

little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Ivar's Fourth of July Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new section 165.1307 is added to read as follows:

§ 165.1307 Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of Elliott Bay bounded by the following coordinates: Latitude 47°37'22" N, Longitude 122°22'06" W; thence to Latitude 47°37'06" N, Longitude 122°21'55" W; thence to Latitude 47°36'54" N, Longitude 122°22'05" W; thence to Latitude 47°36'09" N, Longitude 122°22'25" W; thence returning to the origin. This safety zone resembles a square centered around the barge from which the fireworks will be launched and begins 100 yards from the shoreline of Myrtle Edwards Park. Floating markers will be placed by the sponsor of the fireworks display to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated March 29, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 211

Excessing of Lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers proposes to expand its policy regarding excess lands with Indian reservations. This action flows from Congressional intent expressed in Public Law 102-575, language in Public Law 103-211 encouraging the Corps to proceed with the Department of the Interior to identify excess lands and transfer them to the Tribes, the President's policies regarding Native Americans, and our desire to give to the Tribes as much interest in the project lands at Lakes Sakakawea and Oahe as possible under existing law. If approved, this policy will enable the Corps to retain sufficient real property interests in certain Corps administered lands to fulfill project purposes, yet declare certain other interests in the lands excess to project needs, thereby permitting eventual transfer to the Department of Interior to be held in trust for the Tribes.

DATES: Comments must be received on or before July 10, 1995; dates for public hearings will be announced to the public at a later date.

ADDRESSES: Comments should be mailed to U.S. Army Corps of Engineers District, Omaha, ATTN: CEMRO-OP-TN (Mike George), 215 North 17th Street, Omaha, NE 68102-4978. Addresses for public hearings will be announced to the public at a later date.

FOR FURTHER INFORMATION CONTACT: Mike George at (402) 221-3988.

SUPPLEMENTARY INFORMATION:

Background

As part of the Garrison Diversion Unit Commission, authorized by P.L. 98-360, the Joint Tribal Advisory Committee (JTAC) was formed for the purpose of assessing impacts to the Three Affiliated Tribes (TAT) of the Fort Berthold Reservation and the Standing Rock Sioux Tribe (SRST) resulting from the construction of the Garrison Dam/Lake Sakakawea Project and the Oahe Dam and Lake Project. In its recommendations, the JTAC stated that

some former Indian lands should be returned to the tribes.

The criteria used by the JTAC in identifying lands for return to the tribes was based on a contour elevation which approximated the reservoir maximum operating pool. As recommended in the Final Report of the Joint Tribal Advisory Committee, the Omaha District conducted a "Special Assessment of Project Lands" with the intent of identifying project lands which would not have been acquired under current acquisition criteria. The ruling guide was the 1971 Joint Acquisition Policy adopted by the Secretary of Army and Secretary of Interior and recorded in 32 CFR 644.4 and 43 CFR part 8. As a result of the Special Assessment, 7,583 acres at lake Sakakawea and 3,218 acres at Lake Oahe were identified as lands which would not have been acquired under current acquisition criteria. Further analysis found that even though these lands would not have been acquired under current acquisition guidelines, some were nonetheless currently committed to project purposes such as recreation or fish and wildlife management. Corps policy, as expressed in Engineer Regulation (ER) 1130-2-400, provides that lands which otherwise would be excess (because they do not fall within current acquisition guidelines), but which are committed to valid project purposes, will not be declared excess. At Lakes Sakakawea and Oahe, 1,692 and 2,832 acres, respectively, were so identified. In addition, some lands were encumbered by outgrants of interests in the lands, such as leases and licenses.

In 1989, in accordance with the policy expressed in ER 1130-2-400, the Secretary of Army decided to exclude the lands devoted to recreation or wildlife purposes, but to otherwise transfer the balance (5,891 acres at Lake Sakakawea and 386 acres at Lake Oahe). A report of excess was completed and the property was transferred to the GSA which, in turn, transferred it to the Department of the Interior to be held in trust for the tribes in accordance with P.L. 93-599. P.L. 93-599 provides that excess federal lands within the reservation boundaries of a federally-recognized tribe be transferred to the Department of the Interior to be held in trust for that tribe. The TAT accepted the transfer of 5,878.25 acres at Lake Sakakawea (the 5,891 acre figure mentioned above was adjusted and refined when property descriptions were prepared), the SRST, however, rejected the transfer of 386 acres at Lake Oahe. The transfer to the TAT was completed in July, 1992.

