

Delaware River Basin Commission

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regulation in accordance with the Compact and the laws of the Commonwealth, and for recovery of the fines fixed by section 14.17 of the Compact, in the name and on behalf of the Commission. The Commonwealth of Pennsylvania and its law enforcement officers are hereby requested pursuant to sections 10.1 and 11.5 of the Compact, to provide such technical, professional and administrative services as may be required for such enforcement.

(c) In addition to such penal sanctions as may be imposed pursuant to this section, any violation of this regulation shall be subject to such civil remedies by injunction and otherwise as provided by law.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.33 Duration.

The delineation and declaration of the Southeastern Pennsylvania Ground Water Protected Area made pursuant to this regulation, and the requirements established hereby, shall continue until terminated by specific action of the Commission.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.35 Amendments.

Upon request by any interested party, or on its own motion, the Commission may consider amendment of this regulation, and modify the geographic boundaries of the protected area, in accordance with Article 10 of the Compact.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

CHAPTER VI—WATER RESOURCES COUNCIL

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AUTHORITY: Sec. 402, Pub. L. 89-80; 79 Stat. 244, as amended (42 U.S.C. 1962-1962d-5), unless otherwise noted.

Subpart A—Introduction

SOURCE: 43 FR 25944, June 15, 1978, unless otherwise noted.

§ 701.1 General.

This part describes the organization established by the Water Resources Council in discharging its duties and responsibilities. The organization is designed to assure that Council Members will meet at least quarterly and consider and decide major matters before the Council. It provides that the Director can take action when necessary and appropriate; provided, that in the preparation of agenda items for the Council meetings, the Director shall consult with the Interagency Liaison Committee. It also provides that the Council Members shall be continuously advised of the significant actions of the Council staff. Council Members expect to participate personally in the work of the Council.

§ 701.2 Creation and basic authority.

The Water Resources Council was established by the Water Resources Planning Act of 1965 (Pub. L. 89-80, 79 Stat. 244, as amended (42 U.S.C. 1962-1962d-5)). The rules and regulations of this part are promulgated by authority of

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section 402 of the Act (42 U.S.C. 1962d-1).

[41 FR 20548, May 19, 1976]

§ 701.3 Purpose of the Water Resources Council.

It is the purpose of the Water Resources Council to effectuate the policy of the United States in the Water Resources Planning Act (hereinafter the Act) to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned, within the limitations set forth in section 3 of the Act (42 U.S.C. 1962-1).

§ 701.4 Functions.

The functions of the Water Resources Council are:

(a) To maintain a continuing study and prepare periodically an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and of the national interest therein.

(b) To maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation.

(c) To appraise the adequacy of administrative and statutory means for coordination and implementation of the water and related land resources policies and programs of the several Federal agencies and to make recommendations to the President with respect to Federal policies and programs.

(d) To establish, after consultation with appropriate interested Federal and non-Federal entities, and with approval of the President, principles, standards, and procedures for Federal participation in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects, including primary direct navigation benefits as defined by section 7a, Pub. L. 89-670.

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(e) To coordinate schedules, budgets, and programs of Federal agencies in comprehensive interagency regional or river basin planning.

(f) To carry out its responsibilities under Title II of the Act with regard to the creation, operation, and termination of Federal-State river basin commissions.

(g) To receive plans or revisions thereof submitted by river basin commissions in accordance with section 204(3) of the Act (42 U.S.C. 1962b(3)), and to review and transmit them, together with its recommendations, to the President in accordance with section 104 of the Act (42 U.S.C. 1962a-3).

(h) To assist the States financially in developing and participating in the development of comprehensive water and related land resources plans in accordance with Title III of the Act.

(i) To perform such other functions as the Council may be authorized by law, executive orders, regulations, or other appropriate instructions to perform.

(j) To take such actions as are necessary and proper to implement the Act and to carry out the functions enumerated herein.

§ 701.5 Organization pattern.

(a) The Office of the Water Resources Council is composed of the Water Resources Council, the Chairman of the Water Resources Council, the Water Resources Council Staff headed by a Director, and Field Organizations within its jurisdiction.

(b) The Water Resources Council consists of the following Members: The Secretary of Agriculture; the Secretary of the Army; the Secretary of Commerce; the Secretary of Energy; the Secretary of Housing and Urban Development; the Secretary of the Interior; the Secretary of Transportation; and the Administrator of the Environmental Protection Agency.

(c) The Chairman of the Council is designated by the President.

(d) The Water Resources Council staff is employed, assigned duties and responsibilities, and supervised by the Director.

(e) The Council Members shall establish an Interagency Liaison Committee. Task forces may be established

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and assigned duties by the Director with the concurrence of the Members, and/or action of the Council. Any Council Member may provide each task force with whatever representation he or she deems necessary.

(f) Field organizations are established by or operate under the Council and include field committees formerly under the Inter-Agency Committee on Water Resources and the offices of the Chairmen of Federal-State River Basin Commissions established under Title II of the Act.

§ 701.6 Location of office.

The Headquarters is located in the Washington, DC area.

Subpart B—Headquarters Organization

SOURCE: 43 FR 25945, June 15, 1978, unless otherwise noted.

§ 701.51 The Council.

Decisions of the Council are made as hereinafter described in §§ 701.53 and 701.54.

§ 701.52 Definitions.

As used in this part the term *Member* means the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of the Interior, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency, or Alternate appointed in accordance with § 701.53(a) when the alternate is acting for one of the above-named.

§ 701.53 Council decisions by Members.

Council decisions by Members may be made by direct vote at Council meetings or by a written communication which may provide for either a written or telephone response. Written communications shall state the time limit for voting on issues which they contain; however, extensions of time may be granted by the Director or Chairman when it is deemed necessary. Issues raised at Council meetings shall be decided by majority vote of Members present and voting. Issues identi-

fied in written communications must receive approval of all Members. If an action item does not receive approval of all Members, it will be considered as an agenda item at the next Council meeting. For purposes of this section, approval of all Members shall be defined as approval without a negative vote within the time limit for voting provided within each action memorandum. Decisions affecting the authority or responsibility of a Member, within the meaning of section 3(b) of the Act, (42 U.S.C. 1962-1(b)), can be made only with that Member's concurrence.

(a) Each of the Members in § 701.5(b) shall designate in writing to the Chairman, with a copy to the Director, those individuals who may act as their Alternates in fulfilling the duties as a Member. Each Member shall designate one Alternate and one second Alternate to represent the Member on the Council.

(b) A quorum for the transaction of business at Council meetings shall consist of five or more Members and a majority shall consist of at least four votes.

(c) Each Member has equal responsibility and authority in all decisions and actions of the Council. Each Member may place an item on a meeting agenda or, acting through the Director, circulate in writing an item for Council action. Each Member, as well as each Associate Member and each Observer, shall have full access to all information relating to the performance of his duties and responsibilities.

(d) No vote shall be taken at Council meetings until each Member and Associate Member present has had full opportunity to express his views.

(e) Members shall meet regularly at least quarterly, upon the call of the Chairman, or when requested by a majority of Members.

(f) Matters specifically reserved for Council decision by Members are:

(1) Actions requiring Presidential action or approval.

(2) Approval of Annual Budget requests and the Annual Operating Program of the Office of the Water Resources Council.

(3) Decisions involving substantial policy issues.

(4) Delegations of authority.

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(5) Determination that testimony taken or evidence received shall be taken under oath.

(6) Issuance of invitations to become Associate Members or Observers.

(7) Appointment and termination of the appointment of the Director.

[43 FR 25945, June 15, 1978, as amended at 45 FR 24460, Apr. 10, 1980]

§ 701.54 Interagency Liaison Committee.

There is established within the Council an Interagency Liaison Committee (hereafter referred to as ILC).

(a) The ILC shall be composed of one representative for each Member, Associate Member, and Observer. Additional agency representatives may participate in the ILC meeting whenever necessary.

(b) The chairmanship of the ILC shall rotate quarterly among the Members' representatives. Secretarial assistance shall be the responsibility of the ILC Chairman.

(c) The function of the ILC will be to provide a forum for discussion of agenda items prior to Council meetings to advise the Director of the Members' views on such agenda items, and with the Director, to develop the final agenda. It shall be the duty of the Director or his representative to brief the ILC on each agenda item at these meetings.

(d) The ILC may meet at other times upon the call of the Chairman or Director, to consider other items.

(e) Draft agenda items shall be submitted to ILC representatives at least 30 days prior to the Council meeting. The ILC shall meet at least 20 days prior to the Council meeting. Final Council agenda material shall be submitted to the Members at least 7 days prior to the Council meeting.

(f) All ILC meetings will be open except when privileged information is discussed. At such meetings only representatives of Members shall be present.

[43 FR 25945, June 15, 1978, as amended at 45 FR 58834, Sept. 5, 1980]

§ 701.55 Associate Members.

(a) The Chairman, with concurrence of the Council, may invite the heads of other Federal agencies having authorities and responsibilities relating to the

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work of the Council to become Associate Members. Associate Members, on the same terms and conditions as Members, may designate persons, in accordance with the same procedure identified in § 701.53(a), to serve for them as Associate Members.

(b) Associate Members may participate with Members in consideration of all matters relating to their areas of responsibility, except that their concurrence on a decision of the Council is not required.

§ 701.56 Observers.

(a) Chairmen and Vice-Chairmen of River Basin Commissions established under Title II of the Act shall be Observers.

(b) The Chairman, with the concurrence of the Council, may invite the heads of offices or other officials of the Executive Office of the President or other Federal agencies to become Observers.

(c) Observers may designate persons to attend Council meetings of Members. Observers will be furnished agenda and other materials on the same basis as Associate Members.

§ 701.57 Official decisions of the Council.

Official decisions of the Council shall be of record. Such decisions shall be recorded in accepted minutes of duly called regular or special meetings or set forth in resolutions, memoranda, or other documents approved by Members. Decisions which would affect the authority and responsibilities of heads of other Federal agencies, including Associate Members, within the meaning of section 3(b) of the Act, shall only be made during a regular or special meeting of Members and recorded in the minutes thereof.

§ 701.58 Task forces.

The Director with Council concurrence or the Council may establish task forces from time to time to aid in the preparation of issues for presentation to the Council.

(a) Any Member, Associate Member, or Observer may provide representation on each task force.

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(b) The Director or the Council may designate the chairman of each task force.

(c) For each task force, the Director or the Council shall set forth the purpose and specific functions of each task force and their termination dates in establishing such task forces. Such charter documents shall also identify the relationship of each task force to functions of the Council.

