Sunshine Act Meetings

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Governemnt in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, September 26, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the Corporation's corporate activities; (2) matters relating to the possible closing of an insured bank; and (3) matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' ntoice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 27, 1989.

Federal Deposit Insurance Corporation.

Rober E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-23243 Filed 9-28-89; 9:27 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 25, 1989, 54 FR 39255.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 27, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-4, CAG-5, CAG-28 and CAG-93 on the Agenda of 9/27/89:

Item No., Docket No., and Company

CAG-4
RP89-75-000 and RP89-213-000, Black Marlin Pipeline Company
CAG-5
RP89-203-000, Southern Natural Gas Company
CAG-28
RP88-259-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-93
RP88-177-061 and RP88-67-012, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89-23351 Filed 9-28-89; 3:43 pm]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday,October 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meting.

Date: September 27, 1989

William W.Wiles,

Secretary of the Board.

[FR Doc. 89-23264 Filed 9-28-89; 10:58 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:24 p.m. on Wednesday, September 27, 1989, the Board of Directors of the Resolution Trust Corporation met in open session to consider the requirements that a potential bidder must meet in order to qualify as an acceptable bidder for a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 27, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 89-23315 Filed 9-28-89; 2:04 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-144]

Oriental Fruit Fly

Correction

In rule document 89-19611 beginning on page 34477 in the issue of Monday, August 21, 1989, make the following corrections:

§ 301.93-2 [Corrected]

1. On page 34481, in the second column, in the 30th line, *(Sandericum koetjape)* was misspelled.

2. On the same page, in the same column, in the 39th line, *(Lycopersicon esculentum)* was misspelled.

§ 301.93-3 [Corrected]

3. On the same page, in the third column, in paragraph (b), in the 18th line, "of" should read "or".

§ 301.93-5 [Corrected]

4. On page 34482, in the second column, in paragraph (a)(1)(ii), in the second line, "premises" was misspelled.

5. On the same page, in the same column, in footnote 5, the section number should read § 301.93-5(a)(2).

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of California

Correction

In notice document 89-21947 beginning on page 38423 in the issue of Monday, September 18, 1989, make the following corrections:

On page 38423, in the first column, in the fourth paragraph, in the seventh line "bran" should read "brain", and in the tenth line "obain" should read "obtain".

On the same page, in the third column, under *Docket Number:* 89-211, in the fifth line "BM 900T" should read "EM 900T".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

Correction

In notice document 89-22636 appearing on page 39456 in the issue of Tuesday September 26, 1989, make the following correction:

In the third column, in the third line, the meeting date should read "Monday, November 13, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on the Analysis of Workplace Air for Diesel Exhaust Particulates

Correction

In notice document 89-21911 beginning on page 38438 in the issue of Monday, September 18, 1989, make the following correction:

On page 38438, in the third column, under **ACTION**, "Nation" should read "Notice".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404

RIN 0960-AB96

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

Correction

In proposed rule document 89-18763 beginning on page 33238 in the issue of Monday, August 14, 1989, make the following corrections:

1. On page 33239, in the third column, in the third complete paragraph, in the first line, "of" should read "or".

Appendix 1 to Part 404- [Corrected]

2. On page 33241, in the second column, in 112.00A., in the second line, "listing" should read "listings".

3. On page 33242, in the second column, in 112.00C.2., in the second line from the bottom of the first complete paragraph, the second "of" should read "or".

4. On the same page, in the third column, in 112.00D., in the ninth line, "aware" should read "are".

5. On page 33243, in the first column, in the last incomplete paragraph, in the third line, insert "of" after "determination".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Uruguay Round Negotiations on Tariff and Non-Tariff Measures

Correction

In notice document 89-21865 beginning on page 38311 in the issue of Friday, September 15, 1989, make the following correction:

On page 38312, in the second column, under **III. PUBLIC HEARING**, in the second paragraph, in the eighth line, "Seventh" should read "Seventeenth".

BILLING CODE 1505-01-D

federal register

Monday
October 2, 1989

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the danger zone and restricted area regulations in 33 CFR part 334 to remove obsolete materials and add procedural type requirements. These danger zone, restricted area and prohibited area regulations were consolidated under 33 CFR part 334 on October 22, 1985. We are eliminating the designation "prohibited area" and redesignating them as restricted areas.

DATE: Comments must be received on or before November 1, 1989.

ADDRESS: USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272-1783.

SUPPLEMENTARY INFORMATION: On October 22, 1985 (50 FR 42696-42699), the Department of the Army published final rules which combined all danger zones, restricted areas and prohibited areas in a new part. In order to avoid confusion and to keep the consolidated rules as brief as possible, only the repromulgated rules were published while new definitions, procedures and corrections were planned, but were held in abeyance. Those interpretive type rules and other changes to remove obsolete materials in 33 CFR part 334 are now proposed.

In § 334.1 we have stated the purpose of this part; in § 334.2 we are proposing the definitions of "restricted area" and "danger zone;" in § 334.3 we are proposing special policies which concern the establishment of danger zones and restricted areas and in § 334.4 we are proposing procedures for establishing danger zones and restricted areas. The term "prohibited area" is being deleted because the function of denying access to a defined area is also achieved by designating the area as a restricted area.

We are also making minor editorial amendments which reflect that the titles of several military commands have changed. We are making a change in the designation of the color of signal lights from red to blue on Navy patrol boats as specified in § 334.230 to avoid confusing those lights with lights commonly used on U.S. Coast Guard aids to navigation. We have added the feminine gender within the regulations where appropriate.

NOTES

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is in accordance with the exemption provided military functions.

2. The undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we proposed to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS [AMENDED]

1. The authority citation for part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.1 *Purpose* is added as follows:

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing danger zones and restricted areas,

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

3. Section 334.2 *Definitions* is added as follows:

§ 334.2 Definitions.

