

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****33 CFR Part 334****Restricted Areas and Danger Zones at Eglin Air Force Base, FL**

AGENCY: U.S. Army Corps of Engineers, Department of Defense

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its restricted area/danger zone regulations to update and revise several existing danger zone and restricted area descriptions and restrictions, remove one existing restricted area and establish four new restricted areas within the Eglin Air Force Base (AFB) facilities and along the Eglin AFB facility shoreline in Florida. The Eglin AFB and Eglin Reservation span over 724 square miles with over 150 miles of waterway boundary. This amendment to the existing regulation is necessary to update Eglin AFB water safety and water boundary security in order to provide adequate protection to Eglin AFB personnel and resources in concert with changing mission goals and multi-service/agency special testing and operation needs.

DATES: *Effective Date:* January 3, 2012.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at (202) 761-4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at (904) 232-1680.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to its authorities under 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 amending the regulations in 33 CFR part 334 by revising five existing danger zone and restricted area descriptions and restrictions, removing one existing restricted area and establishing four new restricted areas. The proposed regulations were published in the December 28, 2009, issue of the **Federal Register** (74 FR 68552) and provided a 30-day comment period. The <http://www.regulations.gov> docket number is COE-2009-0056.

General Comments and Responses

In response to the proposed rule, comments were provided by eight individuals. Seven of the commenters voiced concerns ranging from the establishment and use of the restricted areas to the rulemaking process. The eighth commenter said they have no objection to the proposed regulations.

Most of the concerns raised were related to the new restricted areas proposed at the Camp Pinchot and Poquito housing areas. Some of the comments noted a concern that the establishment of these restricted areas would lead to a loss of property rights, would generate navigational hazards in Garnier Bayou and Poquito Bayou and eliminate their ability to utilize the waterways. Additionally, statements were provided questioning whether or not the proposed restricted areas would really provide any security and making allegations as to the perceived underlying reason for the military's request for these restricted areas.

The regulations for restricted areas only apply to areas of navigable waters of the United States and the language in this final rule has been revised to clearly state this fact. Because the proposed restricted areas are situated in navigable waters of the United States along the waterfront of existing Eglin AFB residential areas, there will not be any loss of property rights to the adjacent landowners. Neither of these two proposed restricted areas includes the construction of any structures in navigable waters, so there is no possibility to create a navigational hazard within these waterways. A commenter suggested that the United States Coast Guard perform a risk assessment of the potential hazard to navigation which might be generated by the establishment of a restricted area in Poquito Bayou. Because the proposed restricted area does not propose any changes to the number, size, or location of any structures in the Bayou, there is no possibility of creating a hazard to navigation, therefore, a risk assessment is not necessary. The language used in the proposed rule indicated that the restrictions associated with these restricted areas would be in effect 24 hours a day, 7 days a week and that entry into the restricted areas would require the permission of the Commander, Eglin AFB. These two statements generated the concern that the public would no longer be able to utilize any portions of these waterways at anytime. The language describing each of the restricted areas clearly delineates their location within the larger waterbody and they will be

shown on the National Oceanic and Atmospheric Administration navigational charts. The language addressing utilization of the restricted areas was revised to note that the public is allowed full use of the restricted area as long as there are no perceived threats to the Eglin AFB facilities. The revised language also makes it clear that at low threat levels, anyone entering the restricted areas would be subject to identification checks by U.S. Air Force patrol boats. At high threat levels, entry into the restricted areas would require the permission of the Commander, Eglin AFB. It is not the Corps role to address statements pertaining to the effectiveness of these restricted areas. The Corps has the authority to issue these regulations in response to a request by the Commander of a Department of Defense facility, after soliciting public comment and evaluating the reasonably foreseeable effects on the evaluation criteria in 33 CFR part 320, especially effects on navigation and the food fishing industry. The Commander of any military facility has the responsibility to provide appropriate protection to both the facility and the personnel utilizing the facility, and determine whether restricted area regulations are needed to help provide that protection. The waterfront security analysis performed by Eglin AFB indicated a need to provide a level of protection to these residential areas. The level of protection required was determined by the Eglin AFB security personnel.

One commenter noted that if the public is going to be allowed access to the restricted areas and if identification checks are going to be required in those areas, that should be noted in the regulation. This commenter also said that the proposed rule was unclear as to the location of the restricted area in section 334.740.

