

(c) *Enforcement.* The regulation in this section, promulgated by the U.S. Army Corps of Engineers, shall be enforced by the Commanding Officer, Naval Weapons Station Earle, and/or other persons or agencies as he/she may designate.

Dated: June 5, 2003.

**Lawrence A. Lang,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

##### United States Navy Restricted Area, Naval Air Station North Island, San Diego, CA

**AGENCY:** Army Corps of Engineers, DoD.  
**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations to establish a new restricted area in waters adjacent to the Naval Air Station North Island (NASNI), San Diego, California. This amendment will restrict activities by the public on the northeast side of the base. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

**EFFECTIVE DATE:** July 28, 2003.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Russell L. Kaiser, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452-3293.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR part 334 by adding a restricted area at 334.865. The restricted area is being established for safety and security purposes in support of accommodating the homeport of a third aircraft carrier at NASNI. The restricted area is adjacent to a current U.S. Coast Guard security zone, which is enclosed

by latitude/longitude coordinates: 32°42'52.5" N, 117°11'45.0" W; 32°42'55.3" N, 117°11'45.0" W; 32°42'55.0" N, 117°11'30.5" W; 32°42'40.0" N, 117°11'06.5" W; 32°42'37.2" N, 117°11'06.8" W; 32°42'28.5" N, 117°11'11.0" W; 32°42'21.5" N, 117°10'47.7" W; and 32°42'13.1" N, 117°10'51.2" W. The connection of the restricted area with the security zone will occur at the following coordinates: 32°42'55.0" N, 117°11'30.5" W and 32°42'40.0" N, 117°11'06.5" W.

#### 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

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 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 this new restricted area would have practically 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

The Los Angeles District has prepared an Environmental Assessment (EA) for this action. The district has concluded, based on the minor nature of the addition of this restricted area, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the Los Angeles District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

##### 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 or 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 General Accounting Office

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, the U.S. 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

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 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).

■ 2. Section 334.865 is added to read as follows:

§ 334.865 Naval Air Station North Island, San Diego, California, Restricted Area.

(a) *The area.* The waters within an area beginning at 32°42'55.0" N, 117°11'30.5" W; thence running easterly to 32°42'57.0" N, 117°11'22.5" W; thence running easterly to 32°42'56.0" N, 117°11'19.0" W; thence running southeasterly to 32°42'49.0" N, 117°11'08.5" W; thence running southeasterly to 32°42'44.5" N, 117°11'06.5" W; thence running southerly to 32°42'40.0" N, 117°11'06.5" W.

(b) *The regulation.* (1) The restricted area shall not be open to swimming, fishing, water-skiing, mooring or anchorage.

(2) Dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(3) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(4) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(5) No vessel or craft of any size shall lie-to or anchor in the restricted area at

any time other than a vessel operated by or for components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

Dated: June 5, 2003.

**Lawrence A. Lang,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 138-4098a; FRL-7511-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Federally Enforceable State Operating Permit Program; Allegheny County, Pennsylvania

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revision consists of Allegheny County's state operating permit program. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on August 25, 2003 without further notice, unless EPA receives adverse written comment by July 28, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [gaffney.kristeen@epa.gov](mailto:gaffney.kristeen@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part V of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Paul Arnold, Permits and Technical Assessment Branch at (215) 814-2194 or by e-mail at [arnold.paul@epa.gov](mailto:arnold.paul@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 9, 1998 as amended on March 1, 2001, the Pennsylvania Department of Environmental Protection (PADEP), on behalf of the Allegheny County Health Department (ACHD), submitted a revision to the State Implementation Plan (SIP). The SIP revision consists of a state operating permitting program for sources of air pollution in Allegheny County. The SIP revision contains a regulation to implement a state operating permit program that provides a procedural and legal basis for the issuance of federally enforceable operating permits. Pennsylvania also requested approval of Allegheny County's state operating permit program pursuant to section 112(l) of the Clean Air Act.

Federally enforceable state operating permits (FESOPs) may be used to establish emission standards and other source-specific regulatory requirements for stationary sources of air pollution. FESOPs are frequently employed by permitting authorities to accomplish one or more of the following objectives: To designate a source as a synthetic minor source with regard to applicability of Federal requirements and standards, such as new source review; to combine a source's requirements under multiple permits into one permit; to implement emissions trading requirements; to cap the emissions of a source contributing to a

violation of any air quality standard; or, to establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or state air statutes and regulations.

On December 6, 1999, EPA proposed approval of the permit program (64 FR 68066). The ACHD subsequently revised its regulations on August 15, 2000, effective January 12, 2001. These revisions improve the ACHD permitting programs. EPA has withdrawn the previous proposal (64 FR 68066) and is approving the FESOP program submitted on November 9, 1998, as amended on March 1, 2001.

##### II. Evaluation of State Operating Permit Program Under Section 110 of the Act

On June 28, 1989, EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's maximum potential emission rates or potential-to-emit (PTE). This is true provided that the state's operating permit program is approved into the SIP under section 110 of the Clean Air Act as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. (See, 54 FR 27274-27286.) The following describes each of the criteria for approval of a state operating permit program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how the ACHD's SIP submittal satisfies those criteria.

*Criterion 1.* The state operating permit program *i.e., the regulations or other administrative framework describing how such permits are issued* must be submitted to and approved by EPA as a SIP revision. On November 9, 1998 as amended on March 1, 2001, the Commonwealth of Pennsylvania submitted an administratively and technically complete SIP revision request for approval of Allegheny County Health Department's operating permit program. The permit program, Article XXI, Parts B and C, provide the framework for permit issuance.

*Criterion 2.* The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to