(a) *Danger zone.* A defined water area (or areas) used for target proactice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for government property and/or protection to the public from the risks of damage or injury arising from the government's use of that area.

4. Section 334.3 Special policies is added as follows:

§ 334.3 Special policies.

(a) *General.* The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate.

(b) *Food fishing industry.* The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the district engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired only for such temporary, occasional, or intermittent periods that operations can be operated safely without imposing unreasonable restrictions on navigation, applicants may be informed that formal regulations are not required. However, proper notices for mariners requesting that vessels avoid the area will be issued by the district engineer, or if appropriate, the Agency requesting such use of the water area, to all known interested persons. Copies will also be sent to appropriate state agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390, ATTN: Code NS 12.

5. Section 334.4 *Establishment procedures* is added as follows:

§ 334.4 Establishment procedures.

(a) *Application.* Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the district engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice.* (1) The Corps of Engineers will normally publish public notices and **Federal Register** documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the district engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft **Federal Register** document to the Office of the Chief of Engineers, ATTN: CECW-OR. The Chief of Engineers will publish the proposal in the **Federal Register** concurrent with the public notice issued by the district engineer.

(2) *Content.* The public notice and **Federal Register** documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the district engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution.* Public notices will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington: Commander, Naval Base, Seattle
California: Commander, Naval Base, San Diego
Hawaii and Trust Territories: Commander, Naval Base, Pearl Harbor

(c) *Public hearing.* The district engineer may conduct a public hearing in accordance with 33 CFR part 327.

(d) *Environmental documentation.* The district engineer shall prepare environmental documentation in accordance with Appendix B to 33 CFR part 325.

(e) *District engineers recommendation.* After closure of the comment period, and upon completion of the district engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW-OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The district engineer shall include a copy of environmental documentation prepared in accordance with Appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the **Federal Register**.

(f) *Final decision.* The Chief of Engineers will notify the district engineer of the final decision to either approve or disapprove the regulations. The district engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the **Federal Register** and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the **Federal Register** unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

6. Section 334.80 is amended by revising the section heading as follows:

§ 334.80 Narragansett Bay, R.I.; restricted area.

* * * * *

7. Section 334.110(b)(4) is revised to read as follows:

§ 334.110 Delaware Bay, off Cape Henlopen, Del.; naval restricted area.

* * * * *

(b) * * *

(4) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

8. Section 334.120(b)(2) is revised to read as follows:

§ 334.120 Delaware Bay off Milford Neck; naval aircraft bombing target area.

* * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

9. Section 334.150 is amended by revising the section heading and paragraphs (a) and (b)(4), to read as follows:

§ 334.150 Severn River, at Annapolis, MD; experimental test area, David W. Taylor Naval Ship Research and Development Center.

(a) *The restricted area.* The waters of Severn River shoreward of a line beginning at the southeasternmost corner of the David W. Taylor Naval Ship Research and Development Center sea wall and running thence southwesterly perpendicular to the main Severn River channel, approximately 560 feet, thence northwesterly parallel to and 50 feet shoreward of the edge of the channel, 1,035 feet, and thence northeasterly perpendicular to the channel, approximately 600 feet, to the shore. Spar buoys will mark the corners of the area adjacent to the channel.

(b) * * *

(4) The regulation in this section shall be enforced by the Superintendent, U.S. Naval Academy, and such agencies as he/she may designate.

10. Section 334.230(a)(2)(iii) is revised to read as follows:

§ 334.230 Potomac River.

(a) * * *

(2) * * *

(iii) The regulations in this section shall be enforced by the Commander, Naval Surface Weapons Center and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a flashing blue light shall be displayed at the mast head. The Naval Surface Weapons Center (Range Control) can be contacted by marine VHF radio (Channel 16) or by telephone (703) 663-8791.

* * * * *

11. Section 334.260 is amended by revising the section heading, the heading of paragraph (a)(1) and revising paragraphs (a)(2) and (b)(1), as follows:

§ 334.260 York River, Va.; naval restricted areas.

(a) *The areas*—(1) *Naval mine service-testing area.* * * *

(2) *Naval mine service-testing area.* A rectangular area adjacent to the northeast boundary of the area described in subparagraph (1) of this paragraph, beginning at latitude 37 16'00" N., longitude 76 32'29" W.; thence to latitude 37 16'23" N., longitude 76 32'00" W.; thence to latitude 37 15'27" N., longitude 76 30'54" W.; thence to latitude 37 15'05" N., longitude 76 31'27"

W.; thence to latitude 37 15'27" N., longitude 76 31'48" W.; thence to latitude 37 15'42" N., longitude 76 32'06" W.; thence to latitude 37 15'40" N., longitude 76 32'09" W.; and thence to the point of beginning.

* * * * *

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the area described in paragraph (a)(1) of this section

* * * * *

12. Section 334.310(b)(3) is revised to read as follows:

§ 334.310 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.

* * * * *

(b) * * *

(3) This section shall be enforced by the Commander, Naval Base, Norfolk, and such agencies as he/she may designate.

13. Section 334.320(b)(2) is revised to read as follows:

§ 334.320 Chesapeake Bay entrance; naval restricted area.

* * * * *

(b) * * *

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, VA.

14. Sections 334.400, 334.500, 334.540 and 334.560 are amended by revising the section headings to read as follows:

§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

* * * * *

§ 334.500 St. Johns River, Fla, Ribault Bay; restricted area.

* * * * *

§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.

* * * * *

§ 334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.

* * * * *

15. Section 334.700 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 334.700 Choctawatchee Bay, Aerial Gunnery Ranges, Armament Division, Eglin Air Force Base, Fla.

* * * * *

(b) * * *

(2) *Enforcing agency.* The regulation in this section shall be enforced by the Commander, Armament Division, Eglin AFB, and such agencies as he/she may designate.