We have added language to the final rule to clarify that the public may utilize the restricted areas during periods of low threat levels and that identification checks may be conducted in the restricted area. The language describing the restricted area in section 334.740 notates the beginning point, the interim points, and the termination point, as well as the distance the restricted area extends from the shoreline, clearly delineating its location within the larger waterbody. The boundaries of the restricted area will be shown on the National Oceanic and Atmospheric Administration navigational charts.

Two commenters expressed concern with the process used to disseminate the proposed rule and to receive comments. The process for establishing and

amending restricted area and danger zone regulations follows standard rulemaking procedures, including the additional procedures provided at 33 CFR 334.4. In addition to publication of the proposed rule in the December 28, 2009, issue of the **Federal Register**, the Jacksonville District issued a local public notice which was available on the Jacksonville District Regulatory Division web page.

In response to the comments received, we have made the following changes to the final rule:

We have modified the rule text to clarify that the danger zone and restricted area regulations apply only to navigable water of the United States, as defined by 33 CFR part 329.

Section 334.700(c)(2) was reworded to clarify that enforcement of the regulations in that section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

Section 334.710(c) was rewritten by redesignating the proposed paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2). Paragraph (c)(1) provides information pertaining to the party/ies enforcing the regulation in this section. Paragraph (c)(2) was added to clarify that enforcement of the regulations in this section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

Section 334.720(c) was also rewritten by designating proposed paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2). Paragraph (c)(1) provides information on the party/ies enforcing the regulation in this section. Paragraph (c)(2) was added to clarify that enforcement of the regulations in this section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

In section 334.730 several changes were made. Paragraphs (a)(1) and (a)(2)(i) were modified to clarify that Harvey Lock, Louisiana is referenced because it is the "zero mile" location from which the mileage values denoted in the Gulf Intracoastal Waterway were measured. Paragraph (a)(2)(i) was also modified to correct one of the Gulf Intracoastal Waterway mileage values from 334.6 to 204.6. Paragraph (a)(2)(iii) was modified to expand a portion of the restricted area to provide protection for a fuel pier and associated mooring area at Hurlburt Field. Paragraph (b)(1) was subdivided to clarify the information pertaining to the danger zone. Paragraph

(b)(1)(i) provides information on how the area is used and restrictions on entry into the area when it is in use.

Paragraph (b)(1)(ii) was added to note that the danger zone and associated restrictions are in effect 24 hours a day, 7 days a week. Paragraph (b)(2)(i) was modified to remove the existing language stating that no person or vessel shall enter the area without permission of Eglin AFB or the Hurlburt Field Commander. In response to comments, the final rule clarifies that all persons, vessels and other craft are permitted to access the restricted areas defined in paragraph (a)(2) during times of low security threats and that they would be subject to identification checks by the U.S. Air Force patrol boats. With the exception of the Gulf Intracoastal Waterway, during times of high security threats anyone wishing to enter, transit, anchor or drift within the restricted areas noted in paragraph (a)(2) must have the permission of Eglin AFB or the Hurlburt Field Commander or his/her authorized representative. Paragraph (c) was rewritten by designating the proposed paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2). Paragraph (c)(1) provides information on the party/ies enforcing the regulation of this section. Paragraph (c)(2) was added to clarify that enforcement of the regulations in this section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

Section 334.740(b)(1) was modified to remove the existing language stating that no person or vessel shall enter the area without permission. In response to comments, the final rule clarifies that all persons, vessels and other craft are permitted to access the restricted area defined in paragraph (a) of this section during times of low security threats and that they would be subject to identification checks by the U.S. Air Force patrol boats. During times of high security threats anyone wishing to enter, transit, anchor or drift within the restricted area noted in paragraph (a) of this section must have the permission of the Commander, 96 Air Base Wing, Eglin AFB or his/her authorized representative. Paragraph (c)(2) was reworded to clarify that enforcement of the regulations in this section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

For sections 334.742, 334.744 and 334.748, paragraph (b)(1) was modified to remove the proposed language stating that no person or vessel shall enter the area without permission. In response to

comments, the final rule clarifies that all persons, vessels and other craft are permitted to access the restricted areas defined in paragraph (a) of each of these sections during times of low security threats and that they would be subject to identification checks by the U.S. Air Force patrol boats. During times of high security threats anyone wishing to enter, transit, anchor or drift within the restricted areas noted in paragraph (a) of each of these sections must have the permission of the Commander, 96 Air Base Wing, Eglin AFB or his/her authorized representative. Paragraph (c) was rewritten by designating the proposed paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2). Paragraph (c)(1) provides information on the party/ies enforcing the regulation of this section. Paragraph (c)(2) was added to clarify that enforcement of the regulations in this section would be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition System.