(d) Each duly constituted task force will be provided administrative and secretarial support by the Water Resources Council Staff to the extent possible, directly or through arrangements with other Federal agencies.

§ 701.59 Advisory committees.

The Council may establish standing and ad hoc advisory committees. The establishment, operation, and termination of such committees shall be in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and other pertinent law and directives.

§ 701.60 Procedures for revision of rules and regulations.

Revisions proposed by the Water Resources Council Members to the Principles and Standards Manual of Procedures promulgated as rules and regulations by the Water Resources Council are to be submitted in writing by one or more Members of the Water Resources Council to the Director, Water Resources Council, to be handled as an action item in accordance with § 701.53. Proposed revisions adopted by the Council in accordance with § 701.53 will be published in the FEDERAL REGISTER as proposed interim, or final changes. Proposed or interim changes shall be subject to a minimum 60-day public comment period; after the comment period, the Water Resources Council will publish notice that the revision is final as written or as changed to reflect comment or is revoked. Final changes will not be subject to a public comment period following publication in the FEDERAL REGISTER and will become effective when published or at specified date.

[44 FR 72584, Dec. 14, 1979]

§ 701.71 The Chairman.

(a) The Chairman shall preside at Council Meetings of Members.

(b) The Chairman is the official spokesman of the Council and represents it in its relations with the Congress, the States, Federal agencies, persons, or the public. He shall from time to time report, on behalf of the Council, to the President. He shall keep the Council apprised of his actions under this section.

(c) The Chairman shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council.

(d) In the case of absence, disability, or vacancy, the acting Chairman shall be, in order of precedence, as designated (1) by the President (2) by the Chairman from among the Members, or (3) by the Council from among the Members.

§ 701.76 The Water Resources Council Staff.

The Water Resources Council Staff (hereinafter the Staff) serves the Council and the Chairman in the performance of their functions and in the exercise of their authorities in accordance with the Act, the rules and regulations and other decisions of the Council, and all other laws, rules, regulations, and orders applicable to the Water Resources Council, and will be organized in accordance with a structure approved by the Council.

§ 701.77 Director—duties and responsibilities.

The Director shall serve as the principal executive officer for the Council and as the head of the staff, and shall see to the faithful execution of the policies, programs, and decisions of the Council; report thereon to the Council from time to time or as the Council may direct; administer the office and staff of the Council within the limits of the Annual Budget and the Annual Operating Program related thereto; make recommendations to the Council and the Chairman relating to the performance of their functions and the exercise of their authorities; and facilitate the work of the Council and the Chairman.

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His duties and responsibilities include, but are not limited to, the following:

(a) Acting for the Chairman, represents the Council in its relations with the Congress, States, Federal agencies, persons, or the public under the general supervision and direction of the Council.

(b) Establishes the line of succession as Acting Director among the other officers of the Council below the Deputy Director.

(c) Directs the Staff in its service to the Council and the Chairman in the performance of their functions and in the exercise of their authorities. The Director is responsible to the Council for the organization of the Staff, employment and discharge of personnel, training and personnel development program, assignment of duties and responsibilities, and the conduct of its work.

(d) Insures that the quality of the work of the Staff in its studies, reports, and in other assignments is high that the professional integrity of its personnel is respected, and that its overall perspective and independence of judgment with regard to water and related land resources matters is approximately maintained within the context of the inter-agency, intergovernmental, and other staff collaboration that is both necessary and desirable in the fulfillment of the purpose of the Council as set forth in § 701.3.

(e) Prepares and recommends reports on legislation, Executive orders, and other documents requested of the Council.

(f) Prepares and recommends an Annual Budget request in accordance with policies, rules, and regulations applicable thereto. During its consideration by the Office of Management and Budget the President and the Congress, the Director shall seek acceptance of the proposed Annual Budget by every appropriate means. On behalf of the Council, he is authorized in his discretion to make appeals and agree to adjustments. However, to the extent that time and circumstances permit, he shall consult with and obtain the approval of the Council on all substantial appeals and adjustments.

(g) Prepares and recommends the Annual Operating Program to carry out

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the work of the Council, within the appropriations provided by the Congress and allowances approved by the Office of Management and Budget.

(h) Prepares and recommends proposed rules and regulations, including proposed delegations of authority, for carrying out the provisions of the Act, or other provisions of law which are administered by the Council.

(i) Prepares and recommends reports and materials for public information that are explanatory of the work and accomplishments of the Council.

(j) Appoints staff representatives to each task force established pursuant to § 701.58.

(k) Establishes and enforces administrative rules and regulations pertaining to the Staff consistent with applicable laws, Executive Orders, Budget Circulars, and other regulations and orders.

§ 701.78 Director—delegation of authorities.

(a) Under the authority of section 403 of the Act (42 U.S.C. 1962d-2), the Director is delegated authority to:

(1) Hold hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reprints thereon as he may deem advisable.

(2) Acquire, furnish, and equip such office space as is necessary.

(3) Use the U.S. mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(4) Employ and fix compensation of all personnel as the Director deems advisable in accordance with the civil service laws and the Classification Act of 1949, as amended; assign duties and responsibilities among such personnel and supervise personnel so employed.

(5) Procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 3109), at rates not in excess of the daily equivalent of the rate prescribed for grade GS-18 under section 5332 of Title 5 of the United States Code in the case of individual experts or consultants.

(6) Purchase, hire, operate, and maintain passenger motor vehicles.

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(7) Utilize and expend such funds as are deemed advisable for proper administration of the authorities delegated herein. However, contract and individual modifications there of in excess of \$100,000 or which involve significant policy decisions shall be submitted to the Council for approval before execution.

(8) Request any Federal department or agency (i) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (ii) to detail personnel to temporary duty with the Council on a reimbursable basis.

(9) Make available for public inspection during ordinary office hours all appropriate records and papers of the Council.

(10) Compute and certify for payment funds to the States in accordance with standards and formula approved by the Council, and perform related functions of the Council contained in section 305 of the Act.

(11) Serve as a duly authorized representative of the Chairman of the Council for the purpose of audit and examination of any pertinent books, documents, papers, and records of the recipient of a grant under Title III of the Act, and recommend to the Chairman the appointment of further representatives as may be necessary for such function.

(12) Review, for compliance, State programs approved under Title III; conduct full inquiries as the Council may direct; and recommend for Council decision such withholding or reinstatement of payments as is appropriate and authorized by section 304 of the Act.

(13) Serve as the "responsible agency official" under part 705 of these rules and regulations.

(b) The authorities delegated in this section may be redelegated by the Director to the extent determined by him to be necessary and desirable for proper administration.

§ 701.79 Selection policy for professional personnel.

In the selection for employment of the professional staff as a whole, the

Director shall be guided by the following criteria:

(a) Outstanding character and competence—both personal and professional.

(b) Spread and balance of training and experience in the several relevant professions—ecology; economics; economic geography; engineering; fish and wildlife biology; forestry; hydrology; irrigation; landscape architecture; law; political science; recreation; sanitary engineering; soil conservation; urban and other land planning; etc.

(c) Diversity of prior identification and experience, both planning and operating in Washington and in the field; including personnel with prior identification and experience with Federal, State, or local government, private enterprise, or university teaching and research.

Subpart C—Field Organization

SOURCE: 39 FR 20590, June 12, 1974, unless otherwise noted.

§ 701.100 Field Directors.

The Council may employ as professional staff Field Directors who shall be designated as chairmen of committees or groups established by the Council to develop and prepare regional or river basin assessments or plans. Such Field Directors shall perform their official functions at locations established by the Council.

§ 701.101 Field committees.

The Council may establish or continue already established regional committees to carry out assigned functions at field level.

§ 701.102 Existing committees.

Field Committees operating under the Water Resources Council (formerly under the Inter-Agency Committee on Water Resources) are as follows:

Pacific Southwest Inter-Agency Committee
Arkansas-White-Red Inter-Agency Committee
Southeast Basins Inter-Agency Committee

Subpart D—Availability of Information

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561; 42 U.S.C. 1962d-1.

SOURCE: 40 FR 7253, Feb. 19, 1975, unless otherwise noted.

§ 701.200 Statement of policy.

Water Resources Council records and informational materials are available to the fullest extent possible consistent with 5 U.S.C. 552, as amended, and will be promptly furnished to any member of the public.

§ 701.201 Availability of records and informational materials.

(a) Except for records and materials exempted from disclosure pursuant to paragraph (b) of this section, any person may inspect and copy any document in the possession and custody of the Water Resources Council in accordance with the procedure provided in § 701.202.

(b) The provisions of 5 U.S.C. 552 which require that agencies make their records available for public inspection and copying do not apply to matters which are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes but only to the extent that the production of such

records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

§ 701.202 Procedure for requests for information.

(a) A member of the public who requests records or materials from the Water Resources Council must provide a reasonable description of the records or materials sought so that such records or materials may be located without undue search or inquiry.

(b) Requests which reasonably describe the records or materials sought should be directed to the Public Information Officer, Water Resources Council, Suite 800, 2120 L Street NW., Washington, DC 20037.

(c) To insure that requests for information are processed as expeditiously as possible, all Freedom of Information Act (FOIA) requests should be clearly identified by the requester as such on the envelope and in the letter.

(d) Records or materials will be available for inspection and copying in person during normal business hours or by mail.

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(e) Requests for records which originate in or concern matters which originate in another department or agency may be forwarded to the department or agency primarily concerned and the requester so notified.

§ 701.203 Schedule of fees.

(a) The Public Information Officer will to the extent practicable, encourage the widest possible distribution of information by permitting requests for inspection or copies of records or materials to be met without cost to the person making the request.

(b) Fees will be charged in the case of requests which are determined by the Public Information Officer to involve a burden on staff or facilities significantly in excess of that normally accepted by the Council in handling routine requests for information.

(c) In all instances where the Public Information Officer determines that a request for information can be considered as primarily benefiting the general public (despite a § 701.203 determination of burden), such request shall be met either without cost wherever practicable or at a reduced cost to the requester. Any such reduction shall be determined by the Public Information Officer on the basis of the balance between the benefit to the general public and the cost to the Water Resources Council.

(d) Fees shall be limited to recovery of only direct costs of search and duplication but in no event shall the fee for search and duplication exceed \$2.50 per half hour, nor shall the fee for copying exceed \$0.25 per page (maximum per page dimension of 8×14 inches).

