
United States
Department of
Agriculture

**Soil
Conservation
Service**

**National
Watershed
Manual**

Part 500

Program Criteria

Part 500

Program Criteria

Contents:	Subpart 500A	General	500-1
		500.00 Purpose and scope	500-1
		500.01 The Act	500-1
	Subpart 500B	Assistance available under the Act	500-2
		500.10 Eligible purposes	500-2
		500.11 Cost sharing	500-2
	Subpart 500C	Requirements of the Act	500-5
		500.20 Project criteria	500-5
		500.21 Watershed plan approval authority	500-6
	Subpart 500D	Related public laws	500-6
		500.30 General	500-6
		500.31 Public Law 78-534—Flood Control Act of 1944	500-6
		500.32 Public Law 86-523—Reservoir Salvage Act of 1960	500-7
		500.33 Public Law 89-665—National Historic Preservation	500-7
		Act of 1966	
		500.34 Public Law 91-190—National Environmental Policy	500-7
		Act of 1969	
		500.35 Public Law 93-251—Water Resource Development Act of 1974	500-8
		500.36 Public Law 93-291—Archeological and Historic Preservation	500-8
		Act of 1974	
		500.37 Public Law 90-542—Wild and Scenic Rivers Act of 1968	500-8
		500.38 Public Law 92-500—Amendments to the Federal Water	500-8
		Pollution Control Act of 1972	
		500.39 Public Law 93-205—Endangered Species Act of 1973	500-8
		500.40 Public Law 97-98—Farmland Protection Policy Act of 1981	500-9
		500.41 Public Law 99-198—Food Security Act of 1985	500-9
		500.42 Public Law 99-662—Water Resources Development	500-9
		Act of 1986	
		500.43 Public Law 101-624	500-9
		500.44 Other laws	500-10

Subpart 500E	Related executive orders	500-11
500.50	General	500-11
500.51	Executive Order 10584 — Rules and Regulations Relating to the Administration of the Watershed Protection and Flood Prevention Act as amended and Supplemented by Executive Order 10913	500-11
500.52	Executive Order 11514 — Protection and Enhancement of..... Environmental Quality	500-11
500.53	Executive Order 11988 —Flood Plain Management	500-11
500.54	Executive Order 11990 —Protection of Wetlands	500-11
500.55	Other executive orders	500-12
<hr/>		
Subpart 500F	USDA regulations	500-12
500.60	USDA Regulation 9400-1 —Rural Development	500-12
500.61	USDA Regulation 9500-3 —Land Use Policy	500-12
500.62	USDA Regulation 9500-4 —Fish and Wildlife Policy	500-13
<hr/>		
Subpart 500G	Codified rules and guidelines	500-13
500.70	Soil Conservation Service rules	500-13
500.71	Consistency policy	500-13
500.72	Economic and environmental principles and guidelines	500-13
	for water and related land resources implementation studies of March 10, 1983	
500.73	Channel modification guidelines	500-14
<hr/>		
Subpart 500H	Exhibits	500-15
	Exhibit 500-1 Public Law 83-566 (as amended)—Watershed	500-17
	Protection and Flood Prevention Act, 1954	
	Exhibit 500-2 Executive Order 10584, as supplemented	500-25
	Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects	500-31
<hr/>		
Tables	Table 500-1 Statutory cost-sharing provisions	500-4
	Table 500-2 Watershed plan approval authorities	500-6

Subpart 500A General**500.00 Purpose and scope**

Part 500 sets forth the minimum requirements for administering the Watershed Protection and Flood Prevention Act (Public Law 83-566). It relates the main parts of the law as well as other pertinent laws, executive orders, secretarial memoranda, and regulations that affect administration and application of the Act. The requirements given in this part generally cannot be changed unilaterally by the Soil Conservation Service (SCS).

500.01 The Act

The Watershed Protection and Flood Prevention Act, Public Law 83-566, Stat. 666, (see exhibit 500-1) authorizes the Secretary of Agriculture to cooperate with State and local agencies in planning and carrying out works of improvement for soil conservation and for other purposes. It provides for technical, financial, and credit assistance by the United States Department of Agriculture (USDA) to local organizations representing the people living in small watersheds. It also provides for needed additional treatment and protection of federally owned lands within such watersheds.

Unlike other national conservation programs, the Watershed Protection and Flood Prevention Program requires the development of a physically, environmentally, socially, and economically sound plan of improvements scheduled for implementation over a period of years. It uses a project-type approach to accomplish this. Firm commitments are required from local organizations (including States). They must:

- Share the costs of installation,
- Assume operation and maintenance responsibilities (with certain exceptions on Federal land), and
- Meet other requirements as a condition for Public Law 83-566 assistance in carrying out the improvements.

The Congress made it clear that the authority provided under the Act should be used to "supplement both our present agricultural soil and water conservation programs and our programs for development and flood protection of major river valleys. It will bridge the gap between these two types of programs and greatly enhance the ultimate benefits of both." (See House of Representatives Report No. 1140, 83d Congress, 2d Session.)

"Federal help under the Act is available only to assist local organizations to plan and install needed water management and flood prevention measures that cannot feasibly be installed under other current Federal conservation programs." (See Committee Print, H.R. Committee on Agriculture, August 25, 1954, 83d Congress, 2d Session, Watershed Conservation and Flood Prevention, answer to question 4.)

Interpretation of the Act by the Office of the President is in Executive Order 10584, Exhibit 500-2.

Subpart 500B Assistance available under the Act

500.10 Eligible purposes

(a) General purposes

Section 1 of the Act sets forth its three general purposes:

- Preventing damage from erosion, floodwater, and sediment.
- Furthering the conservation, development, utilization, and disposal of water.
- Furthering the conservation and proper utilization of land.

To achieve these purposes, the Act authorizes the Secretary of Agriculture to assist local organizations in preparing and carrying out plans for works of improvement. It defines works of improvement to include structural and land treatment measures. Other legislation (Public Laws 93-251 and 99-662) provides for the inclusion of nonstructural flood protection measures in project plans.

(b) Specific purposes

Section 4 of the Act lists the following specific purposes as eligible for cost sharing:

- Flood prevention
- The agricultural phases of the conservation, development, utilization, and disposal of water (referred to in this manual as agricultural water management)
- Fish and wildlife development
- Recreational development
- Ground water recharge
- Water quality management (defined in the Act as primarily water storage in reservoirs for regulation of streamflow)
- Conservation and proper utilization of land
- Municipal and industrial water supply

For a detailed description of eligible purposes, refer to part 502 of this manual.

500.11 Cost sharing

Cost-share rates depend on the type of measure (land treatment, nonstructural, or structural) and, for structural measures, the purpose to which the cost is allocated. Table 500-1 summarizes the cost-sharing provisions.

(a) Land treatment measures

The Act provides that Federal assistance for land treatment measures shall not exceed the rate of assistance for similar practices under existing national programs. This limitation applies to total Federal assistance, not just Public Law 83-566 funds. The Act authorizes the use of long-term contracts with land users for installing measures needed to develop and conserve the soil, water, woodland, wildlife, energy, and recreation resources of the land, and to enhance water quality. Land treatment for flood prevention is also eligible for assistance. Public Law 83-566 funds may also be used to provide technical assistance for planning and applying project land treatment measures.

(b) Nonstructural measures

The cost sharing rate for nonstructural flood protection measures is set forth in Public Law 99-662. Federal funds will pay 75 percent of the total cost of nonstructural flood protection measures.

The Act authorizes the use of USDA funds to assist Sponsoring Local Organizations (SLO) in acquiring perpetual wetland or flood plain conservation easements to perpetuate, restore, and enhance the natural capability of wetlands and flood plains to retain excessive floodwaters, improve water quality and quantity, and provide fish and wildlife habitat. Where such assistance is provided, the project SLO are required to provide up to 50 percent of the cost of acquiring such easements.

(c) Structural measures

The Act authorizes Federal assistance and sets forth required local contributions for various project purposes and cost categories. The cost categories are real property rights, engineering, and construction.

(1) Property rights for public fish and wildlife or recreation developments—The Act authorizes the use of Public Law 83-566 funds to pay up to 50 percent of the cost of real property rights for public fish and wildlife or recreation developments. Local

organizations must furnish the rest of the real property rights costs for these purposes and all real property rights for all other purposes. The Act does not prohibit the use of other Federal funds for that part that is not Public Law 83-566 share. The Act also authorizes the use of Public Law 83-566 funds to pay up to 50 percent of the cost of real property rights acquired by local organizations for mitigation of fish and wildlife habitat losses.

(2) Basic facilities for fish and wildlife or recreation developments—The Act authorizes the use of Public Law 83-566 funds to pay up to 50 percent of the cost of minimum basic facilities needed for public use of fish and wildlife or recreation developments. This is interpreted to mean construction and engineering costs.