16. Section 334.710 is amended by revising the section heading and paragraph (b)(2) as follows:

§ 334.710 The Narrows and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

* * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

17. Section 334.720 is amended by revising the section heading and paragraph (b)(4) as follows:

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Armament Division, United States Air Force, Eglin Air Force Base, Florida.

* * * * *

(b) * * *

(4) The regulations in this section shall be enforced by the Commanding Officer, Armament Division, Eglin Field, Florida, and such agencies as he/she may designate.

18. Section 334.730 is amended by revising the section heading and paragraph (b)(5) as follows:

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

* * * * *

(b) * * *

(5) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

19. Sections 334.870(d), 334.880(a) and (b)(3) and 334.890(b)(3) are revised to read as follows:

§ 334.870 San Diego Harbor, Calif.; restricted areas.

* * * * *

(d) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

§ 334.880 San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.

(a) *The area.* That portion of San Diego Bay southerly of Ballast Point, exclusive of the southwesterly portion of the restricted area described in § 334.890 located westerly of the entrance channel, bounded on the west by the shoreline at Point Loma, on the east by the entrance channel west project line, and on the south by latitude 32 40'.

(b) * * *

(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, Calif., and such agencies as he/she may designate.

§ 334.890 Pacific Ocean, off Point Loma, Calif.; naval restricted area.

* * * * *

(b) * * *

(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

20. Section 334.920(b)(4) is revised to read as follows:

§ 334.920 Pacific Ocean, off the east coast of San Clemente Island, Calif.; naval restricted area.

* * * * *

(b) * * *

(4) The regulations in this section shall be enforced by security personnel attached to the U.S. Naval Ordance Test Station, China Lake, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, California.

21. Section 334.950(b)(2) is revised to read as follows:

§ 334.950 Pacific Ocean at San Clemente Island, Calif.; Navy shore bombardment area in vicinity of Pyramid Cove.

* * * * *

(b) * * *

(2) Except in an emergency, no vessel shall anchor in the area without first obtaining permission from the Commander, Naval Base, San Diego, or from the Senior Officer present in the anchorage who may grant permission to anchor not exceeding the period he himself, is authorized to remain there. The Senior Officer present shall advise the Commander, Naval Base, San Diego, when and to whom he/she assigns a berth.

22. Section 334.960(b)(5) is revised to read as follows:

§ 331.960 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.

* * * * *

(b) * * *

(5) The regulations in this section shall be enforced by security personnel attached to the Naval Ordnance Test Station, Pasadena Annex, and by such agencies as may be designated by the Commander, Naval Base, San Diego.

23. Section 334.960(b)(2) is revised to read as follows:

§ 334.970 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off China Point.

* * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she may designate.

24. Section 334.980(d)(5) is revised to read as follows:

§ 334.980 Pacific Ocean, around San Nicolas Island, Calif.; naval restricted area.

* * * * *

(b) * * *

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, Calif.

25. Section 334.1000, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1000 San Francisco Bay, north of Alcatraz Island; submarine operating area.

(a) *The area.* * * *

(b) *The regulations.* Prior notification of the dates and times of all operations will be made by local notice to mariners. A patrol boat will direct the movement of vessels passing in the vicinity of the operating area by means of signal light and loud hailer. Vessels traversing this area shall be alert and comply with the orders of the patrol boat. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1010 [Amended]

26. In Section 334.1010, the heading preceding paragraph (a) is removed.

27. In § 334.1020, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a)(1) (i) and (ii) are redesignated as (a) (1) and (2), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda.

(a) *The areas.*

(1) * * *

(2) * * *

(b) *The regulations.* (1) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer U.S. Naval Air Station, Alameda, California, shall navigate, anchor, or moor in the area described in paragraph (a)(1) of this section.

(2) No vessel without special authority from the Commander, Twelfth Coast Guard District, shall lie, anchor, or moor in the area described in paragraph (a)(2) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

§ 334.1030 [Amended]

28. In § 334.1030, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1040 [Amended]

29. In § 334.1040, paragraph (a) heading is removed, paragraph (a)(2) is redesignated as paragraph (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as paragraphs (b) (1) and (2).

§ 334.1050 [Amended]

30. In § 334.1050, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1060 [Amended]

31. In § 334.1060, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1070 [Amended]

32. In § 334.1070, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

33. In § 334.1080, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1080 San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area.

(a) *The area.* * * *

(b) *The regulations.* No vessels, except those engaged in naval operations, shall lie, anchor, moor or unnecessarily delay in the area. Vessels may pass through the area in the process of ordinary navigation except as directed by patrol boats. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1090 [Amended]

34. In § 334.1090, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1100 [Amended]

35. In § 334.1100, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

§ 334.1110 [Amended]

36. In § 334.1110, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

37. In § 334.1120, is amended by revising the section heading and revising paragraph (b)(6) to read as follows:

§ 334.1120 Pacific Ocean, in the vicinity of Point Mugu, California; naval small arms firing range.

* * * * *

(b) *The regulations.* * * *

(6) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

38. Section 334.1140 is amended by revising paragraph (c)(7) to read as follows:

§ 334.1140 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.

* * * * *

(c) *The regulations.* * * *

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commander, Naval Base, San Diego, California, may designate.

* * * * *

39. Section 334.1170(b) is amended by designating the existing text as paragraph (b)(1) and adding new paragraph (b)(2) to read as follows:

§ 334.1170 San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.

* * * * *

(b) *The regulations.*

(1) * * *

(2) The regulations in this section will be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

40. Section 334.1180(c) is revised to read as follows:

§ 334.1180 Strait of Juan de Fuca, Washington; air-to-surface weapon range, restricted area.

* * * * *

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

41. Section 334.1190 is amended by revising paragraphs (a)(2)(ii), (b)(1) and (c) to read as follows:

§ 334.1190 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing areas.