(e) Unless a request for information specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve an assessed fee in excess of \$50.00 will not be deemed to have been received until the requester is advised promptly upon physical receipt of the request of the anticipated cost and agrees to bear it.

(f) When anticipated fees exceed \$50.00, a deposit for 25% of the amount must be made within 10 days of the notice to the requester of the initial determination.

(g) The Council reserves the right to limit the number of copies of any document that will be provided to any one person.

§ 701.204 Time limits for WRC initial determinations regarding requests for information.

(a) An initial determination to grant or deny each request for information will be made within ten (10) working days of receipt of such request.

(b) The requester shall be notified immediately of the initial determination and the reasons therefor.

(c) The Public Information Officer will make initial determinations to grant requests for information.

(1) In those instances where the initial determination by the Public Information Officer is to grant the request and the information is immediately supplied such action will serve as both notice of determination and compliance with the request.

(2) In those instances where the initial determination by the Public Information Officer is to grant the request, but the information is not immediately available, the Public Information Officer will send immediate notice of the determination to comply, and the approximate date the information will be forwarded.

(d) The Public Information Officer will make initial determination to deny the requests only with the concurrence of the General Counsel. The requester shall be notified immediately of the initial adverse determination, the reasons therefor, and the right to appeal the initial adverse determination to the Director.

§ 701.205 Time limit for requester to appeal an initial adverse determination.

(a) The requester shall have thirty (30) calendar days to file with the Director an appeal from an initial adverse determination. The appeal must be in writing.

(b) The thirty (30) day period of appeal shall run from receipt of the initial adverse determination (in cases of denials of an entire request) and from receipt of any records being made

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available pursuant to the initial adverse determination (in cases of partial denials).

§ 701.206 Time limit for WRC final determinations regarding requests for information appealed by the requester from an initial adverse determination.

The Director shall make a final determination with respect to any appeal within twenty (20) working days after receipt of such appeal. If the initial adverse determination is in whole or in part upheld by the Director, the requester shall be notified of the final adverse determination and the provisions for judicial review of that determination as stated in the Freedom of Information Act, as amended (see 5 U.S.C. 552(a)(4) *et seq.*; as amended by Pub. L. 93-502).

§ 701.207 Extension of time limits for WRC initial and final determinations.

(a) In unusual circumstances, as specified in this section, the time limits prescribed in either § 701.203 or § 701.204 may be extended by written notice from the responsible WRC official (i.e., the Public Information Officer in instances of initial requests and the Director in instances of appeals) to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, and in no event shall the total extended time exceed ten (10) working days with respect to a particular request.

(b) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

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(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 701.208 WRC petition for judicial extension of time.

The provisions of § 701.206 notwithstanding, the Director may petition for judicial extension of time when exceptional circumstances warrant such action.

§ 701.209 River basin commissions and field committees.

(a) River basin commissions established pursuant to Title II of the Water Resources Planning Act are encouraged to establish, pursuant to section 205(c) of that Act, procedures for public availability of information that are consistent with 5 U.S.C. 552, as amended, and this subpart.

(b) Field committees will be governed by the procedures adopted by the lead Federal agency to implement 5 U.S.C. 552, as amended; except that if the lead agency of a field committee is a non-Federal entity, the standards of this subpart shall apply.

(c) Requests for documents and informational materials may be made to the chairmen of the field committees and river basin commissions at the following addresses.

(1) River Basin Commissions:

Great Lakes Basin Commission, P.O. Box 999, Ann Arbor, Michigan 48106;

New England River Basins Commission, 55 Court Street, Boston, Massachusetts 02108; Ohio River Basin Commission, 36 East 4th Street, Suite 208-220, Cincinnati, Ohio 45202;

Pacific Northwest River Basins Commission, P.O. Box 908, Vancouver, Washington 98660; Upper Mississippi River Basin Commission, Federal Office Building, Room 510, Fort Snelling, Twin Cities, Minnesota 55111;

Missouri River Basin Commission, 10050 Regency Circle, Suite 403 Omaha, Nebraska 68114.

(2) Field Committees:

Arkansas-White-Red Inter-Agency Committee, Room 4030, Federal Building, Albuquerque, New Mexico 87101;

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Pacific Southwest Inter-Agency Committee,
630 Sansome Street, Room 1216, San Fran-
cisco, California 94111;

Southeast Basins Inter-Agency Committee,
402 New Walton Building, Atlanta, Georgia
30303.

[40 FR 7253, Feb. 19, 1975, as amended at 40
FR 10668, Mar. 7, 1975]

Subpart E—Protection of Privacy

AUTHORITY: Sec. 402, Water Resources
Planning Act of 1965 (Sec. 402, Pub. L. 89-80;
79 Stat. 254, as amended (42 U.S.C. 1962d-1))
and the Privacy Act of 1974 (Pub. L. 93-579; 88
Stat. 1896 (5 U.S.C. 552a)).

SOURCE: 40 FR 45676, Oct. 2, 1975, unless
otherwise noted.

§ 701.300 Purpose and scope.

(a) The purpose of this subpart is to
set forth rules to inform the public
about information maintained by the
U.S. Water Resources Council relating
to identifiable individuals and to in-
form those individuals how they may
gain access to and correct or amend in-
formation about themselves.

(b) The regulations in this subpart
implement the requirements of the Pri-
vacy Act of 1974 (Pub. L. 93-579; 88 Stat.
1896 (5 U.S.C. 552a)).

(c) The regulations in this subpart
apply only to records disclosed or re-
quested under the Privacy Act of 1974,
and not requests for information made
pursuant to the Freedom of Informa-
tion Act, as amended (5 U.S.C. 552, as
amended by Pub. L. 93-502).

§ 701.301 Definitions.

For the purposes of this subpart, un-
less otherwise required by the context:

(a) *Council* means the U.S. Water Re-
sources Council;

(b) *Individual* means a citizen of the
United States or an alien lawfully ad-
mitted for permanent resident;

(c) *Maintain* means maintain, collect,
use or disseminate;

(d) *Record* means any item, collec-
tion, or grouping of information about
an individual that is maintained by the
Council, including, but not limited to,
his education, financial transactions,
medical history and criminal or em-
ployment history, and that contains
his name, or the identifying number,
symbol, or other identifying particular

assigned to the individual, such as a
finger or voice print or a photograph;

(e) *Adverse determination* means a de-
cision by the proper Council official to
deny, in whole or in part, a request
from an individual for a correction or
amendment of a record concerning the
individual and maintained by the
Council; and

(f) *Record system* means *system of
records* as defined in the Act, i.e., a
group of any records under the control
of the Council from which information
is retrieved by the name of the indi-
vidual or by some identifying partic-
ular assigned to the individual.

§ 701.302 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined
in the Privacy Act of 1974, maintained
by the Council are listed annually in
the FEDERAL REGISTER as required by
that Act. Any individual may request
the Council to inform him or her
whether a particular record system
named by the individual contains a
record pertaining to him or her. The
request may be made in person during
business hours or in writing at the lo-
cation and to the person specified in
the notice describing that record sys-
tem.

(b) An individual who believes that
the Council maintains records per-
taining to him or her but who cannot
determine which records system con-
tains those records, may request assist-
ance by mail or in person at the Divi-
sion of Program Coordination and Man-
agement, 2120 L Street, NW., Wash-
ington, DC 20037, during business hours
(8:00 A.M. through 4:30 P.M., Monday
through Friday, excluding legal holi-
days).

(c) The Council will attempt to re-
spond to a request as to whether a
record exists within 10 working days
from the time it receives the request or
to inform the requestor of the need for
additional time or additional informa-
tion within 10 working days. If a re-
quest is complied with within 10 work-
ing days, no separate acknowledgment
will be made.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR
8343, Feb. 26, 1976]

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§ 701.303 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Council will not disclose any record which is contained in a system of records, by any means of communication to any person who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Council may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Council may disclose any such record provided such disclosure is:

(1) To those officers and employees of the Council who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use compatible with the purpose for which it was collected;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Council with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law: *Provided*, The head of the agency or instrumentality has made a prior written request to the Assistant Director Program Coordination and Management specifying the particular record and the law enforcement activity for which it is sought;

(8) To a person pursuant to a showing of compelling circumstance affecting the health or safety of an individual: *Provided*, That upon such disclosure notification is transmitted to the last known address of such individual (and see § 701.306);

(9) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee or subcommittee, or joint committee of Congress;

(10) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the GAO; or

(11) Under an order of a court of competent jurisdiction.

§ 701.304 Procedures for identification of individuals making requests.

(a) Each individual requesting the disclosure of a record or copy of a record will furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (b) of this section that he or she is the individual to whom the requested record relates; and

(3) Any other information required by the notice describing the record system.

(b) Proof of identity as required by paragraph (a)(2) of this section will be provided as described in paragraph (b)(1) and (2) of this section. Requests made by an agent, parent, or guardian will include the authorization described in § 701.310(a) and (b).

(1) Requests made in writing will include a statement, signed by the individual and properly notarized, that he or she appeared before a notary public and submitted proof of identification in the form of a drivers license, birth certificate, passport or other identification acceptable to the notary public. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the agency determines that the identification is not adequate, it may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requester will submit proof of identification similar to that described in

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paragraph (b)(1) of this section, acceptable to the Council.

[41 FR 8343, Feb. 26, 1976]

§ 701.305 Procedures for requests for access to or disclosure of records pertaining to individuals.

(a) After being informed by the Council that a system of records contains a record pertaining to him or her, an individual may request the Council for access to or disclosure of that record to him or her in the manner described in this section. Each such request of a record or a copy of it will be made at the place specified in the notice describing that system of records, either in writing or in person. Requests may be made by agents, parents, or guardians of individuals as described in § 701.310(a) and (b).

(b) The request for access to or disclosure of a record should specifically identify the systems of records involved.

(c) The Council will attempt to affirm or deny a request within 10 working days from the time it receives the request or to inform the requester of the need for additional time, additional information, identification, or the tendering of fees (as specified in § 701.312), within 10 working days; except that if the request for access was not preceded by a notification request as provided in § 701.302, then the 10-day period will not begin until after such time as it has been determined that the record exists. If a request is complied with within 10 working days, no separate acknowledgement will be made.

[41 FR 8343, Feb. 26, 1976]

§ 701.306 Special procedure: Medical records.

(a) An individual requesting disclosure of a record which contains medical or psychological information may name a medical doctor or other person to act as his agent as described in § 701.310(a). Records containing medical or psychological information may be disclosed to that agent rather than to the individual at the individual's request.