(3) Construction and engineering costs for flood prevention—The Act states that Public Law 83-566 funds shall pay all construction and engineering costs applicable to flood prevention.

(4) Construction and engineering costs for other uses—The Act authorizes the use of Public Law 83-566 funds to pay all engineering costs and an equitable share of the construction costs allocated to

- Agricultural water management,
- Fish and wildlife development,
- Recreational development,
- Ground water recharge,
- Water quality management, and
- Conservation and proper utilization of land.

The Act calls for the Secretary of Agriculture to determine the equitable share for each of these purposes. Public Law 83-566 funds are currently authorized to pay up to 50 percent of the construction cost for agricultural water management, fish and wildlife development, recreational development, and ground water recharge. Cost sharing policy has not been developed for reservoir storage for water quality management. Measures for conservation and proper utilization of land generally will be installed under the land treatment provisions of the Act.

(5) Storage of municipal and industrial water—The Act authorizes the use of USDA funds to pay for storage of municipal and industrial water in reservoirs built with Public Law 83-566 funds. Storage may be provided for present and future demands. Local organizations are to pay at least 50 percent of the cost of storage for present demands and to reimburse the USDA for the cost of storage for future demands. Implementation of this provision is not presently allowed.

(6) Relocation payments—If relocation payments are to be made, the Public Law 83-566 share of the relocation payments will be the same percentage as the Public Law 83-566 share of the total project cost. These payments are authorized by Public Law 91-646.

(7) Public Law 93-291—The Archeological and Historic Preservation Act of 1974 (Public Law 93-291) authorizes the expenditure of up to 1 percent of appropriated project monies to preserve, protect, or recover archeological material that might be lost or destroyed as a result of a project. Additional monies may be expended with Congressional approval.

Table 500-1 Statutory cost-sharing provisions (N/A=Not Applicable, ES=Equitable Share, ≤ means less than or equal to, ≥ means more than or equal to)

Purpose	---- Land treatment ----		----- Nonstructural -----		----- Structural measures -----		
	Tech. asst.	Installation	Real property rights	Other costs	Real property rights ^{1/}	Engineering	Construction
Flood prevention							
Wetland & flood plain cons. easement	N/A	N/A	≥ 50%	0	N/A	N/A	N/A
All other measures	100%	^{2/}	75% ^{3/}	75% ^{3/}	0	100% ^{4/}	100% ^{4/}
Agricultural water management (IR, DR, WQ, rural water supply)							
Wetland & flood plain cons. easement	N/A	N/A	≥ 50%	0	N/A	N/A	N/A
All other measures	100%	^{2/}	0	0	0	100%	ES ^{5/}
Public fish & wildlife dev.							
Water resource improvement	100%	^{2/}	0	0	≤ 50%	100%	ES ^{5/}
Minimum basic facilities	100%	^{2/}	0	0	≤ 50%	≤ 50%	≤ 50%
Wetland & flood plain cons. easement	N/A	N/A	≥ 50%	0	N/A	N/A	N/A
Public Recreational Dev.							
Water resource improvement	100%	^{2/}	0	0	≤ 50%	100%	ES ^{5/}
Minimum basic facilities	100%	^{2/}	0	0	≤ 50%	≤ 50%	≤ 50%
Ground water recharge	100%	^{2/}	0	0	0	100%	ES ^{6/}
Water quality management							
Reservoir storage ^{7/}	N/A	N/A	0	0	0	100%	ES ^{6/}
Conservation & proper utilization of land (watershed protection)	100%	^{2/}	0	0	0	100%	ES ^{6/}
Municipal & industrial water supply ^{8/}	100%	^{2/}	0	0	0	0	≤ 50% of storage cost for present demand

^{1/} Cost-sharing on real property rights for mitigation of fish and wildlife habitat losses is authorized up to 50 percent.

^{2/} Cost-sharing for land treatment is not to exceed the level of other existing national programs.

^{3/} 75 percent of composite cost, including installation, technical or engineering assistance, real property rights, administration, and overhead.

^{4/} Structural measures for flood prevention include land stabilization.

^{5/} USDA policy sets Public Law 83-566 share at up to 50 percent.

^{6/} Rate to be set at the discretion of the Secretary.

^{7/} Plans must be approved by the Environmental Protection Agency.

^{8/} Authorized by the Act, but Federal cost-sharing on structural measures is not presently allowed.

Subpart 500C Requirements of the Act

500.20 Project criteria

A watershed or subwatershed area is not to exceed 250,000 acres. A number of such subwatersheds, where they are component parts of a larger watershed, may be planned together if the SLO so desire. However, no single plan can be submitted for a watershed or subwatershed area exceeding 250,000 acres.

No structure providing more than 12,500 acre-feet of floodwater detention capacity or more than 25,000 acre-feet of total capacity may be included in the plan. Total capacity as used in the Act is construed to mean the total volume of space available for water and sediment upstream from a dam below the elevation at which discharge begins in the primary emergency spillway.

Each project must contain benefits directly related to agriculture, including rural communities, that account for at least 20 percent of the total benefits of the project.

Local organizations shall acquire, or provide assurances satisfactory to the Secretary that they will acquire, such real property rights as will be needed in connection with works of improvement installed with Public Law 83-566 assistance.

Need must be demonstrated taking into account the anticipated day-use of the projected recreational development and considering the availability within the region of existing water-based outdoor recreational developments.

The number of recreation developments within a watershed shall be limited by the size of the watershed; one development in a watershed project of less than 75,000 acres, two developments in a project between 75,000 and 150,000 acres, or three developments (the maximum number allowed) in a project of more than 150,000 acres.

Works of improvement for water quality management that consist of water storage capacity in reservoirs for regulation of streamflow shall not be provided as a substitute for adequate treatment. The Act requires that works of improvement for water quality management be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management. Because the Water Resources Council no longer exists, solutions will be consistent with State water quality standards developed in accordance with sections 208 and 319 of Public Law 92-500, as amended.

The SLO must be willing to carry out all phases of project installation, operation, and maintenance, and must have the financial ability or be able to make adequate financial arrangements for carrying out their full responsibilities with relation to the project.

The SLO shall acquire or provide other evidence that landowners or water users have acquired such water rights pursuant to State law as may be needed in the installation and operation of the works of improvement.

The SLO shall obtain agreements to carry out recommended soil conservation measures and proper conservation plans from owners of not less than 50 percent of the lands situated in the drainage area above each retention reservoir to be installed with Public Law 83-566 funds.

The SLO shall submit a plan of repayment satisfactory to the Secretary for any loan or advancement made.

Project benefits must exceed costs. Effects of alternative plans will be displayed in accordance with the four accounts established in the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G), March 10, 1983. These accounts are

- National Economic Development (NED)
- Environmental Quality (EQ)
- Regional Economic Development (RED)
- Other Social Effects (OSE)

Benefits and costs may be expressed in monetary and nonmonetary terms.

500.21 Watershed plan approval authority

Approval authority is based on the total Public Law 83-566 construction cost, including financial assistance for land treatment, and the capacity of water-impounding structures included in the plan. Table 500-2 summarizes approval authorities. All plans sent to congressional committees must be approved of the SCS Chief and by the Secretary of Agriculture.

Delegation of administrative approval authority is discussed in part 505.

Subpart 500D Related public laws

500.30 General

In addition to the Act, several laws are directly related to the administration of the Act. This subpart contains only a partial listing of general laws, executive orders, and Secretary's memorandums that apply to all projects. All work undertaken and performed under the Act is to be in harmony with all applicable Federal, State, and local laws, orders, and related work of other Federal agencies.

500.31 Public Law 78-534—Flood Control Act of 1944

The Flood Control Act of 1944 as amended, gives the USDA responsibility in 11 selected watersheds for watershed investigations and for planning and installing measures to reduce runoff and erosion and slow down streamflow. The SCS and the Forest Service carry out this responsibility with assistance from other agencies within and outside the USDA.

Table 500-2 Watershed plan approval authorities (< means less than; > means more than)

Public Law 83-566 construction cost	Total capacity of any single structure	Approval required
< \$5 million, and	< 2,500 ac. ft.	Administratively
\$5 million or more, and	< 4,000 ac. ft.	Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives
Any amount, and	> 2,500 ac. ft., but < 4,000 ac. ft.	Committee on Agriculture Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives
Any amount, and	> 4,000 ac. ft.	Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives

The 11 watersheds are Buffalo Creek, New York; Coosa River, Georgia and Tennessee; Little Sioux River, Iowa and Minnesota; Little Tallahatchie River, Mississippi; Los Angeles River, California; Middle Colorado River, Texas; Potomac River, Virginia, West Virginia, Maryland, and Pennsylvania; Santa Ynez River, California; Trinity River, Texas; Washita River, Oklahoma and Texas; and Yazoo River, Mississippi. They cover 30 million acres.