(a) *Hood Canal in vicinity of Bangor.* * * *

(2) *The Regulations.* * * *

(ii) Navigation will be permitted within the area at all times except when naval exercises are in progress. No vessel shall enter or remain in the area when such exercises are in progress. Prior to commencement of an exercise, the Navy will make an aerial or surface reconnaissance of the area. Vessels under way and laying a course through the area will not be interfered with, but they shall not delay their progress. Vessels anchored or cruising in the area and vessels unobserved by the Navy reconnaissance which enter or are about to enter the area while a torpedo is in the water will be contacted by a Navy patrol boat and advised to steer clear. Torpedoes will be tested only when all vessels or other craft have cleared the area.

* * * * *

(b) *Dabob Bay in the vicinity of Quilcene*—(1) *The area.* All waters of Dabob Bay beginning at latitude 47 39′27″, longitude 122 52′22″; thence northeasterly to latitude 47 40′19″, longitude 122 50′10″; thence northeasterly to a point on the mean high water line at Tskutsko Pt.; thence northerly along the mean high water line to latitude 47 48′00″; thence west on latitude 47 48′00″ to the mean high water line on the Bolton Peninsula; thence southwesterly along the mean high water line of the Bolton Peninsula to a point on longitude 122 51′06″; thence south on longitude 122 51′06″ to the mean high water line at Whitney Pt.; thence along the mean high water line to a point on longitude 122 51′15″; thence southwesterly to the point of beginning.

* * * * *

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

§ 334.1200 [Amended]

42. In section 334.1200, paragraph (a) heading is removed, paragraph (a)(1) is redesignated (a), paragraph (a)(2) is redesignated (b), paragraph (a)(3) is redesignated (c), former paragraphs (a)(3) (i) and (ii) are redesignated (c) (1) and (2) and former paragraph (a)(4) is redesignated (d).

§ 334.1210 [Amended]

43. In § 334.1210, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1220 [Amended]

44. In § 334.1220, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) and (4) are redesignated as (b), (c), and (d), former paragraphs (a)(3) (i) and (ii) are redesignated (c)(1) and (c)(2), and former paragraphs (a)(3)(ii) (A), (B), (C), (D) and (E) are redesignated as (c)(2) (i), (ii), (iii), (iv), and (v).

§ 334.1230 [Amended]

45. In § 334.1230, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1240 [Amended]

46. In § 334.1240, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c) and former paragraphs (a)(3) (i), (ii) and (iii) are redesignated as (c) (1), (2) and (3).

§ 334.1250 [Amended]

47. In § 334.1250, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c), former paragraphs (a)(2) (i), (ii), (iii), (iv), and (v) are redesignated as (b) (1), (2), (3), (4), and (5), former paragraphs (a)(2)(v) (*a*) through (*g*) are redesignated as (b)(5) (i) through (vii), and former paragraph (a)(2)(v)(*a*) (*1*) through (*3*) are redesignated as (b)(5)(i) (A) through (C).

§ 334.1260 [Amended]

48. In § 334.1260 paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1270 [Amended]

49. In § 334.1270, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as (b).

Dated: September 14, 1989.

Wilbur T. Gregory,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-23088 Filed 9-29-89; 8:45 am]

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Part III

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document presents the final rule partially implementing section 103(m) of Public Law 99–662, 33 U.S.C. 2213m, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This rule applies only to flood control projects. Guidelines for agricultural water supply projects are to be promulgated in the future.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Daniel (202) 272–8568.

SUPPLEMENTARY INFORMATION: An interim final rule was published in the **Federal Register** on September 23, 1987 (52 FR 35875). Comments were solicited prior to publication of the final rule. As a result of the comments received, certain changes have been made. These changes, as well as certain technical clarifications which have arisen as a result of the comments received and application of the rule since September 23, are discussed in the supplementary information.

The basic structure of the interim final rule has been retained. Two tests are applied to each flood control project in order to determine whether a project qualifies for a reduction in the non-Federal cost-share. The benefits test sets an alternative cost-sharing floor whenever one fourth of the benefit-cost ratio, expressed as a percentage, is less than the standard cost-share as defined in the applicable portion of section 103 of Public Law 99–662, 33 U.S.C. 2213. To be eligible for any cost-share reduction that would result from application of the benefits test, a project must also have an Eligibility Factor that exceeds zero. The Eligibility Factor is determined by the income test which compares the income of people in the project area (as measured by the county) and state to the national average. If the county and state per capita income values are low, projects with an alternative non-Federal cost-share established by the benefits test will be eligible for a reduction.

There are three major changes to the interim final rule. First, the income test has been modified by giving less weight to state per capita personal income (PCI) and more weight to the income of the project area (as represented by county PCI). Second, when the income test yields an Eligibility Factor which is greater than zero, we are permitting deferred payments for a portion of the non-Federal share by non-Federal parties regardless of the outcome of the benefits test. Third, when a Native American tribe or village is the local sponsor, the Eligibility Factor is based on income data for the tribe or village only.

Background

There were 11 responses to the interim final rule. Some concentrated on a single point, others brought up a number of concerns. Each point raised by the commenters is addressed in the discussion that follows.

In our previously published discussion of September 23, 1987, on interpretation of section 103(m), we argued that the language was broad and that there was no definite Congressional direction on how the Secretary is to proceed. We concluded that every flood control project should retain at least a five percent non-Federal share. Several commenters disagreed, expressing the view that the Secretary should grant exemptions to non-Federal cost-sharing in the most extreme economic circumstances. In two letters, it was pointed out that Rep. Roe was asked specifically about the projects authorized by section 202 of Public Law 96-367, 94 Stat. 1339. In his response, Rep. Roe stated that "It is the committee's view that improverished areas such as those affected by the Section 202 projects should be exempted from the cost sharing provisions of the bill pursuant to the Secretary's authority." (p. H11567). A third commenter also pointed to Rep. Roe's remarks in supporting the review that exemptions from cost sharing be generally considered. We acknowledged in our previous discussion that Rep. Roe expressed his view that the Secretary should be encouraged to provide new flood control protection at reduced or no non-Federal cost-sharing. We also found evidence of the opposite position, as taken by Sen. Stafford: "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share." (p. S16983).

