

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Rick Henderson, Corps of Engineers, Norfolk District, Regulatory Branch, at (757) 441-7653.

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 amending section 334.300 which establishes a restricted area in waters adjacent to the Norfolk Naval Base at Norfolk, Virginia.

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 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 proposal will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Norfolk District has prepared an Environmental Assessment (EA) for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, 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 Norfolk 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. Revise §334.300 to read as follows:

§ 334.300 Hampton Roads and Willoughby Bay, Norfolk Naval Base, Naval Restricted Area, Norfolk, Virginia

(a) *The area.* (1) The waters within an area beginning at latitude 36°55'55" N, longitude 76°20'02" W; thence northwesterly to latitude 36°56'00" N, longitude 76°20'08" W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57'52" N, longitude 76°20'00" W; thence easterly to latitude 36°57'52" N, longitude 76°19'35" W; thence to latitude 36°57'47.7" N, 76°18'57" W; thence southeasterly to latitude 36°57'26" N, longitude 76°18'42" W; thence easterly to latitude 36°57'26.2" N, longitude 76°17'55.2" W; thence southerly to latitude 36°57'05" N, longitude 76°17'52" W; thence southeasterly to latitude 36°56'56.2" N, longitude 76°17'27" W; thence northeasterly to latitude 36°57'10" N, latitude 76°16'29" W; thence to the shoreline at latitude 36°57'18.8" N, longitude 76°16'22" W at the Naval Air Station.

(2) Beginning at a point on the Naval Station shore at latitude 36°56'37.5" N, longitude 76°19'44" W; thence westerly and northerly along the breakwater to its extremity at latitude 36°56'41.5" N, longitude 76°19'54" W; thence westerly

to a point on the eastern limit of Norfolk Harbor Channel at latitude 36°56'41.5" N, longitude 76°20'05.5" W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57'52" N, longitude 76°20'00" W; thence easterly to latitude 36°57'52" N, longitude 76°19'35" W; thence to latitude 36°57'47.7" N, longitude 73°18'57" W; thence southeasterly to latitude 36°57'26" N, longitude 76°18'42" W; thence easterly to latitude 36°57'26.2" N, longitude 76°17'55.2" W; thence southerly to latitude 36°57'05" N, longitude 76°17'52" W; thence southeasterly to latitude 36°56'56.2" N, longitude 76°17'27" W; thence northeasterly to latitude 36°57'10" N, longitude 76°16'29" W; and thence to the shoreline at latitude 36°57'18.8" N, longitude 76°16'22" W, at the Naval Air Station.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

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

Dated: February 7, 2002.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 96, and 97

[FRL-7156-3]

Availability of Additional Documents for the Response to the Remands in the Ozone Transport Cases Concerning the Method for Computing Growth for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability for the NO_x SIP Call and the section 126 rule.

SUMMARY: The EPA is providing notice that it has placed in the dockets for the two main rulemakings concerning ozone-smog transport in the eastern part of the United States—the Nitrogen Oxides State Implementation Plan Call (NO_x SIP Call) and the Section 126

Rule—additional data relevant to the remands by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) concerning growth rates for seasonal heat input by electric generating units (EGUs). In both the NO_x SIP Call and Section 126 rulemakings, EPA determined control obligations with respect to EGUs through the same computation, which included, as one component, estimates of growth in heat input by the EGUs from 1996 to 2007. In two cases decided last year challenging the Section 126 rulemaking and a pair of rulemakings that made technical corrections to the NO_x SIP Call, the D.C. Circuit considered challenges to EPA's calculation of the growth estimate and its use of growth factors. In virtually identical decisions, the Court remanded the growth component to EPA for a better response to certain data presented by the affected States and industry concerning actual heat input, and for a better explanation of EPA's methodology. The EPA is in the process of responding to those remands.

On August 3, 2001, EPA published a notice of data availability announcing the placement, in the dockets for the NO_x SIP Call and Section 126 Rule, of new data concerning EGU growth rates (66 FR 40609 (NODA-1)). In NODA-1, EPA articulated its preliminary view that its growth calculations were reasonable and could be supported with a more robust explanation that takes into account the Court's concerns.

Today's document informs that EPA is considering additional data that it has recently placed, or will soon place, in the docket for the NO_x SIP Call Rule, Docket A-96-56, and that have been incorporated by reference in the docket for the Section 126 Rule, Docket No. A-97-43.