This manual also applies to all Public Law 78-534 watersheds, except as noted.

500.32 Public Law 86-523— Reservoir Salvage Act of 1960 (as amended)

This law relates to the preservation of historical and archeological materials or data, including relics and specimens that might otherwise be lost or destroyed as a result of any Federal or federally assisted or licensed project, activity, or program.

The state conservationist is to notify the Secretary of the Interior whenever a plan includes a dam that creates a permanent reservoir larger than 40 surface acres or a floodwater-retarding dam providing more than 5,000 acre-feet of detention capacity. For smaller structures, if SCS finds or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area, it will advise the Secretary of the Interior. If any such materials are found during construction, the law requires similar notification.

500.33 Public Law 89-665— National Historic Pres- ervation Act of 1966 (as amended)

This law provides for the preservation of certain properties including historic districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, and culture. SCS, before it undertakes any work, must take into account the effect of that work on any historic district, site, building, structure, or objects eligible for or listed in the National Register of Historic Places. No Federal funds may be expended on work affecting a historic

property until the Advisory Council on Historic Preservation has had a reasonable opportunity to comment. Where historic sites, places, structures, or objects are encountered, the state conservationist will proceed in accordance with 420 GM 401.

In addition to historic sites, structures, or objects listed in the National Register, various other cultural features may have State or local significance. This law does not cover these specifically, but notes that it is appropriate for the Federal Government to assist State and local governments to expand and accelerate their historic preservation programs and activities.

500.34 Public Law 91-190— National Environmental Policy Act of 1969

Through this Act, the Congress declared its national policy to encourage productive and enjoyable harmony between man and his environment; to promote efforts to prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation.

This Act calls for environmental evaluations and impact analysis of all planned actions for disclosure of the decisionmaking process and for measures to be taken to mitigate adverse environmental impacts. It also established the Council on Environmental Quality (CEQ).

The CEQ's regulation for implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) prescribes document format, coordination among agencies, scoping of evaluations, tiering of evaluations of impacts, and minimizing adverse impacts.

The general procedures for SCS programs for compliance with NEPA are in 7 CFR 650. Secretary's Memorandum 1695 (as supplemented), Protecting and Improving the Quality of the Environment, and 7 CFR 3100 further implement the provisions of Public Law 91-190.

500.35 Public Law 93-251—Water Resource Development Act of 1974

Federal assistance in projects is authorized for the installation of nonstructural measures for flood protection by section 73 of this Act dated March 7, 1974. An excerpt from the text of the Act follows:

"In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, flood proofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages."

500.36 Public Law 93-291—Archeological and Historic Preservation Act of 1974

This Act amends the Reservoir Salvage Act of 1960 and authorizes the Secretary of the Interior or the Federal agency itself to undertake recovery, protection, and preservation of historic and archeological data that would otherwise be lost as a result of Federal or federally assisted activities. SCS procedures for the protection of archeological and historical properties encountered in SCS-assisted programs are published in the General Manual (420-401).

500.37 Public Law 90-542—Wild and Scenic Rivers Act of 1968

This Act permits certain select rivers that, with their immediate environments, have outstanding, scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values to be preserved in free-flowing condition, and that they and their immediate environment shall be protected. Components may be added to the system from time to time.

The Act specifically states that no department or agency shall recommend authorization of any water resources project that would have a direct and adverse effect on the values of one of the designated rivers. Issuance of permits and licenses is prohibited in these cases.

500.38 Public Law 92-500—Amendments to the Federal Water Pollution Control Act of 1972

This Act (which, with amendments, is often referred to as the "Clean Water Act") requires a 404 permit from the Department of the Army, Corps of Engineers for placing dredged or fill material into or adjacent to navigable water. It also requires the development of water quality management plans for each State and authorizes 5- to 10-year contracts to install best management practices to control nonpoint source pollution and improve water quality. Other parts of the Act address point sources and permits for discharges of pollutants. The Act as amended is in 33 USC 1251, et seq.

500.39 Public Law 93-205—Endangered Species Act of 1973 (as amended)

This Act declares that, as policy, all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall exercise authority to further the purposes of this Act. The Secretary of the Interior determines which species are covered and regulates the program for their protection. Extensive cooperation with States is called for to ensure maximum compliance with the program.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with and assistance of the Secretary of the Interior, ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or destroy or modify the critical habitat of such species.

500.40 Public Law 97-98—Farm-land Protection Policy Act of 1981

This Act states Federal policy in regard to protecting prime and unique farmlands by minimizing the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. It states that Federal programs will be administered in a manner that, to the extent practicable, will be compatible with State, local, and private programs and policies to protect farmland.

500.41 Public Law 99-198—Food Security Act of 1985

This act sets forth the terms and conditions under which a person, who, after December 23, 1985, produces an agricultural commodity on highly erodible land or converted wetland, shall be determined to be ineligible for certain benefits provided by the USDA and agencies and instrumentalities of the Department. It also removes certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby

- reduce soil loss caused by wind and water erosion,
- protect the Nation's long-term capability to produce food and fiber,
- reduce sedimentation and improve water quality,
- assist in preserving the Nation's wetlands, and
- curb the production of surplus commodities.

500.42 Public Law 99-662—Water Resources Development Act of 1986

(a) Section 103(b)

This section changed the cost-share rate for nonstructural measures to require the non-Federal share to be 25 percent of the costs of such measures.

(b) Section 402

This section requires that, before construction of any project for local flood protection, the non-Federal interests agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.

(c) Section 928

This section gives the requirements for reports on the projects that have recreational benefits that are submitted to the Committee on Public Works and Transportation of the House of Representatives. It states that the reports must describe the usage of other similar public recreational facilities in the area and the anticipated impacts of the proposed project on the use of such existing recreational facilities.

(d) Section 1201(b)

This section modifies Public Law 92-367 by authorizing the establishment of a National Dam Safety Review Board. This board shall be responsible for reviewing and monitoring State implementation of the Dam Safety Act. It will consist of seven members selected for their expertise in dam safety, to represent the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, the Federal Emergency Management Agency, and the Department of Agriculture, plus two members, selected by the President, from employees of officials of States having an approved program under section 8 of this Act.

(e) Section 1202

This section requires that reports submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or the Secretary of Agriculture acting under Public Law 83-566, as amended, which propose construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors that could contribute to the possible failure of such facility.

500.43 Public Law 101-624

The Food, Agriculture, Conservation, and Trade Act of 1990

- adds Public Law 83-566 cost-sharing payments to the list of USDA program benefits that are contingent on the recipient's compliance with the provisions of the Food Security Act of 1985,
- provides for cost-sharing assistance to acquire perpetual wetland or flood plain conservation easements,
- provides for enhancement of water quality as a project purpose,

- requires that 20 percent of the benefits for all projects be agriculturally related, including rural communities, and
- requires that data will be collected and maintained on a State and National basis.

500.44 Other laws

(a) Public Law 89-80

Water Resources Planning Act of 1965, section 103, requires the establishment of principles, standards, and procedures that would be followed for all Federal water and related land projects.

(b) Public Law 90-480

This law requires accessibility to public buildings by the physically handicapped.

(c) Public Law 91-224

The Environmental Quality Improvement Act of 1970 requires Federal departments and agencies to implement environmental policies.

(d) Public Law 91-646

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act sets forth the requirements for the acquisition of real property and the assistance available for persons who are relocated as a result of implementing a project.

(e) Public Law 96-597

Authorization, Appropriations—United States Insular Areas, 48 USC 1469(d)(c), section 9, extends all SCS programs to trust territories. The U.S. Department of Interior and the Public Works and Agricultural Committees of Congress need to be advised 60 days before assistance is extended and a memorandum of understanding needs to be signed with the territory.

(f) Public Law 85-624

The Fish and Wildlife Coordination Act sets forth Federal requirements regarding conservation of wildlife resources. This Act amended Public Law 83-566 by adding section 12, which specifies the requirements related to the small watershed program.

(g) Laws related to nondiscrimination

These laws include the Civil Rights Act of 1964, as amended; Civil Rights Restoration Act of 1987; Rehabilitation Act of 1973; Education Amendments of 1972; and Age Discrimination Act of 1975. These acts, together with related USDA regulations (7 CFR 15), prohibit discrimination on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap in USDA programs and activities.

Subpart 500E Related executive orders

500.50 General

Executive orders are issued by the President of the United States to further clarify the Administration's position on various subjects. These orders provide direction to Federal agencies. Following are some of the more pertinent orders related to Public Law 83-566.

