

(2) *Computation of credit*—(i) The tax return preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's EIC computation, including the method and information used to make the computation.

(ii) The tax return preparer's completion of the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

\* \* \* \* \*

(4) *Retention of records*—(i) The tax return preparer must retain—

(A) A copy of the completed Form 8867 (or successor form);

(B) A copy of the completed Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 (or successor form) and the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 (or successor form) or the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years from the due date of the return (determined without regard to any extension of time for filing) or the date the return or claim for refund was filed, whichever date is later, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Special rule for firms*. A firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to penalty if, and only if—

(1) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the failure to comply with the due diligence requirements of this section;

(2) The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements of this section; or

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) *Exception to penalty*. The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent. The preceding sentence does not apply to a firm that is subject to the penalty as a result of paragraph (c) of this section.

(e) *Effective/applicability date*. This section is effective for tax returns and claims for refund filed after the date that these regulations are published as final regulations in the **Federal Register**, and applies to tax returns and claims for refund for tax years ending on or after December 31, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia; Danger Zone

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**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 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility conducts rocket-launching operations. The proposed amendment is necessary to protect the public from hazards associated with the rocket-launching operations. The proposed amendment would increase the danger zone to a 30 nautical mile sector.

**DATES:** Written comments must be submitted on or before November 10, 2011.

**ADDRESSES:** You may submit comments, identified by docket number COE-2011-0019, 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-2011-0019, 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-2011-0019. 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://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, DC at 202-761-4922, or Nancy Hankins, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-6048.

**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 a permanent danger zone in the waters of the Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The proposed modification of the existing permanent danger zone is necessary to protect the public from hazards associated with rocket-launching operations. The proposed modification expands the danger zone to a 30 nautical mile sector.

#### Procedural Requirements

##### *a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Department of Defense and the

provisions of Executive Order 12866 do not apply.

##### *b. Review Under the Regulatory Flexibility Act*

This proposed rule has 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). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this danger zone would have practically no economic 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*

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. It 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, 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 § 334.130 to read as follows:

#### **§ 334.130 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.**

(a) *The area.* An area immediately behind and directly offshore from Wallops Island defined by lines drawn as follows: Beginning at latitude 37°53'00" N, longitude 75°29'48" W; thence to latitude 37°53'03" N, longitude 74°50'52" W; thence to latitude 37°38'28" N, longitude 74°51'48" W; thence to latitude 37°22'00" N, longitude 75°09'35" W; thence to latitude 37°19'11" N, longitude 75°30'00" W; thence to latitude 37°47'57" N, longitude 75°32'19" W; and thence to latitude 37°53'00" N, longitude 75°29'48" W.

(b) *The regulations.* (1) Persons and vessels shall only be prohibited from entering the area when launch operations are being conducted.

(2) In advance of scheduled launch operations which, in the opinion of the enforcing agency, may be dangerous to persons and watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, U.S. Army Corps of Engineers, may direct. Such warnings will specify the location, time, and duration of operations, and give other pertinent information as may be required in the interest of safety. Announcement of area of closure will appear in the weekly "Notice to Mariners."

(3) The intent to conduct rocket-launching operations in the area shall also be indicated by visual signals consisting of a large orange-colored "blimp-shaped" balloon by day and a rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50'38" N, longitude 75°28'47" W and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50'16" N, longitude 75°29'07" W. The appropriate signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until the danger no longer exists.

(4) In addition to visual signals and prior to conducting launch operations, the area will be patrolled by aircraft or surface vessels and monitored by radars and cameras to ensure no persons or watercraft are within the danger zone or designated area of interest within the danger zone. Patrol aircraft and surface vessels are equipped with marine band radios and may attempt to hail watercraft and request that they leave

the designated area and remain clear of the area at a safe distance until launch operations are complete, and launch will not occur until the designated area is clear. Patrol aircraft may also employ the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle. Surveillance vessels may also come close to watercraft and employ flashing light to establish communications to indicate that the watercraft is entering the designated hazard area.

(5) Any watercraft being so warned shall immediately leave designated area until the conclusion of launch operations, and shall remain at a distance that it will be safe from falling debris.

