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# APPALACHIAN REGIONAL COMMISSION CODE

## CHAPTER 1—THE ARC CODE

### **Section 1.1—The Code.**

The Appalachian Regional Commission (hereinafter referred to as the Commission or ARC), establishes this Appalachian Regional Commission Code as a definitive statement of current ARC policy. The Code reflects Commission decisions adopted through resolutions and motions. Under Section 101(b) of the Appalachian Regional Development Act (hereinafter referred to as the Act or ARDA), no decision involving any modification or revision in the Code can be made without a quorum of governors present.

### **Section 1.2—Codification Authority.**

The executive director is authorized to codify all ARC actions on policy matters, to consolidate and index the subject matter, to delete expired, superseded or unnecessary material, to make clarifying editorial changes, and, subject to the requirements of Section 101(b) of the Act, to make appropriate revisions and additions to the Code as may be necessary from time to time to reflect current Commission policy. The executive director may issue Code amendments made by Commission-adopted resolutions. All other actions under this section are subject to prior approval by the Co-Chairmen's Committee and shall be reported to the Commission at the regular meeting next following such approval.

### **Section 1.3—Reserved Powers.**

The Commission may amend, suspend or revoke any Commission policy or interpretation thereof, whether or not incorporated in this Code, and may waive the application of such policy with respect to any matter, retroactively or prospectively.

### **Section 1.4—General Guidelines Authorization.**

In accordance with specific authorizations and delegations made elsewhere in this Code, regulations and guidelines implementing Commission policy may be approved, amended and waived, as necessary, for the effective administration of the Commission and its programs.

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## CHAPTER 2—COMMISSION PARTNERSHIP

### Section 2.1—Commission Partnership.

- a. The existence of the Appalachian Regional Commission manifests a recognition by the Congress that the joint federal-state effort which led to the development of the Act is essential to the effective implementation of the programs which it authorized. Congress recognized that the combined talents, resources and insights of the federal government and the states are required to make maximum use of the programs and funds authorized under the Act. The Commission therefore embodies the concept of a joint decision-making process that can provide for the effective merging and resolution of the philosophical, political and fiscal considerations that exist within the federal government and within the states and their subsidiary units.
- b. The Act identifies the primary responsibilities of the states and those of the federal government as follows:
  1. The Act provides that a states' co-chairman, elected by the states from among their number, shall be one of the two co-chairmen of the Commission. For the purposes of continuity and to enhance the receipt of informed advice about the Commission's operation, the states also have chosen to establish the position of states' Washington representative to perform a liaison and advisory role.
  2. The Act recognizes that the fundamental initiative for the identification of problems, the development of plans to deal with them, and the creation of the programs and projects that will be submitted to the Commission for assistance under the Act rests with the states. Section 222 of the Act provides that no state is required to engage in or accept any program under the Act, and Section 303 provides that only applications for programs and projects that are submitted through and approved by a state for assistance can be considered by the Commission. Thus, the states have a primary role in the initiation of plans and projects, and, in the Commission forum, a co-equal role in the formulation of policy to guide the administration of the programs authorized by the Act. It is essential that the states maintain and support the Commission as a vehicle for policy formulation and administration.
  3. The Act recognizes the primary responsibility of the federal co-chairman in the development of federal policy positions relative to matters within the Commission's jurisdiction. The federal co-chairman is responsible for informing federal departments and agencies of programs and projects to be considered by the Commission and it is his/her duty to attempt to obtain a consensus within the federal government through appropriate consultation with federal agency representatives before casting a vote on any such matter. He/she is responsible for developing legislative and budgetary proposals for the Executive branch, and for presenting the legislative programs and budgetary proposals of the Executive

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branch to Congress. The Federal Co-chairman also acts as the Chairperson of the Interagency Coordinating Council on Appalachia, which is composed of representatives of Federal agencies that carry out economic development programs in the Appalachian Region.

- c. The Act provides that decisions by the Commission shall require the affirmative vote of the federal co-chairman and of a majority of the state members; that no decision involving Commission policy, approval of state, regional or sub-regional development plans or strategy statements, any modification or revision of the Appalachian Regional Commission Code, any allocation of funds among the states, or any designation of a distressed county or an economically strong county may be made without a quorum of state members present; and that the approval of project and grant proposals shall be a responsibility of the Commission and shall be exercised in accordance with Section 303 of the Act. These provisions were included in the Act to ensure that neither partner would dominate the Commission in the performance of its functions. It also establishes the need for mutual respect and comity by the partners, with differences of opinion and attitude ultimately subordinated to the welfare of the program and the Region it is designed to serve.
- d. There is no area of Commission activity that is beyond the concern of any member of the Commission, although the federal and state partners are assigned different areas of primacy and responsibility by the Act. To the extent permitted by law, there shall be effective state involvement in the development of Commission policies and proposals that involve representation by the federal co-chairman to the Office of Management and Budget, or other elements within the Executive branch of the federal government. It is beyond the jurisdiction of this Commission to purport to limit, in any way, the right of any state to communicate with the Congress; however, to assist in the effective fulfillment of his/her responsibilities, the federal co-chairman should be apprised of such communications as they bear on the welfare of the Commission and the Appalachian Region.
- e. As with any partnership, the strength of the Commission in carrying out its functions under the Act is a direct reflection of the ability of the partners to resolve, within the Commission forum, the differences of opinion that inevitably attach to significant public efforts. By adoption of this section, the Commission re-asserts its unanimous commitment to the partnership and its objectives.

## **Section 2.2—Composition of Commission.**

### ***a. Federal Co-Chairman and State Members.***

The Commission is composed of a federal co-chairman and one member from each state in the Appalachian Region. The governor of each participating Appalachian state shall be the member of the Commission for his/her state.

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***b. States' Co-Chairman.***

1. The state members will elect a states' co-chairman from among their members. To be elected, a state member must receive the votes of a majority of the states. The states' co-chairman will be elected for a term of at least one year. Terms shall begin January 1.
2. In the absence of the states' co-chairman, his/her state alternate designated in accordance with Section 2.5, may serve as states' co-chairman; provided that (a) another governor shall be selected to preside at any Governors' Quorum Meeting; and (b) where a state vote is required to be cast in the Co-Chairmen's Committee, such vote shall be cast by the governor serving as states' co-chairman.

**Section 2.3—General Powers and Duties.**

The functions, responsibilities and duties of the Commission are described in the ARDA of 1965, as amended. The Commission is authorized by the Act to take a number of specific actions and, in general, to take such other actions and incur such expenses as may be necessary or appropriate to carry out its duties.

**Section 2.4—Delegation.**

Except for policy decisions, which, under Section 101 of the Act, can be made only with a majority of the governors present, the Commission may delegate powers or responsibilities to the federal co-chairman and states' co-chairman or any number of governors, or their respective alternates. The federal or states' co-chairman may re-delegate any delegated powers or responsibilities to his/her alternate.

**Section 2.5—State Alternates.**

***a. Designation Procedures.*** Each governor desiring to designate an alternate shall file with the executive director the name of the person appointed by him/her as his/her alternate by certifying that the alternate is a member of the governor's cabinet or of the governor's personal staff and that the governor has officially assigned such person to perform the duties listed in 2.5.b. and c. below. In the event of any change, the governor shall furnish written notice thereof to the executive director and such notice shall take effect upon or after such filing in accordance with its terms.

***b. Role of the State Alternate.*** The state alternate will:

1. serve as the governor's principal advisor and spokesperson for the Appalachian Program;
2. have overall responsibility for the management of the state's Appalachian Program;

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3. have authority to sign Section 303 certifications respecting individual projects or grant applications (as distinguished from state Development Plans and Strategy Statements, which require the governor's signature); and
  4. in the absence of the governor and under his/her direction, vote at Commission meetings (subject to Section 101 of the Act) and take other actions as provided in 2.5.c. below.

**c. *Actions by State Alternates.*** The powers of state alternates to act in Commission meetings on any matter not prohibited by Section 101 of the ARDA include, but are not limited to, the following:

1. assist with program and policy development;
2. advise the executive director directly or through the states' co-chairman, his/her alternate or the states' Washington representative, of their priorities for action;
3. review and approve administrative budgets;
4. review and participate in formulation of final agenda for Commission meetings at which a majority of the governors are expected to be present;
5. approve modifications or adjustments of Commission-approved funds allocations among the states, within policies prescribed by the Commission;
6. act on proposed amendments to Commission-approved state, regional or sub-regional development plans that do not materially alter the goals, objectives or other basic principles of the plans; and
7. act on proposed amendments to Commission-approved state strategy statements that are consistent with Development Plans approved by the Commission and that do not materially affect the basic emphases of such programs.

#### **Section 2.6–Committees.**

**a. *General Authorization.*** The Commission may, from time to time, establish committees or task forces it deems advisable in order to assist it in carrying out its functions.

The Commission shall make available appropriate professional and supporting personnel as required to assist such committees or task forces in performing their functions.

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**b. Co-Chairmen's Committee.**

1. **Establishment.** The Commission establishes a Co-Chairmen's Committee composed of the federal co-chairman and the states' co-chairman, each of whom shall have one vote in the Committee.
  
2. **Functions.** The Co-Chairmen's Committee shall have the following general responsibilities:
  - (a) provide a continuing overview of program implementation and administration to ensure conformance with Commission policies;
  - (b) provide general program and policy advice for the executive director;
  - (c) interpret Commission policy;
  - (d) seek to resolve internal issues or disputes reported to it by any state or the executive director;
  - (e) perform the functions delegated to it in Section 1.2;
  - (f) approve grants or contracts for special efforts in emergency situations or to take advantage of unanticipated special opportunities;
  - (g) serve as liaison and point of contact for purpose of receiving reports from, and implementing supervisory actions relating to, the ARC Inspector General; and
  - (h) take such other actions and perform other functions as the Commission may delegate.
  
3. **Procedures.**
  - (a) Formal actions by the Co-Chairmen's Committee shall be evidenced by appropriate documents signed, unless the Commission or the Committee provides otherwise, by the voting members of the Committee.
  - (b) The Co-Chairmen's Committee may, consistent with and subject to the limitations imposed by the 1975 Amendments to the Act, re-delegate to the executive director, by directive, such of its powers, duties and responsibilities as it deems appropriate, except interpretations of Commission policy; provided that either voting member may withdraw such re-delegation upon written notice thereof to the other member of the Committee.
  - (c) The Co-Chairmen's Committee may establish procedures, not inconsistent with Commission policies and bylaws, to further the effective execution of its functions, and shall report thereon to the Commission at the regular meeting next following any such action.

**Section 2.7—Executive Director.**

The Commission shall appoint an executive director who shall be responsible for carrying out the administrative functions of the Commission, for direction of Commission staff, and for such other duties as the Commission may assign. The executive director shall be compensated at a rate of compensation no higher than that equivalent to a position classified at the Federal Senior Executive Level 3, and may not in any case be compensated at a rate that exceeds statutory limits.