500.51 Executive Order 10584—Rules and Regulations Relating to the Administration of the Watershed Protection and Flood Prevention Act as amended and supplemented by Executive Order 10913

These two executive orders prescribe rules and regulations relating to the administration of the Act (see exhibit 500-2). Because programs of the Departments of the Interior, Army, and Agriculture, and other Federal agencies often affect one another, close cooperation and coordination are mandated. Before planning is started, the Secretary of Agriculture shall obtain the views of these other agencies, river basin authorities and commissions, and others.

The Secretary is responsible for administering the Act, approving or disapproving applications, establishing criteria for formulation and justification, establishing engineering and economic standards and objectives, planning and installing works of improvement, coordinating reviews of the plans for works of improvement, and giving full consideration to recommendations concerning the conservation and development of fish and wildlife resources.

Only those plans shall be submitted to the Secretary that constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved. All plans submitted must properly reflect respective contributions of upstream and downstream improvements, provide best use and control of water resources at minimum cost, and give

preference to the least costly combination of measures where benefits are about the same.

500.52 Executive Order 11514 (as amended)—Protection and Enhancement of Environmental Quality

This order reaffirms national environmental goals and describes the responsibilities of Federal agencies and the CEQ. It requires the monitoring, evaluation, and control of agency activities so as to protect and enhance the quality of the environment. It also requires that the public be given timely information through public hearings, if necessary, to ensure a full understanding of Federal plans and programs. This order was revised by Executive Order 11991, dated May 24, 1977, which provided for other agency involvement in issuing regulations for implementation of NEPA.

500.53 Executive Order 11988—Flood Plain Management

This executive order of May 24, 1977, directed Federal agencies to refrain from supporting development in flood plains. It revoked and replaced Executive Order 11296 issued August 10, 1966. It prescribes that alternatives be considered to avoid adverse effects and incompatible development in the flood plains. In addition, the Water Resources Council (WRC) has prepared Flood Plain Management Guidelines for implementing Executive Order 11988. They were published in the Federal Register (43 FR 6030) on February 10, 1978.

Watershed projects will be developed in full compliance with SCS rules and regulations for flood plain management, 7 CFR 650.25.

500.54 Executive Order 11990—Protection of Wetlands

The executive order of May 24, 1977, directed Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

Watershed projects will be developed in full compliance with SCS rules and regulations for Protection of Wetlands, 7 CFR 650.26.

500.55 Other executive orders

(a) Executive Order 11593—Protection and Enhancement of the Cultural Environment

This ensures that Federal plans and programs will contribute to the preservation and enhancement of nonfederally owned sites, structures, and objects of historical, architectural, and archeological significance.

(b) Executive Order 12322—Water Resource Projects

This requires that water resources projects be reviewed for technical adequacy by the Office of Management and Budget before they are submitted to Congress.

(c) Executive Order 12372—Intergovernmental Review of Federal Programs

This requires intergovernmental consultation with State and local officials.

Subpart 500F USDA regulations

500.60 USDA Regulation 9400-1—Rural Development

This regulation states the Department's policy of conducting programs that result in rural development with aggressive leadership and assistance to meet the following national rural development goals:

- Improve rural income levels and increase rural employment opportunities.
- Improve rural residents' access to adequate housing and essential community facilities and services.
- Provide a more equitable distribution of opportunities through targeting efforts on distressed areas, communities, and people.
- Create and implement a process for involving the private sector and local, State, and Federal agencies in establishing policies and programs that affect rural areas.
- Strengthen the planning, management, and decisionmaking capability of public and private institutions concerned with economic opportunity and quality of life in rural America.

500.61 USDA Regulation 9500-3—Land Use Policy

Departmental policy is to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to

- Assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs, of high-quality food, fiber, wood, and other agricultural products that may be needed.

- Assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses.
- Assure appropriate levels of environmental quality.

500.62 USDA Regulation 9500-4— Fish and Wildlife Policy

The policy of the Department is to assure that the values of fish and wildlife are recognized and that their habitats, both terrestrial and aquatic, including wetlands, are recognized and enhanced, where possible, as the Department carries out its overall mission.

The Department will support research and management programs that respond to the economic, ecological, educational, recreational, scientific, and aesthetic values of fish and wildlife. A goal of the Department is to improve, where needed, fish and wildlife habitats and to ensure the presence of diverse, native and desired non-native populations of wildlife, fish, and plant species, while fully considering other Department missions, resources, and services.

Subpart 500G Codified rules and guidelines

500.70 Soil Conservation Service rules

SCS rules outline procedures for carrying out water resource activities. The rules that specifically cover the watershed protection and flood prevention programs are in 7 CFR 622 (exhibit 500-3). These rules are supported by this manual. Together they provide the policy for the implementation of the Public Law 83-566 and Public Law 78-534 programs.

Other topical manuals provide details for rules concerning real property rights, water rights, and construction permits (7 CFR 651); relocation assistance (7 CFR 652); technical standards (7 CFR 653); and operation and maintenance (7 CFR 654). The SCS General Manual provides details for rules concerning long-term contracting (7 CFR 630) and protection of cultural resources (420 GM 401). Rules that cover compliance with NEPA (7 CFR 650) are complete within themselves; they also appear in the General Manual. Procedures for project installation are detailed in the National Contracts, Grants, and Cooperative Agreements Manual.

500.71 Consistency policy

In May 1978 the Water Resources Council (WRC) adopted a policy that directed departments and agencies to ensure that projects that receive Federal funding are consistent with the appropriate regional water resource management plans (river basin plans).

500.72 Economic and environmental principles and guidelines for water and related land resources implementation studies (P&G) of March 10, 1983

(a) General

Principles and guidelines have been established as rules in accordance with the Water Resources Planning Act of 1965 (Public Law 89-80), as amended (42

U.S.C. 1962a-z). These guidelines establish uniform requirements to be followed by Federal agencies in formulating and evaluating alternative plans for Level C Implementation Studies. SCS water resources project plans are specifically mentioned for inclusion under these principles and guidelines.

(b) Principles

The principles are the basic concepts from which the guidelines are developed. They are intended to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resources implementation studies.

(c) Guidelines (procedures)

The guidelines establish the procedures for use in water resource planning and implement the principles discussed above. They are chapter I of the P&G.

(d) National Economic Development (NED) procedures


These WRC-developed procedures ensure that benefits and costs are estimated by using the best current techniques and are calculated accurately, consistently, and in compliance with P&G and other economic evaluation requirements. The NED procedures are chapter II of the P&G.

(e) Environmental Quality evaluation (EQ) procedures

These procedures (chapter III of the P&G) establish the process for identification and evaluation of EQ problems and the development of a plan. They require that effects be designated as adverse or beneficial and that the overall effect of the project be specified as either beneficial or adverse. The procedures are intended to aid in complying with NEPA requirements and to provide a basic analytical framework for focusing the concurrent integration of other related review, coordination, and consultation requirements into the planning process.

500.73 Channel modification guidelines

These guidelines were developed jointly by the USDA's SCS and the Fish and Wildlife Service of the U.S. Department of Interior (190-GM-410.27). They provide guidance on considering alternatives in channel modification to minimize environmental damage.



Subpart 500H Exhibits

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954**WATERSHED PROTECTION AND FLOOD
PREVENTION ACT, as amended*
AN ACT**

To authorize the Secretary of Agriculture to cooperate with States and local agencies in the planning and carrying out of works of improvement for soil conservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and that it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment.

SEC. 2. For the purposes of this Act, the following terms shall mean:

The "Secretary"—the Secretary of Agriculture of the United States.

"Works of improvement"—any undertaking for—

- (1) flood prevention (including structural and land-treatment measures),
- (2) the conservation, development, utilization, and disposal of water, or

(3) the conservation and proper utilization of land in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than twelve thousand five hundred acre-feet of floodwater detention capacity, and more than twenty-five thousand acre-feet of total capacity. No appropriation shall be made for any plan involving an estimated Federal contribution to construction costs in excess of \$5,000,000 or which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of the Senate and House of Representatives: Provided, That in the case of any plan involving no single structure providing more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives and in the case of any plan involving any single structure of more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Public Works of the Senate and the Committee on Public Works of the House of Representatives, respectively. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire. Each project must contain benefits directly related to agriculture, including rural communities, that account for at least 20 percent of the total benefits of the project.

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

“Local organization”—any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users’ association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate works of improvement.

