

of New Jersey Department of Military and Veterans Affairs and the State of New Jersey Department of Environmental Protection have requested that the danger zone at the National Guard Training Center at Sea Girt, New Jersey, established by the Corps on January 10, 1969, be disestablished. According to the State, the danger zone is no longer needed to protect the public using the waters offshore of the National Guard Training Center, because of improvements previously made at the small arms firing range. Accordingly, we are hereby removing the regulations which establish the danger zone. We have determined that notice of proposed rulemaking and public procedures thereto are unnecessary since the revocation of the danger zones removes a restriction on public use of the offshore.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the removal of the danger zone at the National Guard Training Center at Sea Girt, New Jersey would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this rule will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

We have concluded that this amendment to the danger zone regulations which removes a restriction on the public's use of a water area will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section

202 of 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, we are amending 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

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).

§ 334.90 [Removed]

2. Section 334.90 is removed.

Dated: February 23, 1997.

Russell L. Fuhrman,
Major General, United States Army, Director
of Civil Works.

[FR Doc. 97-5049 Filed 3-4-97; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AI33

Rulemaking Procedures; Public Participation

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the "General Provisions" regulations of the Department of Veterans Affairs (VA) by eliminating a policy statement concerning prior notice-and-comment for rulemaking. We believe that there is no need to retain this policy statement. Furthermore, this action is warranted to prevent confusion concerning VA policy.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8605.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on March 20, 1996 (61 FR 11309), we amended the "General Provisions" regulations in 38 CFR Part 1 by removing § 1.12 captioned "Public participation in regulatory development." Subsequently, judicial review was sought on the basis that the removal did not comply with notice-and-comment provisions. Accordingly, to avoid unnecessary litigation, we reestablished § 1.12 in a document published in the Federal Register on July 1, 1996 (61 FR 33850). In addition, in a companion document also published in the Federal Register on July 1, 1996 (61 FR 33878), we proposed to remove § 1.12 and requested comments on the proposal. Accordingly, this document relates to the proposal to remove § 1.12.

The comment period ended August 30, 1996. We received four comments. Three were submitted by veterans' service organizations and one was submitted by a law school professor. The commenters argued in favor of retaining § 1.12.

The provisions of the Administrative Procedure Act (APA) at 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include exemptions from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts.

The regulatory history of § 1.12 indicates that this section was established for the purpose of adopting a recommendation of the 1969 Administrative Conference of the United States, i.e., that agencies adopt a policy stating that they would not exempt rulemaking from notice-and-comment provisions solely because the rulemaking concerned public property, loans, grants, benefits, or contracts (see 37 FR 3552, February 17, 1972; 37 FR 7157, April 11, 1972).

Subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply the notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). Also, subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment

provisions to certain rulemaking concerning contracts (see 41 U.S.C. 418b). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property.

One commenter indicated that we should retain the notice-and-comment provisions for rulemaking concerning public property and contracts. We are committed to compliance with all legal requirements concerning rulemaking, including APA requirements. However, we believe that self-imposition of any other procedures for rulemaking should be done on a case-by-case basis and we do not believe that it is necessary or prudent to self-impose additional requirements by regulation.

The commenters also argued in favor of retaining § 1.12 based on issues relating to certain "non-legislative rules" (rules of agency management; interpretative rules; general statements of policy; rules of organization, procedure, or practice). In this regard, the provisions of 5 U.S.C. 553 contain exemptions from the notice-and-comment requirements for "non-legislative rules." The commenters argued that § 1.12 added notice-and-comment requirements for rulemaking regarding such "non-legislative rules" and further included specific reasons to support the desirability of having additional notice-and-comment for such types of rulemaking.

Rulemaking documents establishing "non-legislative rules" are issued by the Secretary and concurred in by the General Counsel. The provisions of § 1.12 included internal instructions which stated: "Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel." The next sentence, in part, states: "Such exceptions, unless public comment is required by statute, may be recommended when: (a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization procedure or practice * * *." The mere finding that a rulemaking proceeding concerned a "non-legislative" rule met the "adequately justified" standard for foregoing the notice-and-comment procedures. The elimination of § 1.12 would bring VA practice into conformity with the requirements generally imposed on the rest of government, i.e., notice-and-comment issues would be governed by the provisions of 5 U.S.C. 553. Eliminating the regulatory provisions imposing

internal procedural steps increases government efficiency and would not result in the diminution of the substantive rights of any party.

Furthermore, the removal of § 1.12 is warranted because it has generated much confusion, particularly with respect to "non-legislative rules."

Accordingly, based on the rationale set forth in the proposed rule and this document, we are removing § 1.12.

This rulemaking action concerns VA policy and internal VA procedures. Although we provided notice-and-comment concerning this rulemaking proceeding it was not required under the provisions of the APA and, consequently, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, the Secretary of Veterans Affairs certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: February 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

2. Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 97-5341 Filed 3-4-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-015-1015a; FRL-5682-5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) to reduce lead emissions sufficient to bring the Glover area into attainment with the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: This action is effective May 5, 1997 unless by April 4, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS in the Glover area is a primary lead smelter owned and operated by the American Smelting and Refining Company (Asarco). The smelter processes lead concentrate recovered from lead mines into pure lead or lead compounds to meet its customer's specifications. The facility's refining capacity is approximately 140,000 tons of refined lead per year.

The original Glover lead State Implementation Plan (SIP) was approved by the EPA in 1981.

Subsequent to SIP approval, the EPA conducted modeling which predicted continued violations of the standard. Asarco and Missouri prepared several SIP revisions; however, these revisions were not approved because modeling still showed violations in some areas defined as "ambient air."