



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2017-0011]

James River, Skiffes Creek and Warwick River Surrounding Joint Base Langley-Eustis (JBLE-Eustis), Virginia; Restricted Areas and Danger Zones

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend an existing permanent danger zone in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. JBLE-Eustis contains a military port berthing numerous Army vessels and conducts exercises to include small craft testing and live fire training activities. The proposed amendment is necessary to protect the public from hazards associated with training and mission operations, and to protect government assets, missions, and the base population in general. The proposed amendment increases the restricted areas and creates danger zones surrounding the existing installation and firing ranges.

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-2017-0011, 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 . Include the docket number, COE-2017-0011, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 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-2017-0011. 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 . 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 Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

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 of Engineers is proposing amendments to regulations in 33 CFR part 334 for the establishment of new restricted areas and danger zones, in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. In a memorandum dated April 28, 2017, the Department of the Air Force requested that the Corps modify 33 CFR 334.280 to establish permanent restricted areas and danger zones. The proposed permanent restricted areas and danger zones

are necessary to protect the public from hazards associated with training and mission operations, and to fulfill the current security needs of the Department of the Air Force to protect government assets, missions, and the base population in general at the facility. The proposed modification expands the restricted areas to surround JBLE-Eustis and establishes danger zones adjacent to the JBLE-Eustis firing ranges.

Procedural Requirements

a. Review under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rules governing the restricted areas, which allow any vessel that needs to transit the restricted areas to do so if the operator of the vessel obtains permission from Commander, JBLE-Eustis, and/or other persons or agencies as he/she may designate.

b. Review under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted areas or danger zones may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted areas and danger zones are necessary to protect vessels and personnel assigned to JBLE-Eustis by implementing a waterside security program. They are also necessary to protect the public. Small entities can also utilize navigable waters outside of the restricted areas and danger zones. Small entities that need to transit the restricted areas and danger zones may do so as long as vessel operators obtain permission from the Commander, Joint Base Langley-Eustis, and/or other persons or agencies as he/she may designate. The restricted areas are necessary for security of JBLE-Eustis. The danger zones area necessary for protect the public from hazards associated with training and mission operations. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed restricted areas and

danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this restricted area and 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.

Due to the administrative nature of this action and because there is no intended change in the use of the area, 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. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

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 sector 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 set out 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 § 334.280 to read as follows:

§ 334.280 James River, Skiffes Creek and Warwick River surrounding Joint Base Langley-Eustis, Virginia; restricted areas and danger zones.

(a) The areas. The datum for the coordinates for the restricted areas and danger zones described in this section is NAD-83.

(1) Army Training and Small Craft Testing Area (restricted area).

Beginning on the shore at latitude 37°09'54" N, longitude 76°36'25" W; thence westerly to latitude 37°09'53" N, longitude 76°36'59" W; thence westerly to latitude 37°09'50" N, longitude 76°37'45" W; thence southerly to latitude 37°09'00" N, longitude 76°38'05" W; thence southerly to latitude 37°08'22" N, longitude 76°37'55" W; thence due east to the shore at latitude 37°08'22" N, longitude 76°37'20" W; thence northerly following the shoreline to the point of beginning.

(2) 3rd Port Facility (restricted area). An area surrounding the 3rd Port facility, Fort Eustis, beginning at a point on the shore line at latitude 37°09'54" N, longitude 76°36'25" W; thence northerly, following the shoreline to latitude

37°10'29" N, longitude 76°36'06" W; thence westerly to latitude 37°10'33" N, longitude 76°36'20" W; thence following the shoreline to latitude 37°10'13" N, longitude 76°36'42" W; thence southerly to latitude 37°09'53" N, longitude 76°36'59" W; thence to the point of beginning.

(3) Warwick River and any tributaries, creeks, estuaries, tidal areas, to include Butlers Gut and Jail Creek (restricted area). All navigable waters of the United States as defined in 33 CFR part 329 within the boundaries of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°09'47" N, longitude 76°33'52" W; thence following the meanders of the installation boundary along the westerly mean low waterline of Warwick River, thence to a point on the installation boundary at latitude 37°04'35" N, longitude 76°33'19" W.

(4) James River and any tributaries, creeks, estuaries, tidal areas, to include Nells Creek, Locust Neck Creek, Dudleys Creek, Morrisons Creek, Morleys Gut, Blows Creek, and Milstead Creek (restricted area). Navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°04'35" N, longitude 76°33'19" W; thence following the meanders of the installation boundary along the northeasterly mean low waterline of the James River, thence to a point on the installation boundary at latitude 37°10'03" N, longitude 76°36'26" W at a point at the mouth of Skiffes Creek.