(b) If the individual has not named a medical doctor as agent, the Council may determine, after consultation with

a medical doctor, that disclosure of the information would have an adverse effect on the requester. The Council may then disclose that information to a medical doctor specified by the individual, rather than to that individual, either in person or by mail.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8343, Feb. 26, 1976]

§ 701.307 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him that was furnished to him under this subpart, may request the agency to correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment will send the request to the agency official who furnished the record to him.

(c) Each request for a correction or amendment of a record will contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name of the system of records in which the record sought to be corrected or amended is maintained;

(3) The location of that record in the system of records;

(4) A copy of the record sought to be corrected or amended or a description of that record;

(5) A statement of the material in the record requested to be corrected or amended;

(6) A statement of the specific wording of the correction or amendment sought; and

(7) A statement of the basis for the requested correction or amendment, including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 701.308 Council review of request for correction or amendment of record.

(a) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of the request for the correction or amendment of a record under § 701.307, the Council will acknowledge receipt of the request and inform the individual whether further information is required before the correction or amendment can be considered.

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(b) The Council will promptly review the request and either make the requested correction or amendment or notify the individual of the initial adverse determination, including in the notification the reasons for the adverse determination and the appeal procedure provided by § 701.309.

(c) The Assistant Director, Program Coordination and Management, or his designee, will, after consulting with the General Counsel, or his designee, have the primary authority to make an initial adverse determination.

(d) The Council will make each requested correction or amendment to a record if that correction or amendment will correct anything that is not accurate, relevant, timely, or complete, within the record.

(e) If the requested correction or amendment to a record is agreed to by the Council, the Council will, within 30 working days:

- (1) Advise the individual;
- (2) Correct the record accordingly; and

(3) Where an accounting of disclosures had been made (as provided in § 701.311), advise all previous recipients (including the individual) of the record of the fact that the correction was made and the substance of the correction.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8343, Feb. 26, 1976]

§ 701.309 Appeal of initial adverse determination.

(a) Any individual whose request for a correction or amendment, requested by him, to a record has been denied, in whole or in part, may appeal that decision to the Director of the Council.

(b) The appeal will be in writing and will:

- (1) Name the individual making the appeal;
- (2) Identify the record sought to be amended;
- (3) Name the record system in which that record is contained;
- (4) Contain a short statement describing the amendment sought; and
- (5) State the name and location of the Council official who made the initial adverse determination.

(c) Not later than 30 days (excluding Saturdays, Sundays, and legal holi-

days) after the date on which the Council received the appeal, the Director will complete his review of the appeal and make a final decision thereon. However, for good cause shown, the Director may extend that 30 day period by not more than an additional 30 working days. If the Director so extends the period, he will promptly notify the individual requesting the review that the extension has been made and the reasons therefor.

(d) After review of an appeal request, the agency will send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision; and

(2) The specific civil remedies available to the requester as per section 2(g) of Pub. L. 93-579, as well as notice that additional remedies may be appropriate and available to enable the full exercise of the requester's rights at law.

(3) The right to file with the Council a concise statement setting forth the requester's reasons for disagreement with the Council's refusal to correct or amend the record.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8344, Feb. 26, 1976]

§ 701.310 Disclosure of record to person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this subpart disclosed to or mailed to a person other than that individual may authorize that person to act as his agent for that specific purpose. The authorization will be in writing, signed by the individual, and will be notarized. The agent will submit with the authorization proof of the individual's identity as required by § 701.304(b).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this subpart. A parent or guardian who desires to act on behalf of such an individual will present suitable evidence of parentage or guardianship, by

birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with §701.304(b).

(c) An individual to whom a record is to be disclosed in person pursuant to this subpart, may have a person of his own choosing accompany the individual when the record is disclosed.

§701.311 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the provisions of §701.303 except §701.303(c)(1) and (2), an accounting will be made.

(2) The accounting will record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section will be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accounting.* (1) Except for accounting of disclosures made under §701.303(c)(1) and (2), accountings of all disclosures of a record will be made available to the individual to whom the record relates at his or her request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him or her will submit his request by following the procedures of §701.305.

(c) *Notification of disclosure.* When a record is disclosed pursuant to §701.303(c)(11) as the result of the order of a court of competent jurisdiction, reasonable efforts will be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

[41 FR 8344, Feb. 26, 1976]

§701.312 Fees.

(a) The Council will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Council makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Council will not charge the individual for the cost of making that copy.

(b) If an individual requests the Council to furnish him with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual), the Council will charge a maximum fee of \$0.25 per page (maximum per page dimension of 8×14 inches) to the extent that the request exceeds \$5.00 in cost to the Council. Requests not exceeding \$5.00 in cost to the Council will be met without cost to the requester.

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

§701.313 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than 5 years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i)(1) and (2) of the Privacy Act (5 U.S.C. 552a(i)(1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

§701.314 Exemptions.

No Council records system or systems are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) and (k).

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

PART 704—PLAN FORMULATION STANDARDS AND PROCEDURES

Subparts A–D [Reserved]

Subpart E—Standards for Plan Formulation and Evaluation

AUTHORITY: Sec. 402, 79 Stat. 254; 42 U.S.C. 1962d-1.

§ 704.39 Discount rate.

(a) The interest rate to be used in plan formulation and evaluation for discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis, shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity: *Provided, however,* That in no event shall the rate be raised or lowered more than one-quarter of 1 percent for any year. The average yield shall be computed as the average during the fiscal year of the daily bid prices. Where the average rate so computed is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent nearest to such average rate.

(b) The computation shall be made as of July 1 of each year, and the rate thus computed shall be used during the succeeding 12 months. The Executive Director shall annually request the Secretary of the Treasury to inform the Water Resources Council of the rate thus computed.

(c) Subject to the provisions of paragraphs (d) and (e) of this section, the provisions of paragraphs (a) and (b) of this section shall apply to all Federal and federally assisted water and related land resources project evaluation reports submitted to the Congress, or approved administratively, after the close of the second session of the 90th Congress.

(d) Where construction of a project has been authorized prior to the close of the second session of the 90th Congress, and the appropriate State or local governmental agency or agencies have given prior to December 31, 1969, satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to the effective

date of this section, and that rate shall continue to be used for such project until construction has been completed, unless the Congress otherwise decides.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the discount rate to be used in plan formulation and evaluation during the remainder of the fiscal year 1969 shall be 4⁵/₈ percent except as provided by paragraph (d) of this section.

(f) Section V. G. 2 of the interagency agreement dated May 15, 1962, approved by the President on May 15, 1962, entitled "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources," and published on May 29, 1962, as Senate Document No. 97, 87th Congress, 2d Session, is superseded by the provisions of this section.

[33 FR 19170, Dec. 24, 1968]

PART 705—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

- Sec.
- 705.1 Purpose.
- 705.2 Definitions.
- 705.3 Application of this part.
- 705.4 Discrimination prohibited.
- 705.5 Assurance required.
- 705.6 Compliance information.
- 705.7 Conduct of investigations.
- 705.8 Procedure for effecting compliance.
- 705.9 Hearings.
- 705.10 Decisions and notices.
- 705.11 Judicial review.
- 705.12 Effect on other regulations.

AUTHORITY: Sec. 602 of Pub. L. 88-352, 78 Stat. 252, (42 U.S.C. 2000 d-1), and sec. 402 of Pub. L. 89-80, 79 Stat. 254, (42 U.S.C. 1962 d-1).

SOURCE: 39 FR 41521, Nov. 29, 1974, unless otherwise noted.

§ 705.1 Purpose.

The purpose of this subpart is to implement the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252 (hereafter referred to as the "Act"), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the

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benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Water Resources Council.

§ 705.2 Definitions.

As used in this part:

(a) *Applicant* means one who submits an application, request, or plan required to be approved by the Water Resources Council, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, request, or plan.

(b) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) *Federal financial assistance* includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or donation of Federal property and interests in property;
- (3) The detail of Federal personnel;
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
- (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work op-

portunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) *Recipient* may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) *Responsible agency official* means the Director of the Water Resources Council or his designee.

§ 705.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Water Resources Council. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the date of this part pursuant to an application whether approved before or after such date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, or (b) any employment practice except to the extent described in § 705.4(c).

§ 705.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an

opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. When previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices

under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive Order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practice of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Location of facilities.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

§ 705.5 Assurance required.

(a) *General.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal

financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, or personal property or equipment of any kind, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for any other purpose involving the provisions of similar services or benefits. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Planning grants to States.* Each designated State agency must submit the assurance specified in § 703.5(n) of these rules and regulations.

(c) *River basin commissions.* Each river basin commission is required to submit, along with its annual budget request, written assurance of its continuing compliance with § 705.4 of this part.

§ 705.6 Compliance information.

(a) *Cooperation and assistance.* The responsible agency official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official timely,

complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 705.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by

himself or by a representative file with the responsible agency official a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official.

(c) *Investigations.* The responsible agency official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible agency official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 705.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible agency official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

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§ 705.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible agency official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this part. Such other means include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with assurance requirement.* If an applicant or recipient fails or refuses to furnish an assurance required under § 705.5 or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this part, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this part. The Water Resources Council shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this part, except that the Council will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for

hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Chairman of the Water Resources Council pursuant to § 705.10(e); and

(4) The expiration of 30 days after the responsible agency official has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken until:

(1) The responsible agency official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 705.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 705.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less

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than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §705.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Water Resources Council in Washington, DC, at a time fixed by the responsible agency official unless it determines that the convenience of the applicant or recipient or of the Council requires that another place be selected. Hearings shall be held before the responsible agency official or at its discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5, U.S.C., or detailed under section 3344 of Title 5, U.S.C.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Water Resources Council shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 554-557) and with such other regulations that may be necessary or appropriate for the conduct of hearings pursuant to this part.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reason-

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ably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible agency official may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with §705.10.

§ 705.10 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may, on his own motion, within 45 days after the initial

decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or its reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to §705.9, a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the responsible agency official shall set forth his or its ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by the Chairman.* Any final decision by the responsible agency official provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman of the Water Resources Council, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or ter-

mination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the responsible agency official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1). While proceedings under this paragraph are pending, the sanctions imposed by the

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order issued under paragraph (f) of this section shall remain in effect.

§ 705.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 705.12 Effect on other regulations.

