

three typical classes of action for similar treatment under NEPA. These typical classes of actions are set forth below:

(1) Actions normally requiring EIS's:

(i) Adoption, approval or submittal of regional water resources management plans (comprehensive, coordinated, joint plans or elements thereof).

(ii) Adoption, approval or submittal of Level B plans.

(2) Actions normally requiring assessments but not necessarily EIS's:

(i) Establishment and implementing guidance (including significant changes) in principles, standards, and procedures for planning water and related land resources.

(ii) Adoption, approval or submittal of framework studies and special studies which include recommendations for future actions.

(iii) Any action not in paragraph (a) (1) or (3) of this section.

(3) Actions normally not requiring assessments or EIS's (categorical exclusions):

(i) Approval of Title III State planning grants.

(ii) Adoption, approval or transmittal or priorities reports.

(iii) Preparation of the National Water Assessment.

(iv) Recommendations to the President with the respect to Federal policies and programs, except for transmittal of plans described in paragraph (a) (1) or (2) of this section for which the original EIS or Environmental Assessment (EA) will be transmitted with the plan. A second EIS is not required.

(v) Framework studies and assessments and special studies which do not include recommendations for future actions.

(b) Where the presence of extraordinary circumstances indicates that an action normally excluded may have a significant environmental effect, the appropriate RFO shall independently determine whether an EIS or an environmental assessment is required.

#### **§707.9 Tiering.**

In accordance with the CEQ NEPA regulations 40 CFR 1502.4(d) and 1508.28(a), this NEPA rule emphasizes the use of tiering to relate broad and narrow actions. The level of detail in

EIS's and EA's prepared by RBC's, WRC interagency committees or WRC coordinating committees will reflect the level of detail in the plans, particularly the comprehensive and policy nature of comprehensive, coordinated, joint plans or elements or revisions thereof. These EIS's are not intended to substitute for individual statements on individual projects as more detailed planning and analysis will be required for major Federal actions proposed in these plans. The "policy" or "overview" EIS should serve as the framework and introduction for a more site-specific project EIS developed by the implementing Federal agency. Environmental impact statements for regional water resource management and Level B plans will generally address the items in the recommended format (40 CFR 1502.10) on the basis of water and related land resources of an entire region or river basin. This is the level of consideration at which the environmental issues and considerations are most relevant to decisionmaking. They may also address groups of interrelated or individual plan elements where these involve significant environmental considerations.

#### **§707.10 Scoping.**

Scoping will be used to determine the extent of issues to be addressed by the EIS and to identify significant issues related to the proposed action. Scoping will be conducted as described by the CEQ NEPA regulations, §§1501.7 and 1508.25.

#### **§707.11 Environmental information.**

Interested persons may contact the Director, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, for information regarding the Council's compliance with NEPA.

### **PART 708—UPPER MISSISSIPPI RIVER BASIN COMMISSION: PUBLIC PARTICIPATION IN UPPER MISSISSIPPI RIVER SYSTEM MASTER PLAN**

Sec.

708.1 Definitions.

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## § 708.1

708.5 Program objectives implementation.

AUTHORITY: Title II, sec. 204, Pub. L. 89-80, Water Resources Planning Act of 1965; Title I, sec. 101(b), Pub. L. 95-502, Inland Waterways Authorization Act of 1978.

SOURCE: 44 FR 14537, Mar. 13, 1979, unless otherwise noted.

### § 708.1 Definitions.

As used in the part, the term:

(a) *Act* means the Inland Waterways Authorization Act of 1978, Pub. L. 95-502.

(b) *Commission* means the Upper Mississippi River Basin Commission, with headquarters at Fort Snelling, Twin Cities, Minnesota.

(c) *Master Plan* means the Upper Mississippi River System Comprehensive Master Management Plan mandated by Title I of the Act.

(d) *GREAT* refers to studies conducted by Great River Environmental Action Teams pursuant to section 117 of the Water Resources and Development Act of 1976 (Pub. L. 94-587) for purposes of developing balanced management strategies for multipurpose use of the Upper Mississippi River.

(e) *System* means those Upper Mississippi River reaches containing commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois.

(f) *Public meeting* means a meeting to provide individuals and representatives of interested organizations opportunities to present their opinions and suggestions by means of an informally structured format.