Both Rep. Roe and Sen. Stafford were quoted in order to show the wide range of opinions that Congress had towards this provision. We continue to believe that we can retain non-Federal cost-sharing requirements for all flood control projects, without damaging the underlying purpose of section 103(m). Furthermore, our policy is constructive in maintaining the integrity of the cost-sharing philosophy which would be damaged by wider divergences in the non-Federal share. We have consistently opposed cost-sharing exemptions and Congress has generally held the same view, making only a small number of exemptions in Pub. L. 99–662 (Barbourville and Harlan KY were the only two section 202 projects exempted). Given this background, we will retain our requirement that at least five percent of the project be a non-Federal share.

The Role of the Local Sponsor

The interim final rule was premised in part on our view that the state should have a responsibility to participate in project financing when a local sponsor's financing options are limited. In the comments received, there was some disagreement on this point. One commenter saw no role for state government: "until Congressional intent is clearly established, the COE should follow existing Federal policy on this issue, i.e., Federal responsibility remains with the involved federal agency for water project costs over and above the local sponsor's contribution." Others stressed the importance of the local sponsor below the state level in planning and financing decisions citing political, legal, and other institutional constraints which limit state participation. The opposite extreme was also expressed, "if the Corps insists that '* * * states have a responsibility in cases where the local sponsor seems incapable of providing the non-Federal share.', then perhaps it is incumbent upon only the states to contract for these projects."

We do not want to exclude consideration of state resources as a source of financing. There is no basis for the assertion that state participation is against Federal policy. This is abundantly clear from the various arrangements states have made for providing state support for such projects. In some cases, when state constraints present a problem, we believe it is incumbent on state and local Governments to address these problems directly, rather than seek additional Federal support. At the same time, we do not feel it is appropriate to insist that states be solely responsible, or attempt to define with any precision, the degree to state involvement in individual cases. In many cases that state and local governments have preferred to use the smaller jurisdiction as the source of financing.

Our formula therefore continues to include state income as a factor in the analysis. In response to the concerns expressed in the comments, we have however, changed the weights given to state and local incomes so that the local income is now given twice the weight of the state.

The Use of Project Benefits in Developing a Cost-Share Alternative

We argued previously that "local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second the project itself will generate benefits.

Many of the benefits to flood control projects are either due to flood damage reduction or to income enhancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation."

Several commenters disagreed with our use of project benefits to define the limits of cost-share reductions. They expressed the view that benefits do not represent the "real dollars" needed for project financing and that the "approach favors projects with less merit and discriminates against those projects that provide the greater *National* benefits." We remain convinced that the resources saved (i.e. the National benefits) by a flood control project can legitimately be used in an ability to pay evaluation and that this will not in any way favor low benefit projects over those with high benefits. The Federal policy, which gives the highest priority to projects with a high benefit/cost ratio, will be unaffected. Communities will still prefer projects with high benefit/cost ratios, because the extra benefits received will be greater than the additonal non-federal costs that might be incurred after application of the ability to pay rule.

We will therefore, continue to use project benefits to determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. When projects are fully eligible based on the income test describe below, the reduction in the non-Federal share will be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "stardard" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), 33 U.S.C. 2213, a and b, is less than 30 percent, there will be no reduction under the ability to pay provision.

We are, however, modifying our interim rule by allowing that for projects with an Eligibility Factor greater than zero, a portion of the non-Federal share may be deferred even if the BBF exceeds the standard non-Federal cost-share. We require for structural projects, that the local sponsor provide during construction, cash payments equal to five percent of total project costs, and to contribute lands, easements, rights of way, relocations, and dredged material disposal areas (LERRD) paid for or acquired by the local sponsor prior to signing a cost-sharing agreement. The remaining non-Federal share, either for LERRD or for cash requirements in excess of 5 percent of project costs, can be deferred. For non-structural projects, we require during construction LERRD paid for or acquired by the local sponsor prior to the agreement with the remainder eligible for deferment. By permitting deferred payments when the Eligibility Factor exceeds zero, we are more closely matching the non-Federal payment requirement to the benefits stream for projects in low income areas. In those areas with the greatest possible cost-share reductions (Eligibility Factor equals or exceeds one), payments during construction and repayments of deferred amounts need be no greater than one fourth of project benefits. We do not believe this represents a hardship

As in the interim rule, any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we will use one fourth of the benefit-cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1989 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income To Determine Project Eligibility

The final rule continues to determine project eligibility for reductions in the non-Federal share by using the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. In developing the interim final and final rule, two of our guiding principles have been: (a) That the rule should not be any more complex than is necessary; and (b) that it should be based on easily accessible, publicly available data. We concluded that a standard measure of income would be the appropriate statistic to use. Several comments were directed towards our approach.

One observation was made that since local or county government taxes are structure-based rather than income-based, household income, rather than per capita personal income would be a better measure to use. There are three sources of income data available from the Federal Government which might be used to measure the underlying resource base of political subdivisions below the state level. First is per capita personal income (PCI), published yearly for each county, by the Bureau of Economic Analysis (BEA). Second is per capita money income available biannually for counties and incorporated (sub-county) places, published by the Bureau of the Census. Third is median family income (MFI), available yearly for each county, from data published by the Department of Housing and Urban Development (HUD). The HUD estimates are more up to date (HUD currently has estimates for 1988, while the BEA data are currently available only through 1986), but are based in part on projections of previous years' data using other economic factors as the basis of the projections.

