

latitude 34°5'42.2", longitude 119°5'13.3"; latitude 34°5'27.8", longitude 119°4'49.5"; latitude 34°5'17.9", longitude 119°4'27.9"; latitude 34°5'5.7", longitude 119°3'59.90"; latitude; 34°5'17.9", longitude 119°3'55.4" (down-coast shoreline point).

(b) *The regulation.* No vessels may enter the restricted area unless permission is obtained in advance from the Commanding Officer of Naval Base Ventura County. Contact Naval Base Ventura County Security at (805) 989-7907.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of Naval Base Ventura County, and such agencies or persons as he/she may designate.

Dated: March 11, 2004.

**Michael B. White,**

Chief, Operations, Directorate of Civil Works.  
[FR Doc. 04-8601 Filed 4-15-04; 8:45 am]

BILLING CODE 3710-92-P

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### 33 CFR Part 334

#### United States Coast Guard Restricted Area, San Francisco Bay, Yerba Buena Island, San Francisco, CA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations to establish a Restricted Area in the waters of San Francisco Bay on the east side of Yerba Buena Island, San Francisco, San Francisco County, California. The designation would ensure public safety and satisfy the security, safety, and operational requirements as they pertain to the Coast Guard Group San Francisco on Yerba Buena Island, by establishing an area into which unauthorized vessels and persons may not enter.

**EFFECTIVE DATE:** May 17, 2004.

**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 at (202) 761-1075 or Mr. Bryan Matsumoto, Corps San Francisco District, at (415) 977-8476.

**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 Appropriation 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 establishing a new Restricted Area at 334.1065, in the waters of San Francisco Bay on the east side of Yerba Buena Island, San Francisco, San Francisco County, California. This amendment will close off an open area in San Francisco Bay from a point along the southeastern shore of Yerba Buena Island at latitude 37°48'27" North, longitude 122°21'44" West; east to latitude 37°48'27" North, longitude 122°21'35" West; north to latitude 37°48'49" North, longitude 122°21'35" West, a point on the northeastern side of Yerba Buena Island. These coordinates correct a small error in the coordinates in the proposed notice, but the change in size and shape of the Restricted Area is considered negligible. The points defining the proposed Restricted Area were selected to isolate dock-side and pier face activity that might present a terrorist threat. Additionally, the Restricted Area would reduce the potential hazard to the public in the event of a rapid response by Coast Guard assets for Homeland Defense and Search and Rescue Operations.

#### Procedural Requirements

##### a. Review Under Executive Order 12866

This rule is issued with respect to security and safety functions of the U.S. Coast Guard 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 (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 establishment of this Restricted Area would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

##### c. Review Under the National Environmental Policy Act

The San Francisco District has prepared an Environmental Assessment (EA) for this action. We have concluded that this action will not have a significant impact on the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA will be available for review at the San Francisco District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** paragraph 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, we amend 33 CFR Part 334 to read 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 334.1065 is added to read as follows:

#### § 334.1065 U.S. Coast Guard Station, San Francisco Bay, Yerba Buena Island, San Francisco Bay, California; Restricted Area.

(a) *The area.* San Francisco Bay on the east side of Yerba Buena Island: From a point along the southeastern shore of Yerba Buena Island at latitude 37°48'27" North, longitude 122°21'44" West; east to latitude 37°48'27" North, longitude

122°21'35" West; north to latitude 37°48'49" North, longitude 122°21'35" West, a point on the northeastern side of Yerba Buena Island.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the Restricted Area for any reason without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(2) Mooring, anchoring, fishing, transit and/or swimming shall not be allowed within the Restricted Area without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island, and such agencies and persons as he/she shall designate.

Dated: March 11, 2004.

**Michael B. White,**

*Chief, Operations, Directorate of Civil Works.*  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MI84-02; FRL-7647-6]

### Conditional Approval and Promulgation of Implementation Plans: Michigan: Oxides of Nitrogen Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Michigan on April 3, 2003. The submittal made by the Michigan Department of Environmental Quality (MDEQ) responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." The rules submitted by MDEQ establish a nitrogen oxides (NO<sub>x</sub>) emissions allowance trading program for large electric generating and industrial units, and require reductions from large electric generating and industrial units and cement kilns, beginning in 2004. The intended effect of the regulations submitted by MDEQ is to reduce

emissions of NO<sub>x</sub> to help attain the national ambient air quality standard for ozone. EPA is conditionally approving Michigan's Oxides of Nitrogen Budget Trading Program because it generally meets the requirements of the Phase I NO<sub>x</sub> SIP Call designed to significantly reduce ozone in Michigan and ozone transport in the eastern United States.

**DATES:** This rule is effective on May 3, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. MI84. All documents in the Docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at: Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please contact Douglas Aburano at (312) 353-6960 or [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov) before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:**

Douglas Aburano, Environmental Engineer, Criteria Pollutant Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, fax (312) 886-5824, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "you" refer to the reader of this rule and/or to sources subject to the State rule, and the terms "we," "us," or "our" refer to EPA.

On April 3, 2003, MDEQ submitted a NO<sub>x</sub> emission control plan to the EPA for inclusion in Michigan's SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. The revisions generally comply with the requirements of the Phase I NO<sub>x</sub> SIP Call. Included in this submission are Michigan Rules 802 through 817. The information in this conditional approval is organized as follows:

- I. What Action Is EPA Taking Today?
- II. Statutory and Executive Order Reviews.

**I. What Action Is EPA Taking Today?**

EPA is conditionally approving revisions to Michigan's SIP concerning the adoption of its NO<sub>x</sub> emission trading rules, which the State submitted on April 3, 2003. The rules meet the requirements of the Phase I NO<sub>x</sub> SIP Call with certain exceptions which EPA identified in our February 26, 2004,

proposed conditional approval (69 FR 8905). In a letter dated January 9, 2004, MDEQ committed to submit fully adopted rules addressing the deficiencies by May 31, 2004. MDEQ is in the process of adopting rules to correct these deficiencies. Once MDEQ has submitted the rule changes to address these deficiencies, we can take action to fully approve the SIP revision. If Michigan does not submit approvable revisions by this date, this conditional approval will automatically revert to a disapproval of the Michigan NO<sub>x</sub> SIP submission.

EPA published in the **Federal Register** on February 26, 2004 (69 FR 8905) a proposal to conditionally approve Michigan's SIP revision. You can find additional information regarding the State of Michigan's submittal and our rationale for conditionally approving it in the February 26, 2004 proposed rule where we described, in detail, the Michigan SIP revision, as well as the deficiencies that Michigan must address before we can fully approve MI's NO<sub>x</sub> trading program. Since we did not receive any adverse comments during the 30 day public comment period, we are finalizing the conditional approval that we proposed on February 26, 2004. Unless this conditional approval is satisfied within 1 year, it will become a disapproval. EPA will publish a document in the **Federal Register** indicating whether the conditional approval was satisfied or became a disapproval.

Pursuant to the good cause exemption in section 553(d)(3) of the Federal Administrative Procedure Act (5 U.S.C. 553(d)(3)), we are making this rule effective on May 3, 2004, which is 15 days after publication of this final action because of the need for the State to allocate allowances to affected sources in a timely manner. Sources will need these allowances for the compliance season which begins on May 31, 2004.

## II. Statutory and Executive Order Reviews

### *Executive Order 12866; Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to