Section 334.750 has been removed because the area it encompassed has been incorporated into section 334.740.

Procedural Requirements

a. *Review Under Executive Order 12866.* This regulation 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.* The regulation 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). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This regulation 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 (Pub. L. 104–4, 109 Stat. 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 regulation.

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 amends 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. Revise § 334.700 to read as follows:

§ 334.700 Choctawhatchee Bay, aerial gunnery ranges, Air Armament Center, Eglin Air Force Base, Fla.

(a) *The danger zones.* (1) *Aerial gunnery range in west part of Choctawhatchee Bay.* The danger zone shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of Choctawhatchee Bay within an area bounded by a line connecting the following coordinates, excluding that part of the area included within the aerial gunnery range along the north shore of Choctawhatchee Bay as described in paragraph (a)(2) of this section: Commencing at the northeast shore at latitude 30°28'09.11" N, longitude 086°29'02.30" W; thence to latitude 30°25'30" N, longitude 086°21'30" W; thence to latitude 30°23'34.72" N, longitude 086°23'00.22" W; then following the shoreline at the mean high water line to latitude 30°24'09.45" N, longitude 086°25'00.08" W; thence to the southwest shore at latitude 30°27'54.18" N, longitude 086°29'18.32" W; then following the shoreline at the mean high water line easterly to point of origin.

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* The danger zone shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of Choctawhatchee Bay within an area bounded by a line connecting the following coordinates: Commencing at the northwest shore at latitude 30°27'26" N, longitude 086°25'30" W; thence to latitude

30°26'00" N, longitude 086°25'30" W; thence to latitude 30°26'57" N, longitude 086°20'35" W; thence to latitude 30°26'12" N, longitude 086°20'35" W; thence to latitude 30°26'29" N, longitude 086°15'00" W; thence to the northeast shore at latitude 30°29'08.7" N, longitude 086°15'00" W; then following the shoreline at the mean high water line easterly to point of origin.

(b) *The regulations.* (1) *Aerial gunnery range in west part of Choctawhatchee Bay.* The aerial gunnery range in the west part of Choctawhatchee Bay (as described in paragraph (a)(1) of this section) may be used by persons and watercraft except during periods when firing is conducted. Use of the area will be advertised in advance by Eglin AFB Public Affairs. During periods of firing, traverse of this area shall not be denied to regular cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the area, the officer in charge of gunnery operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within the range of the weapons being used. The vessel shall proceed on its normal course and shall not delay its progress.

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* No person, vessel or other craft shall enter or remain within the aerial gunnery range along the north shore of Choctawhatchee Bay (as described in paragraph (a)(2) of this section) during times the area is active. Activation of the area will be advertised in advance by Eglin AFB Public Affairs.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 3. Revise § 334.710 to read as follows:

§ 334.710 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Headquarters Air Armament Center, Eglin Air Force Base, Fla.

(a) *The restricted area.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of The Narrows and the Gulf of Mexico easterly of the periphery of a circular area five nautical miles in radius, centered at latitude 30°23'10.074" N, longitude 086°48'25.433" W (USC&GS

Station Tuck 3), within the segment of a circle, three nautical miles in radius, centered at latitude 30°24'00" N, longitude 086°41'47" W.

(b) *The regulations.* The area will be used intermittently during daylight hours. During periods of use the entry into the area will be prohibited to all persons and navigation. Notifications will be via Eglin AFB water patrol and published in local news media in advance.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 4. Revise § 334.720 to read as follows:

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; Missile test area.

(a) *The danger zone.* The danger zone shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of the Gulf of Mexico south from Choctawhatchee Bay within an area described as follows: Beginning at a point five nautical miles southeasterly from USC&GS Station Tuck 3, at latitude 30°23'10.074" N, longitude 086°48'25.433" W, three nautical miles offshore of Santa Rosa Island; thence easterly three nautical miles offshore and parallel to shore, to a point south of Apalachicola Bay, Florida at latitude 29°32'00" N, longitude 085°00'00" W; thence southeasterly to latitude 29°17'30" N, longitude 084°40'00" W; thence southwesterly to latitude 28°40'00" N, longitude 084°49'00" W; thence southeasterly to latitude 28°10'00" N, longitude 084°30'00" W; thence 270° true to longitude 086°48'00" W; thence due north along longitude 086°48'00" W to the intersection of the line with a circle of five nautical miles radius centered on USC&GS Station Tuck 3, at latitude 30°23'10.074" N, longitude 086°48'25.433" W, thence northeasterly along the arc of the circle to the point of beginning.