(6) Nothing in this regulation shall be intended to prevent commercial fishing or the lawful use of approved waterfowl hunting blinds along the shorelines of the Wallops Flight Facility at Wallops Island, Virginia, provided that all necessary licenses and permits have been obtained from the Virginia Marine Resources Commission, Virginia Department of Game and Inland Fisheries, and U.S. Fish and Wildlife Service. Commercial fishermen and waterfowl hunters must observe all warnings and range clearances during hazardous range operations.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility Wallops Island, Va., or such agencies as he or she may designate.

Dated: September 30, 2011.

**Michael G. Ensich,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

[FR Doc. 2011-26198 Filed 10-7-11; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

**36 CFR Parts 212, 214, 215, 218, 222, 228, 241, 251, 254, and 292**

**RIN 0596-AB45**

### Appeal of Decisions Relating to Occupancy or Use of National Forest System Lands and Resources

**AGENCY:** USDA, Forest Service.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Forest Service, United States Department of Agriculture (USDA), is proposing to update, rename, and relocate the administrative appeal regulations governing occupancy or use of National Forest System (NFS) lands and resources. The appeal process for decisions related to occupancy or use of NFS lands and resources has remained substantially unchanged since 1989. The proposed rule simplifies the appeal process, shortens the appeal period, and reduces the cost of appeal while still providing a fair and deliberate procedure by which eligible individuals and entities may obtain administrative review of certain types of Forest Service decisions affecting their occupancy or use of NFS lands or resources. The proposed rule also relocates the provision entitled "Mediation of Term Grazing Permit Disputes" to a more appropriate location in the range management regulations. Finally, conforming technical revisions to other parts of the Code of Federal Regulations (CFR) affected by this proposed rule are being made.

**DATES:** Comments must be received in writing by December 12, 2011.

**ADDRESSES:** Submit comments through the Web site <http://www.regulations.gov> or mail written comments to Director, Ecosystem Management Coordination, Mailstop 1104, Forest Service, USDA, 1400 Independence Ave, SW., Washington, D.C. 20250-1103. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead 202-205-1323 to facilitate entry into the building.

Comments concerning the information collection requirements contained in this proposed rule should reference OMB No. 0596-New and the docket number, date, and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements may be submitted as provided for comments on the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Deb Beighley, Assistant Director, Appeals and Litigation, Ecosystem Management Coordination staff, 202-205-1277, or Mike McGee, Appeals Specialist, Ecosystem Management Coordination staff, 202-205-1323.

#### SUPPLEMENTARY INFORMATION:

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#### 1. Background and Need for the Proposed Rule

On January 23, 1989, the Forest Service, USDA adopted a new administrative appeal rule at 36 CFR part 251, subpart C (54 FR 3362) (the 251 Appeal Rule). The 251 Appeal Rule set procedures for holders of or, in some cases, applicants for a written authorization to occupy and use NFS lands and resources to appeal certain Forest Service decisions with regard to the issuance, approval, or administration of the written instrument. The rule established who may appeal, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various timeframes that govern the conduct of an appeal. The appeal procedures vary depending on whether the decision subject to appeal was made by a District Ranger, Forest or Grassland Supervisor, Regional Forester, or the Chief. Except for the addition of a section governing mediation of term grazing permit disputes in 1999, the 251 Appeal Rule has changed little since its adoption in 1989.

As a result of technological advances, communications improvements, and the Agency's experience administering the 251 Appeal Rule for the past 20 years, the Forest Service has identified several modifications that will simplify the appeal process, shorten the appeal time period, and achieve cost savings.

The proposed rule relocates the 251 Appeal Rule to a new part 214, entitled "Appeal of Decisions Relating to Occupancy or Use of National Forest System Lands and Resources." Current provisions in the 251 Appeal Rule will be rewritten or replaced with new provisions, and part 251, subpart C, will be removed. The proposed rule also moves the provision governing mediation of term grazing permit disputes to a new subpart D under the range management regulations found at 36 CFR part 222, since mediation is unique to the range management program and is not part of the administrative review process under the 251 Appeal Rule.

The following table provides a crosswalk between the 251 Appeal Rule and the proposed rule.