We continue to feel that data should be available on a yearly basis and that a three-year average should be used in the calculation of the Eligiblity Factor. This limits our choice to per capita personal income and median family income. There are a number of reasons for differences in the measures of PCI and MFI. Perhaps the most significant is that PCI is a measure of the mean, while MFI is a measure of the median. This is relevant to our choice of income variable. The revenue potential from a structure-based tax is more closely related to the total value of the structures (and therefore to the mean) than to the median value. It allows that if income is being used as a proxy for wealth to measure a local government's revenue potential, the mean is a more appropriate measure than the median, even if a local government raises revenues by using a structured-based tax. Thus we have decided to stay with PCI in our eligibility formula.

Two commenters pointed out that the local sponsor may be an entity which is smaller than the county level, so that county income does not necessarily represent the income of the residents under the sponsor's jurisdiction. As pointed out above, this information is not available on a yearly basis. Even if it were available, we do not feel it necessary or desirable to match the income estimate precisely to the project sponsor's jurisdiction, since sponsors vary from project to project.

One disagreed with our "formula approach", stating that it would be preferable to have the Secretary apply judgment to each project rather than rely on a "simplistic and unsophisticated formula". We believe that a formula approach is far preferable to a case by case analysis. It is important that any rule be capable of being applied consistently and objectively throughout the nation. This requires that specific factors be identified and that the consequences of these factors be the same in all ability to pay tests. By keeping the formula relatively simple, there is a possibility that a subtle aspect of a single project may be missed. At the same time, we have proposed an approach which can be easily understood and fairly applied. This advantage far outweighs the disadvantages.

One commenter argued that since Native American tribes and villages have special relationships with the Federal Government, the use of county and state PCI figures is inappropriate for projects sponsored by these groups. We are persuaded that such projects do warrant different consideration. Indian, Eskimo, and Aleut tribes and villages do not receive support from state and local governments. Unfortunately, current income data for reservations, tribes, and villages are very limited. The most recent comprehensive information is from the Bureau of Census, 1980 Census, which reports median family income, by reservation, for 1979 in *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, Part 1, Table 10; and per capita money income for 1979 in *General Social and Economic Characteristics-United States Summary (1980)*, Table 252. The data are for Native Americans living on reservations or in villages and are not strictly comparable to the income of all Tribal members, or for all Native Americans living on or near a reservation or village. Our revised procedures require the use of publicly available data such as that appearing in the Census publications identified here and a comparison of data for the relevant Indian, Eskimo, or Aleut group to the national average of the same concept of income and for the same year. For example, using the data cited above, the median family income for the reservation would be compared to 1979 median family income for the United States. We will require the use of the most recently available data, which in any case must be no earlier year than the 1979 data cited above. If later or more accurate information is available, it may be used as a substitute provided that the substitute data is comparable to an equivalent national average which is publicly available. These projects will, of course, also be subject to the benefits test.

We have maintained our decision from the Interim Final Rule, that all U.S. Territories will be eligible for the full amount of cost-share reduction derived from the benefits test. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capita personal income in the territories ranged from 66 percent of the U.S. average (Guam) to 25 percent of the U.S. average (American Samoa).

We will continue to exclude unemployment and the sponsor's borrowing capability in our Eligibility Factor formula. While no one advocated that unemployment be used, several comments addressed our decision to exclude borrowing capability. One commenter for example, pointed out that the legal constraints against borrowing vary from state to state and should therefore be a factor in our ability to pay analysis. Consideration of these constraints would result in unequal treatment on a national scale and in our judgment, would be inappropriate. In addition, per capita income itself represents a rough measure of fiscal capacity which can be applied without regard to past spending and taxing decisions, or legal or other institutional constraints. Our final rule implicitly recognizes a potential limit to borrowing capacity for "low income projects". When the Eligibility Factor, described below, exceeds zero we will allow payments over time rather than during construction, for a portion of the non-Federal share. As pointed out above, this repayment provision applies whenever the income of the project area and state is low, regardless of the outcome of the benefits test.

The Eligibility Formula

The eligibility factor (EF) is determined by:

$$EF = a - b_1 \times (\text{State PCI Index}) - b_2 \times (\text{County PCI Index})$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state's index number would be 100. If a project includes beneficiaries in more than one county, the county PCI index will be a combined PCI index, where each county PCI index is weighted by the share of project benefits which can be located geographically. Similarly, when project beneficiaries are located in more than one state, the state index will be determined using weights determined by the states' shares of project benefits.

If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the standard cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF = .6, the non-Federal cost-share reduction will be the fractional amount 0.6 or 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent $(50 - .06 \times (50\text{–}30) = 38.0)$.

In the interim final rule, we gave equal weights to state and county PCI, that is b_1 and b_2 were set equal to each other. As discussed above (the role of the local sponsor), we have reevaluated the weights and concluded that the county index factor should be set at twice the state factor. The values for a, b_1 and b_2 will be published in Engineering Circulars. The formula will reflect our view that the ability to pay provision should only apply in exceptional circumstances. Therefore, two thirds of the counties will not be eligible; 20 percent of the counties will be eligible for the full application; and the remaining 13⅓ percent will be eligible for a partial application.

Available county PCI data lag behind available state PCI data. County information currently exists through 1987, state information through 1988. The guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up to date economic profile of a project area which can be applied uniformly to all projects.

Other Issues

We have retained the five percent minimum cash requirement of section

103(a)(1)(A), 33 U.S.C. 2213(a)(1)(A), even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. It is identical to the cash requirement in the interim final rule. One commenter found no basis for a cash requirement in section 103(a)(1)(A) (although the comments included recognition that section 104(g), 33 U.S.C. 2214, refers to the 103(a)(1)(A) requirement as a cash requirement. We believe that this reference, plus the language in the Conference Report for Public Law 99–662 (p. 206) shows clearly that a 5 percent cash payment is required under standard cost-sharing of structural flood control projects. By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are, under standard cost-sharing, the responsibility of the non-Federal interest.