(5) Skiffes Creek and any tributaries, creeks, estuaries, tidal areas, to include Baileys Creek (restricted area). All navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, easterly of a line connecting the following coordinates: Commencing from a point on the installation boundary at latitude 37°10'03" N, longitude 76°36'26" W; thence following the meanders of the installation boundary along the northeasterly mean low waterline of Skiffes Creek, thence to a point at latitude 37°10'30" N, longitude 76°36'07" W within Skiffes Creek at the centerline of an unnamed tributary off Skiffes Creek; thence, with the centerline meanders of the said centerline of the unnamed tributary following the meanders of the installation boundary; thence to a point on the installation boundary at latitude 37°10'36" N, longitude 76°36'02" W.

(6) Danger Zone Warwick River. Navigable waters of the United States as defined at 33 CFR part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°06'44" N, longitude 76°34'04" W; thence to a point at latitude 37°06'44" N, longitude 76°34'02" W; thence to a point at latitude 37°06'35" N, longitude 76°33'56" W; thence to a point at latitude 37°06'28" N, longitude 76°33'57" W; thence to a point at latitude 37°06'15" N, longitude 76°33'30" W; thence to a point at latitude 37°05'43" N, longitude 76°33'13" W; thence to a point at latitude 37°05'33" N, longitude 76°33'17" W; thence to a point at latitude 37°05'13" N, longitude 76°32'53" W; thence to a point at latitude 37°05'03" N, longitude 76°33'09" W; thence following

the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04'52" N, longitude 76°33'13" W; thence to a point at latitude 37°04'49" N, longitude 76°33'11" W; thence to a point at latitude 37°04'43" N, longitude 76°33'28" W; thence following the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04'35" N, longitude 76°33'19" W.

(7) Danger Zone James River. Navigable waters of the United States as defined at 33 CFR part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°04'35" N, longitude 76°33'19" W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River to a point at latitude 37°04'39" N, longitude 76°33'39" W; thence to a point at latitude 37°04'33" N, longitude 76°34'15" W; thence to a point at latitude 37°04'52" N, longitude 76°34'19" W; thence to a point at latitude 37°04'52" N, longitude 76°34'18" W; thence to a point at latitude 37°04'60" N, longitude 76°34'20" W; thence to a point at latitude 37°05'19" N, longitude 76°34'51" W; thence to a point at latitude 37°05'53" N, longitude 76°35'00" W; thence to a point at latitude 37°06'03" N, longitude 76°35'08" W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River, thence to a point at latitude 37°06'40" N, longitude 76°35'52" W; thence to a point at latitude 37°06'35" N,

longitude 76°36'19" W; thence to a point on the installation boundary at latitude 37°06'50" N, longitude 76°36'21" W.

(b) The regulations. (1) For the restricted areas defined in paragraphs (a)(1) and (a)(2) of this section:

(i) All vessels will contact the 3rd Port Harbor Master on marine channel 12 or 68 prior to entering or transiting these restricted areas.

(ii) The passage of fishing vessels to or from authorized traps, or the transit of commercial vessels, will be coordinated with the 3rd Port Harbor Master on marine channel 12 or 68.

(iii) The harvesting and cultivation of oyster beds or the setting of fish traps within these restricted areas will be allowed provided the commercial fisherman coordinate access to these areas with the 3rd Port Harbor Master on marine channel 12 or 68.

(iv) The Commander, Joint Base Langley-Eustis will, to the extent possible, give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Department of Defense use of the restricted areas.

(2) For the restricted areas defined in paragraphs (a)(3), (a)(4), and (a)(5) of this section:

(i) Entry into these areas is for official government purposes only, or as authorized by the Commander, Joint Base Langley-Eustis.

(ii) Entry will be coordinated and conducted in accordance with the policies and procedures established by the Commander, Joint Base Langley-Eustis.

(3) For the danger zones defined in paragraphs (a)(6) and (a)(7) of this section:

(i) Persons, vessels or other craft shall not enter or remain in the danger zone when firing is or will soon be in progress unless authorized to do so by the enforcing agency.

(ii) Advance notice of the schedule of small arms firing will be provided via the Joint Base Langley-Eustis webpage.

(iii) All projectiles will be fired to land within the impact area on the Fort Eustis peninsula. Neither the Department of the Army nor the Department of the Air Force will be responsible for damages by such projectiles to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within these danger zones.

(c) Enforcement. The regulations of this section shall be enforced by

the Commander, Joint Base Langley-Eustis, Virginia, and such agencies as the commander may designate.

Dated: May 11, 2018

Thomas P. Smith
Chief, Operations and Regulatory Division
Directorate of Civil Works

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