(g) *Public hearing* means a formally structured public meeting scheduled to provide adequate time for each testimony, which will be recorded, transcribed, published, and made available to the public.

### § 708.2 Scope.

(a) This part describes minimum guidelines for public participation in the development, revision, and implementation of the Master Plan specified in the Act.

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(b) This part applies to the following organizations with references to the activities described in § 708.2(a):

(1) The Commission, including its staff and persons, organizations, and agencies under contract to it for work within the scope of the Master Plan.

(2) Such Federal departments and agencies as are directed under section 101(3) of the Act to conduct studies pursuant to the Master Plan, for any work carried out for purposes of developing, revising, and implementing the Master Plan.

(3) Such departments and agencies of any state or local government as are authorized and/or directed to carry out studies and analyses under direction or advice of the Commission as stipulated in section 101 of the Act.

(c) The guidelines referred to in this part shall be considered general requirements applicable to all studies, procedures, programs, regulations, or other administrative devices carried out under § 708.2(b), but only for those Master Plan Activities under authority of the Act.

### § 708.3 Policy, objectives, and standards.

(a) *Policy.* (1) Congress has directed the Commission to prepare a comprehensive Master Plan for management of the System in cooperation with appropriate Federal, state, and local officials. In developing the plan, the Commission is required to identify various economic, recreational, and environmental objectives of the System, recommend guidelines to achieve such objectives, and propose methods to assure compliance with such guidelines and coordination of future management decisions affecting the System, and include with the proposed plan any legislative proposals which may be necessary to carry out such recommendations and achieve such objectives.

(2) The Commission is required to provide for public participation in the development, revision, and implementation of the Master Plan and to encourage and assist such participation. In doing this, the Commission seeks to foster a spirit of openness and a sense of mutual trust between the public and the planners. Public participation is

expected to result in greater responsiveness of the Master Plan to public concerns and priorities, as well as improved popular understanding of official studies, planning processes, and decisions.

(3) In order for public participation to be effective, it must be timely and integrated into the planning process. The Commission shall seek public participation prior to any decision-making on the Master Plan or any of its components. Such public participation will ordinarily include informational output about the plan, public response and input, two-way discussions or exchange, and Commission consideration of public expressions.

(4) Neither the Master Plan as a whole nor any component of it shall be formulated without incorporation of a program of public participation involving fair representation of all segments of the public. The public participation section of the Master Plan—Plan of Study shall be developed consistent with the guidelines described in this part.

(5) Public participation processes utilized by the Commission in developing the Master Plan shall aim for the highest achievable standards of objectivity and thoroughness consistent with other requirements of the Act and the intent, concepts, ideas, and basic tenets of the Principles and Standards for Planning Water and Related Land Resources published by the Water Resources Council in the FEDERAL REGISTER, Volume 38, Number 174, Part III, September 10, 1973 and any forthcoming revisions. Public participation programs shall include monitoring procedures to maintain an acceptable degree of responsiveness and accountability.

(b) *Objectives.* Objectives of the public participation program developed by the Commission as part of the Master Plan are:

(1) To develop awareness of public preferences by those responsible for preparation and approval of the Master Plan.

(2) To anticipate and help resolve conflicts arising during the study,

(3) To improve information transfer and public awareness of the study,

(4) To provide for periodic reviews in the development of the Master Plan as

well as the final review required by the Act, and

(5) To provide for evaluation of public participation in the planning process.

(c) *Standards.* The Commission in meeting the above objectives recognizes that:

(1) Inputs from the public are important for development of the Master Plan;

(2) Participants are to include individual citizens as well as organizations;

(3) The public participation program is to assume the existence of numerous publics and their interests—identified and delineated according to a number of socioeconomic, demographic, geographic, person, and ideological variables;

(4) The public participation process must be continuous: it is to be provided for, encouraged, and assisted throughout the planning process;

(5) The public participation process is to have as a product measurable sets of opinion and other manifestations of the public will in regard to details of the Master Plan;

(6) Inputs from the public into the Master Plan through avenues other than the Commission public participation program should be facilitated; and

(7) Desires expressed by the public are likely to be conflicting and therefore, public participation cannot be substituted for the decision-making responsibility.

