

40 Central to ensuring achievement of the benefits of the Plan is the development of the pre-  
41 CERP baseline. This baseline represents the conditions in the region on the date of  
42 enactment of the Water Resources Development Act of 2000 (December 11, 2000). The  
43 baseline establishes existing deliveries of water by the Central and Southern Florida  
44 Project. The proposed rule provides that each Project Implementation Report consider the  
45 loss of pre-CERP baseline water availability in identifying the quantity, timing, and  
46 distribution of water to be made available for the natural system by a project component.

1 The PIR may also consider other remedial actions, including, but not limited to: whether  
2 additional quantity, timing, and distribution of water should be made available by  
3 subsequent projects; whether to recommend preparation of a Comprehensive Plan  
4 Modification Report; or whether to recommend that the State of Florida and its agencies  
5 re-examine the reservation or allocation of water needed under State law in order to meet  
6 the needs of the natural system.

7  
8 The Comprehensive Everglades Restoration Plan was developed as an integrated set of  
9 components or projects that are intended to work together to successfully achieve the  
10 goals and purposes of the Plan. Although individual projects increase the amount of water  
11 available, the effect of an individual project extends far beyond the location of the  
12 project. Accordingly, it is important that the identification of water to be reserved for the  
13 natural system take into account the synergistic and regional effect of projects. The  
14 proposed rule provides that a protocol be developed to provide a uniform system-wide  
15 procedure for quantifying water made available by projects and for identifying the water  
16 to be reserved for the natural system. The proposed rule also provides direction for the  
17 development of the protocol.

18  
19 Some agencies, agricultural, environmental, urban utilities, recreational, and urban  
20 interest groups, and the public were concerned about potential variations from the  
21 predicted availability of water once projects are actually implemented and operated. The  
22 proposed rule provides that development of a Comprehensive Plan Modification Report  
23 be undertaken to determine the need for revisions to the Plan. The proposed rule also  
24 provides that in the interim during preparation of the Project Implementation Report,  
25 operation of the project should be consistent with the purposes of the project component  
26 as authorized by Congress. In the absence of specific purposes for a project component in  
27 the Congressional authorization, then the operation of a project component generally  
28 should be based on providing water in accordance with the following priorities: the first  
29 operational priority will be uses transferred from existing legal sources of water, then  
30 “new water” for restoration of the natural system, and then “new water” for other uses of  
31 water.

### 32 33 O. Savings Clause Provisions

34 Many agencies, groups, and the public were concerned about the effects of  
35 implementation on existing legal sources of water and on existing levels of flood  
36 protection. The report of the Senate Committee on Environment and Public Works on the  
37 Water Resources Development Act of 2000 (Senate Report No. 106-362) describes the  
38 intent of the savings clause provisions: “Elimination of existing sources of water supply  
39 is barred until new sources of comparable quantity and quality of water are available;  
40 existing authorized levels of flood protection are maintained; and the water compact  
41 among the Seminole Tribe of Florida, the State, and the South Florida Water  
42 Management District is specifically preserved. With respect to flood control, the  
43 committee intends that implementation of the Plan will not result in significant adverse  
44 impact to any person with an existing, legally recognized right to a level of protection  
45 against flooding. The committee does not intend that, consistent with benefits included in

1 the Plan, this bill create any new rights to a level of protection against flooding that is not  
2 currently recognized under applicable Federal or State law.”

3  
4 The savings clause provisions of section 601(h)(5)(A) of the Water Resources  
5 Development Act of 2000 (114 Stat. 2690) are intended to provide protection to existing  
6 legal sources of water. The proposed rule provides that the Project Implementation  
7 Report include analyses to determine if the project will cause such a transfer. If the  
8 project will cause a transfer, then the Project Implementation report will include an  
9 implementation plan that ensures that such transfer will not take place until after the  
10 project is constructed and operating as intended.

11  
12 In accordance with the provisions of section 601(h)(5)(B) of the Water Resources  
13 Development Act of 2000 (114 Stat. 2690), the proposed rule also provides that the  
14 Project Implementation Report include analyses of the existing level of service for flood  
15 protection. If the existing level of service would be adversely affected, then the proposed  
16 rule provides that the recommended plan be modified to mitigate or eliminate the adverse  
17 effect. The proposed rule also allows for the evaluation of increased levels of flood  
18 protection, provided that it is consistent with the goals and purposes of the Plan and is  
19 practical.

20  
21 P. Interim Goals

22 Section 601(h)(3)(c)(i)(III) of the Water Resources Development Act of 2000 (114 Stat.  
23 2689) requires that interim goals be established to provide a means by which the  
24 restoration success of the Plan may be evaluated throughout the restoration process.  
25 Progress towards meeting the interim goals is to be reported to Congress as part of the  
26 periodic reports required by the Act. While there was widespread agreement among  
27 agencies, agricultural, environmental, urban utilities, recreational, and urban interest  
28 groups, and the public that interim goals should be established to ensure that the goals  
29 and purposes of the Plan are achieved, there were different views about whether these  
30 interim goals should be a part of the programmatic regulations. Some believed that the  
31 interim goals needed to be a part of the programmatic regulations to ensure that the goals  
32 would be met. Their basis for this was the report of the Senate Committee on  
33 Environment and Public Works on the Water Resources Development Act of 2000  
34 (Report 106-362) which states, “In developing the programmatic regulations, the Federal  
35 and State partners should establish interim goals—expressed in terms of restoration  
36 standards—to provide a means by which the restoration success of the Plan may be  
37 evaluated throughout the implementation process. The restoration standards should be  
38 quantitative and measurable at specific points in the Plan implementation.” They also  
39 believed that goals had to be incorporated into the regulations to enable the public to take  
40 part in the process of establishing the goals Others were concerned that the statute  
41 specifically required the regulations to set up the *process* for establishing interim goals  
42 rather than the goals themselves. Some were concerned that placing the interim goals in  
43 the programmatic regulations would make goals cumbersome to adopt and amend. Some  
44 were concerned that incorporating the goals themselves into the regulations would  
45 suggest that goals were meant to set standards or schedules enforceable in court rather  
46 than planning targets, and assessment and reporting tools.

1  
2 The proposed rule attempts to balance these competing views, while making it clear that  
3 interim goals are not intended to be standards or schedules enforceable in court. The  
4 proposed rule establishes the process for developing the interim goals. Development of  
5 the technical basis for interim goals will be carried out by the interagency Restoration  
6 Coordination and Verification (RECOVER) team and includes a number of opportunities  
7 for public and agency comment. Interim goals will be memorialized through an  
8 agreement signed by the Department of the Army, the Department of the Interior, and the  
9 State of Florida. The periodic reports to Congress that are required by section 601(l) of  
10 the Water Resources Development Act of 2000 will include information on progress  
11 towards meeting the interim goals. The proposed rule also provides a process for revising  
12 the interim goals when necessary.

13  
14 IV. Project Implementation Reports Approved Pursuant to Schedule and  
15 Transition Rule

16 Section 601(h)(3)(D) of the Water Resources Development Act of 2000 (114 Stat. 2689)  
17 provides a schedule and transition rule for Project Implementation Reports approved  
18 before the date of promulgation of the programmatic regulations. The requirement for  
19 Project Implementation Reports approved pursuant to the schedule and transition rule is  
20 that they be consistent with the Plan. A number of Project Implementation Reports are  
21 currently underway, but no Project Implementation Reports have been approved to date.

22  
23 The Project Implementation Report for the Southern Golden Gates Estates project in  
24 Collier County is currently scheduled to be completed prior to promulgation of the final  
25 rule. If the final Project Implementation Report on Southern Golden Gates Estates is  
26 approved before the date of promulgation of the final rule, then the preamble to the final  
27 rule will contain a statement concerning the consistency of that Project Implementation  
28 Report with the programmatic regulations.

29  
30 The Water Preserve Areas and Indian River Lagoon feasibility studies, which include a  
31 number of Comprehensive Everglades Restoration Plan components, have been  
32 underway for some time and are nearing completion. We anticipate that the final  
33 feasibility reports will be submitted to Congress later this year. Following promulgation  
34 of the final rule, we anticipate preparing Special Project Implementation Reports and  
35 submitting them to Congress. The Special Project Implementation Reports will address  
36 water quantification and identification of water to be reserved for the natural system  
37 using the protocols developed pursuant to these programmatic regulations.

38  
39 V. Concurrence Requirements

40 Section 601(h)(3)(B) of the Water Resources Development Act of 2000 (114 Stat. 2688)  
41 requires that the Secretary of the Interior and the Governor provide the Secretary with a  
42 written statement of concurrence or nonconcurrence on the proposed programmatic  
43 regulations within 180 days from the end of the public comment period. We maintained  
44 close coordination with the Department of the Interior and the State of Florida throughout  
45 the process for developing the proposed rule. The final rule will include a reference to the

1 concurrence or non-concurrence statements of the Secretary of the Interior and the  
2 Governor of Florida on the proposed rule.

#### 3 4 VI. Organization of the Proposed Rule

5 We have organized the proposed rule under four major headings. The first heading  
6 provides the purpose and scope of the rule, definitions needed for the rule, and other  
7 information required by Section 601(h)(3)(C) of the Water Resources Development Act  
8 of 2000 (114 Stat. 2688). The remaining headings were designed to be consistent with the  
9 content required by Section 601(h)(3)(C). These headings are: Comprehensive  
10 Everglades Restoration Plan Implementation Processes; Incorporating New Information  
11 into the Plan; and Ensuring Protection of the Natural System Consistent with the Goals  
12 and Purposes of the Plan.

#### 13 14 VII. Public Comments Solicited

15 We solicit comments or suggestions from the public, other concerned governmental  
16 agencies, or any other interested party concerning this proposed rule.

17  
18 If you wish to comment on this proposed rule, you may submit your comments and  
19 materials by any one of several methods (see ADDRESSES section). If submitting  
20 comments by electronic format, please submit them in ASCII file format or Word file  
21 format and avoid the use of special characters and any form of encryption. Please include  
22 your name and return e-mail address in your e-mail message. Please note that the e-mail  
23 address will be closed out at the termination of the public comment period.

#### 24 25 VIII. Administrative Requirements

##### 26 27 A. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

28 This rule does not impose any information collection requirements for which OMB  
29 approval under the Paperwork Reduction Act is required. Thus, this action is not subject  
30 to the Paperwork Reduction Act.

##### 31 32 B. Executive Order 12866

33 Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine  
34 whether the regulatory action is “significant” and therefore subject to review by the  
35 Office of Management and Budget (OMB) and the requirements of the Executive Order.  
36 The Order defines “significant regulatory action” as one that is likely to result in a rule  
37 that may:

38 (1) Have an annual effect on the economy of \$100 million or more, or adversely  
39 affect in a material way the economy, a sector of the economy, productivity, competition,  
40 jobs, the environment, public health or safety, or State, local, or Tribal governments or  
41 communities;

42 (2) Create a serious inconsistency or otherwise interfere with an action taken or  
43 planned by another agency;

44 (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan  
45 programs or the rights and obligations of recipients thereof; or

1 (4) Raise novel legal or policy issues arising out of legal mandates, the President's  
2 priorities, or the principles set forth in the Executive Order.

3  
4 Pursuant to the terms of Executive Order 12866, it has been tentatively determined that  
5 this rule is a "significant regulatory action" in light of the provisions of paragraph (4)  
6 above. As such, this action will be submitted to OMB for review. Changes made in  
7 response to OMB suggestions or recommendations will be documented in the public  
8 record.

9  
10 C. Executive Order 13132

11 Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires  
12 us to develop an accountable process to ensure "meaningful and timely input by State and  
13 local officials in the development of regulatory policies that have federalism  
14 implications." "Policies that have federalism implications" is defined in the Executive  
15 Order to include regulations that have "substantial direct effects on the States, on the  
16 relationship between the national government and the States, or on the distribution of  
17 power and responsibilities among the various levels of government." This rule does not  
18 have significant federalism implications. The proposed rule defines the relationships  
19 between the Federal and State partners in implementing the Comprehensive Everglades  
20 Restoration Plan. The proposed rule is limited to implementation of the Comprehensive  
21 Everglades Restoration Plan and, therefore, has little incremental impact on State and  
22 local governments and their activities. It will not have substantial direct effects on the  
23 States, on the relationship between the national government and the States, or on the  
24 distribution of power and responsibilities among the various levels of government, as  
25 specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this  
26 rule.

27  
28 D. Regulatory Flexibility Act

29 The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq., as amended by the Small  
30 Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) generally requires an  
31 agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-  
32 comment rulemaking requirements under the Administrative Procedure Act or any other  
33 statute unless the agency certifies that the rule will not have a significant economic  
34 impact on a substantial number of small entities. Small entities include small businesses,  
35 small organizations and small governmental jurisdictions. For purposes of assessing the  
36 impacts of the proposed rule on small entities, a small entity is defined as: (1) A small  
37 business based on SBA size standards; (2) a small governmental jurisdiction that is a  
38 government of a city, county, town, school district, or special district with a population of  
39 less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is  
40 independently owned and operated and is not dominant in its field. After considering the  
41 economic impacts of the proposed rule on small entities, we certify that this action will  
42 not have a significant economic impact on a substantial number of small entities. The  
43 proposed rule only establishes processes and governmental relationships that will be used  
44 for implementation of the Comprehensive Everglades Restoration Plan.