Two commenters observed that the Ability to Pay Interim Final Rule did not address the relationship between credits given under section 104 and cost-share reductions under 103(m). In cases where a project is eligible for both credits and a cost-share reduction, the ability to pay calculation should be made first. Credits would then be applied against the non-Federal share as adjusted. The application of credits is subject to a separate regulation, ER 1165–2–29, published in the **Federal Register**, Nov. 18, 1987 (33 CFR 240).

The remaining comments (and our response) are listed here:

Comment: The ecological design of a project can reduce economic benefits, which becomes a liability under the ability to pay guidelines.

Response: When economic benefits are reduced, the project's benefit-cost ratio is reduced, increasing the likelihood that there will be a reduction under the ability to pay test.

Comment: The Secretary does not have the legal authority to reduce the non-Federal share under section 103(m).

Response: In our judgment, the record shows that this authority has in fact been given to the Secretary.

Comment: It is not clear how the rule is to be applied when the state, rather than a smaller entity, is the non-Federal sponsor.

Response: The rule is applied to all projects in exactly the same way regardless of the nature of the local sponsor.

Comment: The rule should include a chart showing how the ability to pay tests would affect projects with various characteristics.

Response: This suggestion was made by an advocate of a simpler formula. Given the number of factors in the final rule, a chart may cause imprecision in the application of the rule which our formula avoids.

Three other points have arisen during application of the interim rule which require clarification. First, some projects have been authorized without calculation of the economic benefit-cost ratio as defined in the Water Resource Council's Principles and Guidelines. In these cases, such a calculation must be made before the ability to pay test can be applied. Second, when determining the alternative cost share, it should be calculated to the nearest 1/10 of one percent. Finally, the test must be applied to projects constructed under section 208 of the 1954 Flood Control Act, 33 U.S.C. 701g (as amended), as well as the projects constructed under the other continuing authority programs identified in the interim final rule.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, it imposes few, if any, administrative burdens of any sort on small entities. Furthermore, the number of entities affected by this rule is small.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Kenneth L. Denton,

Alternate Army Liaison Officer, with the Federal Register.

The Corps of Engineers is hereby issuing final rules revising part 241 in title 33, chapter II as follows:

PART 241 FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99–662, 33 U.S.C. 2213, as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and field operating activities (FOA's) of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,* March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591–30.

(d) Office of Personnel Management, *FPM Bulletin* 591–32

(e) U.S. Army Corps of Engineers, *Engineer Regulation* 1165–2–29.

§ 241.4 General policy.

(a) Procedures described herein establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the standard non-Federal share that would be required under the provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213. The "standard share", as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m) requires that all cost-sharing agreements for flood control covered by the terms of section 103(a) or 103(b) be subject to the ability to pay test. The test must therefore be applied not only to projects specifically authorized by Congress, but to the continuing authority projects constructed under Section 14 of the 1946 Flood Control Act (33 U.S.C. 701r), section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act (33 U.S.C. 701g), all as amended.

(c) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance and rehabilitation responsibilities are unaffected by the ability to pay test.

(e) When projects are eligible for credits as outlined in ER 1165-2-29, reference § 241.3(e), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal share, the allowable amount of credits will be limited by the lower share.

(f) The test is based on the following principles:

(1) Since the standard non-Federal cost-share is substantilly less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(2) The test should depend not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project area is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(3) The alternative level of cost-sharing determined under the ability to pay principle should be governed in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(4) Since project benefits represent availability of resources in the future, but not the present, project sponsors should be permitted to defer a certain percentage of the non-Federal share whenever current economic circumstances suggest that non-Federal resources may be limited.

(g) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the standard cost-share and no further economic inquiry will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one, the benefits test.* Determine the maximum possible reduction in the level of non-Federal cost-sharing for any project.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*—ref. § 241.3(b)) to flood control costs for the project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four. For example, if the project's (or separable element's) benefit-cost ratio is 1.2:1, the factor for this project equals 0.3. If a project has been authorized for construction without a benefit-cost ratio calculated in accordance with the Principles and Guidelines, determination of the ratio is a prerequisite for consideration under the ability to pay provision.

(2) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is greater than the standard level of cost-sharing, the standard level will apply.

(3) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is less than the standard level of cost-sharing, projects may be eligible for either a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the standard level and the BBF, as determined by the procedures in step two, § 243.5. In no case however, will the non-Federal cost-share be less than five percent.

(b) *Step two, the income test.* Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the current economic resources of the project area and of the state or states in which the project is located.

(1) To assure consistency, the calculations in § 241.5(b) (2) and (3) will be performed by HQUSACE and distributed to all FOA's via Engineering Circulars. The information will be updated and distributed to HQUSACE and to the field as soon as new data are available. The procedures may be verified for any single county or state using the sources cited.

(2) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the state in which the project beneficiaries are located, and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business.* (If the project beneficiaries are located in Alaska or Hawaii, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI as contained in References §§ 241.3(c) and 241.3(d).) Determine the state's per capita personal income as an index number in comparision to the national average (U.S. = 100), and calculate the three year average of the state's index number.

(3) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the county where the project beneficiaries are located (the "project area"), and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business.* (If the project beneficiaries are located in Alaska or Hawaii, divide the county's per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.) Calculate the index for the county's per capita personal income to the national average (U.S. = 100), and calculate the three year average of the county's index number.

(4) When the project area, as determined by the location of the project's beneficiaries, includes more

than one county, calculate a composite project area index by taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. When the project area includes more than one state, the state index for the project should be calculated using the same weighting technique.

(5) Calculate an "Eligibility Factor" for the project according to the following formula:

$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor})$.

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the standard non-Federal cost-share in accordance with the procedures described in paragraph § 241.5(c) below. The values of a, b_1 and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of 0 or less. These values will be adjusted periodically as new information becomes available. Changes will be published in Engineering Circulars. The values will be set so that $b_2 = 2 \times b_1$, giving local income twice the weight of state income.