SEC. 3. In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations if such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this Act, or by the Governor if there is no State agency having such responsibility-

- (1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement;
- (2) to prepare plans and estimates required for adequate engineering evaluation;
- (3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;
- (4) to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: Provided: That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;
- (5) to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section;
- (6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, cooperators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to conserve and develop the soil, water, woodland, wildlife, energy, and recreation resources of, and enhance the water quality of, lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or subwatershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part which the Secretary determines is appropriate and in the public interest for the carrying out of the practices and measures

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs. The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (a) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (b) surrender of any such history and allotments.

SEC. 3A. Cost-share assistance

(1) Easements—The Secretary may provide cost share assistance to project sponsors to enable such sponsors to acquire perpetual wetland or flood plain conservation easements to perpetuate, restore and enhance the natural capability of wetlands and flood plains to retain excessive floodwaters, improve water quality and quantity, and provide habitat for fish and wildlife.

(2) Amount—The Secretary shall require that project sponsors of watershed projects provide up to 50 percent of the cost of acquiring easements under subsection (1).

SEC. 4. The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall—

(1) acquire, or with respect to interests in land to be acquired by condemnation provide assurances satisfactory to the Secretary that they will acquire, without cost to the Federal Government from funds appropriated for the purposes of this Act, such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance: Provided, That when a local organization agrees to operate and maintain any reservoir or other area included in a plan for public fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the local organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: Provided further, That the Secretary shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is demonstrated in accordance with standards established by him, taking into account the anticipated man-days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational developments: Provided further, That the Secretary shall be authorized to participate in not more than one recreational development in a watershed project containing less than seventy-five thousand acres, or two such developments in a project containing between seventy-five thousand and one hundred and fifty thousand acres, or three such developments in projects exceeding one hundred and fifty thousand acres: Provided further, That

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

when the Secretary and a local organization have agreed that the immediate acquisition by the local organization of land, easements, or rights-of-way is advisable for the preservation of sites for works of improvement included in a plan from encroachment by residential, commercial, industrial, or other development, the Secretary shall be authorized to advance to the local organization from funds appropriated for construction of works of improvement the amounts required for the acquisition of such land, easements or rights-of-way; and, except where such costs are to be borne by the Secretary, such advance shall be repaid by the local organization, with interest, prior to construction of the works of improvement, for credit to such construction funds: Provided further, That the Secretary shall be authorized to bear an amount not to exceed one-half of the costs of the land, easements, or rights-of-way acquired or to be acquired by the local organization for mitigation of fish and wildlife habitat losses, and that such acquisition is not limited to the confines of the watershed project boundaries;

(2) assume (a) such proportionate share, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purpose under other Federal programs, of the costs of installing any works of improvement, involving Federal assistance (excluding engineering costs), which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land: Provided, That works of improvement for water quality management shall consist primarily of water storage capacity in reservoirs for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source, and shall be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management, and (b) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purpose of this Act: Provided, That, in addition to and without limitation on the authority of Secretary to make loans or advancements under section 8, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water included in any reservoir structure constructed or modified under the provisions of this Act as hereinafter provided: Provided further, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: Provided further, That the Secretary shall determine prior to initiation of construction or modification of any reservoir structure including such water supply storage that there are adequate assurances by the local organization or by an agency of the State having authority to give such assurances, that the Secretary will be reimbursed the cost of water supply storage for anticipated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands: And provided further, That the cost to be borne by the local organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that

(a) no reimbursement of the cost of such water supply storage for anticipated future demands need be made until such supply is first used, and

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

(b) no interest shall be charged on the cost of such water supply storage for anticipated future demands until such supply is first used but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 8.

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture.

(4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement.

(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 8.

SEC. 5.

(1) At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in Section 4, the local organization may secure engineering and other services, including the design, preparation of contracts and specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, by retaining or employing a professional engineer or engineers satisfactory to the Secretary or may request the Secretary to provide such services: Provided, That if the local organization elects to employ a professional engineer or engineers, the Secretary shall reimburse the local organization for the costs of such engineering and other services secured by the local organization as are properly chargeable to such works of improvement in an amount not to exceed the amount agreed upon in the plan for works of improvement of or any modification thereof: Provided further, That the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated installation cost of such works.

(2) Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: Provided, That if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures.

(3) Whenever the estimated Federal contribution to the construction cost of works of improvement in the plan for any watershed or subwatershed area shall exceed \$5,000,000 or the works of improvement include any structure having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President.

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

(4) Any plan for works of improvement involving an estimated Federal contribution to construction costs in excess of \$5,000,000 or including any structure having a total capacity in excess of twenty-five hundred acre-feet

(a) which includes works of improvement for reclamation or irrigation, or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior,

(b) which includes Federal assistance for floodwater detention structures,

(c) which includes features which may affect the public health, or

(d) which includes measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President.

(5) Prior to any Federal participation in the works of improvement under this Act, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this Act, and to assure the coordination of the work authorized under this Act and related work of other agencies, including the Department of the Interior and the Department of the Army.

SEC. 6. The Secretary is authorized in cooperation with other Federal and with States and local agencies to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs. In areas where the programs of the Secretary of Agriculture may affect public or other lands under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture in the planning and development of works or programs for such lands.

SEC. 7. The provisions of the Act of June 22, 1936 (49 Stat. 1570), as amended and supplemented, conferring authority upon the Department of Agriculture under the direction of the Secretary of Agriculture to make preliminary examinations and surveys and to prosecute works of improvement for runoff and waterflow retardation and soil erosion prevention in the watersheds of rivers and other waterways are hereby repealed: Provided, That (a) the authority of that Department of Agriculture, under the direction of the Secretary, to prosecute the works of improvement for runoff and waterflow retardation and soil erosion prevention authorization to be carried out by the Department by the Act of December 22, 1944 (58 Stat. 887), as amended, and (b) the authority of the Secretary of Agriculture to undertake emergency measures for runoff retardation and soil erosion prevention authorized to be carried out by section 7 of the Act of June 28, 1938 (52 Stat. 1215), as amended by section 216 of the Act of May 17, 1950 (64 Stat. 163), shall not be affected by the provisions of this section: Provided further, That in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887),

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

as amended and supplemented, the Secretary of Agriculture is authorized to prosecute additional works of improvement for the conservation, development, utilization, and disposal of water in accordance with the provisions of section 4 of this Act or any amendments hereafter made thereto.

SEC. 8. The Secretary is authorized to make loans or advancements (a) to local organizations to finance the local share of costs of carrying out works of improvement provided for in this Act, and (b) to State and local agencies to finance the local share of carrying out works of improvement (as defined in section 2 of this Act) in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented: Provided, That the works of improvement in connection with said eleven watershed improvement programs shall be integral parts of watershed or subwatershed work plans agreed upon by the Secretary of Agriculture and concerned State and local agencies. Such loans or advancements shall be made under contracts or agreements which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than fifty years from the date when the principal benefits of the works of improvement first become available, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the loan or advancement is made, which are neither due nor callable for redemption for fifteen years from date of issue. With respect to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed \$10,000,000.

SEC. 9. The provisions of this Act shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands.

SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available until expended. No appropriation hereafter available for assisting local organizations in preparing and carrying out plans for works of improvement under the provisions of section 3 or clause (a) of section 8 of this Act shall be available for any works of improvement pursuant to this Act or otherwise in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by clause (b) of section 8.

SEC. 11. This Act may be cited as the "Watershed Protection and Flood Prevention Act".

SEC. 12. When the Secretary approves the furnishing of assistance to a local organization in preparing a plan for works of improvement as provided for in section 3:

(1) The Secretary shall so notify the Secretary of the Interior in order that the latter, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement that is acceptable to the local organization and the Secretary of Agriculture.

(2) Full consideration shall be given to the recommendations contained in any such report of the Secretary of the Interior as he may submit to the Secretary of Agriculture prior to the time the local organization and the Secretary of Agriculture have agreed on a plan for works of improvement. The plan shall

Exhibit 500-1 Public Law 83-566 (as amended)—Watershed Protection and Flood Prevention Act, 1954—Continued

include such of the technically and economically feasible works of improvement for wildlife purposes recommended in the report by the Secretary of the Interior as are acceptable to, and agreed to, by the local organization and the Secretary of Agriculture, and such report of the Secretary of the Interior shall, if requested by the Secretary of the Interior, accompany the plan for works of improvement when it is submitted to the Secretary of Agriculture for approval or transmitted to the Congress through the President.

(3) The cost of making surveys and investigations and of preparing reports concerning the conservation and development of wildlife resources shall be borne by the Secretary of the Interior out of funds appropriated to his Department.

SEC. 13. DATA. The Secretary shall collect and maintain data on a national and State by State basis concerning -

(1) expenditures for the individual flood control and conservation measures for which assistance is provided under this Act; and

(2) the expected flood control or environmental (including soil erosion) benefits that will result from the implementation of such measures.