45  
46 E. Unfunded Mandates Reform Act

1 In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

2 (a) This rule, as proposed, will not “significantly or uniquely” affect small  
3 governments. A Small Government Agency Plan is not required. Small governments will  
4 only be affected to the extent that they agree to act as non-Federal sponsor for  
5 implementation of projects for the Comprehensive Everglades Restoration Plan. The  
6 proposed rule does not establish new or different requirements for non-Federal sponsors  
7 for implementation of projects for the Comprehensive Everglades Restoration Plan.

8  
9 (b) This rule, as proposed, will not produce a Federal mandate of \$100 million or  
10 greater in any year, that is, it is not a “significant regulatory action” under the Unfunded  
11 Mandates Reform Act. The proposed rule defines processes and relationships between the  
12 Federal and State partners in implementing the Comprehensive Everglades Restoration  
13 Plan. The proposed rule does not affect the cost sharing requirements for non-Federal  
14 sponsors in implementing the Plan and therefore, imposes no new obligations on State or  
15 local governments.

16  
17 F. National Technology Transfer and Advancement Act

18 Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the  
19 NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs us to use  
20 voluntary consensus standards in our regulatory activities unless to do so would be  
21 inconsistent with applicable law or otherwise impractical. Voluntary consensus standards  
22 are technical standards (e.g., materials specifications, test methods, sampling procedures,  
23 and business practices) that are developed or adopted by voluntary consensus standards  
24 bodies. The NTTAA directs us to provide Congress, through OMB, explanations when  
25 we decide not to use available and applicable voluntary consensus standards. This rule  
26 does not involve technical standards. Therefore, we did not consider the use of any  
27 voluntary consensus standards.

28  
29 G. Executive Order 13045

30 Executive Order 13045, entitled Protection of Children From Environmental Health  
31 Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was  
32 initiated after April 21, 1997, or for which a notice of proposed rulemaking was  
33 published after April 21, 1998; (2) is determined to be “economically significant” as  
34 defined under Executive Order 12866, and (3) concerns an environmental health or safety  
35 risk that we have reason to believe may have a disproportionate effect on children. If the  
36 regulatory action meets all three criteria, we must evaluate the environmental health or  
37 safety effects of the planned rule on children, and explain why the planned regulation is  
38 preferable to other potentially effective and reasonably feasible alternatives that we  
39 considered. This proposed rule is not subject to Executive Order 13045 because it is not  
40 an economically significant regulatory action as defined by Executive Order 12866. The  
41 proposed rule establishes processes for the implementation of the Comprehensive  
42 Everglades Restoration Plan and defines the relationships between the Federal and State  
43 partners for implementation. Furthermore, it does not concern an environmental health or  
44 safety risk that we have reason to believe may have a disproportionate effect on children.

45  
46 H. Executive Order 13084

1 Under Executive Order 13084, we may not issue a regulation that is not required by  
2 statute, if it significantly or uniquely affects the communities of Indian Tribal  
3 governments and imposes substantial direct compliance costs on those communities,  
4 unless the Federal government provides the funds necessary to pay the direct compliance  
5 cost incurred by the Tribal governments, or we consult with those governments. If we  
6 comply by consulting, Executive Order 13084 requires us to provide the Office of  
7 Management and Budget, in a separately identified section of the preamble to the rule, a  
8 description of the extent of our prior consultation with representatives of affected Tribal  
9 governments, a summary of the nature of their concerns, and a statement supporting the  
10 need to issue the regulation. In addition, Executive Order 13084 requires us to develop an  
11 effective process permitting elected officials and other representatives of Indian Tribal  
12 governments “to provide meaningful and timely input in the development of regulatory  
13 policies on matters that significantly or uniquely affect their communities.” The proposed  
14 rule is required by section 601(h)(3) of the Water Resources Development Act of 2000  
15 (114 Stat. 2688). Additionally, the proposed rule does not significantly or uniquely affect  
16 the communities of Indian Tribal governments, nor does it impose significant compliance  
17 costs on them. The proposed rule establishes processes for the implementation of the  
18 Comprehensive Everglades Restoration Plan and defines the relationships between the  
19 implementing entities. Accordingly, the requirements of section 3(b) of Executive Order  
20 13084 do not apply to this rule.

#### 21 22 I. Executive Order 12630

23 In accordance with Executive Order 12630 entitled “Governmental Actions and  
24 Interference with Constitutionally Protected Property Rights”, the proposed rule will not  
25 effect a taking of private property or otherwise have taking implications. A takings  
26 implication assessment is not required. The proposed rule establishes processes to be  
27 used in implementing the Comprehensive Everglades Restoration Plan.

#### 28 29 J. Civil Justice Reform

30 In accordance with Executive Order 12988, we have determined that the proposed rule  
31 does not unduly burden the judicial system and meets the requirements of sections 3(a)  
32 and 3(b)(2) of the Order. The proposed rule establishes processes to be used in  
33 implementing the Comprehensive Everglades Restoration Plan and defines the  
34 relationships between the governmental entities that will implement the Plan.

#### 35 36 K. Executive Order 13211

37 On May 18, 2001, the President issued an Executive Order (EO 13211) that applies to  
38 regulations that significantly affect energy supply, distribution, and use. Executive Order  
39 13211 requires agencies to prepare Statements of Energy Effects when undertaking  
40 certain actions. Because this proposed rule is not expected to significantly affect energy  
41 supplies, distribution, or use, this action is not a significant energy action and no  
42 Statement of Energy Effects is required.

#### 43 44 L. Environmental Documentation

45 We have determined that this proposed rule does not constitute a major Federal action  
46 significantly affecting the quality of the human environment. Therefore, environmental

1 documentation under the National Environmental Policy Act (NEPA) is not required for  
2 this proposed rule. The Corps of Engineers has prepared appropriate environmental  
3 documentation, including a Programmatic Environmental Impact Statement, for the  
4 Comprehensive Everglades Restoration Plan. Moreover, this proposed regulation  
5 establishes requirements for the preparation of appropriate environmental documentation  
6 as part of the implementation process.  
7

8 We have identified actions in this regulation which generally require preparation of a  
9 NEPA document (either an Environmental Impact Statement or an environmental  
10 assessment), or which are categorically excluded from NEPA. Our intent is to reduce  
11 controversy over whether NEPA is required for individual actions by taking a systematic  
12 look at the kinds of actions needed to implement the Plan, and to apply the principles of  
13 §230 of this chapter to Comprehensive Everglades Restoration Plan activities. Certain  
14 individual actions, such as development, adoption or revision of methods or protocols,  
15 are listed as categorically excluded. We have determined that development, adoption, or  
16 revision of a method or protocol itself would not require NEPA, and that use of the  
17 method or protocol could be analyzed under NEPA, if appropriate, in a decision  
18 document such as a Project Implementation Report.  
19

20 List of Subjects in 33 CFR Part 385

21  
22 Environmental protection, Flood control, Intergovernmental relations, Natural resources,  
23 Water resources, Water supply.  
24

25 Dated: xx \_\_\_\_, 2002  
26  
27

28 Mike Parker,  
29 Assistant Secretary of the Army (Civil Works), Department of the Army  
30

31 For the reasons set forth in the preamble, the Army Corps of Engineers proposes to add  
32 33 CFR Part 385 as follows:  
33

34 Add Part 385 to read as follows:  
35

36 PART 385 -- PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE  
37 EVERGLADES COMPREHENSIVE PLAN  
38

39 PURPOSE AND SCOPE  
40

41 Sec.

42 385.1 Purpose of the Programmatic Regulations.

43 385.2 Applicability of the Programmatic Regulations.

44 385.3 Definitions.

45 385.4 Goals and Purposes of the Comprehensive Everglades Restoration Plan.

46 385.5 Implementation Principles.

- 1 385.6 Concurrency Statements.
- 2 385.7 Limitation on Applicability of Programmatic Regulations.
- 3 385.8 Development and Adoption of Protocols.
- 4 385.9 Review of Programmatic Regulations.

5  
6 **CERP IMPLEMENTATION PROCESSES**

- 7
- 8 **Sec.**
- 9 385.10 Implementation Process.
- 10 385.11 Incorporation of NEPA and Related Considerations into the Implementation
- 11 Process.
- 12 385.12 Consistency with Requirements of the State of Florida.
- 13 385.13 Design Agreements.
- 14 385.14 Project Delivery Team.
- 15 385.15 Consultation and Coordination.
- 16 385.16 Public Outreach.
- 17 385.17 Environmental and Economic Equity.
- 18 385.18 Restoration Coordination and Verification (RECOVER).
- 19 385.19 Quality Control.
- 20 385.20 Independent Scientific Review.
- 21 385.21 Dispute Resolution.
- 22 385.22 Project Management Plans.
- 23 385.23 Project Implementation Reports.
- 24 385.24 Project Cooperation Agreements.
- 25 385.25 Operating Manuals.

26  
27 **INCORPORATING NEW INFORMATION INTO THE PLAN**

- 28
- 29 **Sec.**
- 30 385.26 Master Implementation Sequencing Plan.
- 31 385.27 Adaptive Assessment Program.
- 32 385.28 Revisions to the Comprehensive Everglades Restoration Plan.
- 33 385.29 Revisions to Models and Analytical Tools.

34  
35 **ENSURING PROTECTION OF THE NATURAL SYSTEM CONSISTENT**

36 **WITH THE GOALS AND PURPOSES OF THE PLAN**

- 37
- 38 **Sec.**
- 39 385.30 Achievement of Project Benefits.
- 40 385.31 Compliance with Savings Clause Provisions.
- 41 385.32 Interim Goals.

42  
43 **Appendix A – Illustrations to Part 385**

44  
45 **Authority: Section 601, Public Law 106-541, 114 Stat. 2680; 10 U.S.C.**

46 **3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.**

47

## PURPOSE AND SCOPE

§385.1 Purpose of the Programmatic Regulations.

The purpose of the programmatic regulations is to establish the processes and procedures needed to implement the Comprehensive Everglades Restoration Plan and to ensure that the goals and purposes of the Plan are achieved. The programmatic regulations also define the relationship and responsibilities of the Federal and State partners charged with implementing the Plan as well as relationships and responsibilities of other agencies and governments and the public.

§385.2 Applicability of the Programmatic Regulations.

(a) This regulation applies to all components, projects, separable elements, and program level activities conducted for implementation of the Comprehensive Everglades Restoration Plan.

(b) Nothing in this regulation shall be interpreted to amend, alter, diminish, or otherwise affect 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 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).

(c) Protocols, interim goals, water control plans, operating plans, models, analytical tools, Master Implementation Sequencing Plans, Project Management Plans, Design Document Reports, Operating Manuals, Project Implementation Reports, Project Cooperation Agreements, Comprehensive Plan Modification Reports, and other documents created under these regulations or the Plan, are intended to be used as planning, measurement, assessment, reporting, and/or management tools. They are not designed to be, nor shall they be construed to be, standards, schedules, or requirements enforceable by third parties, or otherwise restricting the discretion of the Secretary, the District Engineer, the State, or the non-Federal sponsor, in carrying out their responsibilities under the Plan.

(d) Nothing in these regulations are intended to, or shall be interpreted to, prescribe the process for reservation or allocation of water or for regional water management under Florida law. Nor are these regulations intended to, nor shall they be interpreted to, prescribe any other process of Florida water law.

§385.3 Definitions.

The following terms are defined for the purposes of Part 385:

Adaptive assessment means the process for understanding and reducing uncertainties related to the responses of the south Florida ecosystem to the Plan. Adaptive assessment includes monitoring and assessment.

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Assessment means the process whereby the actual performance of implemented projects are measured and interpreted based on information obtained from system-wide monitoring.

Central and Southern Florida (C&SF) Project means the project for Central and Southern Florida authorized under the heading “CENTRAL AND SOUTHERN FLORIDA” in section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification authorized by any other provision of law.

Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,” dated April 1, 1999, as modified by section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), or any subsequent modification authorized in law.

Concurrence means the role of the Secretary of the Interior and the Governor of Florida with regard to programmatic regulations, as specified in section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688).

Consultation means holding meetings, briefings, telephone conversations, and other outreach activities with Federal, State, tribal, and local agencies and governments to provide information or an exchange of views.

Coordination means the formal exchange of information and views, by letter, report, meeting or other prescribed means, between the Corps of Engineers and another agency. Coordination activities are required by and in accordance with purposes and procedures established by Federal policy (public law, executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers).

Current evaluation condition means the conditions predicted (forecast) in the south Florida ecosystem that are modeled to include all of the Project Implementation Reports approved (i.e. Division Engineer’s public notice issued). This condition establishes an evaluation baseline for estimating how much water an individual project makes available.

Design Agreement means the agreement between the Corps of Engineers and a non-Federal sponsor concerning cost sharing for activities related to planning, engineering, design, and other activities needed to implement the Plan.

Design Documentation Report means the document that describes the results of investigations, analyses, and calculations made during the detailed design phase that provides the technical basis for the plans and specifications.

District Engineer means the District Engineer of the Corps of Engineers, Jacksonville District.

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Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic Division.

Drought Contingency Plan means a plan contained within the Operating Manuals that describes procedures for dealing with drought situations that affect management decisions for operating the projects.

Environmental and economic equity means the fair treatment of all persons regardless of race, color, creed, or national origin, including environmental justice, and the provision of economic opportunities for small business concerns controlled by socially and economically disadvantaged individuals, including individuals with limited English proficiency in the implementation of the Plan.

Environmental justice means identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations as required by Executive Order 12898.

Evaluation means the process whereby the performance of plans and designs relative to desired objectives is forecast through predictive modeling.

Future without Plan condition means the conditions predicted (forecast) in the south Florida ecosystem through modeling for the year 2050 without implementation of any of the projects of the Plan.

Governor means the Governor of the State of Florida.

Independent scientific review means the process to ensure that appropriate bodies that are independent of the Corps of Engineers, the South Florida Water Management District, or other non-Federal sponsors review and validate the scientific and technical processes and information developed for the Plan.

Independent Technical Review Team means the team established by the Corps of Engineers and the non-Federal sponsor, to ensure quality control of documents and products produced by the Project Delivery Team through periodic technical reviews.

Indicator means an element or component of the natural or human systems that is expected to be influenced by the Plan, and has been selected to be measured as representative of a class of system responses.

Interim goal means objectives for comparatively short-term achievements during the implementation of the Plan. Interim goals provide a basis for reporting on the progress made at specified intervals of time towards the implementation of the Plan, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

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Level of service for flood protection means the water level or flow at which flood damages would be expected to begin to occur in a specific community or region. This is often expressed as a given hydrologic exceedence frequency.

Monitoring means the systematic process of collecting data related to particular natural and human systems at specified locations and times.

Natural system means all land and water managed by the Federal government or the State within the South Florida ecosystem and includes water conservation areas; sovereign submerged land; Everglades National Park; Biscayne National Park; Big Cypress National Preserve; other Federal or State (including a political subdivision of a State) land that is designated and managed for conservation purposes; and any tribal land that is designated and managed for conservation purposes, as approved by the tribe.

New water means water that is made available by a project of the Plan.

Non-Federal sponsor means a legally constituted public body that has full authority and capability to perform the terms of the Project Cooperation Agreement and the ability to pay damages, if necessary, in the event of failure to perform, pursuant to Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b).

Operating Manuals means the set of documents for projects and the entire system used to guide the operation of the projects of the Plan. Operating Manuals include the System Operating Manual and Project Operating Manuals. Operating Manuals may include water control plans, regulation schedules, and operating criteria for project and/or system regulations as well as additional provisions to collect, analyze, and disseminate basic data in order to operate projects to ensure that the goals and purposes of the Plan are achieved.

Outreach means activities undertaken to involve or inform the public about the Plan and activities associated with implementation of the Plan.

Performance measure means an indicator and its target.

Pilot Project Technical Data Report means the report that documents the findings and conclusions from the implementation and testing phases of a pilot project.

Plan means the Comprehensive Everglades Restoration Plan contained in the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement” dated April 1, 1999, as modified by section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), or any subsequent modification authorized in law.

Plans and Specifications means the information required to bid and construct the project detailed in the Project Implementation Report and documented in the Design Documentation Report.

1 Pre-CERP baseline means the conditions in the south Florida ecosystem that existed on  
2 December 11, 2000, the date of enactment of section 601 of the Water Resources  
3 Development Act of 2000 (114 Stat. 2680), through modeling and includes such things as  
4 land use, population, water demand, and operations of the Central and Southern Florida  
5 Project. The pre-CERP baseline may change as the models are revised or additional data  
6 is incorporated into the models.

7  
8 Program-level activities means activities or tasks that support more than one project or  
9 that affect the entire implementation program for the Plan.

10  
11 Project means a component or group of components of the Plan that are implemented  
12 together to provide functional benefits towards achieving the goals and purposes of the  
13 Plan.

14  
15 Project Cooperation Agreement (PCA) means the legal agreement between the  
16 Department of the Army and a non-Federal sponsor that is executed prior to project  
17 construction. The Project Cooperation Agreement describes the financial, legal, and other  
18 responsibilities for construction, operation, maintenance, repair, rehabilitation, and  
19 replacement of a project.

20  
21 Project Delivery Team means the inter-agency, interdisciplinary group led by the Corps  
22 of Engineers and the non-Federal sponsor that develops the products necessary to  
23 implement projects or program-level activities.

24  
25 Project Implementation Report (PIR) means the report prepared by the Corps of  
26 Engineers and the non-Federal sponsor pursuant to section 601(h)(4)(A) of the Water  
27 Resources Development Act of 2000 (114 Stat. 2689) and described in Section 10.3 of  
28 the “Final Integrated Feasibility Report and Programmatic Environmental Impact  
29 Statement”, dated April 1, 1999. The Project Implementation Report is a new type of  
30 document containing additional project formulation and evaluation as well as more  
31 detailed engineering and design. The Project Implementation Report bridges the gap  
32 between the conceptual level of detail contained in the “Final Integrated Feasibility  
33 Report and Programmatic Environmental Impact Statement” and the detailed design  
34 necessary to proceed to construction.

35  
36 Project-level activity means an activity or task that supports implementation of a project.

37  
38 Project Operating Manual means the manual that describes the operating criteria for a  
39 project or group of projects of the Plan. The Project Operating Manual is considered a  
40 supplement to the System Operating Manual and presents more detailed information on  
41 the operation of a specific project or group of projects.

42  
43 Protocol means a method or methods, which in the discretion of the Corps of Engineers  
44 and the South Florida Water Management District, is appropriate for performing a task  
45 necessary to implement the Plan, such as plan formulation and evaluation, adaptive

1 assessment, modeling, quantification of water to be reserved or allocated for the natural  
2 system, and similar tasks.

3  
4 Public means any individuals, organizations, or unit of government that might be affected  
5 by or interested in the implementation of the Plan. The public includes Federal, regional,  
6 State, and local government entities and officials, public and private organizations,  
7 Native American (Indian) tribes, and individuals.

8  
9 Reservation of water for the natural system means the actions taken by the South Florida  
10 Water Management District, the Florida Department of Environmental Protection, or any  
11 other state agency or water management district which may be authorized by Florida law,  
12 pursuant to the provisions of Chapter 373.232 of the Florida Statutes, or other applicable  
13 state law, to legally reserve water from allocation for consumptive use for the protection  
14 of fish and wildlife.

15  
16 Restoration Coordination and Verification (RECOVER) means the interagency,  
17 interdisciplinary group, established by the Corps of Engineers and the South Florida  
18 Water Management District, to assess, evaluate, and integrate the projects of the Plan  
19 with the overall goal of ensuring that the system-wide goals and purposes of the Plan are  
20 achieved.

21  
22 Secretary means the Secretary of the Army, unless indicated otherwise. The Secretary of  
23 the Army acts through the Assistant Secretary of the Army (Civil Works) with respect to  
24 the Army's civil works program pursuant to 10 U.S.C. 3016.

25  
26 South Florida ecosystem means the area consisting of the land and water within the  
27 boundary of the South Florida Water Management District in effect on July 1, 1999 and  
28 includes the Everglades, the Florida Keys, and the contiguous near-shore coastal water of  
29 South Florida.

30  
31 South Florida Water Management District (SFWMD) means the public body constituted  
32 by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

33  
34 State means the State of Florida.

35  
36 Special Project Implementation Report means a report prepared by the Corps of  
37 Engineers and the non-Federal sponsor to provide information on a project necessary to  
38 fulfill the requirements of Section 601(h)(4)(A) of the Water Resources Development Act  
39 of 2000 (114 Stat. 2689).

40  
41 System Operating Manual means the system-wide Operating Manual for the Plan that  
42 provides an integrated framework for operating all of the projects of the Plan.

43  
44 Target means a measure of change by the indicator that is expected or desired during and  
45 following the implementation of the Comprehensive Everglades Restoration Plan.

46

1 Technical review means the process that confirms the proper selection and application of  
2 established criteria, regulations, laws, codes, principles, and professional procedures to  
3 ensure a quality product. Technical review also confirms the constructability and  
4 effectiveness of the product and the utilization of clearly justified and valid assumptions  
5 and methodologies.

6  
7 Water control plan means a plan that describes operating criteria for a project or group of  
8 projects.

9  
10 Water made available means the water generated from the implementation of the  
11 components of the Plan. These components include storage reservoirs, aquifer storage  
12 and recovery facilities, stormwater treatment areas, water reuse facilities, and seepage  
13 management.

14  
15 Water Shortage Plan means the plan developed by the South Florida Water Management  
16 District to protect the water resources of the South Florida Water Management District  
17 from harm; to assure equitable distribution of available water resources among all water  
18 users during times of shortage, consistent with the goals of minimizing adverse  
19 economic, social and health related impacts; to provide advance knowledge of the means  
20 by which water apportionments and reductions will be made during times of shortage,  
21 and to promote greater security for water use permittees.

22  
23 With Plan condition means the conditions predicted (forecast) in the south Florida  
24 ecosystem through modeling with the Plan in place. As revisions to the Plan are approved  
25 the “With Plan condition” will also change.

26  
27 §385.4 Goals and Purposes of the Comprehensive Everglades Restoration Plan.

28 The overarching objective of the Comprehensive Everglades Restoration Plan is the  
29 restoration, preservation, and protection of the south Florida ecosystem while providing  
30 for other water-related needs of the region, including water supply and flood protection.  
31 The goal of the Corps of Engineers, in cooperation with non-Federal sponsors, is to  
32 implement the Plan to ensure the protection of water quality in, the reduction of the loss  
33 of fresh water from, the improvement of the environment of the South Florida Ecosystem  
34 and to achieve and maintain the benefits to the natural system and human environment  
35 described in the Plan, and required pursuant to section 601 of the Water Resources  
36 Development Act of 2000 (114 Stat.2680), for as long as the project is authorized.

37  
38 §385.5 Implementation Principles.

39 The Corps of Engineers and the South Florida Water Management District, in  
40 cooperation with other non-Federal sponsors, shall:

41 (a) sequence and schedule projects to accelerate system-wide restoration,  
42 preservation, and protection benefits while providing for other water-related needs of the  
43 region, including water supply and flood protection, to the extent practical given funding,  
44 technical, and other constraints;

45

1 (b) integrate projects and program level activities to achieve the system-wide  
2 goals and purposes of the Plan;

3  
4 (c) operate projects in such a manner that maximizes the system-wide benefits of  
5 restoration, preservation, and protection of the south Florida ecosystem while providing  
6 for other water-related needs of the region, including water supply and flood protection;

7  
8 (d) use the principles of adaptive assessment to assess the Plan's success in  
9 achieving its goals and purposes and for revising the Plan when necessary to ensure that  
10 the goals and purposes of the Plan are achieved; and

11  
12 (e) establish interim goals in order to provide a means by which the success of the  
13 Plan in achieving its goals and purposes may be evaluated throughout the implementation  
14 process.

15  
16 §385.6 Concurrency Statements.

17 [This is a placeholder. As required by section 601(h)(3)(B) of the Water Resources  
18 Development Act of 2000 (114 Stat. 2688), the final rule will reference the statements of  
19 concurrence or non-concurrence by the Secretary of the Interior and the Governor of  
20 Florida on the proposed rule.]

21  
22 §385.7 Limitation on Applicability of Programmatic Regulations.

23 In accordance with section 601(h)(3)(c)(ii) of the Water Resources Development Act of  
24 2000 (114 Stat. 2689), these regulations expressly prohibit any requirement for  
25 concurrence by the Secretary of the Interior or the Governor on Project Implementation  
26 Reports, Project Cooperation Agreements, Operating Manuals for individual projects  
27 undertaken in the Plan, and any other documents relating to the development,  
28 implementation, and management of individual features of the Plan, unless such  
29 concurrence is provided for in other Federal or State laws.

30  
31 §385.8 Development and Adoption of Protocols.

32 (a) Whenever, in the discretion of the Corps of Engineers and the South Florida  
33 Water Management District it is appropriate, or as otherwise required by these  
34 regulations, the Corps of Engineers and the South Florida Water Management District, in  
35 consultation with the Department of the Interior, the Florida Department of  
36 Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole  
37 Tribe of Florida, and other Federal, State, and local agencies, may develop and adopt  
38 protocols that describe in more detail the procedures to be followed in conducting  
39 activities necessary to implement the Plan.

40  
41 (b) Protocols shall be consistent with these programmatic regulations, applicable  
42 law, and achieving the goals and purposes of the Plan.

43  
44 (c) The public shall be given notice and opportunity to comment on protocols  
45 prior to their adoption or revision and adopted protocols shall be made available to the  
46 public.

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§385.9 Review of Programmatic Regulations.

(a) The Secretary shall review the programmatic regulations not any less often than every five years from their date of promulgation. In addition, the Secretary may review the programmatic regulations whenever the Secretary believes that such review is necessary to attain the goals and purposes of the Plan. The Secretary shall place appropriate notice in the Federal Register upon initiating review of the programmatic regulations.

(b) Upon completing the review of the programmatic regulations, the Secretary shall promulgate any revisions to the programmatic regulations after notice and opportunity for public comment, with the concurrence of the Governor and the Secretary of the Interior, 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 from the end of the public comment period on the proposed revisions to the programmatic regulations, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor may provide the Secretary with a written statement of concurrence or nonconcurrence with the proposed revisions. A failure to provide a written statement of concurrence or nonconcurrence within such time frame shall be deemed as meeting the concurrency requirements 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 nonconcurrency statement shall specifically detail the reason or reasons for the nonconcurrence.