(a) Nothing in this part shall be deemed to supersede any other order, regulation, or instruction which prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible agency official shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The responsible agency official may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 705.10), including the achievement of effective coordination and maximum uniformity within the Water Resources Council and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action, taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible agency official.

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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- 706.413 Submission of statements by River Basin Commission Chairmen.

AUTHORITY: Water Resources Planning Act, 1965 (Sec. 402, Pub. L. 89-80, 79 Stat. 254 (42 U.S.C. 1962d-1)); E.O. 11222 (30 FR 6469, 3 CFR Proc. 3279; as amended); 5 CFR part 735 (33 FR 12487).

SOURCE: 40 FR 32818, Aug. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 706.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and

special Government employees is essential to assure the proper performance of the Water Resources Council's (hereafter referred to as the Council) business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Council's regulations prescribing standards of conduct and responsibilities and governing statements of employment and financial interests for employees and special Government employees.

§ 706.102 Definitions.

In this part:

(a) *Employee* means the Director and an employee of the Council employed by the Director under the authority of § 701.78(a)(4) of this chapter.

(b) *Special Government employee* means a special Government employee as defined in section 202 of Title 18 of the United States Code who is employed by the Council.

§ 706.103 Remedial action.

(a) A violation of this part by an employee or special Government employee may be cause for remedial action. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee or special Government employee of his conflicting interest;
- (3) Disciplinary action which may be in addition to any penalty prescribed by law; or
- (4) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 706.104 Interpretation and advisory service.

The General Counsel will serve as Counselor for the purpose of providing interpretation and advisory assistance to the Council staff on matters covered in this part 706.

Subpart B—Conduct and Responsibilities of Employees

§ 706.201 Proscribed actions.

An employee shall avoid any action which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 706.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Council;
- (2) Conducts operations or activities that are regulated by the Council; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships, such as those between the employee and his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may be properly in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

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(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 706.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Council orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

§ 706.203 Outside employment and activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances wherein acceptance may result in, or create the appearance of, a conflict of interest;

(2) Outside employment or activity which tends to impair his mental or

physical capacity to perform the duties and responsibilities of his position in an acceptable manner;

(3) Outside employment or activity which is in violation of a statute, Executive order, or regulation, including applicable State and local statutes and ordinances.

(b) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222 of May 11, 1965, as amended by Executive Order 11590 of April 27, 1971, this part or other Council regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of non-public information on the basis that the use is in the public interest.

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government.

(d) An employee shall not engage in outside work or activity which may be construed by the public to be official acts of the Council, or of a nature closely paralleling the work of the Council.

(e) An employee who engages in any kind of outside paid employment on a substantially regular basis shall submit to his immediate supervisor a memorandum describing the employment and stating approximately how many hours per week he is so employed. The immediate supervisor shall forward the memorandum through the Director for inclusion in the employee's Official Personnel Folder.

(f) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

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(2) Participation in the local self-government activities in the community in which he resides to the extent permitted by law; or,

(3) Participation in the affairs of, or acceptance of an award for meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization.

§ 706.204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, as amended, 5 CFR part 735, or this part.

§ 706.205 Misuse of information.

For the purpose of furthering a private interest an employee shall not, except as provided in §706.203(b), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 706.206 Support of Council programs.

(a) When a Council program is based on law or Executive order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Council on pending legislation proposals before congressional committees on request; provided, that the relevant provisions of the current OMB Circular A-14 ("Legislation Coordination and Clearance") are complied with; or

(2) Assisting congressional committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

§ 706.207 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 706.208 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes.

(b) When an employee has a levy placed against his salary for failure to pay an indebtedness for Federal income taxes, he shall be issued a written reprimand stating that failure to make satisfactory arrangements regarding future tax liabilities will be grounds for removal.

(c) When an employee is the subject of a letter of complaint stating that he has not paid his State or local taxes and has failed to make satisfactory arrangements regarding the debt, he shall be interviewed by the Assistant

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Director, Division of Program Coordination and Management. In this interview he shall be instructed to make satisfactory arrangements for the payment of his debt immediately and informed that failure to do so will be grounds for removal.

(d) When an employee is the subject of a letter of complaint regarding any other kind of indebtedness to a unit of government, Federal, State, or local, the procedure prescribed in paragraph (c) of this section shall be observed.

(e) When a creditor who holds a legal judgment against an employee requests that the Council assist in collecting the debt, the employee shall be interviewed by the Assistant Director, Division of Program Coordination and Management. In this interview he shall be instructed to pay the debt in full within 90 days, or within whatever longer period is specified by the Assistant Director, Division of Program Coordination and Management if he determines that a 90-day limit would impose undue hardship on the employee, and informed that failure to do so will be grounds for removal.

(f) When an employee is the subject of a letter of complaint from a creditor who does not hold a legal judgment against the employee, the Assistant Director, Division of Program Coordination and Management shall forward a copy of the letter to the employee together with a memorandum calling the employee's attention to the provisions of this section. However, the Council will not assist the creditor in collecting the debt.

§ 706.209 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.210 Coercion.

An employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or

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another person, particularly one with whom he has family, business, or financial ties.

§ 706.211 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 706.212 Miscellaneous statutory provisions.

The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the Code of Ethics for Government Service.

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (E.O. 10450, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

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(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The provision relating to the denial of the right to petition Congress (5 U.S.C. 7102).

(r) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(s) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(t) The prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

(u) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees in GS-16 or above, or a comparable pay level) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from a private foundation.

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 706.301 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the de-

sire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 706.302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, and writing to the same extent, and subject to the same restrictions, as provided in § 706.303(b) for employees.

§ 706.303 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Council anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) The exceptions from the restrictions as set forth in § 706.202(b) for employees apply in the same manner to special Government employees.

§ 706.304 Applicability of other provisions.

The provisions of §§ 706.206 through 706.211 apply to special Government employees in the same manner as to employees.

Subpart D—Statements of Employment and Financial Interests

§ 706.401 Employees required to submit statements.

(a) Employees in the following named positions shall submit statements of

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employment and financial interest to the Director:

(1) Employees in Grade GS-16 or above of the General Schedule established by the Classification Act of 1949, as amended;

(2) The General Counsel and Administrative Officer;

(3) The Staff Specialists assigned to review applications by States for planning grants under Title III of the Water Resources Planning Act;

(4) Special Government employees, as defined in § 706.102; and

(5) Employees classified at GS-13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions which the Director may determine have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in possible conflicts-of-interest situation and carry out the purpose of law, Executive order, and Council regulations.

(b) A statement of employment and financial interest is required from the Director and shall be submitted by the Director to the Chairman of the Council.

§ 706.402 Employee's complaint on filing requirements.

An employee who feels that his position has been improperly included in the list in § 706.401 as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the Council's internal grievance procedure.

§ 706.403 Form of statements.

An employee required to submit a statement of employment and financial interests shall submit that statement in the format prescribed by the Division of Management.

§ 706.404 Time for submission of statements.

An employee required to submit a statement of employment and financial interests by § 706.401 shall submit that statement no later than 30 days after the date of entrance on duty in the position covered by § 706.401.

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§ 706.405 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement, in the format prescribed by the Division of Management, as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result in a violation of the conflicts-of-interest provisions of section 18 U.S.C. 208, or subpart B of this part.

§ 706.406 Interests of employees' relatives.

The interests of a spouse, minor child, or other member of an employee's immediate household are considered to be interests of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 706.407 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or on a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

§ 706.408 Information not required.

An employee is not required to submit on a statement of employment and financial interests, or on a supplementary statement, any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with

the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 706.409 Opportunity for explanation of conflict or appearance of conflict.

When a statement submitted under § 706.401 indicates a conflict or an appearance of conflict, between the interests of an employee and the performance of his services for the Government, the employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

§ 706.410 Confidentiality of statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and retained in limited access files of the reviewing official. The use of information on the statements shall be limited to that necessary to carry out the purposes of this part. Information from a statement or a supplementary statement shall not be disclosed except by decision of the Director for good cause shown: *Provided*, That information from a statement or a supplementary statement of the Director shall not be disclosed except by decision of the Chairman for good cause shown.

§ 706.411 Effect of statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which he or the other person's participation is prohibited by law, order, or regulation.

§ 706.412 Submission of statements by special Government employees.

(a) Each special Government employee shall submit a statement of employment and financial interests not later than the time of his employment.

Each special Government employee shall keep his statement current throughout his period of employment by the submission of supplementary statements.

(b) A special Government employee shall submit his statement of employment and financial interests in the format prescribed by the Division of Management. The statement will be filed with the Division of Management and is accorded the confidentiality prescribed in § 706.410.

(c) The provisions of §§ 706.406 through 706.411 apply to special Government employees in the same manner as to employees.

(d) The Director may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purposes of this paragraph "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

§ 706.413 Submission of statements by River Basin Commission Chairmen.

A statement of employment and financial interest is not required under this part from Chairmen of River Basin Commissions created by the President pursuant to Title II of the U.S. Water Resources Planning Act. The Commission Chairmen are subject to section 401 of Executive Order 11222, as amended, and are required to file a statement with the Chairman of the Civil Service Commission.

PART 707—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Subpart A—General

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Subpart B—Water Resources Council Implementing Procedures

707.6 Early involvement in private, State, local, and other non-Federal activities requiring Federal action.

707.7 Ensuring that environmental documents are actually considered in agency decisionmaking.

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707.9 Tiering.

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707.11 Environmental information.

AUTHORITY: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); E.O. 11991, 42 FR 26967; 3 CFR 1977 Compl. p. 123.

SOURCE: 44 FR 69922, Dec. 5, 1979, unless otherwise noted.

Subpart A—General

§ 707.1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection and enhancement of the environment. Section 102(2) of NEPA contains certain policy statements and procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, amended E.O. 11514 and directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500–1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. Section 1507.3(a) of CEQ regulations provides that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the CEQ NEPA regulations identifies those

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sections of the regulations which must be addressed in agency procedures.

§ 707.2 Purpose.

The purpose of this NEPA rule is to establish Water Resources Council (WRC) policy and procedures which supplement the CEQ NEPA regulations by making them more specifically applicable to our activities and which implement § 1507.3 (a) and (b) of the CEQ NEPA regulations. This rule will be revised to incorporate detailed procedures integrating NEPA and the Principles and Standards (P&S) and applicable parts of the procedures for Federal participants in the preparation of comprehensive regional or river basin plans when these procedures are developed. This NEPA rule must be used in conjunction with the CEQ NEPA regulations. Compliance with both the CEQ NEPA regulations and this NEPA rule is required. Information in the CEQ NEPA regulations generally is not repeated here to avoid needless duplication. This NEPA rule supersedes WRC Policy Statement No. 2—Environmental Statements-Framework Studies and Assessments and Regional or River Basin Plans.