As amended November 1990 (Includes provisions of the 1990 Farm Bill)

* (Public Law 83-566, 83d Cong., 68 Stat. 666; Public Law 84-1018, 84th Cong., 70 Stat. 1088; Public Law 85-624, 85th Cong., 72 Stat. 563; Public Law 85-865, 85th Cong., 72 Stat. 1605; Public Law 86-468, 86th Cong., 74 Stat. 131, 132; Public Law 86-545, 86th Cong., 74 Stat. 254; Public Law 87-170, 87th Cong., 75 Stat. 408; Public Law 87-703, 87th Cong., 76 Stat. 608; Public Law 89-337, 89th Cong., 79 Stat. 1300; Public Law 90-361, 90th Cong., 82 Stat. 250; Public Law 92-419, 92d Cong., 86 Stat. 667; Public Law 95-113, 95th Cong., 91 Stat. 913; Public Law 97-98, 97th Cong., 95 Stat. 1213; Public Law 99-662, 99th Cong., 100 Stat. 4196; Public Law 101-624, 101st Cong., 104 Stat. 3359.)

Exhibit 500-2 Executive Order 10584, as supplemented

**TEXT OF EXECUTIVE ORDER NO. 10584 OF
DECEMBER 18, 1954, PRESCRIBING RULES AND
REGULATIONS RELATING TO THE ADMINISTRATION OF
THE WATERSHED PROTECTION AND FLOOD PREVENTION
ACT AS AMENDED AND SUPPLEMENTED BY EXECUTIVE
ORDER NO. 10913 of JANUARY 18, 1961**

By virtue of the authority vested in me by the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.), and as President of the United States, it is ordered that Executive Order No. 10584 of December 18, 1954, be, and it is hereby, amended by deleting sections 1, 2, 3, and 4 thereof, by renumbering sections 5 and 6 thereof as sections 6 and 7, respectively, and by substituting the following new sections:

“Section 1. Scope of order. This order shall apply (a) to the planning, construction, operation, and maintenance of all works of improvement under the authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566, approved August 4, 1954, as amended; 16 U.S.C. 1001 et seq.), hereinafter referred to as the Act, and (b) to other programs and projects of the Department of Agriculture, and to programs and projects of the Department of the Interior, the Department of the Army, and other Federal agencies to the extent that such programs or projects affect, or are affected significantly by, works of improvement provided for in the Act.

“Sec. 2. General administration. The Secretary of Agriculture shall have the following-described responsibilities under the Act:

“(a) Approval or disapproval of applications for Federal assistance in preparing plans for works of improvement, and the assignment of priorities for the provision of such assistance.

“(b) Establishing criteria for the formulation and justification of plans for works of improvement and criteria for the sharing of the cost of both structural and land-treatment measures which conform with the provisions of the Act and with policies established by or at the direction of the President for watershed protection, flood prevention, irrigation, drainage, water supply, and related water-resources development purposes.

“(c) Establishing engineering and economic standards and objectives, including standards as to degrees of flood protection, for works of improvement planned and carried out under the authority of the Act.

“(d) Determination and definition of (1) those land-treatment measures and structural improvements for flood prevention and measures for the agricultural phases of conservation, development, use and disposal of water or for fish and wildlife development which are eligible for assistance under the Act, and (2) the nature and extent of such assistance and the conditions under which such assistance shall be rendered.

Exhibit 500-2 Executive Order 10584, as supplemented—Continued

“(e) Planning and installing works of improvement on lands under his jurisdiction, and arranging for the participation of other Federal agencies in the planning and installation of works of improvement on lands under their jurisdiction. Recommendations of the heads of other Federal agencies for necessary works of improvement on lands under their jurisdiction shall be submitted as an integral part of the plans of the Department of Agriculture for works of improvement. Arrangements for construction, operation, and maintenance of works of improvement on such lands shall be mutually satisfactory to the Secretary of Agriculture and the head of the Federal agency concerned.

“(f) Submitting plans for works of improvement to the State Governor or Governors concerned and to the Federal agencies concerned for review and comment when the Secretary and the interested local organization have agreed on such plans; and, when and as required by the Act, submitting such plans to the Secretary of the Interior and the Secretary of the Army for their review and comment prior to transmission of the plans to the Congress through the President.

“(g) Giving full consideration to the recommendations concerning the conservation and development of fish and wildlife resources contained in any report of the Secretary of the Interior which is submitted to him, in accordance with section 12 of the Act and section 5 of this order, prior to the time he and the local organization have agreed on a plan for works of improvement, and including in the plan such works of improvement for fish and wildlife purposes recommended in the report as are acceptable to him and the local organization.

“(h) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

“Sec. 3. Notification

(a) The Secretary of Agriculture shall:

“(1) Notify in writing the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

“(2) Notify the following, severally, in writing of all approvals or disapprovals of applications for planning assistance: the sponsoring organization, the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned.

“(b) The Secretary of the Interior shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

Exhibit 500-2 Executive Order 10584, as supplemented—Continued

“(c) The Secretary of the Army shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Interior, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

“Sec. 4. Coordination. In order to assure the coordination of work authorized under the Act and the related work of other agencies, so that the proper use, conservation, and development of water and related land resources through Federal programs and financial assistance may be achieved in the most orderly, economical, and effective manner.

“(a) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act, shall:

“(1) When an application applies to a watershed located in one of the seventeen western reclamation States or Hawaii and it appears that a major objective is the agricultural phase of the conservation, development, utilization, and disposal of water for irrigation purposes, request the views of the Secretary of the Interior concerning the feasibility of achieving equivalent irrigation benefits by means of works of improvement constructed pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts ambulatory or supplementary thereto, or by means of assistance furnished pursuant to the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a-422k), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

“(2) When it appears that a major objective of an application is the reduction of flood damages in urban areas (as defined in the most recent census), request the views of the Secretary of the Army concerning the feasibility of achieving equivalent urban flood protection benefits by means of works of improvement constructed pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928, 45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), or acts ambulatory or supplementary thereto, and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

“(3) When an application applies to a watershed located in the Tennessee River drainage basin, request the views of the Board of Directors of the Tennessee Valley Authority concerning the feasibility of achieving the objectives of the application by means of works of improvement for flood control or watershed protection constructed under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving such objectives; and when such planning assistance is authorized, consult with the Tennessee Valley Authority throughout all phases of project development concerning the relationship of works of improvement under the Act to the unified development and regulation of the Tennessee River system.

“(b) The Secretary of the Interior shall, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts ambulatory or supplementary thereto, or

Exhibit 500-2 Executive Order 10584, as supplemented—Continued

prior to initiating investigations after receipt of a Notice of Intent to apply for a loan under the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a-422k), relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such a survey or field investigation or approve such application for assistance only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

“(c) The Secretary of the Army shall, prior to undertaking any survey or field investigation pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), and acts ambulatory or supplementary thereto, relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such survey or field investigation only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

“(d) The Board of Directors of the Tennessee Valley Authority shall, prior to undertaking any survey or field investigation under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), relating to works of improvement for flood control or watershed protection to be installed wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the works of improvement for flood control or watershed protection by means of works of improvement constructed under the Act, and proceed with such survey or investigation only after carefully considering whether works of improvement under the Tennessee Valley Authority Act would be a more appropriate method of achieving such objectives.

“(e) Whenever the foregoing provisions of this section require an agency head to request the views of another agency head, such request shall be effected prior to the making of any commitment to local interests, and local interests shall be informed at the outset of negotiations that any plan resulting therefrom is subject to coordination as required by this section.

“(f) When any agency having responsibilities for water resources development is considering the initiation of surveys or field investigations in a watershed or subwatershed area of not more than 250,000 acres and it appears that the purposes to be served by the project under investigation could more advantageously be met by means of a combination of works of improvement under the statutory authority available to that and other agencies, the appropriate agency head shall consider with the other agency heads concerned and the cooperating local interests the feasibility of preparing a jointly developed plan for coordinated action under available statutory authority.

“Sec. 5. Fish and wildlife development. Upon receipt of the notice required by section 12 of the Act and section 3(a)(l) of this order, the Secretary of the Interior, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of fish and wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement which will be acceptable to the local organization and the Secretary of Agriculture.”

Exhibit 500-2 Executive Order 10584, as supplemented—Continued

Sec. 6. Relationship to comprehensive development

(a) The Secretary of Agriculture shall submit plans for installation of works of improvement under the Act to the Congress through the President only if the Secretary is satisfied that such works constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved.