## CERP IMPLEMENTATION PROCESSES

§385.10 Implementation Process.

(a) Major Steps in the Project Development Process. Due to the size and complexity of the Plan, implementation will be divided into smaller implementable projects. Generally, the Corps of Engineers and the non-Federal sponsor intend to follow the implementation process for projects shown below and in figure 1 in Appendix A:

(1) Project Management Plan. The purpose of the Project Management Plan is to establish the project's scope, schedule, costs, funding requirements, and technical performance requirements, including the various functional areas performance and quality criteria that shall be used to produce and deliver the products that comprise the project.

(2) Project Implementation Report. The Project Implementation Report provides plan formulation and evaluation, engineering and design, economic benefits and estimated costs, and environmental information to bridge the gap between the conceptual design included in the Plan and the detailed design necessary to ready a project for construction.

(3) Design Documentation Report. The Design Documentation Report describes the results of investigations, analyses and calculations made during the detailed design phase and provides the technical basis for the plans and specifications.

(4) Plans and Specifications. Plans and Specifications contain information required to bid and construct the projects detailed in the Project Implementation Report and documented in the Design Documentation Report.

(5) Real Estate Acquisition. The non-Federal sponsor acquires the lands, easements, and rights-of-way needed for the project.

(6) Construction. This phase is the actual construction of a project's components.

(7) Operation and Monitoring. After the project has been constructed, it is operated in accordance with the Operating Manuals. Monitoring is also conducted to determine the effectiveness of the project and to provide information that will be used in adaptive assessment.

(b) Pilot Projects.

(1) The Plan includes pilot projects to address uncertainties associated with certain components such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of the pilot projects is to determine the feasibility, as well as optimum design, of a facility prior to embarking upon full-scale implementation of the feature.

(2) The Corps of Engineers and the non-Federal sponsor may develop processes and procedures as necessary to implement pilot projects. These processes and procedures shall be consistent with these programmatic regulations and applicable law.

(3) Upon completion of operational testing and monitoring, the Corps of Engineers and the non-Federal sponsor shall prepare a Pilot Project Technical Data Report, documenting the findings and conclusions from the implementation and testing of the pilot project.

1 §385.11 Incorporation of NEPA and Related Considerations into the Implementation  
2 Process.

3 (a) Actions Normally requiring an Environmental Impact Statement (EIS) under  
4 §230.6 of this Chapter. Actions normally requiring an EIS are:

- 5 (1) Comprehensive Plan Modification Report;  
6 (2) Project Implementation Reports;  
7 (3) Proposed revisions to sequences of projects substantially deviating  
8 from the Plan for reasons other than Congressional authorization or approval by the  
9 Secretary, funding, engineering, contract administration or other administrative or  
10 technical reasons;  
11 (4) System Operating Manual;  
12 (5) Proposed major changes in operation and/or maintenance of completed  
13 projects; and  
14 (6) Changes in projects that increase size substantially or add additional  
15 purposes beyond the plan recommended in the Project Implementation Report.

16  
17 (b) The District Engineer may consider the use of an environmental assessment  
18 (EA) on the types of actions described in paragraph (a) of this section if early studies and  
19 coordination show that a particular action is not likely to have a significant impact on the  
20 quality of the human environment.

21  
22 (c) Actions normally requiring an EA. In addition to the actions listed in §230.7 of  
23 this chapter, actions normally requiring an EA, but not an EIS, are:

- 24 (1) Modifications to Project Operating Manuals for projects or groups of  
25 projects, not expected to be a major change in operation and/or maintenance; and  
26 (2) Changes in the System Operating Manual.

27  
28 (d) Categorical Exclusions. In addition to the activities listed in §230.9 of this  
29 chapter, actions listed below when considered individually and cumulatively do not have  
30 significant effects on the quality of the human environment and are categorically  
31 excluded from NEPA documentation. However, the District Engineer should be alert for  
32 extraordinary circumstances that may dictate the need to prepare an EA or an EIS.

- 33 (1) Design Documentation Reports;  
34 (2) Interim Goals or Changes to Interim Goals;  
35 (3) Master Implementation Sequencing Plan;  
36 (4) Project Cooperation Agreements;  
37 (5) Project Management Plans;  
38 (6) Plans and specifications for projects;  
39 (7) Project Operating Manuals for projects or groups of projects that are  
40 consistent with the water reservation or allocation for the natural system described in the  
41 Project Implementation Report and the Project Cooperation Agreement for the project or  
42 group of projects;  
43 (8) Minor technical changes to the System Operating Manual or Project  
44 Operating Manuals, not significant enough to warrant notice and opportunity for public  
45 comment under section 601(h)(4)(B)(ii) of the Water Resources Development Act of  
46 2000 (114 Stat. 2690); and

1 (9) Development, adoption, or revision of protocols or methods such as  
2 adaptive assessment; modeling; monitoring; plan formulation and evaluation;  
3 quantification of water needed for the natural system or protection of existing uses;  
4 methods of determining levels of flood protection; and similar protocols or methods.  
5

6 (e) Even though an EA or EIS is not indicated for a Federal action because of a  
7 “categorical exclusion”, that fact does not exempt the action from compliance with any  
8 other Federal law, such as compliance with the Endangered Species Act, the Fish and  
9 Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act,  
10 Clean Air Act, and any other applicable law.  
11

12 §385.12 Consistency with Requirements of the State of Florida. The State of Florida has  
13 established procedures, requirements, and approvals that are needed before the State or  
14 the South Florida Water Management District can participate as the non-Federal sponsor  
15 for Comprehensive Everglades Restoration Plan projects. To the extent practical, Project  
16 Implementation Reports shall include such information and analyses as are necessary to  
17 facilitate review and approval of projects by the non-Federal sponsor and the State  
18 pursuant to the requirements of Florida law.  
19

20 §385.13 Design Agreements.

21 (a) The Corps of Engineers shall execute a design agreement with each non-  
22 Federal sponsor prior to initiation of design activities with that non-Federal sponsor.  
23

24 (b) Any protocols, procedures, policies, or documents developed by the Corps of  
25 Engineers or the non-Federal sponsor pursuant to a design agreement shall be consistent  
26 with these programmatic regulations.  
27

28 §385.14 Project Delivery Team.

29 (a) Implementation of the projects of the Plan shall be the responsibility of the  
30 Corps of Engineers and the non-Federal sponsor as the implementing agencies for  
31 specific projects or programs.  
32

33 (b) The Corps of Engineers and the non-Federal sponsor shall, to the extent  
34 practical, assign individual project managers to be responsible for the successful  
35 implementation of projects, and to ensure that projects are planned, designed and  
36 constructed consistent with the design agreement, Project Management Plan, and  
37 achievement of the goals and purposes of the Plan.  
38

39 (c) The Corps of Engineers and the non-Federal sponsor shall form a Project  
40 Delivery Team to develop the products necessary to implement the project.  
41

42 (d) Project Delivery Teams shall be interdisciplinary in composition.  
43 Additionally, the Corps of Engineers and South Florida Water Management District or  
44 other non-Federal sponsor shall request that the Department of the Interior, the Florida  
45 Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the  
46 Seminole Tribe of Florida, and other Federal, State, and local agencies participate on the

1 Project Delivery Team. In general, agency participation on the Project Delivery Team  
2 shall be the financial responsibility of the participating governmental entity. However,  
3 the Corps of Engineers shall provide funding for the U.S. Fish and Wildlife Service's  
4 preparation of Coordination Act Reports, as required by applicable law, regulation, or  
5 agency procedures.

6  
7 (e) Should issues arise within the Project Delivery Team that the team is unable to  
8 resolve, the project managers shall elevate the issues to the appropriate management at  
9 the Corps of Engineers and the non-Federal sponsor consistent with the provisions of the  
10 design agreement.

11  
12 §385.15 Consultation and Coordination.

13 (a) As appropriate, the Corps of Engineers and the South Florida Water  
14 Management District or other non-Federal sponsor shall consult with the Department of  
15 the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe  
16 of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local  
17 agencies as part of the implementation process for the Plan. The time for, and extent of,  
18 consultation shall be appropriate for, and limited by, the activity involved.

19  
20 (b) The Corps of Engineers and the non-Federal sponsor shall coordinate  
21 implementation activities and the preparation of documents with other Federal, State and  
22 local agencies to fulfill the requirements of Federal and State legislation such as the Fish  
23 and Wildlife Coordination Act, the National Environmental Policy Act, the Clean Air  
24 Act, the Clean Water Act, the National Historic Preservation Act, and the Endangered  
25 Species Act.

26  
27 (b) The Corps of Engineers and the non-Federal sponsor shall coordinate Plan  
28 implementation activities with the Miccosukee Tribe of Indians of Florida and the  
29 Seminole Tribe of Florida in accordance with Executive Order 13084 "Consultation and  
30 Coordination with Indian Tribal Governments" and other applicable policies.

31  
32 §385.16 Public Outreach.

33 (a) Goals.

34 (1) The goal of public outreach is to open and maintain channels of  
35 communication with the public in order to: provide information about proposed activities  
36 to the public; make the public's desires, needs, and concerns known to decision-makers;  
37 provide for consultation with the public before decisions are reached; and consider the  
38 public's views in reaching decisions.

39 (2) In carrying out implementation activities for the Plan, the Corps of  
40 Engineers and the non-Federal sponsor shall undertake outreach activities to:  
41 (i) increase general public awareness for the Plan;  
42 (ii) involve interested groups, agencies, tribes and other interested  
43 communities in the decision-making process and to incorporate public values into  
44 decisions;

45 (iii) better serve minority communities, persons with limited  
46 English proficiency, and socially and economically disadvantaged individuals;

1 (iv) involve traditionally underserved communities, especially  
2 those that may be affected by the Plan;

3 (v) improve the substantive quality of decisions as a result of  
4 public participation; and

5 (vi) reduce conflict among interested and affected parties by  
6 building agreement on solutions to emerging issues.

7  
8 (b) General Requirements.

9 (1) The Corps of Engineers and the non-Federal sponsor shall, as  
10 appropriate, develop and conduct outreach activities for each project or program-level  
11 activity in order to provide information to the public and to also provide opportunities for  
12 involvement by the public.

13 (2) As appropriate, Project Management Plans shall include information  
14 concerning outreach activities to be undertaken during the implementation of the project  
15 or activity.

16 (3) As appropriate, Project Delivery Team meetings and RECOVER  
17 meetings shall be open to attendance by the public. The public shall be notified in  
18 advance of these meetings through e-mail, posting on a web site, or other appropriate  
19 means.

20  
21 (c) Outreach to Socially and Economically Disadvantaged Communities.

22 (1) The Corps of Engineers and the non-Federal sponsor shall, as  
23 appropriate, develop and conduct public outreach activities to ensure that socially and  
24 economically disadvantaged individuals, including individuals with limited English  
25 proficiency, are provided opportunities to review and comment during implementation of  
26 the Plan.

27 (2) As appropriate, Project Management Plans shall include information  
28 concerning outreach activities to socially and economically disadvantaged communities,  
29 including individuals of limited English proficiency to be undertaken during the  
30 implementation of the project or activity.

31 (3) To the extent appropriate, the Corps of Engineers and the non-Federal  
32 sponsor shall make project and program information available in languages other than  
33 English for individuals of limited English proficiency.

34 (4) To the extent appropriate, the Corps of Engineers and the non-Federal  
35 sponsor shall provide translators or similar services at public meetings where a significant  
36 number of participants are expected to have limited English proficiency.

37  
38 §385.17 Environmental and Economic Equity.

39 (a) Goals. In carrying out implementation activities for the Plan, the Corps of  
40 Engineers and the non-Federal sponsor shall, to the extent the District Engineer deems  
41 appropriate, or as otherwise as provided by applicable law, undertake environmental and  
42 economic equity activities to:

43 (i) promote economic equity throughout the implementation of the  
44 Plan through maximum utilization of socially and economically disadvantaged small  
45 business concerns and individuals in the performance of prime contract and subcontract  
46 awards;

1 (ii) provide relevant, timely, valid, and reliable socio-economic  
2 and environmental justice baseline data for system-wide and project-specific  
3 assessments;

4 (iii) institute environmental justice assessment procedures,  
5 according to NEPA guidelines, for all project planning and decision-making;

6 (iv) provide overall guidance, support, and coordination to project  
7 level activities on matters pertaining to socio-economic characteristics, assessments and  
8 issues relating to socio-economics and environmental justice;

9 (v) incorporate and utilize appropriate models, improved methods,  
10 and research in the subjects of demography, economics, land use, water use, water  
11 conservation, environmental justice, public involvement, and community-based planning  
12 to enhance decision making system-wide and at the project level; and

13 (vi) evaluate and assess socio-economic parameters of the Plan  
14 through development of indicators and performance measures, periodic monitoring of  
15 with/without project condition, and the institution and utilization of quantitative and  
16 qualitative feedback mechanisms.

17  
18 (b) General Requirements.

19 (1) As appropriate, Project Management Plans shall include information  
20 concerning environmental and economic equity activities to be undertaken during the  
21 implementation of the project or activity.

22 (2) As required by applicable laws and policies, the Corps of Engineers  
23 and the non-Federal sponsor shall consider and evaluate environmental justice issues and  
24 concerns in the implementation of projects.

25 (3) The District Engineer shall ensure that small business concerns owned  
26 and controlled by socially and economically disadvantaged individuals are provided  
27 opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C.  
28 644(g)).

29  
30 §385.18 Restoration Coordination and Verification (RECOVER).

31 (a) The Corps of Engineers and the South Florida Water Management District  
32 shall establish and lead an interagency, interdisciplinary technical and scientific team  
33 known as Restoration Coordination and Verification (RECOVER). RECOVER will  
34 organize and apply scientific and technical information in ways that, in its judgment, are  
35 most effective in supporting the achievement of the system-wide goals and purposes of  
36 the Plan. RECOVER shall provide advice and recommendations to decision-makers.

37  
38 (b) The Corps of Engineers and the South Florida Water Management District  
39 shall request that the Department of the Interior, the Florida Department of  
40 Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole  
41 Tribe of Florida, and other Federal, State, and local agencies participate on RECOVER.  
42 In general, agency participation on RECOVER shall be the financial responsibility of the  
43 participating governmental entity.

44  
45 (c) The Corps of Engineers and the South Florida Water Management District  
46 shall establish and jointly chair a RECOVER Leadership Group that shall be responsible

1 for coordinating and managing the activities of RECOVER. The Corps of Engineers and  
2 the South Florida Water Management District shall determine the structure and functions  
3 of the RECOVER Leadership Group, but membership shall include the Department of  
4 the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe  
5 of Indians of Florida, the Seminole Tribe of Indians, and may include other Federal,  
6 State, or local government agencies.

7  
8 (d) The Corps of Engineers and the South Florida Water Management District  
9 may create sub-teams or other entities necessary to carry out the responsibilities of  
10 RECOVER.

11 (e) RECOVER shall, as appropriate,:

12 (1) develop performance measures and targets for evaluating and assessing  
13 the Plan in achieving its system-wide goals and purposes, which include restoration of the  
14 natural system, as well as providing for other water-related needs of the region;

15 (2) conduct evaluations of alternative plans developed during the Project  
16 Implementation Report phase from a system-wide perspective in order to evaluate  
17 predicted performance of the Plan;

18 (3) conduct adaptive assessment activities, including the system-wide  
19 monitoring program to assess the actual performance of the Plan;

20 (4) develop refinements and improvements in the design or operation of  
21 the Plan during all phases of implementation;

22 (5) develop and refine system-wide models and tools;

23 (6) conduct activities associated with preparation of Comprehensive Plan  
24 Modification Reports;

25 (7) conduct activities associated with the preparation of Operating  
26 Manuals

27 (8) develop recommendations for interim goals in accordance with  
28 §385.32 to provide a means by which the restoration success of the Plan may be  
29 evaluated throughout the implementation process, and assessing progress towards  
30 achieving these interim goals;

31 (9) cooperate with the independent scientific review panel constituted  
32 pursuant to section 601(j) of the Water Resources Development Act of 2000 (114 Stat.  
33 2691);

34 (10) evaluate new information and science that could have an effect on the  
35 Plan; and

36 (11) prepare information for use in the periodic reports to Congress  
37 prepared pursuant to section 601(l) of the Water Resources Development Act of 2000  
38 (114 Stat. 2692).

39  
40  
41 (f) Any documents, reports, or recommendations prepared by RECOVER shall  
42 not be self-executing, but shall be considered by the Corps of Engineers and the South  
43 Florida Water Management District, in consultation with the Department of the Interior,  
44 the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of  
45 Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies.

46

1 (g) At its discretion, RECOVER may develop protocols as necessary, in  
2 accordance with §385.8, to assist in carrying out its responsibilities.

3  
4 (h) RECOVER shall assist Project Delivery Teams in relating system-wide goals  
5 and objectives to project design and performance and to incorporate, as appropriate,  
6 information developed for Project Implementation Reports into the Plan.

7  
8 (i) In carrying out its responsibilities, RECOVER shall consider projects that are  
9 not part of the Plan, but could affect the ability of the Plan to achieve its goals and  
10 purposes.

11  
12 (j) As appropriate, RECOVER shall provide opportunities for public comment at  
13 its meetings and for review of its draft documents by the public before they are finalized.

14  
15 (k) As appropriate, RECOVER shall consider seeking independent scientific  
16 review or other similar assistance in carrying out its responsibilities, including review of  
17 documents developed by RECOVER.

18  
19 §385.19 Quality Control.

20 (a) The Corps of Engineers and the non-Federal sponsor shall prepare a quality  
21 control plan for each product/project to describe the procedures used to ensure  
22 compliance with technical and policy requirements during implementation. The quality  
23 control plan shall be part of the Project Management Plan.

24  
25 (b) During development of the Project Management Plan for each project, the  
26 Corps of Engineers and the non-Federal sponsor shall establish an Independent Technical  
27 Review Team to conduct reviews to ensure that products are consistent with established  
28 criteria, guidance, procedures, and policy. To the extent practical, the members of the  
29 Independent Technical Review Team shall be independent of the Project Delivery Team  
30 and the project being reviewed, and should be knowledgeable of design criteria  
31 established for the Plan.

32  
33 (c) Independent technical review is intended to be a continuous process  
34 throughout project implementation. Project managers shall coordinate accomplishment of  
35 technical reviews. The Independent Technical Review Team shall document its actions  
36 and recommendations and provide reports to the Project Delivery Team at designated  
37 points during the implementation process.

38  
39 §385.20 Independent Scientific Review.

40 (a) Project Delivery Teams shall cooperate with the independent scientific review  
41 panel constituted pursuant to Section 601(j) of the Water Resources Development Act of  
42 2000 (114 Stat. 2691) and shall consider recommendations made by such panel.

43  
44 (b) RECOVER shall cooperate with the independent scientific review panel  
45 constituted pursuant to Section 601(j) of the Water Resources Development Act of 2000  
46 (114 Stat. 2691) on activities conducted by the panel including assessment of ecological

1 indicators and other measures of progress in restoring the ecology of the natural system  
2 or their review of the Plan's progress toward achieving the natural system restoration  
3 goals of the Plan, and preparation of the biennial report to Congress by the panel.  
4 RECOVER shall consider recommendations made by such panel.

5  
6 (c) Notwithstanding the provisions of Section 601(j) of the Water Resources  
7 Development Act of 2000 (114 Stat. 2691), the Corps of Engineers, the State, or the non-  
8 Federal sponsor may establish other independent scientific review panels or peer reviews  
9 as necessary to provide assistance with implementation activities.

10  
11 §385.21 Dispute Resolution

12 (a) Disputes with the non-Federal sponsor concerning a Project Cooperation  
13 Agreement shall be resolved under the specific procedures of the Project Cooperation  
14 Agreement.

15  
16 (b) Disputes with the non-Federal sponsor concerning design activities shall be  
17 resolved under the specific procedures of the design agreement.

18  
19 (c) All other unresolved issues with the non-Federal sponsor and disputes with the  
20 State associated with the implementation of the Plan shall be resolved according to the  
21 terms of the Dispute Resolution Agreement developed by the Secretary and the Governor  
22 under section 601(i) of the Water Resources Development Act of 2000 (114 Stat. 2691).

23  
24 §385.22 Project Management Plans.

25 (a) General Requirements.

26 (1) The Corps of Engineers and the non-Federal sponsor, in consultation  
27 with the Department of the Interior, the Florida Department of Environmental Protection,  
28 the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other  
29 Federal, State, and local agencies, shall develop and approve a Project Management Plan  
30 prior to initiating activities on a project.

31 (2) The Project Management Plan shall define the activities, and where  
32 appropriate, the subordinate tasks, as well as the assignment of responsibility for  
33 completing products such as Project Implementation Reports, Pilot Project Design  
34 Reports, Design Documentation Reports, plans and specifications, real estate acquisition,  
35 construction contracts and construction, and any activities necessary to support the  
36 delivery of the projects.

37 (3) The Project Management Plan shall include a quality control plan as  
38 described in §385.19.

39 (4) The Project Management Plan shall include appropriate activities for  
40 RECOVER to evaluate alternative plans from a system-wide perspective during the  
41 development of the Project Implementation Report.

42  
43 (b) Project Management Plan Guidelines. In developing a Project Management  
44 Plan, the Corps of Engineers and the non-Federal sponsor shall:

45 (1) provide opportunities for public review and involvement;

1 (2) provide, to the extent practical, budget and schedule information for the  
2 project; and

3 (3) develop and maintain a level of detail commensurate with the current  
4 phase of the project (e.g., high level of detail on the activities associated with the  
5 completion of a Project Implementation Report with less detail for activities associated  
6 with subsequent detailed design and construction phases).

7  
8 (c) Changes to Project Management Plans. The Corps of Engineers and the non-  
9 Federal sponsor, in consultation with the Department of the Interior, the Florida  
10 Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee  
11 Tribe of Indians of Florida, and other Federal, State, and local agencies, shall revise the  
12 Project Management Plan after completion of key major project development products to  
13 reflect the changes in the project's scope or to reflect additional or better understanding  
14 of the project's development resulting from the completion of a decision document or  
15 design/acquisition document.

16  
17 §385.23 Project Implementation Reports.

18 (a) General Requirements.

19 (1) Prior to implementation of a project, the Corps of Engineers and the  
20 non-Federal sponsor, and, to the extent practical or as required by law, in consultation  
21 with the Department of the Interior, the Florida Department of Environmental Protection,  
22 the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other  
23 Federal, State, and local agencies, shall complete a Project Implementation Report  
24 addressing the project component's economic and environmental benefits, engineering  
25 feasibility, and other factors required by section 601(h)(4)(A) of the Water Resources  
26 Development Act of 2000 (114 Stat. 2689).

27 (2) The Project Implementation Report shall:

28 (i) be consistent with the Plan and the programmatic regulations ;

29 (ii) comply with all applicable Federal and State laws, including  
30 the National Environmental Policy Act, the Endangered Species Act, the Fish and  
31 Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act,  
32 the Clean Air Act, and any other applicable law;

33 (iii) contain sufficient information for proceeding to final design of  
34 the project, such as: additional plan formulation and evaluation, engineering and design,  
35 economics, environmental analyses, flood damage assessment, real estate analyses and  
36 the preparation of supplemental National Environmental Policy Act documents;

37 (iv) comply with applicable water quality standards and applicable  
38 water quality permitting requirements as provided for in section 601(b)(2)(A)(ii) of the  
39 Water Resources Development Act of 2000 (114 stat.2681);

40 (v) identify the appropriate quantity, timing, and distribution of  
41 water dedicated and managed for the natural system;

42 (vi) identify the amount of water to be reserved or allocated for the  
43 natural system under State law;

44 (vii) be based on the best available science;

45 (viii) include an analysis concerning the cost-effectiveness and  
46 engineering feasibility of the project;

1 (ix) include an analysis, prepared by RECOVER as described in  
2 paragraph (c)(2) of this section, of the project's effect on achieving the system-wide goals  
3 and purposes of the Plan and recommendations, if necessary, concerning modifications to  
4 the Plan to ensure that the goals and purposes of the Plan are achieved; and

5 (x) include information, as applicable, necessary for the non-  
6 Federal sponsor to address the requirements of appropriate sections of the Florida  
7 Statutes, and other applicable planning and reporting sections of Florida law.

8 (3) The Corps of Engineers and the non-Federal sponsor shall develop the  
9 Project Implementation Report generally in accordance with the process shown in figure  
10 2 in Appendix A.

11 (4) The Corps of Engineers and the South Florida Water Management  
12 District shall develop and adopt a protocol in accordance with §385.8 that describes the  
13 major tasks that are generally needed to prepare a Project Implementation Report.  
14

15 (b) Plan Formulation and Evaluation.

16 (1) To the extent appropriate, the Corps of Engineers and the non-Federal  
17 sponsor shall formulate and evaluate alternative plans to better define, refine, and/or  
18 optimize components and/or to investigate more cost-effective ways to achieve the same  
19 or greater benefits while maximizing the project's contribution towards the system-wide  
20 goals and purposes of the Plan.

21 (i) The Corps of Engineers and the South Florida Water  
22 Management District shall develop and adopt a protocol in accordance with §385.8 that  
23 describes the procedures to be used to formulate and evaluate alternative plans and to  
24 evaluate their cost effectiveness.

25 (ii) Project Implementation Reports approved before the date of  
26 promulgation of these programmatic regulations or the adoption of a protocol may use  
27 whatever method that, in the District Engineer's discretion, and in cooperation with the  
28 non-Federal sponsor, is deemed appropriate.

29 (2) The Project Implementation Report shall include the results of the plan  
30 formulation and evaluation activities and the cost effectiveness analyses conducted for  
31 the Project Implementation Report  
32

33 (c) RECOVER System-Wide Performance Evaluation of Alternative Plans.

