



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean South of Entrance to Chesapeake Bay off Camp Pendleton,
Virginia; Firing Range

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a permanent danger zone in waters of the Atlantic Ocean south of Rudee Inlet in Virginia Beach, Virginia. The Camp Pendleton firing range supports a myriad of stakeholders that include all components of the Department of Defense, including: U.S. Army, Army National Guard, Army Reserve, U.S. Navy, Navy Reserve, U.S. Marine Corps, U.S. Marine Corps Reserve, U.S. Air Force, Air Force National Guard, Air Force Reserve, U.S. Coast Guard, and the U.S. Coast Guard Reserve, as well as many non-Department of Defense units. Camp Pendleton, VA will provide an economical, safe training environment for individual live fire exercises, and collective units to conduct the minimum requirements for weapons qualification. The danger zone will increase the level of safety to the public in the vicinity of the live firing operations by providing additional notice of the hazards present.

DATES: Effective date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the June 22, 2015, edition of the Federal Register (80 FR 35621) and the regulations.gov docket number was COE-2015-0006. In response to the proposal, three comments were received. The comments received from the Virginia Department of Historic Resources and Virginia Department of Conservation and Recreation stated that the proposed rule will have no adverse effect on historic properties and no adverse impacts on natural heritage resources. In addition, a comment was received in response to the proposal in the Federal register objecting to the creation of a firing range and the environmental effects associated with it. This action is the establishment of a danger zone at an existing firing range which has been in use for the last century, therefore no new environmental impacts are proposed as a result of the action.

In response to a request by the United States Navy, and 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 of Engineers is amending 33 CFR part 334 for a permanent danger zone, in waters of the Atlantic Ocean south of Rudee Inlet in

Virginia Beach, Virginia. The establishment of a permanent danger zone is necessary to protect the public from hazards associated with live firing operations.

Administrative 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 final rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The danger zone is necessary to protect public safety and satisfy Department of Defense and other government agency requirements for small arms training. Small entities can utilize navigable waters outside of the danger zone when the danger zone is activated. After considering the economic impacts of this final danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An

environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

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 33 CFR 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. Add §334.405 to read as follows:

§ 334.405 South of entrance to Chesapeake Bay off Camp Pendleton, Virginia; firing range.

(a) The danger zone. An area directly from Camp Pendleton extending offshore as defined by lines drawn as follows: Beginning at latitude 36°49'00" N., longitude 75°58'04" W.; thence to latitude 36°49'19" N., longitude 75°57'41"

W.; thence to latitude 36°49'21" N., longitude 75°57'32" W.; thence to latitude 36°49'13" N., longitude 75°56'44" W.; thence to latitude 36°49'22" N., longitude 75°55'48" W.; thence to latitude 36°49'12" N., longitude 75°55'46" W.; thence to latitude 36°49'02" N., longitude 75°55'45" W; thence to latitude 36°48'52" N., longitude 75°55'45" W; thence to latitude 36°48'54" N., longitude 75°56'42" W; thence to latitude 36°48'41" N., longitude 75°57'28" W; thence to latitude 36°48'41" N., longitude 75°57'37" W; thence to latitude 36°48'57" N., longitude 75°58'04" W. The datum for these coordinates is WGS84.

(b) The regulations. (1) Persons and vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. No firing will be done during the hours of darkness or low visibility.

(3) Firing on the ranges shall be suspended as long as any persons or vessels are within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range State Military Reservation, Camp Pendleton.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(c) Enforcement. The regulations in this section shall be enforced by the Adjutant General of Virginia, and such agencies as he or she may designate.

Dated: February 17, 2016.

Edward E. Belk, Jr.,
Chief, Operations and
Regulatory Division,
Directorate of Civil Works.

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