



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Menominee River, Marinette Marine Corporation Shipyard, Marinette, Wisconsin

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The U.S. Army Corps of Engineers published a document in the Federal Register on May 24, 2011, amending its regulations to establish a restricted area in the Menominee River at the Marinette Marine Corporation Shipyard in Marinette, Wisconsin. The Corps published correcting amendments in the Federal Register on April 4, 2012, which corrected latitude and longitude coordinates and also revised administrative and enforcement responsibilities. The Corps is proposing to further amend these regulations to expand the existing restricted area to provide additional area of protection during the construction and launching of Littoral Combat Ships. The proposed expansion would result in temporary encroachment within the Menominee River Federal Navigation Channel. The regulations are necessary to provide adequate protection of U.S. Navy combat vessels, their materials, equipment to be installed therein, and crew, while located at the Marinette Marine Corporation Shipyard.

**DATES:** Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number COE-2016-0005, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil) . Include the docket number, COE-2016-0005, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW-CO (David B. Olson), 441 G Street, NW, Washington, D.C. 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2016-0005. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of

your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at (202) 761-4922, or Mr. Ryan J. Huber, St. Paul District, Corps of Engineers, Regulatory Branch, at (651) 290-5859.

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 proposes to amend the restricted area regulations at 33 CFR part 334 by amending §334.815 to expand the previously established restricted area in the Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin. The amendment would also add a provision of disestablishment whereby the restricted area would be disestablished by no later than November 17, 2025. By correspondence dated October 29, 2015, the Department of the Navy, has requested the Corps of Engineers to amend this restricted area.

Pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 USC §408 (Section 408), and in accordance with Engineer Circular (EC) 1165-2-216, the Corps has granted approval for a ten-year occupancy within a portion of the federal navigation channel. The proposed amendment would include a provision for disestablishment of the restricted area no later than ten years from the date of the Section 408 approval.

#### Procedural Requirements

##### a. Review under Executive Order 12866.

This proposed 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.

The proposed 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 restricted area is necessary for security of this shipyard. Small entities can utilize navigable waters outside of the restricted area when the restricted area is activated. Unless information is obtained to the contrary during the public notice comment period, 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. This proposed rule if adopted, will have no significant economic impact on small entities.

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

A preliminary draft environmental assessment has been prepared for this action. Due to the administrative nature of this action and because the intended change will only

expand the existing restricted area by approximately 1.4 acres for a ten year period, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. The environmental assessment will be finalized after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 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.

List of Subjects in 33 CFR Part 334

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

For the reasons stated in the preamble, the Corps proposes to amend 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. Revise §334.815 to read as follows:

§ 334.815, Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin; naval restricted area.

(a) The area. The waters adjacent to Marinette Marine Corporation's pier defined by a rectangular shape on the south side of the river beginning on shore at the eastern property line of Marinette Marine Corporation at latitude 45°05'55.87" N., longitude 087°36'55.61"W.; thence northerly to latitude 45°05'59.72" N., longitude 087°36'55.61" W.; thence westerly to latitude 45°06'03.22" N., longitude 87°37'09.75" W.; thence westerly to latitude 45°06'03.78" N., longitude 87°37'16.40" W.; thence southerly to latitude 45°06'2.80" N., longitude 87°37'16.56" W.; thence easterly along the Marinette Marine Corporation pier to the point of origin. The restricted area will be marked by a lighted and signed floating buoy line.

(b) The regulation. All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area when marked by signed floating buoy line without permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME or his/her authorized representative.

(c) Enforcement. The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME and/or such agencies or persons as he/she may designate.

(d) Disestablishment of restricted area. The restricted area will be disestablished

not later than November 17, 2025, unless written application for its continuance is made to and approved by the Secretary of the Army prior to that date.

Dated: August 3, 2016.

Approved: \_\_\_\_\_

Edward E. Belk, Jr.,

Chief, Operations and Regulatory

Division

Directorate of Civil Works

[FR Doc. 2016-19023 Filed: 8/9/2016 8:45 am; Publication Date: 8/10/2016]