34 (1) RECOVER shall evaluate the system-wide performance of alternative  
35 plans developed by the Project Delivery Team for the Project Implementation Report, as  
36 described in the Project Management Plan. RECOVER shall:

37 (i) develop a protocol in accordance with §385.8 that describes the  
38 procedures to be used for the evaluation of alternative plans from a system-wide  
39 perspective by RECOVER;

40 (ii) develop appropriate system-wide performance measures and  
41 targets for evaluating alternative plans; and

42 (iii) evaluate alternative plans from a system-wide perspective  
43 based on analysis of performance relative to the system-wide performance measures and  
44 targets developed by the RECOVER team.

45 (2) RECOVER shall prepare a report for the Project Delivery Team  
46 describing the results of the evaluations of alternative plans from a system-wide

1 perspective, including, as appropriate, recommendations and suggestions for improving  
2 the performance of the alternative plans.

3  
4 (d) National Environmental Policy Act Documentation.

5 (1) The Corps of Engineers and the non-Federal sponsor shall prepare  
6 appropriate NEPA documentation for inclusion in the Project Implementation Report.  
7 The NEPA documentation for the Project Implementation Report shall consider the  
8 Programmatic Environmental Impact Statement included in the “Final Integrated  
9 Feasibility Report and Programmatic Environmental Impact Statement” dated April 1,  
10 1999.

11 (2) The NEPA documentation shall be integrated into the Project  
12 Implementation Report whenever possible.

13 (3) Other agencies, as appropriate, shall be invited to be cooperating  
14 agencies in the preparation of the NEPA documentation.

15  
16 (e) Fish and Wildlife Coordination Act Requirements.

17 (1) The Corps of Engineers and the non-Federal sponsor shall coordinate  
18 with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the  
19 Florida Fish and Wildlife Conservation Commission, and other appropriate agencies in  
20 the preparation of a Project Implementation Report, as required by applicable law.

21 (2) Coordination may include preparation of the following:

22 (i) Planning Aid Letter that describes the fish and wildlife  
23 resources in the project area and any recommendations to assist the planning process;

24 (ii) Fish and Wildlife Issues and Recommendations on effects,  
25 concerns, and issues about alternative plans; and

26 (iii) Coordination Act Report that provides the formal views of the  
27 U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Florida  
28 Fish and Wildlife Conservation Commission on alternative plans.

29  
30 (f) Project Implementation Report Review and Approval Process.

31 (1) The Corps of Engineers and the non-Federal sponsor shall provide  
32 opportunities for review of the draft Project Implementation Report and NEPA document  
33 by the public, in accordance with applicable law.

34 (2) Upon approval of the Project Implementation Report by the Division  
35 Engineer and the non-Federal sponsor, the Division Engineer shall issue a public notice  
36 announcing completion of the Project Implementation Report based upon (i) his/her  
37 endorsement of the findings and recommendations of the District Engineer and the non-  
38 Federal sponsor, and (ii) his/her assessment that the report is in accord with current  
39 policy. The notice shall indicate that the report has been submitted for Washington level  
40 review.

41 (3) Headquarters, US Army Corps of Engineers shall coordinate the  
42 Washington level review in accordance with applicable policies and regulations of the  
43 Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-  
44 day state and agency review of the Project Implementation Report as required by law.

1 (4) After completion of the policy review, the Chief of Engineers shall  
2 transmit the Chief of Engineer's Report to the Assistant Secretary of the Army for Civil  
3 Works for review.

4 (5) For projects authorized by section 601(b)(2)(C) or section 601(c) of  
5 the Water Resources Development Act of 2000 (114 Stat. 2682 and 2683), the Assistant  
6 Secretary of the Army for Civil Works shall review and approve the Project  
7 Implementation Report prior to implementation of the project. For all other projects, the  
8 Assistant Secretary of the Army for Civil Works shall transmit the Project  
9 Implementation Report to Congress for authorization.

10 (6) As appropriate, the Project Implementation Report may be used by the  
11 non-Federal sponsor as the basis for obtaining approval under applicable Florida law.  
12

13 (g) Content of Project Implementation Reports. The Corps of Engineers and the  
14 South Florida Water Management District shall develop and adopt a protocol in  
15 accordance with §385.8 that describes the format and content to be generally used in the  
16 preparation of a Project Implementation Report.  
17

18 §385.24 Project Cooperation Agreements.

19 (a) General. Prior to initiating construction or implementation of a project, the  
20 Corps of Engineers shall execute a Project Cooperation Agreement with the non-Federal  
21 sponsor in accordance with applicable law.  
22

23 (b) Verification of Water Reservations. Prior to execution of the Project  
24 Cooperation Agreement, the District Engineer shall verify that the South Florida Water  
25 Management District or the Florida Department of Environmental Protection has,  
26 pursuant to State law, reserved or allocated the total amount of water required for the  
27 natural system, as described in the Project Implementation Report for that project.  
28

29 (c) Assuring Water Reservations Remain in Effect. The Project Cooperation  
30 Agreement shall include a provision that the reservation or allocation of water for the  
31 natural system made pursuant to State law shall remain in effect for as long as the Plan is  
32 authorized and shall not be diminished unless the Corps of Engineers expressly agrees to  
33 such change.  
34

35 (d) Savings Clause Provisions. The Project Cooperation Agreement shall include  
36 a provision that the Corps of Engineers or the non-Federal sponsor shall not:

37 (1) eliminate or transfer existing legal sources of water until a new source  
38 of comparable quantity and quality as that available on the date of enactment of the  
39 Water Resources Development Act of 2000 (114 Stat. 2680) is available to replace the  
40 water to be lost as a result of implementation of the Plan; or

41 (2) reduce levels of service for flood protection that are in existence on the  
42 date of enactment of the Water Resources Development Act of 2000 (114 Stat. 2680) and  
43 are in accordance with applicable law.  
44

45 §385.25 Operating Manuals.

46 (a) General Provisions.

1 (1) The Corps of Engineers and the South Florida Water Management  
2 District or other non-Federal sponsor, in consultation with the Department of the Interior,  
3 the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of  
4 Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall  
5 develop Operating Manuals to ensure that the goals and purposes of the Plan are  
6 achieved.

7 (2) Operating Manuals for the Plan shall consist of a System Operating  
8 Manual and Project Operating Manuals. In general, the System Operating Manual shall  
9 provide a system-wide operating plan for the operation of the projects of the Plan and the  
10 Project Operating Manuals shall provide the details necessary for integrating the  
11 operation of the individual projects with the system operation described in the System  
12 Operating Manual.

13 (3) The Corps of Engineers and the South Florida Water Management  
14 District shall develop and adopt a protocol in accordance with §385.8 that describes the  
15 content of Operating Manuals.

16 (4) The public shall be given notice and opportunity to comment on any  
17 significant modification to the Operating Manuals prior to their adoption or revision.

18 (5) If appropriate, NEPA documentation shall be prepared for Operating  
19 Manuals.

20 (6) The Division Engineer and the non-Federal sponsor shall approve  
21 Operating Manuals prior to their adoption or revision.

22 (7) Operating Manuals shall be consistent with the water reservation or  
23 allocation for the natural system and the savings clause provisions described in the  
24 Project Implementation Report and the Project Cooperation Agreement and the  
25 provisions of §385.30(d) and §385.31.

26 (8) As appropriate, the South Florida Water Management District Water  
27 Shortage Plan shall be incorporated into the Operating Manuals as a part of the Drought  
28 Contingency Plan. The Water Shortage Plan and Drought Contingency Plan shall be  
29 consistent with the water reservation or allocation for the natural system described in the  
30 Project Implementation Report and the Project Cooperation Agreement.

31 (9) Operating Manuals shall reflect the operational criteria used in the  
32 identification of water to be reserved or allocated for the natural system and the savings  
33 clause provisions as described in the Project Implementation Report or Project  
34 Cooperation Agreement.

35 (10) Operating Manuals may allow adjustments during the year when  
36 substantial departures from expected rainfall and runoff occur, or are necessary based on  
37 the results obtained from the adaptive assessment program.

38 (11) As appropriate, RECOVER shall conduct activities associated with  
39 the preparation of Operating Manuals as described in §385.18.

40  
41 (b) System Operating Manual.

42 (1) The Corps of Engineers and the South Florida Water Management  
43 District, in consultation with the Department of the Interior, the Florida Department of  
44 Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole  
45 Tribe of Florida, and other Federal, State, and local agencies, to the extent practical, shall  
46 develop a System Operating Manual that provides a system-wide operating plan for the

1 operation of projects to ensure that the goals and purposes of the Comprehensive  
2 Everglades Restoration Plan are achieved.

3 (2) The System Operating Manual shall initially be based on the existing  
4 Central and Southern Florida Project features.

5 (3) The System Operating Manual shall be revised whenever, in the  
6 discretion of the Corps of Engineers and the non-Federal Sponsor, operational changes  
7 are made that have system-wide effects or prior to the completion of new projects that  
8 have system-wide effects.

9 (4) Any revisions to the Comprehensive Plan that would that would  
10 require changes to the System Operating Manual shall be noted in the next  
11 Comprehensive Plan Modification Report described in §385.28.

12  
13 (c) Project Operating Manuals.

14 (1) The Corps of Engineers and the non-federal sponsor shall develop a  
15 Project Operating Manual for each project of the Plan that is implemented.

16 (2) Project Operating Manuals shall be considered as supplements to the  
17 System Operating Manual, and present aspects of the projects not common to the system  
18 as a whole.

19 (3) Each Project Implementation Report shall, as appropriate, include a  
20 draft Project Operating Manual including a water control plan as an appendix to the  
21 Project Implementation Report. The water control plan contained in the Project  
22 Implementation Report shall be revised, if necessary, for the construction phase and the  
23 monitoring and testing phase of the Project.

24 (4) The final Project Operating Manual shall be completed before  
25 completion of the operational testing and monitoring phase of the project. The final  
26 Project Operating Manual shall consider the plan developed in the PIR and information  
27 collected during the initial testing and monitoring phase.

28  
29

## INCORPORATING NEW INFORMATION INTO THE PLAN

§385.26 Master Implementation Sequencing Plan.

(a) The Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies, shall develop a Master Implementation Sequencing Plan that includes the schedule and sequencing of projects based on the best funding, technical, contracting and other information available.

(1) Projects shall be sequenced and scheduled to accelerate system-wide restoration, preservation, and protection benefits while providing for other water-related needs of the region, including water supply and flood protection, to the extent practical given funding, engineering, and other constraints.

(2) When not otherwise required by applicable law, in the discretion of the District Engineer, the public may be given notice and opportunity to comment on the Master Implementation Sequencing Plan.

(3) The Corps of Engineers and the South Florida Water Management District, in cooperation with other non-federal sponsors, shall initially base the sequence and scheduling of projects of the Plan on the July 2001 sequence and schedule developed by the Corps of Engineers and the South Florida Water Management District.

(b) The Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall annually review the Master Implementation Sequencing Plan.

(1) The Master Implementation Sequencing Plan may be revised as necessary to incorporate new information such as: updated schedules from approved Project Management Plans, the results of pilot projects and other studies, updated funding information, revisions to the Plan, Congressional or other authorization or direction, or information resulting from the adaptive assessment program including achievement of interim goals.

(2) When not otherwise required by applicable law, in the discretion of the District Engineer, the public may be given notice and opportunity to comment on the Master Implementation Sequencing Plan.

§385.27 Adaptive Assessment Program.

(a) The Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall establish an adaptive assessment program to evaluate system responses to implementation of the Plan, to determine whether or not they match expectations, including the achievement of interim goals, and to determine if the Plan should be modified in order to achieve the goals and purposes of the Plan.

1 (b) RECOVER shall conduct adaptive assessment activities and shall develop a  
2 protocol in accordance with §385.8 that describes the procedures to be used to conduct  
3 adaptive assessment.  
4

5 (c) RECOVER shall develop and implement a system-wide monitoring plan that  
6 is generally developed from a series of ecological conceptual models that are designed to  
7 measure status and trends of selected indicators (performance measures), establish base-  
8 line variability, and address uncertainties through cause-effect research.  
9

10 (d) RECOVER shall use the information collected and analyzed through the  
11 system-wide monitoring program as a basis for conducting adaptive assessment tasks,  
12 which may include, but are not limited to, the following:

13 (1) determining if measured responses are undesirable or are falling short  
14 of achieving interim goals;

15 (2) determining if corrective actions to improve performance should be  
16 considered;

17 (3) identifying options for corrective actions for the performance measures  
18 to respond as desired; and

19 (4) preparing reports on the adaptive assessment program.  
20

21 (e) Whenever it is deemed necessary, but not any less often than every three  
22 years, RECOVER shall prepare an adaptive assessment report that presents an assessment  
23 of whether the goals and purposes of the Plan are being achieved. If through adaptive  
24 assessment RECOVER finds that undesirable responses are occurring, the adaptive  
25 assessment report shall provide recommendations for improving the performance of the  
26 Plan. Such recommendations may include, but are not limited to:

27 (1) modifying current operations of the Plan;

28 (2) modifying the Plan;

29 (3) modifying the sequence or schedule for implementation of the Plan; or

30 (4) a combination of these.  
31

32 (f) The Corps of Engineers and the South Florida Water Management District and  
33 other non-Federal sponsors shall consider the adaptive assessment report prepared by  
34 RECOVER in determining if changes to the Plan, the operation of the projects of the  
35 Plan, or the sequence or schedule of the projects of the Plan are necessary to ensure that  
36 the goals and purposes of the Plan are achieved.  
37

### 38 §385.28 Revisions to the Comprehensive Everglades Restoration Plan.

#### 39 (a) Comprehensive Plan Modification Report.

40 (1) Whenever necessary to attain the goals and purposes of the Plan or to  
41 improve performance of the Plan, the Corps of Engineers and the South Florida Water  
42 Management District, in consultation with the Department of the Interior, the Florida  
43 Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the  
44 Seminole Tribe of Florida, and other Federal, State, and local agencies, shall prepare a  
45 Comprehensive Plan Modification Report.