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**a. *Appointment.***

1. With the occurrence of a vacancy in the position of executive director, the Commission shall, by formal notice, declare the vacancy and establish a deadline for submission of applications for the position.
2. The Commission shall appoint a Nominating Committee, consisting of the federal co-chairman, the states' co-chairman and two other members selected by the state co-chairman. Members may be represented on the committee by their respective alternates.
3. The Nominating Committee, using procedures it determines to be appropriate, shall nominate as many applicants as it deems best qualified for the position and shall submit such nominations in a report to the Commission signed by the federal co-chairman and the states' co-chairman.
4. The Commission shall appoint and employ an executive director from the nominations submitted to it by the Nominating Committee.
5. Nothing herein shall preclude the Commission from appointing an executive director in an acting or temporary capacity.

**b. *Functions and Duties.***

The executive director, under the general direction of, and subject to policies and procedures prescribed by, the Commission, is responsible for the administrative and fiscal operations of the Commission. To carry out these responsibilities, the executive director is authorized to:

1. establish rules and procedures, take action and delegate powers, duties, and responsibilities as he/she deems necessary for efficient administration;
2. prescribe, by directive, the internal organization of the Commission staff, and group functions and duties according to major purposes insofar as practicable;
3. exercise sole responsibility for assigning functions and duties to the Commission staff and for modifying assignments;
4. administer and supervise the administration of the Commission staff and prescribe and enforce rules and procedures for efficient management;
5. establish position qualifications and appoint, employ, remove, and provide for the compensation of the Commission staff, subject to Chapter 4 of this Code;
6. serve as the sole conduit for the submission of staff papers and materials to the states or the Co-Chairmen's Committee; provided the executive director will provide equal access to information to the federal and states' offices;
7. be responsible for managing Commission funds in accordance with the principles and requirements set forth in Chapter 4 of this Code;
8. negotiate, execute and administer contracts, leases, and interagency and intergovernmental arrangements;
9. effectuate and enforce all policies and resolutions adopted by the Commission;
10. report to the Commission at each meeting on activities of the Commission and its Co-Chairmen's Committee;
11. submit, not later than four months after the close of each fiscal year, a report of

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- Commission activities during the preceding fiscal year for Commission approval prior to transmission to the President and the governors of member states;
12. serve as Secretary to the Commission, ensure the recording and maintaining of minutes of its proceedings, maintain an official list of Commission members and state alternates and serve as the official repository of Commission documents; and
  13. perform such other functions vested in the Commission by the ARDA of 1965, as amended, as may be delegated or assigned to him/her by the Commission or the Co-Chairmen's Committee.

**Section 2.8—Staff.**

**a. Principles.** The Commission staff is responsible for the service activity of the Commission. The proper execution of its responsibilities requires the staff to give the Commission and each member its best judgment on matters under consideration. At the same time, the staff is expected to undertake assigned activities with due regard for the federal-state partnership concept that underlies the Commission, and for the Co-Chairmen's Committee's responsibility to interpret Commission policy.

**b. Functions and Duties.**

1. **Program Functions.** Under the direction of, and as assigned by, the executive director, Commission staff functions may include such activities as program development; policy review and analysis; technical assistance to the states in the development of state plans and the preparation or refinement of program, project and grant proposals; technical assistance to local development districts; and training of personnel engaged in Appalachian development programs.
2. **Project Review and Grant Administration.** Under the direction of, and as assigned by, the executive director, members of the staff, working closely with the states, shall:
  - (a) analyze state plans and strategy statements for conformity to Commission goals and requirements; and
  - (b) analyze program, project and grant proposals for conformity to Commission criteria and requirements and ascertain from appropriate sources that such proposals are not incompatible with the applicable requirements of basic federal grant programs.
3. **Provision of Information and Technical Assistance.** The executive director shall, upon request of any member, make available to the greatest extent practicable, technical assistance and information that will further the purposes of the Appalachian program.

**c. Resolution of Controversies.** If any controversy between the personnel of a state and the Commission staff cannot be resolved informally between the parties, the Commission staff member shall promptly inform the executive director and provide



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him/her a statement of the facts and points at issue. If the executive director and the state concerned are unable, after appropriate consultation, to arrive at a consensus, the executive director shall report the matter first to the Co-Chairmen's Committee for action pursuant to Section 2.6.b.2.(d), and then to the Commission.

**Section 2.9–Office of Inspector General.**

**a. Establishment and Purpose.** There is established within the Commission, an independent Office of the Inspector General, which shall be headed by an Inspector General appointed in accordance with this Section. The purpose of the Office of Inspector General is (1) to conduct and supervise audits and investigations relating to programs and operations of the ARC; (2) to provide leadership, coordination and recommendations for promoting economy, efficiency and effectiveness in the administration of ARC programs and to detect and prevent fraud, waste and abuse in such programs and operations; and (3) to keep the Commission and Congress fully and currently informed about problems and deficiencies in the administration of ARC's programs and operations. The Inspector General shall have no responsibility for ARC program operations and shall carry out all activities and responsibilities required under the Inspector General Act of 1978, as amended.

**b. Cooperation and Assistance.** The Office of the Inspector General shall have the cooperation and assistance of all other components of ARC, its employees, grantees and contractors in carrying out its functions.

**c. Appointment.** The Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

1. With the occurrence of a vacancy in the position of Inspector General, the Commission shall declare the vacancy and establish a deadline for submission of applications for the position.
2. The Commission shall appoint a Nominating Committee, consisting of the federal co-chair, the states' co-chair and two other members selected by the state co-chair. Members may be represented on the committee by their respective alternates.
3. The Nominating Committee, using procedures it determines to be appropriate, shall nominate as many applicants as it deems best qualified for the position and shall submit such nominations in a report to the Commission signed by the federal co-chair and the states' co-chair.
4. The Commission shall appoint and employ an Inspector General from the nominations submitted to it by the Nominating Committee. The appointment may be accomplished by means of a mail ballot of the members of the Commission.
5. Nothing herein shall preclude the Commission from appointing an Inspector General in an acting or temporary capacity.

**d. Compensation.** The pay of the ARC Inspector General shall be the average total compensation (including bonuses) of the senior level executives of the Commission (Executive Director, General Counsel, Directors of Finance and Administration, Program Operations and Regional Planning and Research) calculated on an annual basis. Nothing in this section shall have the effect

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of reducing the rate of pay of any individual serving on the date of enactment of this section as the ARC Inspector General.

**e. Removal.** The ARC Inspector General may be removed from office or transferred to another position within the Commission only upon the written concurrence of the Federal Co-Chair and nine other members of the Commission.

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## CHAPTER 3—BYLAWS

### Section 3.1—Commission Actions—Votes, Mail Ballots.

#### **a. *Votes Required for Commission Action.***

1. Except as otherwise specified, the affirmative votes of a majority of the state members and the affirmative vote of the federal co-chairman are required for the Commission to take any action, including the rescission of any prior action.
2.
  - (a) Section 101 of the Act requires the presence of at least a majority of the governors for any Commission policy decision, including the approval of state, regional or sub-regional development plans, strategy statements, allocation of funds among the states, changes in the ARC Code or the designation of distressed or economically strong counties.
  - (b) In the absence of the federal co-chairman, his/her vote may be cast by the alternate federal co-chairman.
  - (c) If a majority of the governors is present, the vote of any absent governor on a policy matter may be cast by his/her alternate. The ARDA, as amended, does not require the personal attendance of a majority of the Appalachian governors at all Commission meetings and, in the absence of a governor, his/her alternate may cast the state's vote on any matter not specifically prohibited by Section 101 of the Act, unless the Commission provides otherwise. No person except a Commission member or his/her alternate may cast a vote binding on the Commission. This shall not preclude any member or alternate from authorizing state participation on a non-voting basis in any Commission meeting.
3. The approval of project and grant proposals shall be a responsibility of the Commission and shall be exercised in accordance with Section 303 of the Act.
4. The federal co-chairman may announce his/her intention to abstain in situations of state interest only. If the federal co-chairman abstains, the affirmative votes of a majority of the state members constituting the Commission are necessary to adopt a resolution except as otherwise specified.

**b. *Commission Action—Mail Ballot.*** The Commission acts by resolution or motion. Resolutions ordinarily will be used for matters of general policy while motions will be used for more specific actions. Commission actions shall be taken only at meetings; however, the federal co-chairman or his/her alternate and a majority of the governors may agree at a Commission meeting to determine the Commission vote on agenda items of a Commission meeting by mail or telegraphic ballot which will be conducted by the Commission Secretary (executive director). When any such action is taken other than at a meeting, the vote of the federal co-chairman and each state member, and the result of such vote, shall be recorded immediately by the Secretary to the Commission and shall be entered in the minutes of the appropriate Commission meeting in the manner provided in Section 3.2.c.7.

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- c. *Effective Date.*** Unless otherwise specified, all Commission actions shall take effect when adopted and remain in effect until superseded.

**Section 3.2–Meetings, Conduct of Meetings.**

- a. *Public Notice.*** Commission meetings will be open to the public and all Commission votes will be on the open record. The executive director shall ensure that adequate notice is given to the public of all meetings. The Commission may, however, hold closed sessions to consider privileged and confidential matters.

**b. *Meetings.***

1. ***Governors' Quorum Meetings.*** The Commission will hold at least one meeting each year with the presence of at least a majority of the governors and may hold as many such meetings as necessary to conduct its business. These meetings will deal primarily with the formulation or approval of Commission policy. The executive director shall, with the concurrence of the Co-Chairmen's Committee, arrange specific times and places for each meeting.
2. ***Alternates Meetings.*** As often as necessary to conduct its business, the Commission will hold a meeting with the presence of at least a majority of state alternates. An Alternates Meeting shall be held at least 15 working days prior to each Governors' Quorum Meeting in order to prepare for each meeting. The executive director shall, with the concurrence of the Co-Chairmen's Committee, arrange specific times and places for each meeting.
3. ***Teleconferencing.*** Upon agreement by the federal and states' co-chairmen, meetings of the Commission may be conducted by conference call, teleconferencing, or similar means. Commission action may be taken at such meeting if an appropriate quorum is participating. All such meetings shall be open to the public and the executive director shall ensure that adequate notice is given to the public of such meetings and that public attendance is not unreasonably restricted.

**c. *Conduct of Meetings.***

1. ***Presiding Officer.*** The federal co-chairman and states' co-chairman shall rotate the duties of presiding officer by turns at Commission meetings, except that the federal co-chairman and the states' co-chairman will preside jointly at Governors' Quorum Meetings. In the absence of the states' co-chairman at a Governors' Quorum Meeting at which he/she is scheduled to preside, the attending governors shall designate one of their number as presiding officer. The presiding officer shall rule on all questions of order, subject to appeal to the Commission, and have such other functions, powers and duties as the Commission may from time to time prescribe.

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2. **Quorum.**
    - (a) When any decision involving any matter specified in Section 101(b) of the Act is made, a majority of the governors and the federal co-chairman or his/her alternate must be present to constitute a quorum.
    - (b) When the decision does not involve any issue specified in Section 101(b) of the Act, a majority of the governors, or their respective state alternates, and the federal co-chairman or the alternate federal co-chairman must be present to constitute a quorum.
  3. **Agenda.** The executive director shall prepare a proposed agenda for each meeting after consultation with the federal and states' co-chairmen. The agenda shall include items deemed appropriate by the executive director and any item requested by a Commission member or alternate. The executive director shall transmit the agenda and appropriate information and data concerning agenda items to Commission members and alternates and the office of the states' Washington representative at least 10 calendar days prior to each meeting, unless otherwise provided, and any matter not on the agenda shall not be considered except by the affirmative vote of the federal co-chairman and nine states to do so. Issues to be brought to a Governors' Quorum meeting should reflect a level of state-federal agreement or identified disagreement reached in a prior meeting of the federal co-chairman and the alternates to enable each alternate to brief his/her governor and to allow the federal co-chairman to discuss items with the states or with federal agencies on the basis of consistent information and, when possible, on agreed positions or recommendations. The executive director shall furnish informational copies of the agenda and related materials to other interested persons, in order to ensure adequate public notice, and shall furnish same to any person upon request of any Commission member or alternate.
  4. **Order of Business.** Unless otherwise provided by the Commission, the order of business at each ARC meeting shall be as follows:
    - a. roll call by the secretary;
    - b. review and approval of minutes of previous meetings;
    - c. adoption of agenda;
    - d. reports;
    - e. consideration of policy resolutions;
    - f. old business;
    - g. new business; and
    - h. adjournment.
  5. **Resolutions.** Resolutions may be prepared under the supervision of the executive director at the request of any state, the federal co-chairman, the states' Washington representative for a state, or the executive director. Any resolution prepared by other means shall be submitted to the executive director at least 24
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- hours prior to the meeting at which it is to be considered by the Commission. A copy of each resolution shall be provided for each member of the Commission prior to consideration at any meeting. The requirements in this section may be waived by the affirmative vote of the federal co-chairman and nine states.
6. ***Rules of Proceedings.***
    - (a) The presiding officer at any meeting may move, second, and debate from the chair, and he or she shall not be deprived of any right to vote or of any other right, power, or duty of a Commission member by virtue of occupying the chair.
    - (b) The Commission member who has made a motion shall be entitled to the privilege of closing debate. This privilege can be exercised when members no longer desire recognition to speak on the motion, or when a motion for the previous question has passed, or upon reaching the limit of debate.
    - (c) A motion to reconsider may be made only by a Commission member on the prevailing side, and such a motion may be made only at the meeting at which the action is taken, or at the next succeeding meeting of the Commission.
    - (d) Except as otherwise specifically provided herein, the proceedings of the Commission shall be governed by *Robert's Rules of Order*.
  7. ***Recording Votes by the Commission.*** The vote upon every motion, resolution or action at a meeting of the Commission shall be entered in the minutes. The usual procedure will be to record the consensus of a majority of the states and the federal co-chairman. Any voting member may demand a recorded roll call on any vote.
  8. ***Minutes.*** The executive director shall prepare and distribute to the Commission members the minutes of each meeting as soon as practicable after the meeting. The minutes of any meeting may be approved without reading if they have been distributed prior to the time of approval, or by unanimous consent if they were not so distributed.
  9. ***Certification of Resolutions.*** As soon as practicable after voting by the Commission, the executive director shall, after providing the co-chairmen an opportunity for review, certify resolutions adopted by the Commission and distribute them to the Commission members.

### **Section 3.3—Hearings.**

- a. ***Public Hearings.*** The Commission may conduct public hearings as it deems appropriate for carrying out its functions. No public hearing shall be held in a state without the consent of the member from that state.

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- b. *Hearing Procedures.*** For each hearing, the executive director shall prepare a notice that shall:
    - 1. state the date, time, place and business of the hearing; and
    - 2. be mailed or otherwise distributed, by the executive director, at least ten days before the hearing, to each member of the Commission, all persons who have made written request of the executive director for notice of ARC hearings, the daily press and wire services, and any other person, group, organization, public bodies or agencies which the executive director or any member of ARC deem appropriate.
  - c. *Public Access to Documents.*** At least seven days prior to such hearings there shall be available to the public at the Commission offices such budgets, plans, summaries, maps, findings, statements, orders, or other documents as explain, detail, amplify, describe, or otherwise indicate the action which the Commission is considering and with respect to which the hearing is being held.
  - d. *Witnesses.*** The Commission may invite the general public and/or specific persons, organizations, agencies, or other bodies to appear and testify at such hearings.
  - e. *Oaths.*** Any Commission member is authorized to administer oaths for the purpose of conducting Commission hearings.
  - f. *Questioning.*** Commission members and alternates may question witnesses under policies and guidelines established by the Commission.

### **Section 3.4—Commission Administrative Expenses.**

The Act requires the state members to pay 50 percent of the Commission's administrative expenses, hereafter referred to as the states' contribution. The state members have the responsibility to determine the share of the state's contribution to be paid by each state, and no state may vote or receive assistance under the Act while delinquent in the payment of its share. For each fiscal year, the states' contributions shall be determined on the basis of the Commission's approved budget and a method of apportionment of costs to be determined by the states.

### **Section 3.5—Contingency Re-allocations.**

- a. *Purpose.*** This section provides special contingency procedures for the re-allocation of uncommitted balances and recovered funds in order to ensure maximum efficient use for the benefit of the Appalachian Region of all funds available to the Commission to carry out programs authorized by the ARDA if no program appropriations are forthcoming for the Commission.
- b. *Determination of Necessity for Implementation of Contingency Re-allocation Procedures.*** The federal co-chairman and the states' co-chairman shall determine whether the contingency procedures should be implemented on the basis of the

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criteria in this section. On or before September 15 in any fiscal year, the co-chairmen shall review the status of legislation in the Congress affecting the Commission. The contingency re-allocation procedures and priorities set out in this section shall be implemented if (1) the co-chairmen determine that it is unlikely that a usual appropriation for ARDA programs will be enacted for the following fiscal year at levels substantially the same as those levels appropriated in recent fiscal years in which the Commission made allocations, or at levels sufficient to make allocations by current allocation formulas reasonable, and (2) the co-chairmen determine that the Commission and the Appalachian programs, as authorized in the Act, are entering a phase in which program funds will not be generally available.

- c. *Re-allocation to Special Contingency Program Fund.*** If the determinations required by Section 3.5.b. have been made, all uncommitted balances as of September 15 in the state's allocations for which the state has no apparently approvable projects already on file shall be immediately re-allocated to the Special Contingency Program Fund. Apparently approvable projects are those filed with the Commission that have a reasonable likelihood of receiving Commission approval during the current fiscal year.

All uncommitted balances of program funds in any and all other special purpose allocations, fund set-asides, reservations, etc. as of September 15 shall be immediately re-allocated to the Special Contingency Program Fund.

On and after September 15, all program funds recovered from project underruns or from any other sources shall be re-allocated to the Special Contingency Program Fund, except that recovered funds which under usual ARC policy would be returned to a state's allocation will be returned to that state only to the extent needed for apparently approvable projects filed with the Commission. Where it is impossible or impractical, because of federal agency reporting methods or lack of information, to identify the original allocation from which reported recovered funds are drawn, such recovered funds shall be re-allocated to the Special Contingency Program Fund.

- d. *Special Contingency Program Fund Eligible Uses and Priorities.*** Funds in the Special Contingency Program Fund shall be available for projects and purposes approved by the Co-Chairmen's Committee.
- e. *Emergency Reallocations.*** In the event of an emergency that disrupts Commission operations, the Co-Chair's Committee may make a determination that continued operations will require extraordinary temporary expenditures and approve an allocation of recovered funds, or a reallocation of previously allocated funds, of up to \$100,000 to cover such expenditures.



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## CHAPTER 4—MANAGEMENT

### Section 4.1—Management System.

The Appalachian Regional Development Act, as amended, provides that the Commission's executive director shall be responsible for carrying out the administrative functions of the Commission, for direction of the Commission staff and for such other duties as the Commission may assign. Accordingly, the Commission hereby instructs the executive director to establish and maintain a system of management for the Commission in accordance with the principles set forth in this chapter and in accordance with applicable laws. The executive director shall publish and keep current complete descriptions of the Commission's management system. The executive director shall consult on a continuing basis with the Co-Chairmen's Committee on any management issues and in particular on any significant changes he/she proposes to make to the Commission's management system, and shall report to the federal co-chairman and alternates on management-related issues on a regular basis, no less frequently than each Commission meeting of the federal co-chairman and alternates.

### Section 4.2—Financial Management.

- a. General.** The executive director shall establish and maintain a system of financial management sufficient to ensure accountability for all funds appropriated to the Commission or otherwise coming into the possession of the Commission. The financial management system shall meet the requirements of the ARDA and comply with relevant accounting standards and, to the extent practicable, follow the best practices of the federal government in financial management.
- b. Written Policies and Procedures.** The executive director shall maintain, in writing, financial management policies and procedures including, at least, policies and procedures relating to the following: payments, imprest funds, travel management, purchasing and procurement, and property management.
- c. Records.** The executive director shall maintain complete and appropriate records and documentation of all obligations, expenditures and other transactions in accordance with current federal standards and requirements.
- d. Reporting.** The executive director shall ensure the accurate and timely completion and submission of all financial reports in accordance with the requirements of the U.S. Treasury, the Office of Management and Budget and other government agencies and offices.
- e. Independent Audit.** When and as required by General Accounting Office procedures, the Commission shall select and designate qualified certified public accountants to make an audit of the financial accounts of the Commission.

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- f. Annual Operating Budget.* Not later than one month preceding the beginning of each fiscal year, the executive director shall prepare, and submit to the federal co-chairman and alternates for approval, an operating budget for the fiscal year.

**Section 4.3–Personnel.**

*a. Appointments.*

1. *Staff.* The executive director is authorized to appoint, employ, remove, and provide for the compensation of, the Commission staff.
2. *Others.* The executive director is authorized to appoint, or otherwise obtain the services of, experts, consultants or other necessary personnel, whether individuals or organizations, for the purpose of providing expert advice, technical or research assistance, or other necessary assistance for the Commission or its member states.

- b. Personnel System. Manual.* The executive director shall establish and maintain a system of personnel management in accordance with the principles and requirements set forth in this section and in accordance with the provisions of the ARDA and other applicable federal, state, and local laws. The executive director shall consolidate all personnel policies and procedures into an ARC personnel manual which shall be maintained and kept current and made readily available to Commission staff.

*c. Compensation.*

1. *General.* The principle of equal pay for substantially equal work shall be followed and the compensation system will be performance based and variations in such rates shall be proportional to substantial differences in the difficulty and responsibility of the work performed.

Commission positions, with the exception of the executive director's position, shall be divided into grades of difficulty and responsibility in general accord with the system of grades used by the federal government. Compensation for a particular grade shall be within the range for that grade in the federal government's General Schedule. There shall be a written description for each position, briefly stating the position's major duties and responsibilities.

Employees hired prior to January 1, 2020, and for as long as they remain in their pay grade as of that date, will continue to be covered by the provision of the immediately preceding Code section 4.3.c.3, which states "Commission employees shall receive step increases according to a schedule similar to that used by the federal government."

The executive director is authorized to approve promotions on the basis of increased duties and responsibilities. The executive director may authorize

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payments of premium compensation and may approve a system of incentive pay and merit awards. The Co-Chairmen's Committee is authorized to approve premium compensation or a system of incentive pay and merit awards for the executive director.

2. ***Reduction, Suspensions and Terminations.*** The executive director is authorized to make reductions in grade or pay or suspensions without pay, or to terminate the employment of Commission employees, for such cause as will promote the efficient conduct of the Commission's business, or for the purpose of effecting economy in Commission operations, or for such other reason as is determined to be in the best interest of the Commission. Such action by the executive director shall be subject to subsection 4.3.c.3 below.
3. ***Appeals.*** The executive director shall establish and publish an appeal process, available to all permanent employees who have completed probationary periods, for any denial of a step increase, or any reduction, suspension or termination. Such process shall provide the affected employee adequate notice of the action to be taken and reasonable opportunity to be heard. The decision of the executive director upon such appeal shall be final and the executive director shall report any such decision to the Co-Chairmen's Committee. Nothing herein shall be interpreted to prohibit the executive director from imposing on a Commission employee an immediate temporary suspension with or without pay when such action is determined by the executive director to be in the best interest of the Commission.

***d. Benefits.***

1. Employees of the Commission shall be provided benefits similar to those offered by other governmental or comparable nongovernmental organizations. Such benefits shall include, at least, medical, disability, and life insurance, retirement, severance pay, and injury and unemployment compensation. Leave, including annual, sick, and other, shall be provided in general accord with the practice of the federal government and as required by law.
2. As authorized by Section 106(5) of the ARDA, the Commission has contracted with the Office of Personnel Management of the United States for continued coverage in the retirement program and employee health and life insurance programs of the federal government of Commission employees who have a break in service of less than three days between the end of their federal employment and the start of their Commission employment.

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**e. *Equal Employment Opportunity.***

1. It is the policy of the Appalachian Regional Commission to provide equality of opportunity in employment in the Commission for all persons; to prohibit discrimination because of race, color, religion, sex, national origin, age, disability, or any other protected class in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative action at every management level within the Commission.
2. The Commission is committed to maintaining a work environment that is free of any form of unlawful discrimination or violation of policy. Privacy and constitutional rights are to be protected against inquiries into, or actions based on, non-job-related conduct, such as religious beliefs, sexual orientation or community or social affiliations.
3. The executive director is instructed to establish and maintain procedures for conciliation, review and resolution of complaints of discrimination. Such procedures shall provide adequate notice and a reasonable opportunity for the complainant to be heard. A decision rendered by the executive director upon a complaint of discrimination shall be final and the executive director shall report any such decision to the Co-Chairmen's Committee.

**f. *Employee Conduct Principles.***

1. ***Persons Subject.*** The Employee Conduct Principles set forth in this section are applicable to all employees of the Appalachian Regional Commission. They do not apply to the federal co-chairman or his/her staff, the states' Washington representative or his/her staff, or the state members, their alternates, or members of their staffs.
2. ***Maintaining Integrity of Commission Actions.*** The maintenance of the highest standards of honesty, integrity, impartiality, and conduct of employees of the Appalachian Regional Commission is essential to ensure the proper performance of Commission business and the maintenance of public confidence in the Commission. Therefore, every Commission employee shall avoid any action that might result in, or create the appearance of:
  - a. using his/her ARC office or position for private gain;
  - b. giving preferential treatment to any person;
  - c. impeding Commission efficiency or economy;
  - d. losing complete independence or impartiality;
  - e. making a Commission decision outside official channels; or

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- f. affecting adversely the confidence of the public in the integrity of the Commission.
  3. ***Ethical Requirements.*** The executive director shall include in the Commission Personnel Manual specific ethical prohibitions and requirements as necessary to ensure the integrity of Commission actions and promote the efficiency of Commission operations.
  4. ***Conflicts of Interest. Financial Disclosure.*** Section 108 of the ARDA contains a broad criminal prohibition against Commission employees and others engaging in conflicts of personal financial interest. The executive director shall take actions to require that all members of staff responsible for making decisions or taking actions that have economic impact disclose financial interests, outside employment, or other potential conflicts of interest affecting such decisions or actions.

Annually, the executive director shall file with the federal co-chairman a statement of financial interest and other employment, using the confidential financial disclosure form prescribed by the U.S. Office of Government Ethics. The form shall be filed on or before October 31 of each year.

5. ***Political Activity.*** Commission employees shall abide by the provisions of the Hatch Act found in Chapter 15 of Title 5 of the United States Code, "Political Activity of Certain State and Local Employees." The executive director shall ensure that Commission staff is fully informed about the prohibitions and requirements of this law.

#### **Section 4.4—Conduct of Investigations.**

The executive director is authorized to conduct, or cause to be conducted, investigations of the facts and circumstances of alleged violations of Commission policy. Such investigations shall be conducted in accordance with procedures the executive director shall establish and publish, taking into consideration the privacy and other rights of the parties involved.

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## CHAPTER 5—APPALACHIAN DEVELOPMENT PLANNING

### Section 5.1—General Policy on Planning.

In accord with the Act, the Commission has established a development planning process by which the Commission, states and local governments set forth goals, objectives, priorities and policies for the Region and identify priority programs and projects for Commission assistance. The Commission's development planning process also provides for identifying and targeting areas of special regional concern.

As part of the development planning process, the Commission has adopted the strategic plan set forth in Chapter 6 below. This plan will be reviewed at least annually and updated as needed in accordance with the results of ongoing Commission evaluations affecting each strategic goal area.

The governor of each state prepares and submits for Commission approval a State Appalachian Development Plan and an Annual Strategy Statement, which take into consideration, as appropriate, area-wide action programs or similar plans prepared by local development districts (LDDs). This process gives each state flexibility to establish goals, objectives and priorities for the Region and to identify programs and projects to receive ARC funding assistance.

- a. *Coordination of Planning.*** In developing regional plans, state plans and area-wide action programs or similar plans, the Commission, the states and the local development districts shall give due consideration to the goals, objectives and priorities of the other levels of planning and, to the maximum extent possible, consult with the citizens of the Region as these plans are being developed. State Appalachian Development Plans and Strategy Statements shall reflect the governor's goals, objectives and priorities within the context of the Commission's strategic goals and objectives.
- b. *Coordination of Investments.*** The Commission understands that the Appalachian Development Planning Process at all levels must necessarily involve more than just the programs and resources of the Appalachian Regional Commission and, therefore, resolves to make maximum use of other federal and state resources to further the objectives of the Appalachian Development Program.
- c. *Public Participation in the State Planning Process.*** Each state and LDD will assure an adequate opportunity for the affected public to participate in the state and regional planning process.

### Section 5.2—Regional Development Plan.

The Commission's programs are vital to the development of Appalachia. They provide a balanced and comprehensive approach to help the Region address its special problems, to

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promote its economic development, and to establish a framework for cooperative public and private action on a regional basis.

The Commission's strategic plan was adopted by the Commission on November 16, 2015, and its essential elements are set forth in Chapter 6 of this Code. That plan together with the following documents constitute the Regional Development Plan:

- a. the Commission Code;
- b. the Appalachian State Development Plans;
- c. the Annual Strategy Statement of each Appalachian state;
- d. the Annual Program Budget; and
- e. guidelines implementing Commission programs and performance measures.

### **Section 5.3—State Development Plan.**

- a. *Submission. Term.*** The governor of each Appalachian state shall submit a State Appalachian Development Plan within 10 months after taking office. The plan may be made effective for the entire term of the governor or for such shorter term as the governor deems appropriate, except that an approved plan shall remain effective until such time as it is amended or a new plan is approved by the Commission.
- b. *Approval.*** Each State Appalachian Development Plan must be approved by the Commission at a Governors' Quorum Meeting or by means of a mail ballot authorized at such a meeting. Modifications and amendments to the plan must be approved by the Commission at a Governors' Quorum Meeting or by authorized mail ballot.
- c. *The Plan.*** Each State Appalachian Development Plan shall set forth the governor's goals, objectives and priorities for the Region and identify the needs on which such goals, objectives and priorities are based. The State Development Plans shall reflect the Commission's strategic plan, its goals and objectives, and its guiding principles and shall describe the inter-relationship between economic development in the Appalachian portion of the state and the Appalachian Development Highway System corridors located in the state. The plan shall also contain a description of the state's Appalachian development and planning organization and coordination process, including the roles of LDDs and citizens. Each state shall include, as a part of its State Appalachian Development Plan, a description of the methods used to measure the relative financial resources of project applicants and to ensure an equitable allocation of state contributions for projects to its Appalachian area, and shall explain the derivation, rationale and application of such methods.

### **Section 5.4—Annual Strategy Statement.**

- a. *General.*** Prior to December 15 of each year, the governor of each state shall submit a Strategy Statement describing the state's program for achieving the goals and objectives contained in its state Development Plan. The Strategy Statement shall describe the areas of emphasis for the use of ARC funds in the Region during the

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coming fiscal year and, to the extent applicable, explain approaches under consideration to achieve a goal or goals with resources other than ARC grant funds. The Strategy Statement shall set forth, and explain the reasons for, the state's cost-sharing or matching requirements for ARC grants as well as any other applicable funding limitations. The Strategy Statement shall also explain whether, and how, exceptions to such requirements and limitations will be granted. The Strategy Statement shall include a description of State policies and other efforts to address the energy efficiency of proposed construction projects. (See also Section 7.5.d)

- b. *Approval, Amendments.*** The Strategy Statement must be approved at a Governors' Quorum Meeting or by means of a mail ballot authorized at such a meeting. Amendments to the Strategy Statement that are not inconsistent with the state's Development Plan may be approved at either a Governors' Quorum Meeting or an Alternates Meeting. An approved Strategy Statement shall remain in effect until such time as it is amended or a new Strategy Statement is approved by the Commission.

**Section 5.5–Projects.**

States may submit project applications for any project which is in accord with its approved State Appalachian Development Plan and its Annual Strategy Statement according to such schedule as the federal co-chairman and alternates may approve. The executive director shall institute procedures, or take other action, to assure the timely review of state project applications.

Projects shall be certified by the state in accord with Section 303 of the Act. Projects meeting the provisions of the Act and the provisions of this Code and any applicable guidelines will be approved in accordance with the procedures of Section 223 and 303 of the Act.



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## CHAPTER 6—INVESTING IN APPALACHIA’S FUTURE: ARC STRATEGIC PLAN

### Section 6.1—ARC’s Vision for the Region’s Future.

On November 16, 2015, the Appalachian Regional Commission approved “*Investing in Appalachia’s Future: The Appalachian Regional Commission’s Five-Year Strategic Plan for Capitalizing on Appalachia’s Opportunities, 2016-2020.*” In that document ARC’s vision for the Region’s future was announced, as follows:

**Appalachia is a region of great opportunity that will achieve economic parity with the nation.**

This chapter codifies the essential elements of the strategic plan, including the ARC mission statement, its guiding principles and its goals. This chapter describes the respective responsibilities of the states and the Commission to achieve the goals and authorizes the federal co-chairman and alternates to establish, amend and waive, as necessary, implementing guidelines for each goal, including guidelines for benchmarking and evaluating programs.

The ARC strategic plan is a living document and, as such, it may be amended from time to time to reflect changed circumstances and the experience gained by the Commission partnership members in the implementation of the plan. Amendments to the plan’s essential elements, including the mission statement, guiding principals and goals, shall be made only at a Governors’ Quorum Meeting. Amendment or waiver of implementing guidelines authorized by this chapter may be approved at a Commission meeting of the federal co-chairman and alternates.

### Section 6.2—ARC’s Mission.

ARC’s mission is to innovate, partner and invest to build community capacity and strengthen economic growth in Appalachia.

### Section 6.3—Guiding Principles.

- a. **ARC’s Commitment.** At all levels, ARC is committed to investing organizational and financial resources in ways that:
  1. Are strategic and encourage alignment of projects with the goals of community and regional plans.
  2. Encourage and reward collaborative efforts to achieve common ends, with specific focus on connecting economically distressed counties and areas to Region-wide economic opportunities.
  3. Achieve the greatest impact possible, leveraging ARC’s limited resources to bring more resources into the Region.
  4. Hold ARC, its partners and its grantees accountable for achieving performance targets and helping Appalachia prosper.
- b. **Strengthening ARC’s Capacity to Invest.** ARC is committed to advancing community economic development in the Appalachian Region by emphasizing

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strategic focus, collaboration, impact and accountability. To this end, ARC will pursue the following activities:

1. Identify, document, and proactively share exemplary practices and new ideas with the Region's communities on a regular, timely, and consistent basis so they can maximize economic opportunities.
2. Develop and share data and research that is actionable and useful to communities as they make strategic decisions about their assets and the economic opportunities that offer the best future prospects.
3. Advocate for Appalachia and develop co-investment partnerships with other organizations at all levels—local, regional, national and global.
4. Provide technical assistance and referrals so communities have the capacity and connections needed to pursue opportunities.
5. Work with local development districts in the Region and help build their capacity to support local communities.
6. Create and effectively use advisory councils and other regional networks to provide input on sectors and building blocks that contribute to regional prosperity.
7. Invest in pilot initiatives to demonstrate new and promising practices in the Region.
8. Catalyze, facilitate and strengthen partnerships and collaboration across the Region.
9. Foster coordination among the range of economic development plans and initiatives taking root in the Region.
10. Provide regular opportunities for public, private and nonprofit stakeholders to inform ARC's investments.

#### **Section 6.4—Goals.**

- a. ***Economic Opportunities.*** Invest in entrepreneurial and business development strategies that strengthen Appalachia's economy.
- b. ***Ready Workforce.*** Increase the education, knowledge, skills and health of residents to work and succeed in Appalachia.
- c. ***Critical Infrastructure.*** Invest in critical infrastructure—especially broadband; transportation, including the Appalachian Development Highway System; and water/wastewater systems.
- d. ***Natural and Cultural Assets.*** Strengthen Appalachia's community and economic development potential by leveraging the Region's natural and cultural heritage assets.
- e. ***Leadership and Community Capacity.*** Build the capacity and skills of current and next-generation leaders and organizations to innovate, collaborate and advance community and economic development.

#### **Section 6.5—Implementing Guidelines: Performance Management.**

The federal co-chairman and alternates shall establish guidelines for the implementation of the Commission's strategic plan. In particular, the federal co-chairman and alternates shall establish for each strategic goal area guidelines that shall contain specific objectives and the project criteria, descriptions of eligible and ineligible activities and such other requirements, not inconsistent with this Code, as they deem essential to the achievement

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of the goals and objectives. Guidelines authorized in this section may be amended and waived by the federal co-chairman and alternates, as necessary, in the interest of the effective implementation and administration of Commission programs. (See also Section 7.5.e)

In establishing guidelines, the federal co-chairman and alternate shall include, for each strategic goal area, performance goals or milestones and indicators to measure the effectiveness of Commission programs that are capable of being used to support the continuation or revision, if necessary, of the Commission's strategic goals and objectives.

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## CHAPTER 7—GENERAL PROVISIONS FOR THE AREA DEVELOPMENT PROGRAM

### Section 7.1—Designation of Program.

The Commission's Area Development Program reflects the Commission's strategic goals and includes the following components:

- a. Economic Opportunities
- b. Ready Workforce
- c. Critical Infrastructure
- d. Natural and Cultural Assets
- e. Leadership and Community Capacity

Also specially included in the Area Development Program are activities traditionally supported by the Commission:

- f. LDD administration and planning;
- g. state technical assistance; and
- h. state and commission research.

In consultation with its partners, ARC may identify a limited number of strategic objectives annually as regional priorities. Regional priorities can reflect the need to redouble efforts in one or more goal areas to meet the Commission's ten-year performance goals. The regional priority status can support and promote innovation in a particular goal area, or use ARC resources to focus on a sector of unique opportunity or underperformance.

Regional priorities support the strategic plan by coordinating a concerted effort by the 13 Appalachian states and federal government to address an area of critical importance. The designation of a strategic objective as a regional priority can involve the allocation of additional resources to that strategic objective. The targeted resources may be special advisory councils with the charge to develop region-wide activities, or regional priority status may involve the use of special funds earmarked for a specific strategic objective.

### Section 7.2—Allocation.

#### a. *Program Allocation Principles.*

1. The Commission allocates funds appropriated for the Area Development Program by means of annual resolutions or, if necessary and authorized, by means of mail ballot. Area Development funds may be allocated for programs and projects, as the Commission deems appropriate, including, but not limited to the following: the General Area Development and Distressed Counties Programs, the Local Development District Administrative Grants Program, the Commission Research and Technical Assistance Program, the Co-Chairman's Committee Fund, and Basic Agency Administrative expenses. In some components of the

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Area Development Program, such as the General Area Development and Distressed Counties programs, the Commission further allocates funds among some or all of the Appalachian States.

2. Funds appropriated in a fiscal year shall be allocated for Area Development programs in accord with the levels proposed for such programs in the budget request submitted to Congress for that fiscal year. In the event that actual appropriations and funds made available to the Commission differ from such requested budget levels, the allocation shall be based on the allocation policies agreed to by the Commission and on legislative instructions. Funds approved for a project in a State pursuant to a congressional directive shall be derived from that State's ARC allocation.

**b. Use of State Allocation.** Subject to limitations in appropriation acts, non-highway allocations shall be available for funding of projects and programs authorized under ARDA. These allocations shall be available for projects and programs, for any area of the state's Appalachian Region, which are in accord with the approved state's Appalachian Development Plan and Strategy Statement and meet the other applicable provisions of this Code.

**c. Reallocation.** All funds allocated to a state for the Area Development Program must be approved for grants by the Commission within twenty-four months after the appropriation becomes available to the state. Area Development funds not approved for grants after twenty-four months shall be immediately redistributed by the Co-Chairmen's Committee among all the other states that do not have such funds likewise subject to redistribution. Redistribution among the eligible states shall be accomplished by the Co-Chairmen's Committee on an equitable basis. Nothing contained in this section shall be construed to supersede legislative instructions regarding the expenditures of funds appropriated to the Commission.

### **Section 7.3—General Project Approval Criteria.**

**a. Strategic Goals. Exception.** In addition to meeting the requirements of the ARDA of 1965, all projects for which approval is requested under the Area Development Program must be supported by a demonstration that they will contribute to the achievement of one or more of the Commission's strategic goals, except that a state may request, in accordance with Section 303 of the ARDA, approval of a project or projects without such supporting demonstration, to take advantage of special development opportunities or to respond to emergency economic distress.

**b. LDD Administrative Grants. State Technical Assistance.** Notwithstanding 7.3.(a) above, LDD Administrative and Planning Grants under Section 302(a) of the ARDA and state technical assistance grants for the administration of a State's Appalachian Program, including planning, evaluation, coordination, and program development,

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shall be assumed to contribute to the achievement of the strategic goals without the need of a special demonstration.

**c. *Additional Criteria.*** All ARC-assisted projects shall:

1. relate to one or more goals and objectives set forth in the approved State Appalachian Development Plan;
2. be included in the state's approved Strategy Statement;
3. provide reasonable assurance that the project makes maximum use of all available federal and non-federal funds;
4. address a documented need set forth in the state plan;
5. provide reasonable assurance that the project is not inconsistent with applicable state and/or federal plans, policies and regulations;
6. be signed by the governor or state alternate;
7. provide reasonable assurance of the availability of non-federal shares of project costs, where matching funds are required;
8. provide reasonable assurance that there is management capability to carry out the project or program effectively; and
9. contain detailed outcome measurements by which grant expenditures may be evaluated.

**d. *Relative Financial Resources and Equitable Allocation of State Funds.*** The Commission, in approving or recommending assistance under the Act, will ensure that (a) the relative financial resources of the project applicants are considered, and (b) any state contributions to projects of such kind in the state are on a basis that is equitable to its Appalachian area.

**e. *Match Requirements.*** In accordance with Section 5.4, each State shall set forth in its annual Strategy Statement the State's cost-sharing or matching requirements for ARC grants within the limit imposed by the ARDA and subsections (f) and (g) below.

**f. *Multi-County Projects.*** Special matching rules apply to certain projects carried out in more than one county, as follows:

- (1) If there is a distressed county in a project:
  - a. and at least half the counties are distressed, the project may be funded at up to 80% of project costs;
  - b. and at least half the counties are in some combination of distressed and at-risk, ARC assistance can be the higher of 70% of project costs or the average percentage applicable to the various counties in the project; and
  - c. but fewer than half the counties are distressed, ARC assistance can be the higher of 50% of project costs or the average percentage applicable to the various counties in the project.

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- (2) If there is no competitive county or attainment county in a project, and at least half the counties are at-risk, the project may be funded at up to 70% of project costs.
  - (3) All other projects shall be funded at the average percentage applicable to the various counties in the project; except that the portion of a project, which is attributable to an attainment county in a project not including a distressed county, shall be considered ineligible for ARC assistance and may not be considered for matching purposes.

(Note: ARC assistance for health-related project authorized under Section 202 of the ARDA for the third year of operations is limited to 75% of project costs; and ARC assistance for housing site development projects under Section 207 of the ARDA is limited in all instances to 10% of project costs.)

- g. *Revolving Loan Funds.*** Subject to the waiver provisions in Section 7.6, loans from an ARC-assisted revolving loan fund, using ARC funds approved after November 13, 1998, are limited to 30% of project costs in an ARC-designated competitive county and are prohibited in an ARC designated attainment county.

#### **Section 7.4—Guidelines.**

In addition to the guidelines required by Section 6.5, the federal co-chairman and alternates are hereby authorized to establish guidelines as necessary for the implementation of the Commission's Area Development Programs. Such guidelines may be amended and waived by the federal co-chairman and alternates as necessary for the effective administration of Commission programs.

#### **Section 7.5—Distressed Counties Program.**

- a. *General.*** The Commission recognizes that there are counties within Appalachia with persistent, long-term problems that have resulted in extraordinary levels of economic and human distress. The Commission is committed to providing special assistance to these distressed counties, so that their residents are better able to address problems, realize opportunities, and effectively participate in setting the course of their future development.
- b. *Indexed-Based Economic Classification System.*** The following economic indicators shall be used to designate the economic classification status of Appalachian counties—per capita market income, the poverty rate, and the three-year unemployment rate. Using data for these indicators available on January 1, the Executive Director shall produce a composite index ranking of all counties in the nation based on comparisons of the three indicators for each county to national averages. On the basis of this index, the Commission shall designate for the succeeding fiscal year each of the following:

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1. **Distressed Counties:** Appalachian Counties whose composite index value ranks in the lowest 10% of all counties in the nation;
  2. **At-risk Counties:** Appalachian Counties whose composite index value ranks above the lowest 10%, but not greater than the lowest 25%, of all counties in the nation;
  3. **Competitive Counties:** Appalachian Counties whose composite index value ranks in the highest 25%, but less than the highest 10%, of all counties in the nation;
  4. **Attainment Counties:** Appalachian Counties that have a composite index value in the highest 10% of all counties in the nation;
  5. **Transitional Counties:** Appalachian Counties not classified as distressed, at-risk, competitive, or attainment are categorized as transitional.

*c. Allocation of Resources.* The Commission will allocate up to 30 percent of Commission area development funds for use in distressed counties. Funds will be distributed to the states based on a formula agreed to by the Commission. Such funds may be used only in Commission-designated distressed counties. States are encouraged to continue appropriate levels of assistance to the designated distressed counties from their regular area development allocations.

*d. Strategy Statement.* Each state having designated distressed counties will include in its annual Strategy Statement special objectives and strategies and funding criteria for its distressed counties program. Projects that facilitate the process of building local capacity, that result from a collaborative process, or that promote regional alliances are especially encouraged.

States are encouraged to work with their local partners to assure that Commission-funded activities in distressed counties are consistent with local community economic strategic plans. Local plans should identify community needs, actions for improvement, and capacity to sustain activities in the long term, and should include measurable outcomes.

*e. Guidelines.* In establishing guidelines for implementation of the Commission's goals, the federal co-chairman and alternates shall take into consideration the limited resources available to distressed counties and may establish special criteria or waiver provisions to facilitate effective use of distressed counties funds. (See Section 6.5)

*f. Other Principles of Assistance.*

1. The states and the Commission will seek special resources from other federal, state and local, public and private sources for programs and special development opportunities in distressed counties.
2. In addition to allocating funds for distressed counties, the Commission annually will review the need for specific research to assess common factors affecting distressed counties and for any policy-development or special-technical assistance response required to address identified problems.



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3. In implementing Commission special initiatives, the Commission will provide or arrange for special technical assistance for distressed counties.
  4. The Commission will provide forums for highlighting best practices and showcasing new ideas in distressed counties, for sharing information among Commission partners and grant recipients on strategies, opportunities, appropriate technologies, community building and progress on the Commission's goals.
  5. The Commission will assist states in the development of benchmarks and performance measures for distressed counties.
- g. *Distressed Areas.*** The Commission also recognizes that some areas in other counties of the region are characterized by high poverty or low-income levels to such an extent when compared to national averages that these areas should be considered severely and persistently distressed. Such areas should be an important focus of Commission assistance. Accordingly, the Commission designates as “distressed areas,” those census tracts within non-distressed counties, other than competitive and attainment counties, with a median family income no greater than 67 percent of the U.S. average and with a poverty rate that is 150 percent of the U.S. average or greater. Such designations shall be revised for the fiscal year immediately following release of decennial census data affecting these criteria.

#### **Section 7.6—Economically Strong Counties.**

- a. *General.*** The Commission recognizes that the economic indicators in some Appalachian counties now equal or exceed national averages (attainment counties) and that other counties in the Region have attained substantial economic parity with the rest of the nation (competitive counties). Accordingly, the Commission has determined that funding assistance for projects located in such counties should be partially or, in some instances, entirely, restricted.
- b. *Attainment Counties. Funding Restrictions.*** No ARC assistance will be available for projects located in a designated attainment county, except for projects noted in Section 7.6.d below or projects for which a waiver has been obtained in accordance with Section 7.6.f.
- c. *Competitive Counties. Funding Restrictions.*** ARC assistance will be limited to no more than 30 percent of eligible project costs for projects located in a designated competitive county, except for projects noted in Section 7.6.d. below or projects for which a waiver has been obtained in accordance with Section 7.6.f.
- d. *Exceptions.*** The funding restrictions in this section shall not apply to Appalachian Development Highway System projects funded under Sections 201 of the ARDA and grants for local development district administrative expenses funded under Section 302(a)(1) of the ARDA. In addition, multi-county projects that include a county or counties designated attainment or competitive, as well as a county or counties

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designated distressed, shall not be subject to the restrictions in this section if the project will be of substantial direct benefit to one or more distressed counties.

- e. *Allocations Not Affected.*** Nothing contained in this section shall be understood to prohibit the Commission from allocating appropriated funds among the states using data derived from all of the counties included in the definition of the Appalachian Region in Section 403 of the ARDA.
- f. *Waiver or Modification.*** The funding restrictions in this section may be waived, or modified, at the request of a state and upon the approval of the federal co-chairman and alternates. A waiver or modification request for a particular project shall be supported by a demonstration of one or more of the following:

  - 1. the existence of a significant pocket of distress in the part of the county in which the project is carried out; or
  - 2. the existence of a significant potential benefit from the project in one or more areas of the Region outside the designated economically strong county.

#### **Section 7.7–LDD Assistance.**

- a. *General.*** The ARDA clearly recognizes the key role of multi-county planning and development agencies (hereafter referred to as local development districts or LDDs). To emphasize this role, the Commission provides financial support for the local development districts and encourages them to build a staff of professional individuals in a variety of areas to provide assistance to the Region's communities in the planning and implementation of special projects and programs, and in promoting a variety of activities that concentrate on creating and retaining jobs in the area.
- b. *State Responsibility.*** There shall be in each Appalachian state a single system of local development districts formally designated in accordance with Section 301 of the ARDA.

  - 1. ***Program Administration.*** Unless otherwise requested by the state, grant funds for LDD projects within a state shall be directed to the state agency having administrative responsibility for the LDD program, and shall be disbursed, as appropriate, to carry out the purposes of the grant.
  - 2. ***Role of Appalachian State Member.*** Each Appalachian state member shall have a major and continuing role in organizing the planning effort for the development and execution of his/her state's Appalachian Development Plan.
- c. *LDD Goals and Objectives.*** The goals and objectives of the local development districts shall be in general accord with any overall Commission or state goals and objectives. The local development districts should actively pursue three key roles in the development of the Region:

  - 1. They should perform a wide range of areawide planning, program development and program coordination functions.

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2. They should assist local governments in the provision of local services.
  3. They should promote and actively pursue a public/private partnership at the local level as the basis for developing and strengthening the local economy.

**d. *Representation and Board Composition.*** The local development districts should encourage and facilitate active citizen participation in their organization. At least the majority of the districts' membership should consist of elected officials or their appointed representatives. The remainder of the membership should permit representation of major regional citizen interests and leadership, including representation of low-income and minority groups; and representation of the private sector. Provision should be made for strong advisory groups to represent various functional interests.

#### **Section 7.8—Research.**

**a. *State Research.*** State research projects, funded from the States' area development allocations, are projects in which shared concerns are individually addressed: they focus on problems that are shared by all the states and in which there is a Commission-wide interest, but where the particular approach being used has the most immediate and maximum impact in only one or two states, and the relative benefits to a local area exceed the benefits to the Region as a whole. Projects that improve state program management, that deal with the impact of major public and private investments, or that address problems and opportunities dominant in a particular state are examples of state research projects. The states are expected to develop research proposals designed to find answers to the special problems inhibiting economic development which they may uncover in planning their Appalachian programs.

**b. *Commission Research.*** The purpose of the Commission research program is to provide information, insights and practical experience to assist the Commission and the states to make existing programs more effective and in providing a sound basis for implementing new programs and policies. The research program should continually focus on priority regional issues, concerns, needs and opportunities. The results of Commission research projects are expected to have a high probability of affecting Commission operations. Unlike state research activities, the benefits of which may be confined to a particular state, research projects funded from Commission research allocations are intended to have regional significance with benefits accruing to the entire Region or to a substantial multi-state portion of the Region.

#### **Section 7.9—Discretionary Grant Authority.**

From the discretionary grant authority provided in Section 302 of the ARDA, a portion equal to the amount available in the Co-Chairman's Committee Fund is reserved for Co-Chairmen's Committee projects. The remainder of the authority shall be allocated among the states, with modifications to be approved as necessary by the Co-Chairmen's Committee, and shall be available for use in projects implementing a Regional Initiative, as declared annually by the Commission. A state may use all of a portion of its allocated

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authority for projects involving emergency economic distress, with the approval of the Co-Chairmen's Committee.

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## CHAPTER 8—GRANT ADMINISTRATION

### Section 8.1—General.

ARC grants fall into one of three categories: grants awarded and administered directly by the Commission; grants awarded by ARC and administered by a Registered State Basic Agency (RSBA); or grants awarded and administered for the Commission by a basic federal agency (Federal Basic Agency).

