

**Corps of Engineers, Dept. of the Army, DoD**

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**APPENDIX A TO PART 385—ILLUSTRATIONS TO PART 385**

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

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

**Subpart A—General Provisions**

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

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

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

(c) Section 601(h) of WRDA 2000 establishes an integrated framework for assuring that the goals and purposes of the Plan are achieved. This framework includes tools for planning, implementation, and evaluation; a process for

developing these tools in an open public process, with input from other Federal, State, and local agencies; and an enforcement mechanism to ensure that the requirements of the statute are carried out.

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

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

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

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

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

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

tions of water for the restoration of the natural system are made under State law in accordance with the project implementation report and consistent with the Plan.

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

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

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

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

(iv) Explaining through the regulations of this part and by other appropriate means the process for developing the tools, the linkage between the process, tools, and enforcement mechanism, and the means by which these elements constitute an integrated framework for assuring that the goals and purposes of the Plan are achieved.

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

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

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

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

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

(2) Any existing legal water rights of the United States, the State of Florida,