(b) *The regulations.* (1) The area will be used intermittently during daylight hours for a week or 10 days at a time. Firing will take place once or twice a day for periods ordinarily of not more than one hour. Advance notice of such firings will be published in local newspapers.

(2) During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying

vessels or tows proceeding on established routes. In case any such vessel is within the danger zone, the officer in charge of firing operations will cause the cessation or postponement of fire until the vessel has cleared the portion of the danger area involved. The entire area involved will be under constant observation of both surface patrol vessels and air patrol planes prior to and during periods of firing and notice will be given to vessels and tows of intention to fire by buzzing low over the vessel, upon which signal vessels and tows shall proceed on their established course promptly and clear the area as soon as possible.

(3) All persons and vessels, except those identified in paragraph (b)(2) of this section, will be warned to leave the immediate danger area during firing periods by surface patrol craft. Upon being so warned, such persons and vessels shall clear the area immediately. Such periods normally will not exceed two hours.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 5. Revise § 334.730 to read as follows:

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Armament Center, Eglin Air Force Base, Fla.

(a) *The areas.* (1) *The danger zone.* The danger zone shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of Santa Rosa Sound and Gulf of Mexico within a circle one nautical mile in radius, centered at latitude 30°23'10.074" N, longitude 086°48'25.433" W (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 209.6 and 211.4 as measured from the Harvey Lock, Louisiana, "zero mile" location.

(2) *The restricted areas.* (i) *Area 1.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329, including the waters of Santa Rosa Sound and Gulf of Mexico, surrounding the danger zone described in paragraph (a)(1) of this section, within a circle five nautical miles in radius centered at latitude 30°23'10.074" N, longitude 086°48'25.433" W (USC&GS Station

Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between mile designation 204.6 and 216.4 as measured from the Harvey Lock, Louisiana, "zero mile" location.

(ii) *Area 2. Santa Rosa Island, North Side.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24'06.58" N, longitude 086°40'25.00" W; thence to latitude 30°24'08.08" N, longitude 086°40'25.00" W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°23'12.34" N, longitude 086°50'57.62" W, thence proceeding directly to a point on the shoreline at latitude 30°23'10.85" N, longitude 086°50'57.62" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Eglin AFB.

(iii) *Area 3. Choctawhatchee Bay, North side—Hurlburt Field.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates:

Commencing from the shoreline at latitude 30°24'28.30" N, longitude 086°40'54.91" W; thence to latitude 30°24'26.32" N, longitude 086°40'54.91" W; then the line meanders irregularly, following the shoreline at a distance of 200 feet seaward from the mean high water line to a point at latitude 30°24'20.92" N, longitude 086°41'45.96" W; thence directly to latitude 30°24'23.31" N, longitude 086°42'00.20" W; thence directly to latitude 30°24'28.83" N, longitude 086°42'07.42" W; thence directly to latitude 30°24'25.98" N, longitude 086°42'17.12" W; thence directly to longitude 30°24'26.31" N, longitude 086°42'19.82" W; then the line meanders irregularly following the shoreline at a distance of 200 feet seaward from the mean high water line to a point at latitude 30°24'28.80" N, longitude 086°42'53.83" W, thence proceeding directly to a point on the shoreline at latitude 30°24'30.79" N, longitude 086°42'53.83" W.

(b) *The regulations.* (1) *The danger zone.* (i) Experimental test operations will be conducted by the U.S. Air Force (USAF) within the danger zone. During periods when experimental test operations are underway, no person, vessel or other watercraft shall enter or navigate the waters of the danger zone.

(ii) The area identified in paragraph (a)(1) of this section and the associated

restrictions described in paragraph (b)(1)(i) of this section are in effect 24 hours a day, 7 days a week. The area is used on an intermittent basis and, generally, any test operations shall not exceed one hour and shall not occur more than twice weekly.

(2) *The restricted areas.* (i) All persons, vessels and other craft are permitted access to the restricted areas described in paragraph (a)(2) of this section. Any person or vessel within the restricted areas will be subject to identification checks by USAF patrol boats. During times of high security threats against Eglin AFB or Hurlburt Field, all entry, transit, anchoring or drifting within the restricted areas described in paragraph (a)(2) of this section for any reason is not allowed without permission of Eglin AFB or the Hurlburt Field Commander or his/her authorized representative, except to navigate the Gulf Intracoastal Waterway. Such vessels and other watercraft shall confine their movements to the waters within the limits of the Intracoastal Waterway and shall make the passage as promptly as possible under normal vessel speed.