§ 707.3 Applicability.

This NEPA rule applies to the WRC as an independent executive agency and to Title II river basin commissions (RBC's) and other entities (such as interagency committees) preparing studies and plans for WRC review and transmittal to the President. Although Title III State planning grants do not normally require environmental assessments or statements (§ 707.8 (a)(3)), the WRC will encourage States receiving grants to give appropriate consideration to the environmental effects of their proposed actions and to incorporate suitable environmental conditions, to the extent permitted by State law. The preamble to the WRC Title III guidelines will reflect this policy.

§ 707.4 Definitions.

(a) *Responsible Federal Official (RFO)*. The “Responsible Federal Official (RFO)” is the official of the Federal Government designated by this rule

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who shall be responsible for the implementation of NEPA, including regulations issued by the CEQ (40 CFR Parts 1500 through 1508) and the rule. Of particular importance, the RFO determines the need for an Environmental Assessment or Environmental Impact Statement (EIS) in accordance with § 707.8 (a)(2) and (b), and if an EIS is required, files the draft and final EIS, makes the Record of Decision and assures appropriate public involvement in accordance with 40 CFR 1506.6. The Chairman of the RBC's are the RFO's for the purpose of ensuring compliance with the provisions of NEPA and the P&S for those activities which are funded in whole or in part through the WRC and carried out by the RBC's, such as framework studies, special studies, comprehensive coordinated joint plans, regional or river basin (Level B) plans and revisions thereof. The Chairman of the WRC, or his designee, is the RFO for complying with the provisions of NEPA and the P&S for those framework studies, regional or river basin plans, comprehensive coordinated joint plans, and special studies which are funded by the WRC and carried out by WRC interagency committees and WRC coordinating committees; principles, standards and procedures for planning water and related land resources; rules and regulations of the WRC, and other activities of the WRC.

(b) *Major Federal Action*. "Major Federal action" as defined in the CEQ NEPA regulations (40 CFR 1508.18) includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Such actions include WRC interagency committee, and WRC coordinating committee adoption, approval or submittal of plans for water and related land resources. For the purpose of this rule, RBC adoption, approval or submittal of a plan for water and related land resources is considered a major Federal action by virtue of the scope and significant environmental consequences of such actions, the participation of Federal officials in these RBC actions, and the WRC requirements for Federal agency consistency with approved regional water resource management plans (WRC Policy State-

ment No. 4—The Utilization of Comprehensive Regional Water Resource Management Plans).

§ 707.5 Policy.

(a) *General*. The WRC and the RBC's administer certain programs that must comply with both NEPA and the P&S. Generally, the environmental analysis done during the development of the Environmental Quality (EQ) account under the P&S partially overlaps the analysis required in an EIS, presenting an opportunity for integration. The requirements of NEPA and the P&S will be carried out by integrating the two processes to the fullest extent practicable and by combining to the fullest extent practicable the Environmental Assessment or, when required, Environmental Impact Statement, with each study or plan into a single document that will comply fully with the requirements of both processes, as provided by the CEQ NEPA regulations (40 CFR 1502.10 and 1506.4).

(b) *Public participation*. For each environmental assessment and impact statement, the appropriate RFO will establish a specific program and schedule for public participation of all interested parties in the NEPA process, and shall otherwise provide for public involvement in accordance with the CEQ NEPA regulations (40 CFR 1506.6).

(c) *Environmental Impact Statements*. Environmental Impact Statements (EIS's) as required under Section 102(2)(C) of NEPA will be prepared by river basin commissions, interagency committee, or WRC coordinating committees for comprehensive coordinated joint plans and regional or river basin (Level B) plans, or revisions thereof. The Environmental Impact Statement will be prepared concurrently with the preparation of the study or plan. The statement will reflect the level of planning involved and will address those environmental considerations and alternatives relevant to decisionmaking at that level (see § 707.9 Tiering). Review and comment on the draft study or plan and the incorporated draft environmental impact statement will be performed simultaneously, and the final combined report will incorporate and discuss the comments received on the draft.

Subpart B—Water Resources Council Implementing Procedures

§ 707.6 Early involvement in private, State, local, and other non-Federal activities requiring Federal action.

(a) Section 1501.2(d) of the CEQ NEPA regulations requires Federal agencies to provide for early involvement in activities which, while planned by private or other non-Federal entities, requires some subsequent form of Federal approval or action to which NEPA applies. Such activities for which early involvement is appropriate include those private, local, State, or regional water and related land resources plans, projects or programs which should be included in a regional water resources management plan or Level B plan, since the plans normally required an EIS or assessment as provided in § 707.8(a) of this NEPA rule.

(b) To facilitate the implementation of 40 CFR 1501.2(d), the appropriate RFO shall publish and distribute in the region or basin in which a comprehensive or Level B study is conducted, guidelines for non-Federal entities of the types of plans, projects, and programs which shall be included in such comprehensive or Level B plan. The RFO shall advise non-Federal entities on the scope and level of environmental information and analysis needed for environmental documents.

§ 707.7 Ensuring that environmental documents are actually considered in agency decisionmaking.

(a) Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of the environmental documents in agency decisionmaking. To implement these requirements, the RFO shall:

(1) Consider relevant environmental documents in evaluating actions proposed in plans and studies.

(2) Make relevant environmental documents, comments, and responses part of the record in any formal rulemaking or adjudicatory proceedings.

(3) Ensure that relevant environmental documents, comments and responses accompany the proposed actions through existing review processes.

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action.

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) The NEPA process begins at the earliest possible stage of the planning process and is completed when the RFO makes a finding of significant impact or a record of decision. In cases where the Chairman of a River Basin Commission, or regional Federal official has been designated as the RFO, and a plan or report is submitted to WRC for review and comment after completion of the NEPA process, the environmental documents incorporated into such plans or reports, or submitted with them, shall be fully considered by WRC when it prepares its views, comments, and recommendations for transmittal to the President and Congress. The RFO shall include the Findings of No Significant Impact, or the Record of Decision, with the documents submitted to WRC for review.

§ 707.8 Typical classes of action requiring similar treatment under NEPA.

(a) Section 1507.3(b)(2) of the CEQ NEPA regulations in conjunction with § 1508.4 requires agencies to establish 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.

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(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 of 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.

708.2 Scope.

708.3 Policy, objectives, and standards.

708.4 Required programs and reports.

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.

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(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.

(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,

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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 hear-

ings 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

Sec.

- 725.0 Purpose.
- 725.1 Authority.
- 725.2 Policy.
- 725.3 Applicability.
- 725.4 Definitions.

Subpart B—Responsibilities

- 725.5 Council studies.
- 725.6 Principles, standards and procedures.
- 725.7 Regional or river basin planning.
- 725.8 Report, plan and recommendation development and review.
- 725.9 Reviews of compliance.

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 imple-

menting 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;
- (d) Promote the use of nonstructural loss reduction methods to reduce the risk of flood loss;
- (e) Minimize the impact of floods on human health, safety and welfare;
- (f) Minimize the destruction, loss or degradation of wetlands;
- (g) Restore and preserve the natural and beneficial values served by floodplains;
- (h) Preserve and enhance the natural and beneficial values served by wetlands;
- (i) Involve the public throughout the floodplain management and wetlands protection decisionmaking process;
- (j) Adhere to the objectives of the Unified National Program for Floodplain Management;
- (k) Continually analyze existing and new policies of the Council to ensure consistency between them and the provisions of E.O. 11988 and 11990; and
 - (l) Improve and coordinate the Council's plans, programs, functions and resources so that the Nation may attain

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the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§ 725.3 Applicability.

These regulations apply to all Council actions which have the potential to affect floodplains or wetlands or which would be subject to potential harm if they were located in floodplains or wetlands. The basic test of the potential of an action to affect floodplains or wetlands is the action's potential to result in the long- or short-term adverse impacts associated with:

(a) The occupancy or modification of floodplains, or the direct and indirect support of floodplain development; or

(b) The destruction or modification of wetlands or the direct or indirect support of new construction in wetlands.

These procedures apply to Level A and B regional or river basin planning activities carried out by regional planning sponsors including consideration of inclusion of site specific projects in Level A or B regional or river basin plans. These procedures do not apply to site specific Level C planning carried out by individual Federal agencies. Each Federal agency shall use its own procedures promulgated pursuant to these Orders for such Level C planning.

§ 725.4 Definitions.

The following definitions shall apply throughout this regulation:

(a) All definitions from section 6 of E.O. 11988 (42 FR 26951); all definitions from section 7 of E.O. 11990 (42 FR 26951); and all definitions listed in the Glossary of the Council's Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030) from the term *base flood* through the term *structures*.

(b) *Action* means all Council activities including but not limited to plan review, study preparation, preparation and modifications to the Council's Principles, Standards and Procedures (P,S,&P), provision of financial assistance for State, regional, and river basin planning and reviews of compliance.

(c) *Council* means the U.S. Water Resources Council.

(d) *Enhance* means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

(e) *Regional planning sponsors* means Federal agencies, states, groups of States, river basin commissions, interstate compact commissions and inter-agency committees.

Subpart B—Responsibilities

§ 725.5 Council studies.

All studies and appraisals performed by the Council pursuant to section 102 of Pub. L. 89-80 and any recommendations based on these activities shall include specific analyses for reflection of and opportunities to meet the objectives of E.O. 11988 and E.O. 11990. The Council's Floodplain Management Guidelines (43 FR 6030), E.O. 11988 and E.O. 11990 provide the basic evaluation tools for these analyses.

§ 725.6 Principles, standards and procedures.

The Principles, Standards and Procedures established by the Council pursuant to section 103 of Pub. L. 89-80 shall reflect the provisions of the Executive Orders. These Principles, Standards and Procedures are found in 18 CFR parts 710 through 717.

§ 725.7 Regional or river basin planning.

(a) In agreements between river basin commissions or other regional planning sponsors and the Council for the preparation and revision of regional and river basin Level B Studies and regional water resource management plans, the responsible official representing the river basin commission or regional planning sponsor shall certify to the Council that the following criteria have been or will be utilized as part of the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

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(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and preservation and restoration of natural and beneficial floodplain values;

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values; and

(5) Involvement of the public in the floodplain management and wetlands protection decisionmaking process.