(6) Since estimates (available from the Bureau of Economic Analysis) of per capita personal income for Puerto Rico, Guam and other U.S. territories are well below the national average, the eligibility factor for projects in these areas is administratively established to be equal to 1.

(7) For flood control projects sponsored by Native American tribes or villages, the EF shall be calculated using information on tribe or village income as a replacement factor for both the area and state factor (that is multiply the replacement income factor by both b_1 and b_2 and subtract each from a in the equation in § 241.5(b)(5)). The replacement factor will be tribe or village income as a percentage of the national average for the equivalent definition of income (for example a Tribe's median family income as a percentage of the median family income for all U.S. families). The data should be the latest available information. It is acceptable, but not required that the data be obtained from the Bureau of the Census, *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, part 1, Table 10, or *General Social and Economic Characteristics—United States Summary (1980)*, Table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the standard cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The alternative non-Federal share will be calculated and reported to the nearest one tenth of one percent. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Public Law 99-662, 33 U.S.C. 2213, as follows:

(1) When $EF \geq 1$, non-Federal cost-share = BBF

(2) For structural projects covered by section 103(a), when $0 < EF < 1$:

(i) If LERRD equals or exceeds 45 percent: non-Federal cost-share $= 50 - EF \times (50 - BBF)$

(ii) If LERRD exceeds 20 percent but is less than 45 percent: non-Federal cost-share $= (LERRD + 5) - ER \times [(LERRD + 5) - BBF]$

(iii) If LERRD is less than 20 percent: non-Federal cost-share $= 25 - EF \times (25 - BBF)$

(3) For non-structural projects covered by section 103(b), when $0 < EF < 1$: non-Federal cost-share $= 25 - EF \times (25 - BBF)$

(4) In no case however, can the non-Federal share be less than five percent, even if the calculation made in § 241.5(c) (1), (2), or (3) results in a smaller number.

(5) Note: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas expressed as a percentage of total project costs. The BBF and numerical terms in the equations above are also expressed as percentages.

§ 241.6 Deferred payments for certain qualifying projects.

(a) Whenever a project's Eligibility Factor exceeds zero, the project sponsor will be permitted to defer a portion of its share of flood control costs. The maximum allowable amount deferred equals the total non-Federal share less (for structural projects) five percent of total project costs and less (for all projects) any amounts for LERRD paid for or acquired by the sponsor prior to the time the LCA is signed. If for example, the non-Federal share of a structural project = 35.0 percent (after the ability to pay adjustment, if any) of which 10 percent is LERRD already paid for by the local sponsor, the maximum allowable amount to be deferred = 20 percent of project flood control costs (35 less the 5 percent cash requirements, less the 10 percent LERRD already acquired). Deferred payments at the option of the sponsor will be allowed regardless of the outcome of the benefits test described in § 241.5(a) whenever the Eligibility Factor exceeds zero.

(b) When $EF \geq 1$, the project sponsor may defer as much as the maximum allowable amount as described in § 241.6(a).

(c) When $0 < EF < 1$, the sponsor may defer a fraction of the maximum allowable amount described in § 241.6(a), where the fraction equals the Eligibility Factor expressed to three decimal places. Continuing the example described in § 241.6(a), if $EF = .712$, total allowed deferral equals $.712 \times 20$ percent = 14.2 percent of total project costs.

(d) The deferred payment can be made in equal installments over any period of time selected by the non-Federal sponsor, provided that all repayments are made between the end of construction and thirty years thereafter. The amount repaid shall include interest during the repayment period as well as interest for the appropriate portion of the construction period for any amounts deferred prior to the end of construction. The rate of interest shall be determined in accordance with the provisions of section 106 of Public Law 99-662, 33 U.S.C. 2216.

§ 241.7 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the standard share, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal sponsor is signed. For structural flood control projects, the standard level of cost-sharing will not be known until the end of the project (since the standard level as specified in section 103(a), 33 U.S.C. 2213, includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs.

(c) The LCA for all projects subject to the ability to pay test will include a "whereas" clause indicating the results of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the LCA (there will be no recalculation of this share once the LCA is signed).

(2) An exhibit attached to the LCA will include the Benefits Based Floor (BBF) determined in § 241.5(a); the Eligibility Factor (EF) determined in § 241.5(b); if the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share; and the formula used in determining the ability to pay share as described in paragraphs § 241.5 (c)(1) through (c)(4).

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the LCA, the standard share will apply.

(e) For structural projects. (1) If the standard LERRD plus cash requirement exceeds the ability to pay cost-share, the Federal Government will make any necessary adjustments in expenditures in the following order: First, paying any cash requirement in excess of five percent of total project costs (if any) that would, under standard cost-sharing, have been the responsibility of the non-Federal sponsor; second, making payments for LERRD; and third, providing for reimbursement at the end of construction. Federal payments for LERRD will be made only after the non-Federal payment for LERRD reaches a percentage of total project costs equal to the ability to pay non-Federal cost-share less the five percent cash requirement. If such arrangements are necessary, the LCA should be prepared to reflect agreement on the best manner available for acquisition of those LERRD over the limiting percentage, or for reimbursing the sponsor upon completion of construction.

(2) The non-Federal sponsor will be required to provide a cash payment equal to a minimum of five percent of estimated total project costs, regardless of the outcome of the ability to pay test. The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the amount of Federal expenditures (including sunk pre-construction engineering and design costs as a first year Federal construction expenditure) as a percentage of total Federal expenditures. Total Federal expenditures include cash payments for construction and if necessary (due to ability to pay considerations), for LERRD, and for reimbursement to the non-Federal sponsor. Total Federal expenditures for the purpose of this calculation, do not include expenditures which allow the non-Federal sponsor to defer payment of the non-Federal share under the provisions of this rule.

(f) For non-structural projects, reductions in the non-Federal cost-share as a result of the ability to pay test will not affect the procedures for determining the non-Federal and Federal payment schedules. For non-structural projects, no specific cash payments during construction are required by law.

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