

Environmental Impact Statement.” Instead, the final regulations require that the Project Implementation Report include a discussion of any significant changes in cost or scope of the project from that presented in the April 1999 Report. They also require that in preparing Project Implementation Reports, the Corps of Engineers and the non-Federal sponsor will formulate and evaluate alternative plans in order to optimize the project’s contributions toward achieving the goals and purposes of the Plan on a system-wide basis in the most cost-effective manner, while also ensuring that the selected option provides benefits that justify costs on a next-added increment basis. The final regulations call for the development of a guidance memorandum that will describe the processes to be used to formulate and evaluate alternative plans and their associated monetary and non-monetary benefits and costs and the basis for justifying and selecting an alternative to be recommended for implementation. To aid the formulation and evaluation process, the final regulations also include definitions for the terms “alternative plan,” “justified,” and “optimize.” The definition of “justified” makes clear, consistent with section 601(f)(2) of WRDA 2000 that restoration benefits need not be quantified or monetized to justify costs, provided that the activity is justified by the environmental benefits derived by the South Florida ecosystem and is cost-effective. The regulations make clear that the project described in the April 1999 “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,” will be one of the alternative plans that will be evaluated. They also specify that the selected alternative plan will be the plan that maximizes net benefits while still being justified as the next-added increment. Under the final regulations, alternative plans that are not justified on a next-added increment basis will not be selected. Finally, we have revised figure 2 in Appendix A to better describe the formulation and evaluation activities conducted during the development of the Project Implementation Report.

In publishing these final regulations, we emphasize that the discussion in the regulations on plan formulation and evaluation should not be construed to elevate water supply and flood control benefits, which historically have been easier to quantify and place a monetary value on, over environmental restoration benefits, which are more difficult to quantify.

#### *Y. References to Senate Committee Report Language*

One commenter was concerned about references to the Senate Environment and Public Works Committee Report (Senate Report No. 106–362) in the preamble of the proposed regulations. This commenter expressed the view that Senate Committee Report 106–362 carries no legislative weight since the bill discussed in Senate Committee Report 106–362 differs in several critical areas from the final version of the bill adopted by the full United States Senate. We agree that the final statute differed in several areas from the bill discussed in the report and must be read with this limitation in mind. We have referred to the Senate Report in the preamble to the final regulations only where it provides relevant and reliable information to aid the understanding of issues involved in implementing the Plan.

#### **V. Project Implementation Reports Approved Pursuant to Transition Rule**

Section 601(h)(3)(D) of WRDA 2000 establishes a transition rule for Project Implementation Reports approved before the date of promulgation of the programmatic regulations. This transition rule requires that the Project Implementation Reports be consistent with the Plan. The transition rule also requires that the preamble of the programmatic regulations contain a statement concerning the consistency with the programmatic regulations of Project Implementation Reports that were approved prior to the date of issuance of the final regulations. Accordingly, this preamble specifically states that no Project Implementation Reports have been approved before the date of issuance of the final programmatic regulations.

#### **VI. Concurrence Process for This Regulation**

The Secretary of the Interior and the Governor are required by section 601(h)(3)(B) of WRDA 2000 to provide the Secretary of the Army with a written statement of concurrence or non-concurrence on the final programmatic regulations. The Secretary of Interior and the Governor shall provide concurrence or non-concurrence within 180 days of being provided with a copy of the final regulations.

The Department of the Army has sought to communicate openly and fully with the Department of the Interior and the State of Florida during the course of developing these regulations. We believe that this communication has improved the content of the regulations

and led to a full understanding of the views of these parties. The concurrency statements of the Department of the Interior and the State of Florida are included as an appendix to this document.

#### **VII. Organization of the Final Regulations**

We have organized the final regulations in five subparts. The first subpart, “General Provisions,” sets forth the purpose of the regulations, the applicability of the regulations, definitions pertaining to the regulations and other general information. The second subpart, “Program Goals and Responsibilities,” describes the goals and purposes of the Plan, implementation principles, implementation responsibilities, and consultation and coordination expectations. The remaining subparts were designed to be consistent with the content required by section 601(h)(3)(C). These subparts are: “Comprehensive Everglades Restoration Plan Implementation Processes,” “Incorporating New Information into the Plan,” and “Ensuring Protection of the Natural System and Water Availability Consistent with the Goals and Purposes of the Plan.”

#### **VIII. Administrative Requirements**

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

The final regulations do not impose any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required. Thus, this action is not subject to the Paperwork Reduction Act.

##### *B. Executive Order 12866, as Amended*

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

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees,