

## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## 33 CFR Part 334

## United States Navy Restricted Area, Sandy Hook Bay, Naval Weapons Station EARLE, New Jersey

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing to amend regulations to establish a restricted area in the vicinity of Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Sandy Hook Bay, New Jersey. These regulations will enable the U.S. Navy to enhance safety and security around active military vessels moored at the facility and partly restrict travel in the area. These regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

**DATES:** Written comments must be submitted on or before December 27, 2002.

**ADDRESSES:** Send comments to 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, Washington, DC at (202) 761-4618, or Mr. Richard L. Tomer, U.S. Army Corps of Engineers, New York District, Regulatory Branch, at (212) 264-3996.

**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 proposing to amend the restricted area regulations in 33 CFR part 334 by establishing a restricted area at § 334.102. The public currently has restricted access near the facility and units assigned there due to the existence of a "Security Zone" previously established by the U.S. Coast Guard which is identified at 33 CFR 165.130. It should be noted that the restricted area represents an expansion of the Security Zone by an additional 295 yards to the west. This expansion would

allow the maintenance of a 750-yard wide perimeter around the pier complex. To better protect authorized vessels transiting the Terminal Channel and mooring at the EARLE Piers from acts of terrorism, sabotage, or other subversive acts and incidences of a similar nature during explosives loading and unloading, the Commander, Naval Weapons Station EARLE, has requested that the U.S. Army Corps of Engineers establish a Restricted Area to be enforced at all times. This will enable the U.S. Navy to restrict vessel traffic in a portion of Sandy Hook Bay.

## Procedural Requirements

## a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

## b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601) 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 U.S. Army Corps of Engineers expects that the establishment of this restricted area would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this proposal if adopted, will not have a significant economic impact on a substantial number of small entities.

## c. Review Under the National Environmental Policy Act

An Environmental Assessment (EA) has been prepared for this action. The U.S. Army Corps of Engineers has concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not be a major federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at **FOR FURTHER INFORMATION CONTACT** above.

## d. Unfunded Mandates Act

This proposed 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 Reform Act (Public Laws 104.4, 109 Statute 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 rulemaking.

## List of Subjects in 33 CFR Part 334

Danger zones, 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 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 334.102 is added to read as follows:

**§ 334.102 Sandy Hook Bay, Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Middletown, New Jersey, Restricted Area.**

(a) *The area:* An area bounded by the following points, beginning at: latitude 40° 25'55.6"N, longitude 074° 04'31.4"W; thence to latitude 40° 26'54.0"N, longitude 074° 03'53.0"W; thence to latitude 40° 26'58.0"N, longitude 074° 04'03.0"W; thence to latitude 40° 27'56.0"N, longitude 074° 03'24.0"W; thence to latitude 40° 27'41.7"N, longitude 074° 02'45.0"W; thence to latitude 40° 27'23.5"N, longitude 074° 02'16.6"W; thence to latitude 40° 28'21.2"N, longitude 074° 01'56.0"W; thence to latitude 40° 28'07.9"N, longitude 074° 02'18.6"W; thence to latitude 40° 27'39.3"N, longitude 074° 02'38.3"W; thence to latitude 40° 27'28.5"N, longitude 074° 02'10.4"W; thence to latitude 40° 26'29.5"N, longitude 074° 02'51.2"W; thence to latitude 40° 26'31.4"N, longitude 074° 02'55.4"W; thence to latitude 40° 25'27.1"N, longitude 074° 03'39.7"W longitude; thence along the shoreline to the point of origin (NAD 83).

(b) *The regulation.* (1) Except as set forth in paragraph (b)(2) of this section, 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 other state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer, Naval Weapons Station EARLE, USN, New Jersey, or his/her authorized representative; and (2) Vessels are authorized to cross the

Terminal Channel provided that there are no naval vessels then transiting the channel (bounded by latitude 40° 27'41.7"N, longitude 074° 02'45.0"W; thence to latitude 40° 27'23.5"N, longitude 074° 02'16.6"W; thence to latitude 40° 28'21.2"N, longitude 074° 01'56.0"W; thence to latitude 40° 28'07.9"N, longitude 074° 02'18.6"W;

thence to latitude 40° 27'39.3"N, longitude 074° 02'38.3"W).

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Naval Weapons Station EARLE, New Jersey and/or other persons or agencies as he/she may designate, or any other person

authorized by the District Engineer, New York District, U.S. Army Corps of Engineers.

Dated: October 31, 2002.

**Michael G. Ensich,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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