(b) Federal agencies having responsibilities for water resource developments shall, in the design and justification of works of improvement, take cognizance of all upstream and downstream works in place and in operation, or soon to be brought into operation. The guiding principle shall be to adjust the nature, capacity, and operating characteristics of works of improvement in a manner that (1) reflects the respective contributions of upstream and downstream works to flood protection and to the conservation, development, use, and disposal of water, and (2) provides the best use and control of water resources at minimum cost: Whenever approximately equivalent benefits can be obtained from alternative works of improvement or combinations of improvements, with approximately the same cost, the alternative or combination least costly to the Federal Government shall be given preferential consideration. In case benefits are produced jointly by more than one work of improvement, or in case complementary relationships exist between the projects and plans of the several agencies, the benefits claimed in justification of a system of improvements shall not include any duplication or compounding of benefits.

Sec. 7. Basic data. In the utilization of existing basic physical and economic data, and in the acquisition of additional basic data required for planning, design, construction, operation and evaluation of works of improvement authorized under the Act, the Department of Agriculture shall be assisted by the principal basic-data collection agencies, including the Geological Survey in the Department of the Interior and the Weather Bureau in the Department of Commerce. The basic-data collection agencies shall assist and cooperate with the Department of Agriculture with respect to the following:

- (a) Provision of pertinent information in the preliminary planning of works of improvement.
- (b) Collaboration in planning programs of hydrologic-data collection in project areas, in the selection of station sites and installation of equipment for collecting hydrologic data, and in the collection of such data.
- (c) Collaboration in the analysis and interpretation of hydrologic data collected specifically for projects initiated under the Act, and of relevant data which may contribute to an analysis of the effects of such projects.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects

(As published in the Federal Register, Volume 49, No. 34, Friday, February 17, 1984, Rules and Regulations.)

**Soil Conservation Service
7 CFR Parts 620, 622, 623
Water Resources; Watershed Projects
Action: Final rule**

Summary: This rule prescribes the general procedures for implementation of the Watershed Protection and Flood Prevention Program under the authority of Public Law 83-566 and those under the authority of Public Law 78-534. 7 CFR Parts 620 and 623 are being removed and reserved, as the information contained in these parts is now included in 7 CFR Part 622. Incorporating the material in 7 CFR simplifies and clarifies the rule by eliminating unnecessary detail and repetitious wording. These changes will result in a more accurate and usable regulation. The need for separate rules no longer exists

Effective Date: March 19, 1984.

For further information contact:

Edgar H. Nelson, Director, Basin and Area Planning Division,
Soil Conservation Service, USDA, P.O. Box 2890,
Washington, D.C. 20013.

Supplementary Information:

I. General

Public Law 83-566 and Public Law 78-534 authorize the Secretary of Agriculture to cooperate with State and local agencies in the planning and carrying out of works of improvement for flood prevention; for the conservation, development, utilization and disposal of water; and for the conservation and proper utilization of land in watershed or subwatershed areas. Under Public Law 83-566, these areas shall not exceed 250,000 acres; there is no limitation on acres for Public Law 78-534. The Secretary of Agriculture has delegated authority for administration of the Act to the Chief of the Soil Conservation Service (SCS) with two exceptions: (a) The Administrator of Farmers Home Administration (FmHA) has responsibility for administering Sec. 8 of the Act and those functions with respect to repayment obligations under section 4 and (b) The Chief of the FS administers the forestry aspects of the Act under such general program criteria and procedures as may be established by the Chief of SCS.

This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 to implement Executive Order 12291 and has been classified "nonmajor."

It will not affect the national economy by \$100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Peter C. Myers, Chief, Soil Conservation Service has deter-

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

mined that this action will not have a significant economic impact on a substantial number of small entities.

There will be no major increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions.

The rule will govern a program of technical and financial assistance in which participation is voluntary. Thus, it will not impose an unnecessary regulatory, information or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act Public Law 96-354 (5 U.S.C. 601).

II. Discussion of Comments

On April 19, 1983, SCS published a proposed rule (48 FR 16691) to revise its regulations for the watershed programs. This rule also covered the cancellation of 7 CFR Part 620 and 7 CFR Part 623 since this information is covered in 7 CFR Part 622. At that time, SCS solicited written comments from interested persons regarding the proposed revisions. The public comment period ended on June 20, 1983. Comments were received from three state environmental agencies, one regional environmental agency, four environmental advocacy organizations, and one Federal agency. A summary of the comments and SCS responses are as follows:

Comment 1: The most universal comment received from environmental organizations was concern over the loss of the environmental objective as a coequal objective in planning. The primary concern is that environmental concerns will not receive equal treatment during planning.

Response: It is not the intent of this rule to change the method of planning to exclude consideration of the environment. This regulation provides several mechanisms for the consideration of environmental concerns during the planning effort.

The Economic and Environmental Principles and Guidelines for Water and Related Resources Implementation Studies (P&G) issued by the Water Resources Council set the policy for planning watershed projects. SCS is committed to following the P&G along with regulations issued by the Council on Environmental Quality for complying with Public Law 91-190 National Environmental Policy Act (NEPA). By using both sets of guidelines, watershed plans will be developed which reasonably maximizes net national economic benefits while at the same time minimize adverse environmental impacts. This is consistent with the Federal objective of water and related land resources planning which "is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders and other Federal planning requirements."

These guidelines also make it clear that any alternative plans (including the NED plan) will "include appropriate mitigation of adverse environmental effects." Using the environmental quality account and the impacts section, environmental effects will be accounted for in the analysis and the plan. Another key point is covered under the State and local concerns of the Principles and Guidelines. Alternative plans can be developed to address State and local concerns when their concerns are not fully addressed by the NED plan. In this regard, environmental concerns can be raised and thus examined in the planning effort.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

Comment 2: Several comments were received which took exception to the deletion of Section 622.2(c) and (d) which addressed planning with environmental considerations and the input of other agencies.

Response: The two paragraphs of concern have been reincorporated in the rule as part of a new subpart: Subpart D—Planning.

Comment 3: Many comments were received indicating the new rule eliminates planning guidance and the new Section 622.4 does not convey any substantial information. Suggestions were made to go back to the existing rule or at least be more explicit.

Response: Section 622.4 was incorporated into the rule to cover all planning procedures which are to be followed in the watershed program. By including all references, the need for repeating information available from other sources is eliminated. The SCS intends to continue complying with all rules, regulations, and legislative mandates which affect the program. The last sentence of Section 622.4 has been changed to more clearly convey this intent.

Comment 4: One of those commenting disagreed with the decision that this is a nonmajor action and therefore, should have a program environmental impact statement.

Response: A major Federal action is defined as a change in the regulations which will result in an effect on the national economy of \$100 million or more. Although the watershed program is funded on the average of more than \$100 million, these proposed rule changes will not cause any change in the funding or any change which would have more than a \$100 million impact (see Supplementary Information at the beginning of this rule.) Therefore, under USDA procedures established in Secretary's Memorandum 1512-1 which implement Executive order 12291, this change has been classified as "nonmajor."

Comment 5: Most of those commenting were concerned over the change in the rule which states that projects must reasonably maximize "net national economic benefits" rather than just have benefits which are greater than the costs as in the former rule.

Response: The rule has been changed to indicate that net national economic benefits would be the criteria because of the changes put into effect with the approval of the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G). The Principles state that "A plan recommending Federal action is to be the alternative plan with the greatest net economic benefit consistent with protecting the Nation's environment (the NED plan) is to be selected unless the Secretary of a department or head of an independent agency grants an exception . . ." The SCS has no choice but to follow the P&G. However, Public Law 83-566 requires that the benefits be greater than the costs, and therefore, a benefit-cost ratio will normally be developed for each water resource project plan.

Comment 6: There also were concerns over the elimination of the detail and protective language (planning procedures, environmental concerns, etc.) in the existing rule. Many of those who commented felt that substantive parts of the existing rule should be retained.

Response: This simplification of the rule was carried out in accordance with Executive Order 12291 and Departmental and Office of Management and Budget guidelines. Detailed policy and procedural matters

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

are reserved for departmental and agency directives and manuals. The SCS will continue to utilize the most up-to-date planning and implementation procedures that have evolved from experiences over the years in the soil and water resource arena.

Comment 7: Several sections dealing with the priority of considering measures have been eliminated. It has been suggested that the consideration of land treatment should be first and channel work the last measure considered. This concept should be retained in the proposed rule.

Response: According to the procedures outlined in the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, all possible solutions shall be considered to determine the one which maximizes net NED benefits. This is interpreted to mean that all measures must be considered in order to formulate the National Economic Development Plan.

Comment 8: Several comments indicate that the rule seems to imply that other agencies will be left out of the planning process.

Response: As a result of the comments received, Section 622.3 has been changed to clarify this point. Section 12 of Public Law 83-566, which requires coordination with the Fish and Wildlife Service and specifically refers to coordination with land management agencies when Federal lands are involved, is now cited in the rule.