- a. *Commission-Administered Grants.*** All ARC grants directly administered by the Commission shall be administered in accordance with applicable federal law and the appropriate OMB guidance, in particular the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 C.F.R. Part 200) as currently updated, with such modifications in the requirements of OMB guidance as the Federal Co-Chairman and Alternates may from time to time approve.
- b. *Registered State Basic Agency Grants.*** ARC grants administered by a RSBA shall be administered in accordance with the provisions of a Memorandum of Understanding between the RSBA and the Commission. In general, the RSBA will follow its grants management policies and procedures for the administration of other Federal grants that are not inconsistent with the ARDA, the ARC Code and ARC Project Guidelines. RSBA's shall follow as well appropriate OMB guidance and such other requirements as the ARC Federal Co-Chairman and Alternates may from time to time approve.
- c. *Federal Basic Agency Grants.*** ARC basic agency grants shall be administered in accordance with the regulations of the respective basic agencies that are not inconsistent with the ARDA or this Code and such other requirements as the federal co-chairman and alternates may from time to time approve. Section 223 of the ARDA (40 USC 14523) provides that Commission determination that a project meets the applicable criteria of Section 224 (40 USC 14524) and the planning requirements of Section 225 of the ARDA (40 USC 14525), and will contribute to the development of the Region, shall be controlling and shall be accepted by federal agencies.
- d. *Construction Grants.*** Projects involving significant construction must be administered according to (b) or (c) above.
- e. *For-Profit Grants Ineligible.*** Except as authorized under Section 207 of the ARDA (40 USC 14503), no ARC grant may be made directly to a for-profit entity.

### Section 8.2—Equal Opportunity.

It is the policy of the ARC that grantees assisted under the ARDA shall carry out all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, and

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other federal laws prohibiting discrimination, and in such a manner that no person shall, on the grounds of race, color, national origin, religion, sex, age or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination with respect to any such programs or activities. Grantees shall afford equality of opportunity in all their employment practices.

**Section 8.3–Conflict of Interest.**

- a. No official or employee of an ARC grantee or subgrantee shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or through other actions in any proceeding, application, request for a ruling or other determination, contract award, cooperative agreement, claim, controversy, or other particular matter in which grant funds (including program income or other funds generated by ARC-funded activities) are used; where to his knowledge, he or his immediate family, partners, organization (other than a public agency) in which he is serving as an officer, director, trustee, partner, or employee; or any person or organization with whom he is negotiating, or has any arrangement concerning prospective employment; has a financial interest or less than arms-length involvement.
- b. In the use of ARC grant funds, officials or employees of grantees or subgrantees shall avoid any action that might result in, or create the appearance of:
  1. using official position for private gain;
  2. giving preferential treatment to any person;
  3. losing complete independence or impartiality;
  4. making an official decision outside official channels; or
  5. affecting adversely the confidence of the public in the integrity of the government or the program.
- c. Pursuant to federal regulations at 2 CFR 200.318(c), each grantee and subgrantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees who select, award, and administer contracts. Any potential conflict of interest must be disclosed to ARC.

**Section 8.4–Restrictions on Assistance.**

ARC grant assistance shall not be used for:

- a. any form of assistance to relocating industries;
- b. recruitment activities that place a state in competition with another state or states; and
- c. projects that promote unfair competition between businesses within the same immediate service area.

**Section 8.5–Local Labor.**

The Commission recommends that heads of federal departments and agencies administering construction projects with the aid of funds authorized by or in connection

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with the ARDA of 1965 adopt regulations to assure the use of local labor, to the maximum extent practicable, in the implementation of such programs.

**Section 8.6—Cornerstone or Plaque.**

Any facility financed in whole or in part by funds provided under the ARDA shall include a cornerstone, plaque, or other dedicatory sign appropriately acknowledging the assistance provided through the Appalachian Regional Development Program, Provided that such an item shall not be required if it would be prohibited as an eligible project cost under the basic federal program through which the ARDA assistance is provided.

**Section 8.7—Prohibition on Certain Confidentiality Agreements.**

No contracts, grants, subgrants, or cooperative agreements may be awarded with ARC funds to an entity that requires employees or contractors to sign internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting waste, fraud or abuse to a designated investigative or law enforcement representative of a department or agency authorized to receive such information, including the ARC Office of Inspector General.

**Section 8.8—Conditional Title to Property and Equipment.**

OMB property standards at 2 C.F.R. 200.310-316 apply to ARC awards and subawards. ARC retains a property interest in all property and equipment purchased or improved with ARC funds. ARC will require grantees and subgrantees, other than state agencies, to record a notice of federal interest in real property purchased or improved with ARC funds and for equipment purchased with ARC funds and valued in excess of \$100,000.

**Section 8.9—Post-Grant Cooperation.**

ARC itself, or through its contractors, frequently conduct post-award evaluations of grant outcomes and investment impacts. An evaluation may occur several years after project closeout. Grantees and subgrantees are required to cooperate during these evaluations.

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## CHAPTER 9—HIGHWAYS

### Section 9.1—System Criteria.

The Appalachian Development Highway System shall be constructed in accord with the following criteria.

- (1) The Appalachian Development Highway System shall at the earliest practical date, provide a safe, economical transport network, adequate for the predicted type and volume of traffic to be served by the respective segments.
- (2) The design of the Development Highway System shall be comparable with prevailing federal-aid highway standards, specifications, policies and guides applicable to the projected type and volume of traffic.
- (3) The design and construction shall be coordinated with the objective of achieving continuity and reasonable uniformity throughout the system, and an average travel speed of approximately 50 miles per hour between major termini of the System, commensurate with terrain. Elements of design, such as number of lanes, grade, alignment, and degree of access control may be varied to achieve this objective.
- (4) The System shall be built to provide the maximum number of miles of highway that can be constructed, considering the available federal funds. The System shall be designed, insofar as practicable, to standards which, as applied to each actual construction project, may be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the 20-year period commencing on the date of approval, under usual federal-aid highway procedures, of the plans, specifications and estimates for the actual construction of such project; Provided, however, that nothing herein shall prohibit staged construction where, in the discretion of the state, its finances so require. The right-of-way width on the System shall be adequate to permit construction of projects on the System to these standards.
- (5) The projected type and volume of traffic shall be considered in the determination of access control. Provision shall be made for partial or full control of access where necessary in order to preserve safety and capacity for traffic.
- (6) The scenic beauty of the Region shall be preserved and enhanced to the extent practicable by incorporating landscaping and beautification into the design of the Development Highway System.
- (7) Provision shall be made for maximum use of local labor in construction of the System.



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- (8) The use of indigenous and locally produced materials shall be encouraged.
  - (9) The Commission intends to continue its effort towards the construction of those segments of the Appalachian Development Highway System that have the highest priority for the attainment of the development objectives of the Region.

**Section 9.2—Appalachian Development Highway System.**

- a. Corridors and Termini.** The general corridor locations and termini described in Appendix 1, and shown in Appendix 2, are approved as the Appalachian Development Highway System: Provided that the Commission shall in no event assist in the construction or right-of-way acquisition of any portion of such System which exceeds the number of miles authorized by law.
- b. Corridor Sections.** Each corridor will be divided into sections in order to define completion, estimate completion costs, and track completion progress based on criteria agreed to between Commission staff, the Federal Highway Administration, and the State Departments of Transportation in the Appalachian Region.
- c. Corridor Section Details.** The Commission shall concur in the following corridor section details: highway location, termini, design speed, number of thru travel lanes, typical cross section, and access control type.
- d. Completion Definition.** Approved corridor section details shall serve as the completion definition for each corridor section. Each corridor section's completion definition must be satisfied for the corridor section to be considered complete.
- e. Completion Plan.**
  - (1) General.** Each state shall submit a Completion Plan which defines completion for each unfinished corridor section on a recurring schedule agreed to by Commission staff, the Federal Highway Administration and the State Departments of Transportation.
  - (2) Contents of Completion Plan.** Each state's Completion Plan shall, at a minimum, include the following information for each unfinished corridor section:
    - (a) Cost estimate to complete construction.
    - (b) Corridor section details which define completion, including: highway location, termini, typical cross section, design speed, number of thru lanes, and access control type.
  - (3) Staff Review** The Commission staff shall review each Completion Plan submitted for Commission concurrence and report its findings.

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**(4) Procedure.** Pursuant to the procedures in Section 303 of the Act, action for the Commission will be taken:

- (a) to concur in Completion Plan contents and communicate said concurrence first to the state member (or alternate) on the Commission, and then to the state highway department concerned and the appropriate Federal Highway Administration (FHWA) Division Administrator; or to allow a ten-day period, after receipt of maps and details from the state highway department by the Commission, to expire without action, in which event concurrence shall be assumed; or
- (b) to withhold concurrence in any or all contents in a Completion Plan and inform first the state member (or alternate) on the Commission, and then the state highway department concerned and the appropriate FHWA Division Administrator of such withholding; Provided that any such action shall be reported to the Commission, no later than the next meeting, for such further action as the Commission may deem appropriate.

**f. Completion Definition Prior to Completion Plan Approval.** Prior to approval of the first Completion Plan for each state, corridor section details and completion definition will be based on the most recent Cost-to-Complete Estimate, or subsequently approved changes.

**g. Changes to Corridor Section Details.**

**(1) General.** States may propose changes to general corridor locations, termini, or corridor section details contained in the most recent Completion Plan or Cost-to-Complete Estimate for Commission consideration at any time.

**(2) Commission Vote Required.** In general, approval by Commission vote is required when:

- (a) Proposed modification to highway location could impact the location of the same Corridor in another state.
- (b) State proposes moving unused eligible miles to an existing non-participating corridor section or to create a new Corridor.
- (c) Proposed modification to Corridor location, termini, or corridor section details is regionally significant, politically sensitive, precedent setting or otherwise determined by the Federal Co-Chairman or Executive Director that the proposed change should be brought before the Commission for a vote.

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**(3) Executive Director Approval Required.** In general, approval by the Executive Director is required when:

- (a) Proposed highway location change affects Corridor mileage totals.
- (b) Proposal modifies Corridor termini location but does not impact any Corridor in another state.
- (c) State proposes modifications to the typical cross section on any corridor section that results in an average design speed of less than 50 mph for that corridor section.
- (d) State proposes reducing the ultimate cross section for a corridor section from four or more lanes of traffic to less than four lanes.
- (e) State proposes reducing the access control level on any corridor section from full access control to partial or none.

**(4) Staff Approval Required.** In general, approval by the Commission staff is required when the proposed modification does not impact overall Corridor mileage totals, does not affect multiple states, does not affect Corridor termini, and does not fall into one of the categories listed in Section 9.2 (g)(2) or Section 9.2 (g)(3) which warrants Executive Director or full Commission approval.

**h. Corridor Completion.** Each Corridor is considered complete when each corridor section within that Corridor has been constructed, is open to traffic and fully aligns with the most recently approved corridor section details.