On October 30, 1992, the President signed the "Reclamation Project Authorization and Adjustment Act" (P.L. 102-575) into law. Title XXXV of this Law, "The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act" (106 Stat. 4731), specified that administrative jurisdiction over all lands above a specific contour (more or less the reservoir maximum operating pool) would be transferred from the Army to the Department of the Interior. Interior was then required to offer the former owners or their heirs (including tribal members, individual allottees, and non-Indians) a right to repurchase these lands. Any lands not repurchased were to be offered to the Tribes for purchase. The Army attempted to transfer administrative jurisdiction over the property to the Department of Interior in October 1993, but the Department of Interior did not formally accept the transfer. The land transfer provisions of the Equitable Compensation Act were repealed on February 12, 1994 as part of the California Earthquake Emergency Appropriations Act (section 407 of Public Law 103-211). Legislative history cited excessive costs of the proposed transfer as the reason for the repeal.

The repeal of the land transfer provisions of the equitable Compensation Act included a proviso that "the U.S. Army Corps of Engineers should proceed with the Secretary of Interior to designate excess lands and transfer them pursuant to Public Law 93-599." Again, P.L. 93-599 envisions the transfer of excess Federal lands within Indian reservations to the Department of the Interior to hold in trust for the tribes.

As indicated, the Corps had determined previously that application of the existing excessing policy, as expressed in ER 1130-2-400, would not result in designation of additional excess lands. Because of the expression of congressional intent found in Public Laws 102-575 and 103-211, and the great public interest in this issue, the Assistant Secretary of the Army (ASA(CW)) decided to look again at this issue and to determine whether a new policy could be developed that would take into account the competing interests, and allow us to declare certain interests in real estate not necessary for project purposes to be excess.

Based on input from the North and South Dakota congressional delegations, state government, the Tribes, special interest groups, the public and others, the Office of the ASA(CW) developed proposed criteria for excessing certain interests in land for purposes of further public discussion. Under this concept,

the Corps would retain only such interests in lands as are necessary for project purposes and transfer the remaining interests to GSA for ultimate disposition to the Department of the Interior for the benefit of the Tribes. In identifying the lands that could be transferred, the following criteria/factors would be considered: (1) Investments made by others in the property; (2) the need to maintain access to public and private land; (3) the need to maintain municipal and rural water supply systems; (4) precedential implications. Furthermore, the Office of the ASA(CW) proposed that only lands acquired from the SRST and TAT should be considered for excessing.

Public Input

The ASA(CW) held public meetings in North and South Dakota in June of 1994 to solicit public input on the proposed criteria. Written input was also solicited and received. A Summary of Public Input can be examined. A general discussion of the public input follows:

Most commentors, whether they favored or disfavored the proposed action, urged more public and state government participation in this effort, and encouraged an open process.

Many commentors expressed concerns regarding continued access to shoreline for recreation purposes and grazing. Many commentors also noted concerns regarding existing recreation areas. Some of these commentors expressed the view that recreation areas should remain in government hands to guarantee continued public use.

Some commentors stated that lands on which the government had expended tax dollars should remain open to the public. Others stated their desire that lands on which private investments have been made should be withheld from transfer, even though those lands were merely leased from the Corps.

Many commentors stated that the repeal of the Equitable Compensation Act was a broken promise to the Indians. Many also expressed the need for the government to redress the flooding of Indian communities when the projects were built. Some commentors noted that the interests or investments of lessees on Corps lands should not be protected in perpetuity, because those interests are, by nature, only temporary.

Many commentors stated that lands should be returned to non-Indian former owners also.

Some commentors were concerned that this action would increase existing jurisdictional confusion. Other

commentors questioned the precedential implications of this action.

Test

As a result of the public input received, the ASA(CW) determined that the proposed criteria were appropriate, but that they should be tested by practical application. Corps headquarters directed the Omaha District to randomly sample 10 parcels of former tribal land at Lake Oahe and Lake Sakakawea and apply the four criteria/factors mentioned above to each parcel to illustrate, by example, the effect of implementing this policy.