By March 29, 2002, EPA intends to determine whether it will confirm its preliminary view that the growth calculations were reasonable, or change those calculations. If EPA decides to confirm the growth calculations, it intends to complete its response to the Court's remands by that date.

Detailed background information describing the rulemakings, court decisions, and remands may be found in NODA-1.

DATES: Documents were placed in the docket on or about February 28, 2002.

ADDRESSES: Copies of all of the documents have been placed, or will shortly be placed, in the docket for the NO_x SIP Call rule, Docket No. A-96-56, and have been incorporated by reference in the docket for the Section 126 Rule,

Docket No. A-97-43. These new documents, and other documents relevant to these rulemakings, are available for inspection at the Docket Office, located at 401 M Street SW., Room M-1500, Washington, DC 20460, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Some of the documents have also been made, or will shortly be made, available in electronic form at the following EPA website: <http://www.epa.gov/airmarkets/fednox/126noda2/index.html>.

FOR FURTHER INFORMATION CONTACT:

Questions concerning today's document should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, 6204M, 1200 Pennsylvania Ave. NW., Washington, DC 20004, telephone (202) 564-9172, e-mail culligan.kevin@epa.gov; or Howard J. Hoffman, Office of General Counsel, 2344A, 1200 Pennsylvania Ave. NW., Washington, DC 20004, telephone (202) 564-5582, e-mail hoffman.howard@epa.gov. General questions about the Section 126 Rule or the NO_x SIP Call may be directed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539-02, Research Triangle Park, NC, 27711, telephone (919) 541-5665, e-mail king.jan@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA has placed, or will shortly place, the information described below in the NO_x SIP Call rulemaking docket, A-96-56; and is incorporating it by reference into the Section 126 rulemaking docket, A-97-43.

XV C-01 U.S. Department of Energy web pages—21 SIP Call States—"Estimates of Energy Input at Electric Utilities, 1960-1999" from www.eia.doe.gov/emeu/sep/_/consum/eu.htm where _ is the 2 letter identifier for each State.

XV C-02 U.S. Department of Energy; Energy Information Administration (EIA); Electric Power Annual 1999 Volume 1—August 2000.

XV C-03 Department of Energy; Energy Information Administration; Electric Power Annual 2000 Volume 1—August 2001. Available at www.eia.doe.gov/cneaf/electricity/epav1/epav1.pdf.

XV C-05 Memorandum from Bill Neuffer to Docket (Feb. 22, 2002): Excel spreadsheets—21 SIP call States—Yearly Utility Fossil Heat inputs;" "Summary of 8 Yr Decreases

in Yearly Fossil Fuel Heat Input—Electric Utilities." (Feb. 22, 2002)

XV C-07 Press releases on nuclear uprates in IL.

XV C-08 Press releases on repowering coal units to combined cycle units in IN.

XV C-09 Press release on boiler optimization.

XV C-10 1995-2001 ozone season heat input data for EGUs in the following States: AL, CT, DC, DE, GA, IL, IN, KY, MA, MD, MI, MO, NC, NJ, NY, OH, PA, RI, SC, TN, VA, and WV, including:

(a) For 1995-2000, this data is on a unit-by-unit basis for all units.

(b) For 2001, data for acid rain units is based on monitoring location and has not been converted to a unit-by-unit basis. All data for acid rain units is based on data reported to EPA. For other units it is based on data reported to EIA or data reported to EPA as part of the SIP Call/Section 126 rulemaking process.

XV C-11 Press release documenting off-line status of Cook Units 1 and 2.

XV C-12 Summary of EIA Electric Sales Data for the 1995 through 2001 ozone season.

XV C-13 Northeast Electric Reliability Council Map.

XV C-14 EIA Inventory of Electric Utility Power Plants in the US, 1999.

XV C-15 EIA Inventory of Electric Utility Power Plants in the US, 1998.

XV C-16 EIA Inventory of Electric Utility Power Plants in the US, 1997.

(For *XV C-14*, *XV C-15*, and *XV C-16* above, see website <http://www/eia.doe.gov/cneaf/electricity/ipp/ippbackissues.html>).

XV C-17 EPA Region 4 National Combustion Turbine Spreadsheet maintained at http://www.epa.gov/region4/air/permits/national_ct_list.xls as of February 2002.

The EPA may place additional documents in the docket, and if EPA does so, EPA will announce their availability by posting a notice on the <http://www.epa.gov/airmarkets/fednox/126noda2/index.html> website.

Dated: February 28, 2002.

John D. Bachman,

Acting Director, Office of Air Quality Planning and Standards.

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