### **Section 9.3– ADHS Completion Priorities.**

- a. **Principles for Establishing Priorities.** The Commission's general objective is to provide, to the greatest degree possible, a highway system which, in conjunction with the Interstate System and other federal-aid highways, will provide the greatest access into and within the Region and open up areas of the Region with development potential.

To carry out the general objective, highest priority shall be accorded to: (1) segments within each state which carry the highest overall traffic volume and contribute most to regional economic development opportunities; (2) segments which eliminate the most restrictive gaps in continuity; (3) segments which

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would complete the final connection of an overall Corridor; and (4) segments which would complete the most critical state line crossings.

Additionally, given the common financial, technical, and project delivery challenges associated with ADHS projects, the Commission places high priority on projects which have dedicated ADHS funding or other committed funding available and which the respective state has made a high priority to complete.

- b. **Eligibility for Planning.** All corridor sections of the Appalachian Development Highway System shall be eligible to use funds authorized or appropriated by Congress for the completion of the ADHS for route planning and location studies to determine detailed locations and cost estimates.
- c. **Eligibility for Other Activities.** All corridor sections shall be eligible for other highway activity assistance, including preliminary engineering, design, right-of-way acquisition and construction except the following sections shall be considered ineligible:
  - (1) corridor sections which were considered adequate under previous Commission adequacy ratings but which were subsequently identified as inadequate; or
  - (2) corridor sections which are to be funded with other than funds authorized or appropriated by Congress for the completion of the ADHS; or
  - (3) corridor sections which were constructed with funds authorized or appropriated by Congress for the completion of the ADHS but which have been identified in subsequent cost estimates as requiring additional activities.
- d. **Changes in Classifications.** Changes in eligibility classification must be approved at a meeting of the Commission.

#### **Section 9.4—Procedures for Approval of Obligations of Funds for Eligible Highway Activities.**

- a. **General.** Funds transferred to the Federal Highway Administration or allocated to the states by the Commission for the development of the highway system under Section 9.5 shall, subject to limitations therein, be available for obligation for work on approved projects when (1) the project is included in the statewide transportation improvement program developed by the state and approved by the FHWA and Federal Transit Administration; and (2) the project is approved and authorized by the Federal Highway Administration under federal-aid procedures.

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**b. Obligations for Eligible Activities.**

(1) A state may proceed to obligate funds authorized or appropriated by Congress for the completion of the AHDS for corridor planning, location studies, and cost estimates as provided in Section 9.4.a.

(2) Upon completion of planning and location studies, a state may proceed to obligate funds authorized or appropriated by Congress for the completion of the ADHS for preliminary engineering, design, right-of-way acquisition and construction when:

(a) the Commission has concurred in the detailed location;  
(b) in the case of preliminary engineering and design, the state has committed to undertake construction (or right-of-way acquisition) within ten years;

(c) in the case of right-of-way acquisition, the state has committed to obligate funds for the construction of the section within 20 years following the fiscal year in which such right-of-way acquisition is authorized by the Federal Highway Administration; and

(d) conditions of Section 9.4.a. are met.

**c. Pre-Financing.** Any state which performs work on an approved project with its own funds may be reimbursed the share of its costs; provided that (1) to be eligible for reimbursement, any such work shall be approved as provided by this Section 9.4 and authorized by the Federal Highway Administration in the same manner as a project assisted with allocated available funds; and (2) the total obligations during the current fiscal year, including pre-financed work to be converted to obligations in such fiscal year, shall not exceed the state's cumulative annual allocation.

**Section 9.5—Allocations of Available Funds.**

**a. General.** It is Commission policy to allocate highway authorizations and anticipated appropriations as early as possible in order to enable the states to develop their plans for making the most effective use of funds for their Appalachian Development Highways and Local Access Roads. The Commission will make allocations for the Appalachian Development Highway System as set forth in this section and in accordance with legislative instructions. The Commission will annually review its allocation policy in light of appropriations and the need for local access roads and special regional needs and opportunities.

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- b. **Basis of Allocations.** Allocation of ADHS funding will be based in general on each state's remaining estimated need to complete eligible sections of the ADHS as determined from the latest available cost estimates for completion of the System. Such cost estimates shall be produced at approximate five year intervals. Allocations of funding for the Appalachian Development Public Transportation Assistance Program (ADTAP) will be based in general on each state's remaining estimated need to complete eligible sections of the ADHS as determined by the 2012 Cost-to-Complete Estimate. Allocations of both ADHS and ADTAP funding shall contain upper and lower limits in amounts or percentages to be determined by the Commission and shall be made in accordance with legislative instructions.
  
  - c. **Local Access Road Authority.** Each State is authorized to request approval from ARC to use funds that have been allocated to it for completion of the ADHS, except funds specially designated by Congress for Corridor construction, for local access roads. States with uncompleted ADHS Corridor Sections may only use up to \$5,000,000 annually in balances of ADHS funds for local access roads. Additional funding for access roads is permitted with Area Development funds or with funds from non-ARC sources unless otherwise restricted.
  
  - d. **Reallocation.** Upon a declaration by an Appalachian State that it will not need all or some portion of the balance of funds in its ADHS account at the Federal Highway Administration (FHWA), such funds shall be redistributed among those States that indicate their willingness to receive them on a pro-rata basis in accordance with the allocation principles set forth in Subsection 9.5.b of the ARC Code, Basis of Allocations. The Executive Director is instructed to arrange such redistribution and to provide timely notification to FHWA of the amounts to be redistributed.

#### **Section 9.6—Local Access Roads.**

- a. **Approval of Projects.** The Commission will approve, pursuant to the provision of Section 303 of the Act, only those local access road projects which meet the requirements of this section. Appropriated highway funds allocated or made available under this Code to any state for the local access road program shall be available for work on approved projects, when included by the state in its statewide transportation improvement program and authorized by the Federal Highway Administration, under federal-aid procedures.
  
- b. **Project Criteria.**
  - (1) **Industrial, Commercial and Service Areas.** Local access road projects shall serve industrial and commercial sites and parks and

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service areas which will provide significant employment opportunities or otherwise meet the criteria set forth in approved State Strategy Statements. There shall be in existence, or specifically planned and funded, programs for stimulating economic development at the site, park, or service area to be served by a project. Such programs shall make provisions for necessary utilities, and shall be compatible with other development plans for the area.

**(2) Residential Developments.** Local access road projects shall provide access to sites required to satisfy demonstrated needs for permanent housing.

**(3) Recreation Areas.** The Commission will consider local access road projects to serve recreational development that will have a significant impact on a local economy in any area of the region. There shall be in existence, or specifically planned and funded, programs for stimulating the development of the area to be served by the project.

**(4) Educational Areas.** The Commission will consider local access road projects to serve school consolidation programs or other educational activities in any area of the Region. However, such projects shall be designed, wherever possible, to serve additional developmental objectives.

**(5) Timber Areas.** The Commission will consider access road projects to facilitate the harvesting of timberlands in the Region which have significant commercial value. Priority shall be given to projects that complement other developmental activities serving the same areas.

**APPENDIX A TO CHAPTER 9**

**Appalachian Highway System—Approved Corridors and Termini**

Corridor	Termini		
	State	From	To
A	Georgia North Carolina	I-285 north of Atlanta, Georgia	I-40 near Clyde, North Carolina
A-1	Georgia	Corridor A south of Cumming, Georgia	Intersection SR 53 north of Dawson and Forsyth County line
A-2	Georgia	Corridor A east of Canton, Georgia	I-75 near Cartersville, Georgia
B	North Carolina Tennessee Virginia Kentucky Ohio	Intersection I-26 and I- 40, Asheville, North Carolina	Corridor C north of Portsmouth, Ohio
B-1	Kentucky Ohio	Corridor B near Greenup, Kentucky	Corridor B north of Portsmouth, Ohio
C	Ohio	Corridor B north of Portsmouth, Ohio	I-270 south of Columbus, Ohio
C-1	Ohio	Corridor D near Jackson, Ohio	Corridor C near Chillicothe, Ohio
D	Ohio West Virginia	I-275 east of Cincinnati, Ohio	I-79 near Bridgeport, West Virginia
E	West Virginia Maryland	I-79 near Morgantown, West Virginia	I-70 near Hancock, Maryland
F	Tennessee Kentucky	I-75 near Caryville, Tennessee	Corridor B near Jenkins, Kentucky
G	Kentucky West Virginia	Corridor B near Pikesville, Kentucky	I-64 near Charleston, West Virginia
H	West Virginia Virginia	I-79 near Weston, West Virginia	I-81 near Strasburg, Virginia
I	Kentucky	Corridor F near Whitesburg, Kentucky	I-64 near Winchester, Kentucky
J	Tennessee Kentucky	I-124 near Chattanooga, Tennessee	I-75 near London, Kentucky
K	Tennessee North Carolina	I-75 near Cleveland, Tennessee	Corridor A near Dillsboro, North Carolina
L	West Virginia	I-77 near Beckley, West Virginia	I-79 near Sutton, West Virginia



<b>Corridor</b>	<b>Termini</b>		
M	Pennsylvania	I-70/I-76 near New Stanton, Pennsylvania	I-81 near Harrisburg, Pennsylvania
N	Maryland Pennsylvania	Corridor E near Grantsville, Maryland	Corridor M near Ebensburg, Pennsylvania
O	Maryland Pennsylvania	Corridor E near Cumberland, Maryland	I-80 near Bellefonte, Pennsylvania
O-1	Pennsylvania	Corridor O near Port Matilda, Pennsylvania	I-80 near Clearfield, Pennsylvania
P	Pennsylvania	I-80 near Mackeyville, Pennsylvania	I-80 near Milton, Pennsylvania
P-1	Pennsylvania	Corridor M near Amity Hall, Pennsylvania	I-80 north of Milton, Pennsylvania
Q	Kentucky Virginia West Virginia	Corridor B near Shelbiana, Kentucky	I-81 near Christiansburg, Virginia
R	Kentucky	Corridor I near Campton, Kentucky	Corridor B near Prestonsburg, Kentucky
S	Tennessee	I-81 north of White Pine, Tennessee	Corridor F south of Harrogate, Tennessee
T	Pennsylvania New York	I-90 east of Erie, Pennsylvania	I-81 near Binghamton, New York
U	Pennsylvania New York	Corridor P near Williamsport, Pennsylvania	Corridor T near Elmira, New York
U-1	Pennsylvania New York	Corridor U near Tioga, Pennsylvania	I-86 near Painted Post, New York
V	Mississippi Alabama Tennessee	I-55 near Batesville, Mississippi	I-24 west of Chattanooga, Tennessee
W	South Carolina North Carolina	I-85 near Greenville, South Carolina	I-26 near Hendersonville, North Carolina
X	Mississippi Alabama	Corridor V near Fulton, Mississippi	I-59 near Birmingham, Alabama
X-1	Alabama	I-20/59 near I-459 southwest of Birmingham, Alabama	I-20 east of Birmingham, Alabama