(b) The Council's Floodplain Management Guidelines (43 FR 6030) shall be used as the basis for implementing the criteria in § 725.7(a)(1) through (5).

(c) The responsible official representing the regional planning sponsor shall, to the fullest extent of his or her authority, ensure that any activities carried out under his or her plans and programs meet the criteria in § 725.7(a)(1) through (5).

§ 725.8 Report, plan and recommendation development and review.

All reports, plans and recommendations received under section 104 of Pub. L. 89-80 shall be reviewed by the Council for reflection of and opportunities to meet the objectives of E.O. 11988 and 11990. This review shall be based on the criteria in § 725.7(a)(1) through (5), on E.O. 11988 and 11990, and on the Council's Floodplain Management Guidelines (43 FR 6030).

§ 725.9 Reviews of compliance.

Reviews of compliance performed pursuant to section 304 of Pub. L. 89-80 shall include analysis of each program's treatment of floodplain management and wetland protection in accordance with the manner in which these concepts are expressed in E.O. 11988, 11990, and the Council's Floodplain Management Guidelines (43 FR 6030).

PART 740—STATE WATER MANAGEMENT PLANNING PROGRAM

Sec.

740.1 Purpose and scope.

740.2 Definitions.

740.3 State applications.

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740.4 State water management planning program.

740.5 Review and approval of State applications and programs.

740.6 Financial assistance.

740.7 Administration of financial assistance.

740.8 Reporting.

740.9 Recordkeeping.

740.10 Program review and assistance.

740.11 Federal/State coordination.

740.12 Amendments.

740.13 Supplemental instructions.

AUTHORITY: Water Resources Planning Act of 1965 (as amended), Pub. L. 89-80, 79 Stat. 244, 42 U.S.C. 1962c; Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, 92 Stat. 3, 41 U.S.C. 501 *et seq.*; E.O. 12044, 43 FR 12660.

SOURCE: 45 FR 72010, Oct. 30, 1980, unless otherwise noted.

§ 740.1 Purpose and scope.

(a) In recognition of the role of the States as the focal point for the management of water and related land resources, this part establishes guidelines for financial and program assistance to States for water management planning programs which address each State's particular needs, which are based on established State goals and objectives, and which take into consideration national goals and objectives.

(b) The purpose of the State Water Management Planning Program (Program) is to provide financial and program assistance to participating States to support the development and modification of comprehensive water management planning programs.

(c) Funds made available under this part shall be used to establish, develop or enhance existing or proposed State water resources management and planning programs that are designed to address pertinent State and national goals and objectives, as well as the goals and objectives of Title III of the Water Resources Planning Act (Act), Pub. L. 89-80, as amended, by addressing in the Program the following:

(1) Coordination of the program authorized by the Act and those related programs of other Federal agencies;

(2) Integration of water conservation with State water management planning;

(3) Integration of water quantity and water quality planning;

(4) Integration of ground and surface water planning;

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(5) Planning for protection and management of groundwater supplies;

(6) Planning for protection and management of instream values; and

(7) Enhanced cooperation and coordination between Federal, regional State and local governmental entities involved in water and related land resources planning and management.

§ 740.2 Definitions.

Act means the Water Resources Planning Act (as amended), Pub. L. 89-80, 42 U.S.C. 1962 *et seq.*

Activities means a series of actions and operations which address the water management problems of the State and have a specific purpose or objective. Activities are further characterized by one or more major tasks and milestones.

Affected interests means public and private organizations, local, tribal, State and Federal governments that may be potentially affected by the State water management planning program.

Application means a document submitted by a Governor or designee for consideration by the Council for a grant.

Council means the Water Resources Council established by section 101 of the Act.

Designated agency means an entity of a State designated by the Governor to act as the grant recipient and to act as liaison with the Council for this Program.

Fiscal year means a 12-month period ending on September 30, unless otherwise specified.

Governor means the chief executive officer of a State, including the Mayor of the District of Columbia.

Grant agreement means a document executed by the authorized official of the Water Resources Council and by the authorized representative of the State agency designated as the grant recipient containing the agreed terms and conditions of the approved grant offer and award.

Grant period means a 12-month period specified in the grant agreement, which shall begin during the fiscal year as defined above, during which program funds are authorized to be expended, obligated, or firmly committed by the

grantee for the purposes specified in the Act, in the grant agreement and in these guidelines.

Land area of a State means the land and inland water area of a State as defined and set forth in the publication "Boundaries of the United States and the Several States" Geological Survey Professional Paper 909, U.S. Government Printing Office, Washington, DC issued in 1976, or revisions thereof.

Local government means a local unit of government including a county municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975) and other regional or interstate government entity; or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

Milestones mean key events in the activity implementation schedule. Milestones indicate important dates for design implementation and monitoring tasks. Examples of milestones include but are not limited to hiring of key staff, publication dates, workshop dates, or the completion of specific phases of the implementation schedule.

Obligation means orders placed, contracts awarded, grants issued, services received and similar transactions during a given period that require the disbursement of money.

Per capita income of a State means the most recent year of official U.S. Department of Commerce per capita income figures for the State.

Program period means the period beginning on October 1, 1980, and extending through the authorized life of the Program.

Program funds means grant funds provided under the Act, non-Federal funds and the value of in-kind contributions used for matching purposes.

Population of a State means the latest official resident population estimate by the U.S. Department of Commerce available on or before January 1, of the year preceding the fiscal year for which funds under this part are appropriated.

Related land resources means any land affected by present or projected management practices causing significant

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effects on the quantity or quality of the water resource.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

State water management planning means those activities necessary to effect coordinated decisions for the use of water and related resources within a State or interstate region; which provide for the correction or prevention, respectively, of present and future water and related land resources problems; which consider the potential for water and related land resources use from the standpoint of present and future needs; and which provide for involvement of affected interests. Water management planning activities may include, but are not limited to, planning, data collection and analysis, studies and investigations, program design and coordination, development of regulation and enforcement programs, information dissemination, public meetings, and the coordination of the program with other related programs.

Task means a specific action or operation which comprises a part of the implementation effort for an activity.

Water conservation means activities designed to (1) reduce the demand for water, (2) improve efficiency in use and reduce losses and waste of water, or (3) improve land management practices to conserve water.

Water management planning need is defined as the basis for establishing criteria for assessing each State's need for assistance under the Program.

Work Plan means a document listing the major program elements to be performed under the program during each grant period which presents, in chronological order, the major activities and tasks in the program element; which targets major milestones or proposed accomplishments by activity, cost and date; and which will be used in preparing reports to reflect accomplishment of goals and objectives under the participating State's comprehensive program.

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§ 740.3 State applications.

(a) The Council shall invite the Governor of each State to submit a State application.

(b) To be eligible for financial assistance under this part, a State shall submit to the Council an original and two copies of a State application executed by the Governor or designee. The State application shall be submitted not later than 90 days from the date of the Council's invitation.

(c) The program application package shall consist of:

(1) The forms and instructions for completing the application;

(2) The criteria to be used by the Council in assessing need for water management planning funds;

(3) Information on the applicable Federal requirements for administering the program; and

(4) Other information pertinent to the application.

(d) A State application shall contain:

(1) The name and address of the designated State agency;

(2) A description of the comprehensive State water management planning program, or modifications thereto, as required by § 740.4(a);

(3) A work plan of the major program activities of the State water management planning program which targets milestones on a semi-annual basis;

(4) A budget and corresponding narrative in accordance with the forms and instructions provided by the Council;

(5) A notice of concurrence by the State clearinghouse in accordance with the Office of Management and Budget (OMB) Circular A-95;

(6) The manner in which the general public is involved in the development and modification of the State program; and

(7) A brief description of activities, in order of priority, which would be carried out if additional funds were made available during the grant period under the provisions of § 740.6(e). This may include supplementing or complementing ongoing activities described in paragraph (d)(3) of this section.

(e) The Governor or designee may request an extension to the submission date by submitting a written request to the Council not less than 30 days

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prior to the date referred to in paragraph (b) of this section. The extension shall be granted only if, in the Council's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act. An extension shall not be granted for more than 30 days.

§ 740.4 State water management planning program.

(a) A State shall submit a description of its proposed State program with the State application, which shall:

(1) Describe water and related land resources problems, needs and opportunities, and the priorities proposed for their resolution;

(2) Specify the goals and objectives which reflect the water resources policy of the State and which address the major problems which are of concern to the State;

(3) Describe the major elements of the State water management program, which should address but not be limited to:

(i) The integration of water quantity and water quality planning and management;

(ii) The protection and management of instream values;

(iii) The protection and management of groundwater supplies;

(iv) The integration of ground and surface water planning and management; and

(v) Water conservation.

(4) Identify Federal, State, or local government, or public or private organizations that will participate and a general description of how they are involved in the management planning process;

(5) If provisions are made for pass-through of funds, describe the *process* by which recipients will be selected, and the purpose of the pass-through; and

(6) List existing or proposed administrative, legal and/or institutional arrangements to be used in coordinating intrastate, interstate and regional water resources planning activities involving State, local and/or the Federal Government with the proposed water management planning program of the State to assure that all such activities

are considered in program implementation.

§ 740.5 Review and approval of State applications and programs.

(a) The Council shall review and approve each State application for financial assistance if it is determined that:

(1) The State water management planning program meets the objectives of the Act;

(2) The State application and the State water management planning program meet the requirements of this part; and

(3) Progress on the previous grant period's work plan is satisfactory, based on the requirements set forth by the Council.

(b) Based on the review of the application, the Council shall determine the amount of funds to be made available pursuant to § 740.6 and shall notify the designated agency in each participating State of the grant award as soon as possible after funds are apportioned for Council use.

(c) If an application is not approved by the Council, it shall be returned by registered mail with a full explanation of the reasons for that determination. The State shall then be allowed the opportunity to submit a revised application within 30 days after receipt by the State of such notification. Should the State determine that further review is required by the State clearinghouse under OMB Circular A-95, an additional 30 days will be allowed.

(d) If the grant amount requested by a State differs from the grant amount offered by the Council, the Council will request the designated State agency to submit a revised budget and work plan with the acceptance of the grant offer.

(e) The State, upon acceptance of the terms and conditions of the notice of grant award, as presented by the Council, will be granted financial assistance in the amount of the approved final budget.

