

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****33 CFR Part 334****United States Marine Corps Restricted Area, New River, NC, and Vicinity**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend the regulations which establish restricted areas in the waters of New River, North Carolina, and vicinity to include restricted areas for United States Marine Corps Waterborne Refueling Training Operation in the Morgan Bay Sector, Farnell Bay Sector, and Grey Point Sector. Refueling operations would occur approximately fourteen times a year. Small craft would be refueled with unleaded gasoline or diesel fuel from a tactical bulk refueling system loaded onto a floating platform or vessel. The purpose is for the Marine Corps to gain proficiency in refueling operations and associated activities in riverine environments. The restricted area currently serves as a firing range; but there are no provisions for refueling operations. The changes to the regulation are necessary to safeguard Marine Corps vessels, ribbon bridges, and United States Government facilities from sabotage and other subversive acts, accidents, or other incidents of similar nature. These changes are also necessary to protect the public from potentially hazardous conditions which may exist as a result of the Marine Corps use of the area.

DATES: Written comments must be submitted on or before June 22, 2000.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW-OR, 20 Massachusetts Avenue, NW, Washington, D. C. 20314-1000

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761-1787, or Mr. Ernie Jahnke, Corps of

Engineers, Wilmington District, at 910-251-4467.

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 U.S.C.3) the Corps proposes to amend the restricted area regulations in 33 CFR Part 334.400.

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

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 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 the establishment 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 if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to 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 the end of **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 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

Marine Safety, Navigation (water), Transportation, 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 334.440 would be amended by adding paragraph (c)(6) to read as follows:

§ 334.440 New River, N.C., and vicinity; Marine Corps firing ranges,

* * * * *

(c) * * *

(6) No person shall enter or remain within a 2 acre area surrounding a waterborne refueling training operation, in either the Grey Point Sector, Farnell Bay Sector, or Morgan Bay Sector as described in paragraph (b) of this section, for the duration of the training operation after a notice to conduct a waterborne refueling training operation has been published in the local notice to mariners and has been broadcast over the Marine Band radio network. The 2 acre area surrounding a waterborne refueling training operation will be patrolled and persons and vessels shall clear the area under patrol upon being warned by the surface patrol craft.

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Dated: May 9, 2000.

Charles M. Hess,

Chief, Operations Division, Office of Deputy Commanding General for Civil Works.

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