Comment 9: The rule appears to require SCS to do all the design work for municipal and industrial (M&I) water supply structures.

Response: SCS's requirements for design of M&I water supply structures have not been changed by this proposed rule. Design work for an M&I structure will continue to be done by private consultants or the sponsor's own engineers.

Comment 10: Several reviewers suggested Subpart D— Planning and Approval be retained in the rule.

Response: As a result of this and other similar comments. Subpart D—Planning has been added to the proposed rule. The step-by-step procedures dropped from the old rule are now replaced with an overview of the planning and review process.

Comment 11: The proposed rule states that 7 CFR 623 is being cancelled but there is nothing in the rule that indicates the differences between the watershed program (Public Law 83-566) and the flood prevention program (Public Law 78-534).

Response: Section 622.3 has been added to the rule to summarize the differences between the programs.

Comment 12: The rule does not state that the programs will be operated so as not to be discriminatory.

Response: Section 622.6 on equal opportunity has been added to the rule.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

LIST OF SUBJECTS

7 CFR Part 620

Soil conservation. Water resources.

7 CFR Part 622

Watersheds. Flood Prevention. Technical assistance. Soil conservation. Grant programs-natural resources. Loan programs-natural resources.

7 CFR Part 623

Flood assistance.

Dated January 11, 1984.

Peter C. Myers

Chief, Soil Conservation Service

Accordingly, Chapter VI of Title 7 is amended by removing and reserving Parts 620 and 623 and by revising Part 622 to read as follows:

PART 620—(RESERVED)**PART 622—WATERSHED PROJECTS****Subpart A—General**

Sec.

622.1 Purpose.

622.2 Scope.

622.3 Relationship to the Public Law 78-534 Program.

622.4 Relationship to other agencies.

622.5 Guidelines.

622.6 Equal opportunity.

622.7 Notification under Executive Order 12372.

Subpart B—Qualifications

622.10 Sponsors.

622.11 Eligible watershed projects.

Subpart C—Application Procedure

622.20 Application.

622.21 State agency approval.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued**Subpart D—Planning**

622.30 General

622.31 Basic planning efforts

622.32 Reviews and approvals

Authority: Public Law 83-566, 68 Stat. 666 as amended (16 U.S.C. 1001 et seq.); Public Law 78-534, 58 Stat. 889, (33 U.S.C. 701b-1.)

Subpart A—General**622.1 Purpose**

This part sets forth the general policies for planning and carrying out watershed projects under Public Law 83-566 68 Stat. 666 (16 U.S.C. 1001 et seq.) and flood prevention projects under Public Law 78-534 (33 U.S.C. 701b-1).

622.2 Scope

(a) To assist sponsors in preparing and carrying out watershed plans the Soil Conservation Service (SCS) shall conduct investigations and surveys with the cooperation and assistance of other Federal agencies to:

(1) Determine the extent of watershed problems and needs and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works of improvement is agreed upon between SCS and the sponsors and the approval processes are completed, SCS will provide technical and financial assistance to install the project subject to the availability of funds and the budgeting and fiscal policies of the President.

622.3 Relationship to the Public Law 78-534 Program

(a) *General.* The purposes and objectives of the program under Public Law 83-566 and Public Law 78-534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency partici-

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

pation, financial assistance, eligible measures, operation and maintenance arrangements for the Public Law 78-534 program are consistent with those of the Public Law 83-566 program. The differences with the Public Law 78-534 program are outlined below.

(b) *Initiation.* Flood prevention projects are individually authorized by Federal legislation. The state conservationist and the sponsors agree on a plan of action and notify interested parties to solicit their participation. The sponsors keep the public informed and solicit their views and comments.

(c) *Subwatershed plans.* These plans are administratively approved by the state conservationist. If the plan involves purposes other than flood prevention, clearance must be obtained from the Office of Management and Budget before approval. Financial assistance available differs only in that program funds may be used for the purchase of real property rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

(d) *Installation.* SCS shall award and administer contracts for the installation of project measures unless the sponsors agree to perform the work. Project agreements between the sponsors and SCS are not required if the work consists of flood prevention structures built and funded by SCS

622.4 Relationship to other agencies

SCS will coordinate responsibilities with other water and land resource development agencies on projects that may come under the jurisdictions of various authorities. This will include any land management agencies which may have land which would be affected by project measures. Coordination with the U.S. Department of Interior's Fish and Wildlife Service will be in accordance with section 12 of Public Law 83-566 (as amended).

622.5 Guidelines

Guidelines for carrying out programs authorized under Public Law 83-566 and Public Law 78-534 are contained in miscellaneous instructions, manuals and handbooks issued by the Soil Conservation Service, Regulations for Implementing NEPA (40 CFR Parts 1500-1508) issued by the Council on Environmental Quality, and in Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by the above and other applicable laws, Executive orders, and codified rules.

622.6 Equal opportunity

The Public Law 83-566 and Public Law 78-534 programs will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and in the regulations of the Secretary of Agriculture (7 CFR Part 15), which provide that no person in the United States shall on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued**622.7 Notification under Executive Order 12372**

This program is carried out under Executive Order 12372 “Intergovernmental Review of Federal Programs” and 7 CFR Part 3015, Subpart V, “Intergovernmental Review of the Department of Agriculture Programs and Activities.” State processes or directly affected State, area, regional and local officials and entities have 60 days for comment starting from the date of submission of the application to the State Single Point of Contact.

Subpart B—Qualifications**622.10 Sponsors**

(a) Watershed projects are sponsored by one or more local organizations qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, operate and maintain works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, individually or collectively, have

(1) The power of eminent domain.

(2) The authority to levy taxes or use other adequate funding sources, including State, regional, or local appropriations to finance their share of the project cost and all operation and maintenance costs.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out and maintain the project as planned.

622.11 Eligible watershed projects

(a) To be eligible for Federal assistance, a watershed project must:

(1) Meet the definition of a watershed area as defined in SCS’s National Watersheds Manual.

(2) Not exceed 250,000 acres in size.

(3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.

(4) Have significant land or water management problems that can be solved or alleviated by measures for watershed protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.

(5) Produce substantial benefits to the general public, to communities, and to groups of landowners.

(6) Cannot be installed by individual or collective landowners under alternative cost-sharing assistance.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

(7) Have strong local citizen and sponsor support through agreement to obtain real property rights, contribute the local cost of construction, and carry out operation and maintenance.

(b) Works and improvement that may be included in a watershed project are those that:

(1) Contribute to reducing floodwater, erosion, and sediment damages.

(2) Further the conservation, development, utilization, and disposal of water, and the conservation and proper utilization of land.

(3) Have the greatest net national economic benefits consistent with protecting the Nation's environment (for structural water resource projects) relative to alternative works, unless an exception is granted by the Secretary.

Subpart C—Application Procedure**622.20 Application**

Sponsors shall follow State developed procedures (based on Executive Order 12372) for coordination of proposed Federal financial assistance and also USDA's 7 CFR Part 3015 in applying for Public Law 83-566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from SCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

622.21 State agency approval

The governor or designated State agency will approve or disapprove the application. If disapproved, no further action is required of SCS. If approved or not disapproved within 45 days, the application shall be sent to the SCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the state conservationist will return it to the originator with an opinion.

Subpart D—Planning**622.30 General**

(a) Watershed projects are to be planned and carried out in a way that will (1) minimize all adverse impacts and (2) mitigate unavoidable losses to the maximum practicable degree. Projects must comply with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852) (42 U.S.C. 4321 et seq.).

(b) Fish and wildlife enhancement measures proposed by Federal or State fish and wildlife agencies will be included if they are technically and economically feasible and are acceptable to the sponsors and the SCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, SCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

Exhibit 500-3 Codified Rule—7 CFR 622 Watershed Projects—Continued

(c) All planning efforts by SCS and the sponsors must include well publicized public meetings to obtain public input and views on the project.

622.31 Basic planning efforts

Upon receipt of an application, the SCS will make any necessary field studies and develop a report to justify the need for planning effort. Once planning is authorized by the Chief of SCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by SCS to request funding. This effort must be coordinated with other State and Federal agencies.

622.32 Reviews and approvals

(a) The watershed plan-environmental impact statement (or assessment) will be subject to internal technical reviews, sponsor and local party review, interagency review by other Federal, State, and concerned groups, and a final review as stated in SCS's National Watershed Manual.

(b) After thorough review by SCS and other agencies, the SCS and the sponsors shall accept the plan-EIS or plan-EA by signing the watershed agreement. The watershed plan must be approved by the Committees of Congress or the Chief of SCS. Funding for installation can then be granted by the Chief of SCS.

623—(RESERVED)