The Omaha District selected 10 sections (one square mile) of land at each reservoir that contained former tribal lands. Once the sections were chosen, a map was prepared showing the relationship of the former tribal land to all other project lands within that section.

Applying a 2.5 acre blockout using close tangents above the contour of the maximum operating pool, parcels were identified which could be considered candidates for transfer. Each of these former tribal tracts were then inventoried, and the four mentioned criteria were applied to the candidate transfer parcels. A matrix was prepared for the purpose of summarizing the parcels and providing a basis for comparison.

The findings of this study indicate that along the 828 miles of shoreline at lake Sakakawea, using these criteria, there would be less than 800 acres available for excess. The findings at Lake Oahe indicate that along the 265 miles of shoreline less than 1,600 acres would be available for excess. Depending on the application of the above mentioned criteria, these numbers will likely be less.

The results of the study, as well as the maps prepared for the study, are on file at the Omaha District office, and may be examined.

Conclusion

After reviewing and considering the public input received and upon examining the results of this study, the Acting Assistant Secretary of the Army (Civil Works), in consultation with the Commander, U.S. Army Corps of Engineers, Missouri River Division and the Commander, U.S. Army Corps of Engineers, Omaha District, determined that the three of the four proposed criteria were valid criteria/factors that should be considered in determining which lands could be declared excess at Lakes Sakakawea and Oahe. The fourth criterion, "consider precedential implications," was deemed unnecessary

since this rule is limited to Corps lands within the Standing Rock Sioux Reservation and the Fort Berthold Reservation of the Three Affiliated Tribes and does not apply to other Corps projects. Also, the ASA(CW) determined that it would be appropriate and desirable to consider all former trust lands, allotted as well as tribal, for excessing for the following reasons: Inclusion of all trust lands is consistent with the manner in which lands were acquired for the project, and it creates more manageable land units for both the tribe and the Corps of Engineers. Further, including all former trust lands would be consistent with congressional intent.

Public Participation

Dates and addresses for public meetings will be announced at a later date.

Although this document is a notice of proposed rulemaking that solicits public comment, the Corps of Engineers has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act. The requirements of Executive Order No. 12291 do not apply to these procedures. These regulations do not constitute a "major rule within the meaning of the Executive Order."

List of Subjects in 33 CFR Part 211

Claims, Flood control, Indian reservations, Public lands, Real property acquisition, Reservoirs, Rights-of-way, Waterworks.

For the reasons set forth in the preamble, the Corps of Engineers proposes to amend 33 CFR Part 211, as set forth below:

Part 211—Real Estate Activities of the Corps of Engineers in Connection with Civil Works Projects

1. The authority citation for § 211.148 is added to read as follows:

Authority: Section 211.148 issued under 40 U.S.C. 483, 486.

2. A new center heading and § 211.148 are added, to read as follows:

Excessing of Lands Within Indian Reservations

§ 211.148 Excessing of lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe.

For the projects at Lake Oahe and Lake Sakakawea, interests in real estate

that are not required for project purposes may be considered excess to project purposes when:

(a) The lands lie within the external boundaries of the Standing Rock Sioux Tribe Reservation or the Fort Berthold Reservation of the Three Affiliated Tribes;

(b) The lands are former trust lands, either allotted or tribal, acquired for the project; and

(c) Appropriate interests in the lands may be retained, or conditions imposed, as are necessary to preserve the integrity of legislatively authorized project operations; provided:

(1) There has been no substantial capital investment in the property which cannot be recovered by the investor prior to excessing;

(2) There will be no unreasonable impact on access to public and private land; and

(3) There will be no unreasonable impact on municipal and rural water supply systems.

Dated: March 23, 1995.

Approved:

Elizabeth L. Fagot,

Deputy Director of Real Estate.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5182-6]

RIN 2060-AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: clarification.

SUMMARY: This action proposes clarifying changes and corrections to certain portions of the "National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks" (collectively known as the "hazardous organic NESHAP" or the "HON"). This action proposes to remove three compounds (glycerol tri-(polyoxypropylene)ether, polyethylene