#### **§ 708.4 Required programs and reports.**

(a) The Commission shall prepare a work plan for public participation as part of the Master Plan—Plan of Study. The work plan shall satisfy minimum standards described in this part. The work plan shall describe all substantive administrative and management arrangements to elicit public participation, shall delineate Commission member and staff responsibilities, and shall identify budgetary provisions.

(b) In addition to public meetings and hearings, the public participation program shall include survey research, program evaluation, and information/education activities as described in § 708.5.

(c) The Commission shall recommend long-term public participation activities and programs related to implementation of the Master Plan. These recommendations shall be based on evaluation of procedures and results mandated in this part and carried out during the Master Plan preparation.

(d) The Commission shall issue reports describing the participation program as developed or implemented during the designated reporting period. Each such report shall include as a minimum a brief description of the main participation elicited, the costs of the effort, and the use that was made of the elicited information in the planning process. The reporting periods shall be arranged so as to correspond generally with the main sequential segments of the overall planning process.

**§ 708.5 Program objectives implementation.**

(a) The continuing public participation program shall contain mechanisms or activities for each objective listed in § 708.3(b). The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging, or assisting public participation. Special efforts shall be made to simplify the planning process and products for public and media use. Variances may occur in the use of any given program element, according to the nature of the planning issues, the budgetary resources accorded the participation process, and the effectiveness of the participation actually elicited and measured in the field.

(b) To obtain data in regard to plan-relevant public opinion, methods, shall include but not be limited to survey research.

(1) The survey research process shall be developed and utilized in connection with the Master Plan as a whole and its components. Whereas public meetings are organized to elicit unstructured participation and opinion changes, surveys shall be targeted on carefully selected samples of functionally defined publics located throughout the System.

(2) The Commission shall evaluate the effectiveness of the information/education program on the part of the surveyed publics. This is necessary for

continued and sustained participation in the decision-making steps of the planning process.

(3) If a gap is found between the desired and actual effectiveness, the Commission shall develop and implement a short-term narrow-focus information and education program targeted at the specific problem areas in question.

(4) On completion of the short-term information/education program, re-surveys shall be made among the affected publics. The results shall constitute a measure of the effectiveness of the short-term information/education program.

(c) To improve information transfer and public awareness of the study, two levels of information and education activities shall be pursued. The first shall have the general public as its target audience and shall emphasize methods that foster general awareness and understanding of plan issues and the nature of the ongoing planning process. The second level of information and education activities shall focus on public interest groups, agency representatives, and elected officials and shall emphasize the creation of plan component data and information in a form that can be utilized by these groups in the plan decision-making process. The information presented shall be broadly representative of the relevant perspectives and issues.

(d) Throughout the period of study and the succeeding period of implementation of the Master Plan, the Commission shall provide a centralized capability for acting as an information/education center. The Commission shall provide a central source of media-directed information about the Master Plan, its components, future expected planning needs in the System, current program-related activities, and other relevant subject areas. Special efforts shall be made to summarize complex technical materials for public and media use. The Commission shall have standing arrangements for early consultation and exchange of views with interested or affected persons and organizations on development or revisions of plans, programs, or other significant

actions prior to decision-making. Survey research methods and other procedures will be used to determine the content and emphasis of information and education activities and products.

(e) The Commission shall provide for periodic reviews of the development of the Master Plan as well as the final review required by the Act. Activities to accomplish this shall include:

(1) *Public meetings.* (i) Public meetings shall be organized at locations in parts of the System most significantly affected by the possible outcomes. These open meetings shall be timed to coincide with sequential elements of the planning process.

(ii) The meetings shall provide citizens and representatives of interested organizations an opportunity to utilize an informally-structured format to air their suggestions and grievances in regard to the subject matter of the Master Plan.

(iii) When the Commission deems a formal public hearing is necessary, it may coincide with the public meeting. When this is the case, a clear distinction shall be made between the formal and open segments of the meeting/hearing.

(iv) Documents and data pertaining to the agenda for each public meeting shall be made available to the public for a reasonable time prior to the public meeting, at a location convenient to the expected participants. In addition, the Commission shall prepare outlines of major issues including brief descriptions of the issues, alternatives, and sources of additional information.

(2) *Public hearings.* (i) The Commission is required to publish a preliminary plan not later than January 1, 1981 and to hold public hearings in each state which would be affected by the plan. The Commission is required to review all comments presented at such hearings or submitted in writing to the Commission, and, after making any revisions in the plan it decides are necessary, to submit to Congress a final Master Plan not later than January 1, 1982.

