

Part 506 - Exhibits

Subpart A – Public Laws and Rules

506.2 Codified Rule – 7 CFR, Part 622, Watershed Projects

TITLE 7 – AGRICULTURE

CHAPTER VI--NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 622 – WATERSHED PROJECTS

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Subpart A – General

Section 622.1 – Purpose.

This part sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83-566, 68 Stat. 666 (16 U.S.C. 1001 et seq.) and flood prevention projects under Pub. L. 78-534, 58 Stat. 889 (33 U.S.C. 701b-1).

Section 622.2 – Scope.

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A. To assist sponsors in preparing and carrying out watershed plans, the Natural Resources Conservation Service (NRCS) 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 NRCS and the sponsors and the approval processes are completed, NRCS 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.

Section 622.3 – Relationship to the Public Law 78-534 Program.

A. General. The purposes and objectives of the programs under Pub. L. 83-566 and Pub. L. 78-534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency participation, financial assistance, eligible measures, operation and maintenance arrangements for the Pub. L. 78-534 program are consistent with those of the Pub. L. 83-566 program. The differences with the Pub. L. 78-534 program are outlined below.

B. Initiation. Flood prevention projects are individually authorized by Federal legislation. The STC 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 STC. If the plan involves purposes other than flood prevention, clearance shall 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 land rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

D. Installation. NRCS 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 NRCS are not required if the work consists of flood prevention structures built and funded by NRCS.

Section 622.4 – Relationship to other agencies.

NRCS 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.

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Department of the Interior's Fish and Wildlife Service will be in accordance with section 12 of Pub. L. 83-566 (as amended).

Section 622.5 – Guidelines.

Guidelines for carrying out programs authorized under Pub. L. 83-566 and Pub. L. 78-534 are contained in miscellaneous instructions, manuals, and handbooks issued by the Natural Resources 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.

Section 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 must, on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

Section 622.7 – Notification under Executive Order 12372.

This program is covered 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, areawide, 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

Section 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 shall commit themselves to use their powers and authority to carry out and maintain the project as planned.

Section 622.11 – Eligible watershed projects.

A. To be eligible for Federal assistance, a watershed project must:

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- (1) Meet the definition of a watershed area as defined in NRCS's National Watershed 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.
- (7) Have strong local citizen and sponsor support through agreement to obtain land 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

Section 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 Pub. L. 83-566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from NRCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

Section 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 NRCS. If approved or not disapproved within 45 days, the application shall be sent to the NRCS STC. After the STC has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the STC will return it to the originator with an opinion.

Subpart D – Planning

Section 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 shall comply with the requirements of the National

Environmental Policy Act of 1969 (Pub. L. 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 NRCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, NRCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

C. All planning efforts by NRCS and the sponsors shall include well publicized public meetings to obtain public input on the project.

Section 622.31 – Basic planning efforts.

Upon receipt of an application, the NRCS 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 NRCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by NRCS to request funding. This effort shall be coordinated with other State and Federal agencies.

Section 622.32 – Reviews and approvals.

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

B. After thorough review by NRCS and other agencies, the NRCS 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 NRCS. Funding for installation can then be granted by the Chief of NRCS.

506.3 Executive Order 10584, Rules and Regulations Relating to Administration

US Code – Title 16> Chapter 18> § 1005

Ex. Ord. No. 10584, Dec. 18, 1954, [19 F.R. 8725](#), as amended by Ex. Ord. No. 10913, Jan. 18, 1961, [26 F.R. 510](#), provided:

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 566, as approved August 4, 1954, as amended; U.S.C. 1001 et seq.) [this chapter], 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.

Section 2. General Administration. The Secretary of Agriculture shall have the following-described responsibilities under the Act [this chapter]:

- (1) 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.

- (2) 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.
- (3) 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.
- (4) Determination and definition of
 - (i) 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.
 - (ii) The nature and extent of such assistance and the conditions under which such assistance shall be rendered.
- (5) 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.
- (6) 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.
- (7) 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 [section [1008](#) of this title] 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.
- (8) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

Section 3. Notification.

- (1) The Secretary of Agriculture must:
 - (i) 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.
 - (ii) 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.
- (2) 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.
 - (3) 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.

Section 4. Coordination. In order to assure the coordination of work authorized under the Act [this chapter] 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.

- (1) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act [this chapter] must:
 - (i) 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 phases 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 amendatory 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) [43 U.S.C. 422a to 422k–1], 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.
 - (ii) 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 amendatory 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.
 - (iii) 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.

- (2) The Secretary of the Interior must, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary thereto, or 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) [43 U.S.C. 422a to 422k–1], relating to works of improvements 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 [this chapter], 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.
- (3) The Secretary of the Army must, 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 amendatory 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 [this chapter], 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.
- (4) The Board of Directors of the Tennessee Valley Authority must, 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 protections by means of works of improvement constructed under the Act [this chapter], 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.
- (5) 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.
- (6) 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.

Section 5. Fish and wildlife development. Upon receipt of the notice required by section 12 of the Act [section 1008 of this title] and section 3(a)(1) 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.

Section 6. Relationship to comprehensive development.

- (1) The Secretary of Agriculture shall submit plans for installation of works of improvement under the Act [this chapter] 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.
- (2) Federal agencies having responsibilities for water resource developments must, 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.

Section 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 [this chapter], 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 [now the National Weather Service] in the Department of Commerce. The basic-data collection agencies shall assist and cooperate with the Department of Agriculture with respect to the following:

- (1) Provision of pertinent information in the preliminary planning of works of improvement.
- (2) 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.
- (3) 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.