1 (2) The Corps of Engineers and the South Florida Water Management  
2 District shall prepare the Comprehensive Plan Modification Report using a process that is  
3 consistent with the provisions of §385.15 and §385.16.

4 (3) The Comprehensive Plan Modification Report shall:

5 (i) be initiated at the discretion of the Corps of Engineers and the  
6 South Florida Water Management District based on consideration of the  
7 recommendations of RECOVER, or other appropriate information;

8 (ii) comply with all applicable Federal and State laws, including  
9 the National Environmental Policy Act, the Endangered Species Act, the Fish and  
10 Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act,  
11 the Clean Air Act, and any other applicable law;

12 (iii) contain information such as: plan formulation and evaluation,  
13 engineering and design, economics, environmental analyses, flood damage assessment,  
14 and real estate analyses;

15 (iv) include, as appropriate, revisions to the System Operating  
16 Manual described in §385.25;

17 (v) contain appropriate NEPA documentation to supplement the  
18 Programmatic Environmental Impact Statement included in the "Final Integrated  
19 Feasibility Report and Programmatic Environmental Impact Statement" dated April 1,  
20 1999; and

21 (vi) include coordination with the U.S. Fish and Wildlife Service,  
22 the National Marine Fisheries Service, the Florida Fish and Wildlife Coordination  
23 Commission, and other appropriate agencies in the preparation of the Comprehensive  
24 Plan Modification Report, as required by applicable law.

25  
26 (b) Review and Approval of Comprehensive Plan Modification Report.

27 (1) The Corps of Engineers and the South Florida Water Management  
28 District shall provide opportunities for review of the draft Comprehensive Plan  
29 Modification Report and NEPA document by the public, as required by applicable law.

30 (2) Upon approval of the Comprehensive Plan Modification Report by the  
31 Division Engineer and the non-Federal sponsor, the Division Engineer shall issue a  
32 public notice announcing completion of the Comprehensive Plan Modification Report  
33 based upon (i) his/her endorsement of the findings and recommendations of the District  
34 Engineer and the non-Federal sponsor, and (ii) his/her assessment that the report is in  
35 accord with current policy. The notice shall indicate that the report has been submitted  
36 for Washington level review.

37 (3) Headquarters, US Army Corps of Engineers shall coordinate the  
38 Washington level review in accordance with applicable policies and regulations of the  
39 Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-  
40 day state and agency review of the Comprehensive Plan Modification Report as required  
41 by law.

42 (4) After completion of the policy review, The Chief of Engineers shall  
43 transmit the Chief of Engineer's Report to the Assistant Secretary of the Army for Civil  
44 Works for review.

45 (5) Upon approval, the Assistant Secretary of the Army for Civil Works  
46 shall transmit the Comprehensive Plan Modification Report to Congress.

1                   (6) As appropriate, the non-Federal sponsor may use the Comprehensive  
2 Plan Modification Report as the basis for obtaining approval under applicable Florida  
3 law.

4  
5 §385.29 Revisions to Models and Analytical Tools.

6                   (a) In carrying out their responsibilities for implementing the Comprehensive  
7 Everglades Restoration Plan and these regulations, the Corps of Engineers and the non-  
8 Federal sponsor shall utilize the models and analytical tools that they believe, in their  
9 discretion, are most appropriate for conducting analyses for the planning, design,  
10 construction, operation, and assessment of projects. To the extent practical or as  
11 otherwise provided by law, this shall be done in consultation with the Department of the  
12 Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of  
13 Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local  
14 agencies.

15  
16                   (b) The Corps of Engineers, the South Florida Water Management District, and  
17 other non-Federal sponsors, may periodically revise models and analytical tools or  
18 develop new ones as needed. Whenever models and analytical tools are significantly  
19 revised or new ones developed, the Corps of Engineers and the South Florida Water  
20 Management District, in consultation with the Department of the Interior, the Florida  
21 Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the  
22 Seminole Tribe of Florida, and other Federal, State, and local agencies, shall reanalyze  
23 the pre-CERP baseline condition using the revised models and analytical tools so as to  
24 provide a similar basis for analyzing the performance of alternative plans and the  
25 identification of water to be reserved or allocated for the natural system.

26

1 ENSURING PROTECTION OF THE NATURAL SYSTEM CONSISTENT WITH THE  
2 GOALS AND PURPOSES OF THE PLAN  
3

4 §385.30 Achievement of Project Benefits.

5 (a) Development of Pre-CERP Baseline. The Corps of Engineers and the South  
6 Florida Water Management District, in consultation with the Department of the Interior,  
7 the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of  
8 Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall  
9 develop the pre-CERP baseline to determine the quantity, timing, and distribution of  
10 water made available by the existing Central and Southern Florida Project on the date of  
11 enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat.  
12 2680).

13  
14 (b) Pre-CERP Baseline Water Availability. To the extent practical, each Project  
15 Implementation Report shall consider whether the pre-CERP baseline quantity of water  
16 available for the natural system is still available for the natural system. If not, the Project  
17 Implementation Report shall consider the loss of pre-CERP baseline water availability in  
18 identifying the quantity, timing, and distribution of water to be made available for the  
19 natural system by a project component. The Project Implementation Report may also  
20 consider other remedial actions, including, but not limited to: whether additional quantity,  
21 timing, and distribution of water should be made available by subsequent projects;  
22 whether to recommend preparation of a Comprehensive Plan Modification Report as  
23 described in §385.28; or whether to recommend that the State of Florida and its agencies  
24 re-examine the reservation or allocation of water needed under State law in order to meet  
25 the needs of the natural system.

26  
27 (c) Identification of Water to be Reserved or Allocated for the Natural System in  
28 the Project Implementation Report.

29 (1) Each Project Implementation Report shall identify the appropriate  
30 quantity, timing, and distribution of water dedicated and managed for the natural system  
31 and shall identify the amount of water to be reserved or allocated for the natural system.

32 (2) The Corps of Engineers and the South Florida Water Management  
33 District shall develop and adopt a protocol in accordance with §385.8 for preparing  
34 Project Implementation Reports that identifies the appropriate quantity, timing, and  
35 distribution of water dedicated and managed for the natural system and identifies the  
36 amount of water to be reserved or allocated for the natural system.

37 (i) Project Implementation Reports approved before the date of  
38 promulgation of these programmatic regulations or the adoption of the protocol may use  
39 whatever method that, in the District Engineer's discretion, and in cooperation with the  
40 South Florida Water Management District and the State of Florida, is deemed  
41 appropriate.

42 (ii) The protocol shall take into account the natural fluctuation of  
43 water made available in any given year; the objective of restoration of the natural system;  
44 the need for protection of existing uses transferred to new sources; the need to maintain  
45 existing levels of flood protection; contingencies for drought protection; and the need to  
46 identify the additional quantity, timing, and distribution of water made available by a new

1 project component while maintaining a system-wide perspective on the amount of water  
2 made available by the Plan.

3 (iii) The protocol may express the quantity, timing and distribution  
4 of water in stage duration curves; exceedance frequency curves; quantities available in  
5 average, wet, and dry years; or any other method which, in the District Engineer's  
6 discretion, and in cooperation with the South Florida Water Management District and the  
7 State of Florida, is deemed appropriate.

8 (iv) The protocol shall provide for re-examination of actual  
9 performance after a project component has been in operation for an appropriate period of  
10 time.

11  
12 (d) Variations from Predicted Availability of Water. If, after re-examination of the  
13 actual performance of a project component, the Corps of Engineers and the South Florida  
14 Water Management District judge that the actual long-term performance of a project  
15 component will not meet the quantity, timing, or distribution of water anticipated to be  
16 made available by the Project Implementation Report, then:

17 (1) the Corps of Engineers and the South Florida Water Management  
18 District shall determine if revisions to the Plan are necessary. If so, then the Corps of  
19 Engineers and the South Florida Water Management District shall prepare a  
20 Comprehensive Plan Modification Report in accordance with §385.28; and

21 (2) in the interim during preparation of this Project Implementation  
22 Report, operation of the project shall be consistent with the purposes of the project  
23 component as authorized by Congress. In the absence of specific purposes for a project  
24 component in the Congressional authorization, then the operation of a project component  
25 generally shall be based on providing water in accordance with the following priorities:

26 (i) uses transferred from an existing legal source of water to the  
27 new source made available by that project,

28 (ii) new water for restoration of the natural system, and

29 (iii) new water for other uses of water.  
30

31 §385.31 Compliance with Savings Clause Provisions.

32 (a) Elimination or Transfer of Existing Legal Sources of Water. Project  
33 Implementation Reports shall include analyses to determine if existing legal sources of  
34 water are to be transferred as a result of project implementation. If implementation of the  
35 project shall cause a transfer of existing legal sources of water, then the Project  
36 Implementation Report shall include an implementation plan that ensures that such  
37 transfer shall not occur until after the project is constructed and operating as intended.  
38

39 (b) Existing Level of Service for Flood Protection.

40 (1) The level of service for flood protection that is in existence on the date  
41 of enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat.  
42 2680) and in accordance with applicable law shall be determined. To the extent practical,  
43 the pre-CERP baseline shall be used in determining the existing level of service for flood  
44 protection.

45 (2) The plan recommended in the Project Implementation Report shall be  
46 evaluated to determine if the level of service for flood protection that is in existence on

1 the date of enactment of section 601 of the Water Resources Development Act of 2000  
2 (114 Stat. 2680) and in accordance with applicable law will be reduced by  
3 implementation of the recommended plan. If so, then the recommended plan shall be  
4 modified as necessary to ensure that adverse effects on the existing level of service are  
5 mitigated or eliminated.

6 (3) In developing alternative plans for evaluation during the preparation of  
7 the Project Implementation Report, the Corps of Engineers and the non-Federal sponsor  
8 may consider opportunities to provide greater levels of service or to provide flood  
9 protection in locations where there is currently no flood protection, provided that greater  
10 levels of service or the provision of flood protection is consistent with the goals and  
11 purposes of the Plan and the provisions of section 601(f)(2)(B) of the Water Resources  
12 Development Act of 2000 (114 Stat.2686).

13  
14 §385.32 Interim Goals.

15 (a) General.

16 (1) The Department of the Army, the Department of the Interior, and the  
17 South Florida Water Management District, in consultation with the Miccosukee Tribe of  
18 Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local  
19 agencies, shall establish interim goals to facilitate interagency planning and provide a  
20 means by which the restoration success of the Plan may be evaluated throughout the  
21 implementation process.

22 (2) Interim goals shall:

23 (i) be expressed in terms of measurable restoration standards,  
24 including terms of hydrologic and ecologic performance values, that may be associated  
25 with specific points during the implementation of the Plan and are consistent with the  
26 goals and purposes of the Plan;

27 (ii) reflect system-wide and regional ecological responses that are  
28 associated with the enhancement of hydrologic and ecologic goals and purposes  
29 contained in the Plan, as developed by the Project Implementation Reports, including  
30 increasing the quantity, timing, and distribution of water dedicated and managed for the  
31 restoration of the natural system, the total spatial extent of natural areas, improving  
32 habitat and its functional quality, and improving native plants and animal species  
33 abundance and diversity;

34 (iii) include measurable standards concerning other water-related  
35 goals and purposes of the Plan, including increasing water supplies for urban,  
36 agricultural, industrial and other users and maintaining flood protection;

37 (iv) provide mechanisms and information to facilitate interagency  
38 planning and assessment for reporting implementation progress, including such  
39 accomplishments as completion of Project Implementation Reports, real estate  
40 acquisition, completion of pilot project construction, completion of project construction  
41 at specific points during the implementation of the Plan, and performance of completed  
42 Plan features;

43 (v) provide incremental and sustained benefits to the natural  
44 system, agricultural and urban water supply, and incidental improvements in flood  
45 protection throughout the construction phase of the Plan; and

1 (vi) ensure achievement of benefits to the natural system, and all  
2 other users, in progression, until the final achievement of the goals and purposes of the  
3 Plan can be measured and reported.

4 (3) The Corps of Engineers and the South Florida Water Management  
5 District and other non-Federal sponsors shall sequence and schedule projects to achieve  
6 the interim goals, to the extent practical given funding, technical, or other constraints.  
7

8 (b) Development of Interim Goals.

9 (1) RECOVER shall develop recommendations on interim goals using a  
10 scientifically based collaborative process.