(ii) The public hearings on the preliminary plan and any other public hearings deemed necessary by the Commission are to be consistent with the provisions of sec. 205 of Pub. L. 89-80 in

conformity with this part. If conflict exists between the minimum guidelines of this part and requirements of state or Federal law or other regulations pertaining to a particular hearing, the more stringent requirements shall be observed.

(iii) In addition to any other formal legal requirements, the public hearings are to be well publicized and notices of each hearing will be mailed to interested or affected persons at least 30 calendar days before the hearings.

(iv) In determining locations and times for hearings, consideration will be given to travel and to facilitating attendance and testimony by a cross-section of interested or affected persons and organizations. Accessibility of hearing sites by public transportation will be considered.

(v) The preliminary plan and any supporting reports, documents, and data to be discussed at the public hearings are to be made available to the public at least 30 days prior to the public hearings. Information concerning availability of the preliminary plan, reports, documents, and data will be provided in public hearing notices.

(vi) The elements of the public hearings, proposed time schedules, and any constraints on statements shall be specified in public hearing notices.

(vii) Testimony of witnesses at public hearings shall be scheduled in advance when necessary to ensure maximum participation and allotment of adequate time for testimony, provided that such scheduling is not used as a bar to unscheduled testimony. Blocks of time shall be considered for major categories of witnesses.

(viii) Public hearing procedures shall not inhibit free expression of views by requirements of more than one legible copy of any statement submitted, or for qualifications of witnesses beyond that needed for identification.

(ix) A record of public hearing proceedings shall be made promptly available to the public at cost. The Commission shall invite, receive, and consider comments in writing from any interested or affected persons and organizations. All such comments shall be part of the public record.

(f) To provide mechanisms for evaluation of public participations in the Master Plan:

(1) The Commission shall conduct periodic evaluations of the public participation program. The purpose of this evaluation is to determine the following:

(i) The extent of actual participation elicited from each of the process phases—public meetings, public hearings, survey research, direct input from organizations, and other sources.

(ii) The degree to which participation elicited from each process phase was actually utilized in the planning process.

(iii) Regional/local differences in effectiveness of public participation methods and procedures.

(iv) The need to modify the public participation process during the Master Plan.

(2) Public participation evaluations shall be incorporated into the Master Plan. Recommendations resulting from this overall evaluation shall be utilized to draft new guidelines and plans of study for public participation programs to be implemented after the Master Plan has been adopted.

## PART 725—IMPLEMENTATION OF EXECUTIVE ORDERS 11988, FLOODPLAIN MANAGEMENT AND 11990, PROTECTION OF WETLANDS

### Subpart A—Introduction

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**AUTHORITY:** The Water Resources Planning Act of 1965, sec. 402, Pub. L. 89–80, 79 Stat. 245 (42 U.S.C. 1962d-1), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001

*et seq.*), the Flood Disaster Protection Act of 1973, as amended (87 Stat. 975), E.O. 11988 and E.O. 11990 (42 FR 26951).

**SOURCE:** 45 FR 76683, Nov. 20, 1980, unless otherwise noted.

## Subpart A—Introduction

### § 725.0 Purpose.

This rule establishes the procedures to be followed by the U.S. Water Resources Council for applying Executive Order 11988, Floodplain Management, and Executive Order 11990, Wetlands Protection, to the water resources planning assistance activities that it performs.

### § 725.1 Authority.

This rule is being promulgated pursuant to the Water Resources Planning Act of 1965, section 402, Pub. L. 89–90, 79 Stat. 245 (42 U.S.C. 1962d-1). In addition, Executive Order 11988, *Floodplain Management*, at section 2(d); directs the preparation of procedures implementing its provisions, as does Executive Order 11990, *Protection of Wetlands*, at section 6. Each of these Orders was prepared in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The floodplain management Order is also based on the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1977, as amended (87 Stat. 975).

### § 725.2 Policy.

It is the policy of the Council to provide leadership in floodplain management and the protection of wetlands. Further, the Council shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act. The Council shall take action to:

- (a) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction or modification of wetlands;  
(b) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;  
(c) Reduce the risk of flood loss;