(f) The work plan for the State water management planning program may be revised at any time by submitting revisions to the work plan and budget to the Council for approval in connection with any proposed significant change (an addition or deletion of major activities specified in the approved work

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plan) with appropriate provision for A-95 State clearinghouse review. The Council will review the proposed revision and notify the State of its decision no later than 30 days from the date of receipt of the request.

§ 740.6 Financial assistance.

(a) The Council shall provide financial assistance from funds available for each fiscal year to each State having an approved application pursuant to § 740.5.

(b) Within the provisions prescribed by paragraphs (c) and (d) of this section, the Council may grant up to 50 percent of the cost for a State program.

(c) The funds appropriated pursuant to the Act for the fiscal year shall be allocated among the participating States as follows, except that under paragraphs (d) (2) through (4) of this section no State shall be granted a greater or lesser sum of funds which shall be based upon a procedure in which each of the factors of population, land area, and the reciprocal of per capital income, are adjusted such that:

(1) Those States having observations two standard deviations below the mean of each respective factor are equated to the mean-minus-two standard deviations, and

(2) Those States having observations two standard deviations above the mean of each respective factor are equated to the mean-plus-two standard deviations.

(d) Financial assistance for the Program shall be allocated among the participating States from funds available for any fiscal year based on the following formula:

(1) An equal share not to exceed \$100,000, the total of which shares shall not exceed 10 percent of the funds available for any fiscal year;

(2) One-third of the remaining balance of the funds after accounting for paragraph (d)(1) of this section in the ratio that the population of each State bears to the population of all States;

(3) One-third of the remaining balance of the funds after accounting for paragraphs (d)(1) and (2) of this section in the ratio that the land area of each State bears to the land area of all the States;

(4) One-third of the remaining balance of funds after accounting for paragraphs (d)(1), (2), and (3) of this section in the ratio that the reciprocal of all per capital income of a State bears to the sum of the reciprocals for all States; and

(5) The remainder of the funds according to the need for water management planning in each State as expressed by the State and assessed by the Council. In assessing need for water management, the Council shall utilize established criteria, the proposed program, and information made available during program review.

(e) Redistribution of grant funds may occur:

(1) If a State fails to apply for a grant within the period specified in § 740.3, or is unable to match the total allocation reserved under § 740.6(d) for that State, that portion of the reserved allocation will be withdrawn by the Council;

(2) If a State fails to obligate Federal funds within the grant period of the approved or amended grant agreement as prescribed in § 740.7(c), such funds shall be returned to the Council not later than 30 days after submission of the Financial Statement for the grant period unless the Council, based on written request, grants an exception or extension to this time limitation;

(3) Funds available under paragraph (e)(1) of this section shall be available for redistribution to those States requesting additional funds pursuant to § 740.3(d)(7). These funds shall be distributed on the basis of proposals in the application, and the relationship of the State's original allocation to the original allocation of other States requesting redistribution funds; and

(4) Funds available under paragraph (e)(2) of this section shall be added to funds available for distribution for the next fiscal year, if the appropriation legislation for the current year allows such action.

§ 740.7 Administration of financial assistance.

(a) Grants under this part shall comply with the requirements of:

(1) Office of Management and Budget (OMB) Circular A-102, Revised, (34 CFR

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part 256), entitled “Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;”

(2) Federal Management Circular (FMC) 74-4 (34 CFR part 255), entitled “Cost Principles Applicable to Grants and Contracts with State and Local Governments;”

(3) OMB Circular A-73 (34 CFR part 251), entitled “Audit of Federal Operations and Programs;”

(4) OMB Circular A-95, entitled “Evaluation, Review and Coordination of Federal and Federally assisted Programs and Projects;”

(5) Treasury Circular (TC) 1075, entitled “Regulations Governing Withdrawals of Cash from the Treasury for Advances under Federal Grants and other Programs;”

(6) TC 1082, entitled, “Notification to States of Grants-in-Aid Information”; and

(7) Other procedures which the Council may from time to time prescribe for the administration of financial assistance.

(b) The planning process as required by these guidelines and assisted by WRC Title III program funds shall reflect the concepts of the Council’s 1979 publication, *A Unified National Program for Floodplain Management*, and the concepts of floodplain and wetlands identification, avoidance and mitigation as described in the Council’s *Floodplain Management Guidelines* (43 FR 6030). In the application for financial assistance, the State shall assure the Council that the following planning concepts have been or will be integrated into the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and preservation and restoration of natural and beneficial floodplain values; and

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values.

(c) Program funds must be obligated within the grant period unless the Council, based on written request, grants an exception or extension to this time limitation. The repeated occurrence of unobligated program funds at the end of the grant period will be considered in determining the need for assistance in subsequent years pursuant to § 740.6(d)(5).

(d) The procurement standards, practices, rules and policies of the State as customarily applied, if in accordance with Attachment O of OMB Circular A-102, shall govern for procurement costs incurred in an approved program.

(e) For all matching funds the sources of a State’s cost share shall have no bearing on whether or not such costs can be matched by Federal funds except that:

(1) Other Federal funds or property cannot be used for matching purposes unless specifically permitted by Federal law;

(2) Program funds shall not be used to match Federal funds under any other federally aided program;

(3) Non-Federal funds used to match other federally aided programs shall not be used to match funds provided under the Act; and

(4) Federal funds provided through this program, if duly matched through the requirements of this part, may be used as non-Federal contributions for Level B studies beginning in Fiscal Year 1981.

(f) Any cost incurred for water management planning may be employed for matching a grant awarded under the Act except as specified in this section. Such expenditures must be reasonable, documentable, and directly applicable to the approved program.

(g) Program funds may not be used for:

(1) Items whose costs are not allowable under the provision of FMC 74-4;

(2) Contributions, dues or assessments to support headquarters offices of interstate commissions, compacts,

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councils, interagency committees, or other similar organizations;

(3) Scholarly or scientific investigations for purposes other than addressing water management problems, needs, concerns or interests specifically identified and explained in the approved program as a priority consideration;

(4) Construction, payment of subsidies, or purchase of land or easements;

(5) Purchase of equipment with a unit cost of \$1,500 or more without prior approval of the Council; and

(6) Purchase of equipment with a unit cost of less than \$1,500 when the cumulative cost of such equipment in any one grant period exceeds 1 percent of the grant award, without prior approval of the Council.

(h) Federal funds may not be used to substitute for State and local funds that would have been made available for water management planning programs in the absence of the grant funds provided under this part. Federal funds may be used to supplement and complement existing water management planning programs. It does not prevent drawing matching shares from individual programs or from existing agency appropriations, budgets, or resources so long as expenditures are not substituted by Federal funds for the purposes of the Act.

(i) Payments shall be made in accordance with Attachment J of OMB Circular A-102 and TC 1075. Grant funds shall be requested only on an as needed basis.

(j) Financial management procedures shall comply with Attachment G of OMB Circular A-102 and with TC 1075. The applicable Federal requirements shall apply to the State and to local governments or non-governmental entities that receive funds as a sub-grantee for the purposes of the Act.

§ 740.8 Reporting.

(a) The designated agency shall submit program status reports and financial statements in accordance with procedures established by the Council. Instructions and a description of the content of these reports and the appropriate forms will be provided by the Council and will be in accordance with

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Attachments H, I and K of OMB Circular A-102 and TC 1075.

(b) The annual program report shall be due 90 days after the end of the grant period, as specified in the grant agreement, and shall contain:

(1) A summary description of the major accomplishments and results of the water management planning activities for the year, and an explanation of any work proposed in the work plan that has not been completed;

(2) An updated activity milestone chart, for each major activity in the work plan, showing the completion dates of major tasks;

(3) For those States implementing an evaluation system, a summary of the results of the evaluation efforts on the overall program effectiveness and key water management activities;

(4) A list of publications, public information materials, and other documents prepared in whole or in part with program funds which must duly note the use of Council grant funds in the printing of these documents;

(5) Other pertinent information, including any specific need for assistance; and

(6) An annual Financial Status Report.

(c) The Report of Federal Cash Transactions, as required under the provisions of Treasury Circular 1075, is due 30 days after the end of each quarter of the grant period, as specified in the grant agreement.

§ 740.9 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Council, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; and any data and information which the Council determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Council and the Comptroller General of the United States shall have access to any books, documents, records or receipts which the Council determines are relevant or pertinent,

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either directly or indirectly, to any financial assistance provided under this part. Such records shall be retained for a period of three years, which starts from the date of the submission of the annual financial status report for the grant period.

§ 740.10 Program review and assistance.

(a) Each State's program will be reviewed annually by the Council to evaluate program management and accomplishments relative to the approved work plan. The Council shall:

(1) Review program information including the application, annual reports, and other relevant information; and

(2) Make onsite visits as frequently as practicable to review the State program to:

(i) Provide assistance in the administration of the program, and at the request of the State, specific technical assistance in water resources management;

(ii) Determine whether Council policies, procedures or guidelines need revision to more effectively administer the grant; and

(iii) Gather information on practical or innovative techniques, methodologies, or other relevant information on the program.

(b) Based on the Council's annual review of each State program, the following may occur:

(1) If the program conforms to the requirements of the Act, the State will be advised of its continued eligibility for a grant;

(2) If it appears that the program does not comply with the requirements of the Act in either design or administration, the Council shall ascertain all the relevant facts. The State shall be notified immediately of the apparent inadequacies of the program with citation of specific requirements of the

Act, this part, or other relevant instructions which apparently have not been met. The State shall be given timely opportunity to be heard through the filing of written statements and personal presentations in support of their position. If the Council is satisfied that sufficient adjustments have been made in the design and operation of the program, payments to the State will be continued; and

(3) If the Council determines on the basis of all the facts that the program still does not meet the requirements of the Act, the Governor shall be notified of the decision and the reasons therefore, and that no further payments shall be made until the noted inadequacies are satisfactorily resolved.

§ 740.11 Federal/State coordination.

The Council will coordinate the program under this part with similar or related programs of other Federal agencies in an effort to achieve consistency and compatibility in the administration of Federal programs.

§ 740.12 Amendments.

The Council may amend all or portions of these guidelines in accordance with established procedures. If it does, it will:

(a) Consult with appropriate advisory groups;

(b) Publish such proposed rulemaking in the FEDERAL REGISTER; and

(c) Simultaneously provide a copy of such proposed changes to each designated agency.

§ 740.13 Supplemental instructions.

As deemed appropriate, the Council may amplify the guidelines in this part by means of supplemental instructions, and may clarify program or administrative requirements set forth in these guidelines by the means of policy bulletins.