11 (2) RECOVER shall:

12 (i) develop criteria for interim goals that use science and  
13 information which, in its discretion, it determines to be the best available and is  
14 consistent with the goals and purposes of the Plan;

15 (ii) develop a draft list of indicators for the interim goals in  
16 accordance with the criteria;

17 (iii) give the public notice and opportunity to comment on the draft  
18 list of indicators;

19 (iv) develop the final list of indicators after considering public  
20 comment on the draft list;

21 (v) develop draft interim targets for each of the indicators;

22 (vi) develop the process and schedule for developing interim  
23 targets for those indicators where additional information is needed in order to develop  
24 draft interim targets;

25 (vii) prepare draft recommendations on interim goals that provide  
26 detailed documentation on each of the interim targets and the process and schedule for  
27 developing interim targets for those indicators that require additional information;

28 (viii) give the public notice and opportunity to comment on the  
29 draft recommendations; and

30 (ix) prepare final recommendations on interim goals after  
31 considering public comment on the draft recommendations.  
32

33 (c) Interim Goals Agreement. Upon receipt of a final report and set of  
34 recommendations from RECOVER, the Department of the Army, the Department of the  
35 Interior and the South Florida Water Management District shall consider the final report  
36 and set of recommendations from RECOVER and develop a proposed agreement setting  
37 forth an initial suite of interim goals with dates for achievement of the interim goals and  
38 the method of measuring and evaluating the progress toward achievement of the interim  
39 goals.

40 (1) The Department of the Army shall consult with the Miccosukee Tribe  
41 of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State and local  
42 agencies, and shall provide an opportunity for public notice and comment.

43 (2) After consideration of comments, the Department of the Army, the  
44 Department of the Interior, and the South Florida Water Management District shall sign  
45 the agreement, incorporating any suggestions, which in their judgment, are appropriate.

1 (3) The Secretary of Army shall publish notice in the Federal Register  
2 after the agreement is signed.

3  
4 (d) Use of Interim Goals.

5 (1) The Department of the Army, the Department of the Interior, and the  
6 South Florida Water Management District shall use interim goals to measure  
7 performance of the Plan in achieving its goals and purposes. To facilitate the use of  
8 interim goals for this purpose, RECOVER shall assess progress towards meeting the  
9 interim goals and shall periodically prepare progress reports to the Department of the  
10 Army, the Department of the Interior, and the South Florida Water Management District  
11 on progress towards meeting the interim goals.

12 (2) In implementing the Plan, the Corps of Engineers and the South  
13 Florida Water Management District and other non-Federal sponsors shall consider the  
14 reports prepared by RECOVER to determine if:

- 15 (i) revisions to the Plan are needed;  
16 (ii) revisions to the operation of the Plan are needed; or  
17 (iii) revisions to the Master Implementation Sequencing Plan are  
18 needed.

19  
20 (e) Reporting on Interim Goals. Interim goals shall be used in the periodic  
21 reports to Congress as required by section 601(l) of the Water Resources Development  
22 Act of 2000 (114 Stat. 2692). The discussion on interim goals in the periodic reports shall  
23 include:

24 (1) discussion of the performance expected to be achieved since the last  
25 periodic report to Congress;

26 (2) discussion of the actual performance of the Plan during this period  
27 along with a discussion of the measures taken to achieve the interim goals;

28 (3) if performance did not meet the interim goals, a discussion of the  
29 reasons for such shortfall;

30 (4) recommendations for improving performance; and

31 (5) the interim goals to be achieved in the next five years, reflecting the  
32 work to be accomplished during the next five years, along with a discussion of measures  
33 to be undertaken to achieve those interim goals.

34  
35 (f) Revising Interim Goals.

36 (1) Whenever the Corps of Engineers and the South Florida Water  
37 Management District deem it necessary, but not any less often than every five years, the  
38 Corps of Engineers and the South Florida Water Management District shall have  
39 RECOVER review the interim goals to determine if it should recommend to the  
40 Department of the Army, the Department of the Interior and the South Florida Water  
41 Management District, that the interim goals incorporated into the agreement required  
42 under paragraph (c) of this section should be revised due to changed conditions or new  
43 information or analyses.

44 (2) If the Department of the Army, the Department of the Interior, and the  
45 South Florida Water Management District agree, then RECOVER shall utilize the  
46 process described in paragraphs (a) and (b) of this section to prepare new

1 recommendations to assist them in revising the interim goals and adopting the revised  
2 goals in a revised agreement.

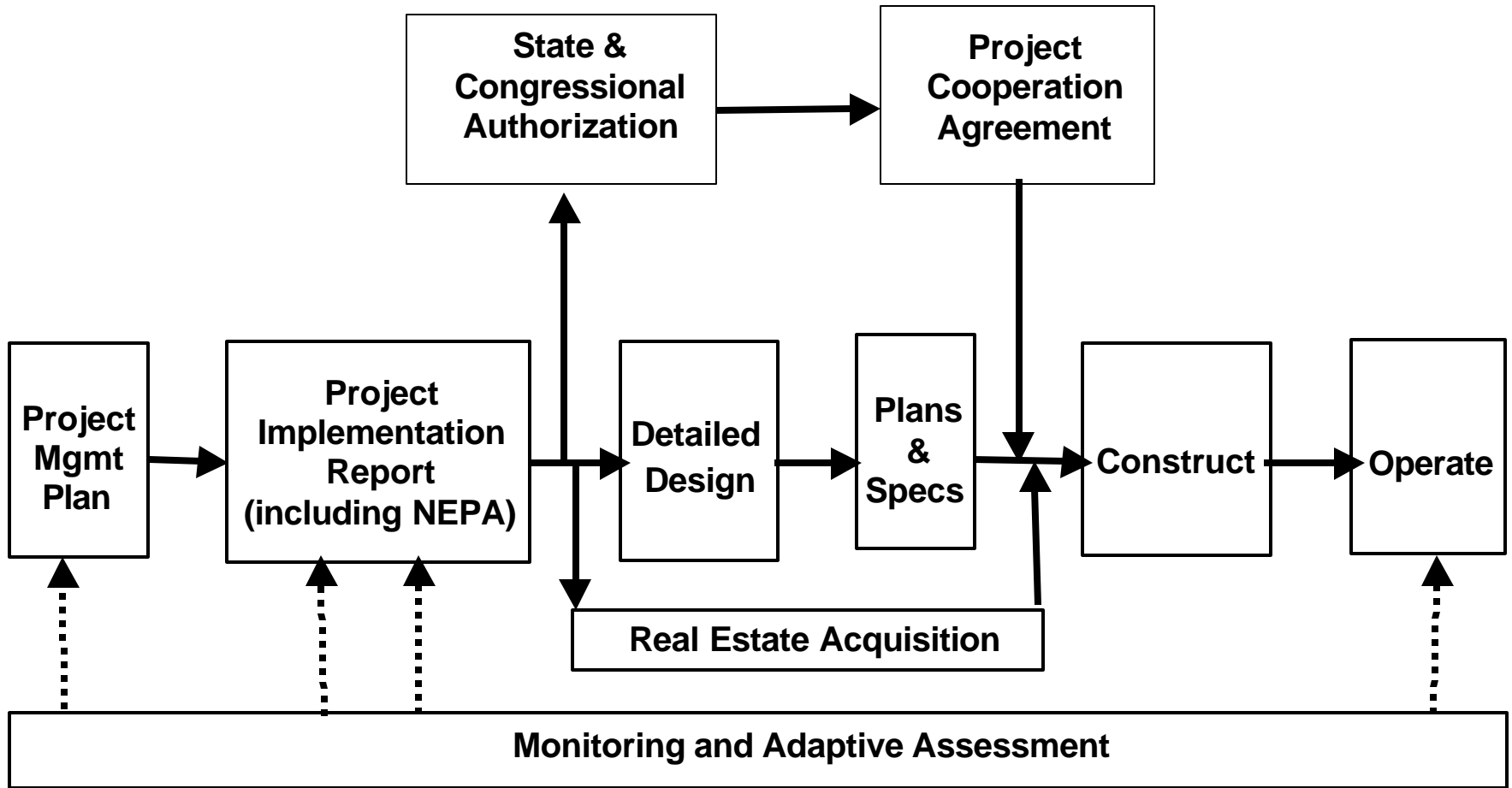
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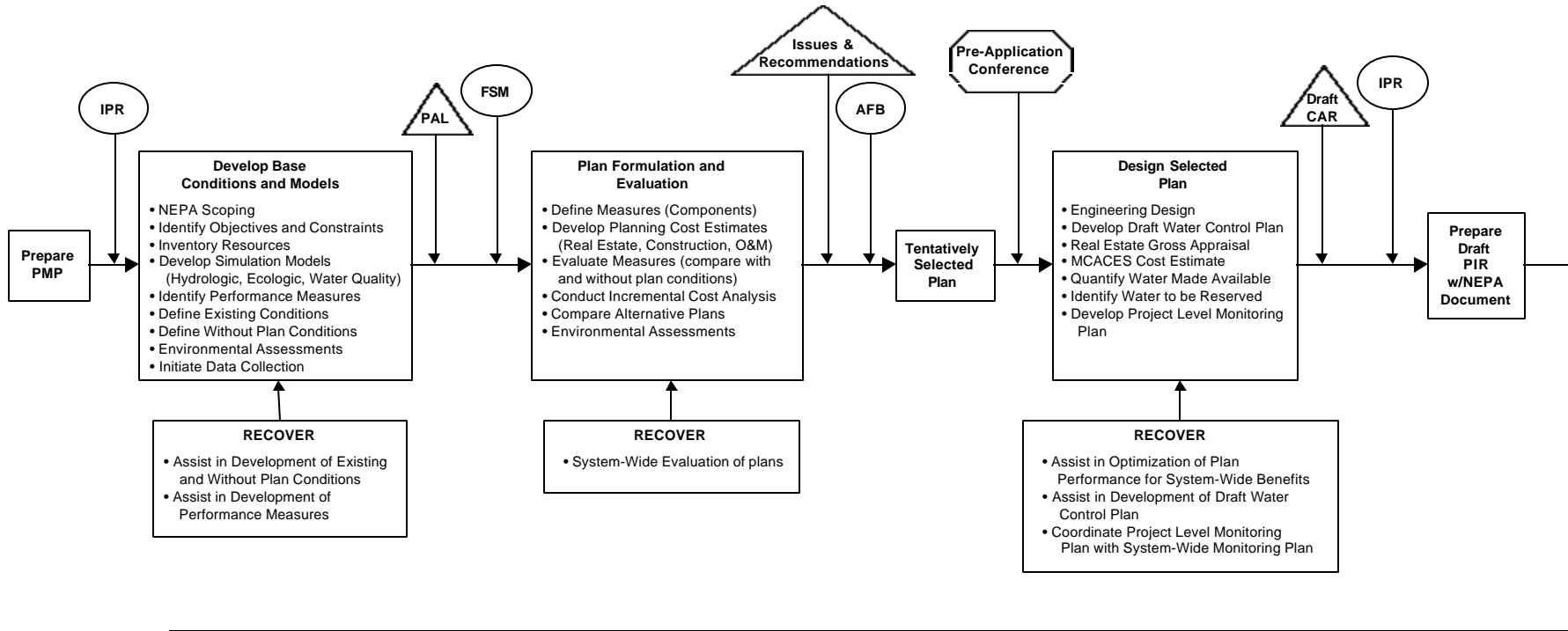
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APPENDIX A to PART 385 – ILLUSTRATIONS TO PART 385

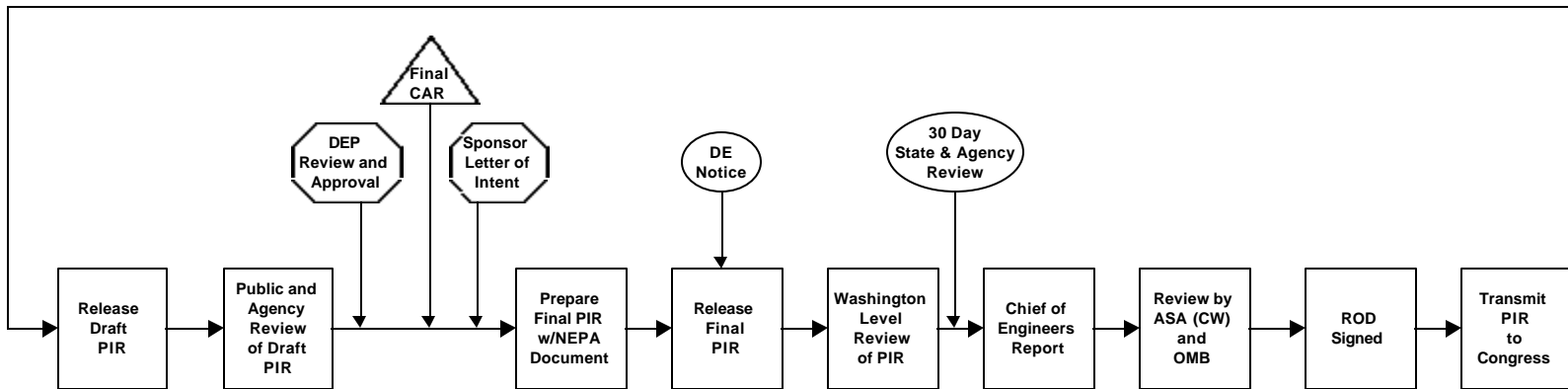
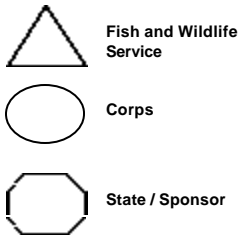
# Project Development Process



# TYPICAL PROJECT IMPLEMENTATION REPORT (PIR) PROCESS



## Legend



Appendix A

Figure 2