(ii) The areas identified in paragraph (a)(2) of this section and the associated restrictions described in paragraph (b)(2)(i) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 6. Revise § 334.740 to read as follows:

§ 334.740 North Shore Choctawhatchee Bay, Eglin Air Force Base, Fla.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°28'59.90" N, longitude 086°29'08.88" W; thence to latitude 30°28'59.61" N, longitude 086°29'01.81" W; thence to latitude 30°29'08.01" N, longitude 086°28'47.78" W; then following the mean high water line at a distance of 1,000 feet to a point at latitude 30°26'48.60" N, longitude 086°32'31.95" W, thence proceeding directly to a point on the shoreline at latitude 30°26'53.58" N, longitude 086°32'41.81" W. The area also includes all contiguous inland navigable waters

that lie within the land boundaries of Eglin AFB.

(b) *The regulations.* (1) All persons, vessels and other craft are permitted access to the restricted area described in paragraph (a) of this section. Any person or vessel within the restricted area will be subject to identification checks by U.S. Air Force patrol boats. During times of high security threats against Eglin AFB, all entry, transit, anchoring or drifting within the restricted area described in paragraph (a) of this section for any reason is not allowed without the permission of the Commander, 96 Air Base Wing, Eglin AFB, and his/her authorized representative.

(2) The area identified in paragraph (a) of this section and the associated restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 7. Add § 334.742 to read as follows:

§ 334.742 Eglin Camp Pinchot, Fla., at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°28'18.68" N, longitude 086°35'38.66" W; thence to latitude 30°28'20.80" N, longitude 086°35'36.25" W; then the line meanders irregularly, following the shoreline at a distance of 300 feet seaward from the mean high water line to a point at latitude 30°28'06.02" N, longitude 086°35'39.18" W, thence proceeding directly to a point on the shoreline at latitude 30°28'07.47" N, longitude 086°35'42.17" W.

(b) *The regulations.* (1) All persons, vessels and other craft are permitted access to the restricted area described in paragraph (a) of this section. Any person or vessel within the restricted area will be subject to identification checks by U.S. Air Force patrol boats. During times of high security threats against Eglin AFB, all entry, transit, anchoring or drifting within the restricted area described in paragraph (a) of this section for any reason is not allowed without the permission of the

Commander, Eglin AFB, Florida, or his/her authorized representative.

(2) The area identified in paragraph (a) of this section and the associated restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

■ 8. Add § 334.744 to read as follows:

§ 334.744 Eglin Poquito Housing at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°27'11.68" N, longitude 086°34'32.87" W; thence to latitude 30°27'11.86" N, longitude 086°34'34.59" W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°27'31.25" N, longitude 086°34'38.56" W, thence proceeding directly to a point on the shoreline at latitude 30°27'34.07" N, longitude 086°34'35.67" W.

(b) *The regulations.* (1) All persons, vessels and other craft are permitted access to the restricted area described in paragraph (a) of this section. Any person or vessel within the restricted area will be subject to identification checks by U.S. Air Force patrol boats. During times of high security threats against Eglin AFB, all entry, transit, anchoring or drifting within the restricted area described in paragraph (a) of this section for any reason is not allowed without the permission of the Commander, Eglin AFB, Florida, or his/her authorized representative.

(2) The area identified in paragraph (a) of this section and the associated restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of

Defense Force Protection Condition (FPCON) System.

■ 9. Add § 334.746 to read as follows:

§ 334.746 U.S. Coast Guard, Destin Station at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°23'33.45" N, longitude 86°31'37.51" W; thence to latitude 30°23'35.67" N, longitude 86°31'37.31" W; thence to latitude 30°23'33.68" N, longitude 86°31'30.98" W; thence to latitude 30°23'32.00" N, longitude 86°31'28.80" W; thence proceeding directly to a point on the shoreline at latitude 30°23'30.14" N, longitude 86°31'30.21" W.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, U.S. Coast Guard, Destin Station, Florida, or his/her authorized representative.

(2) The area identified in paragraph (a) of this section and the associated restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, U.S. Coast Guard, Destin Station, and such agencies as he/she may designate.

■ 10. Add § 334.748 to read as follows:

§ 334.748 Wynnhaven Beach, Fla., at Eglin AFB; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24'35.06" N, longitude 086°46'20.31" W; thence to latitude 30°24'33.57" N, longitude 086°46'20.31" W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°24'34.81" N, longitude 086°46'09.19" W, thence proceeding directly to a point on the shoreline at latitude 30°24'36.30" N, longitude 086°46'09.19" W.

(b) *The regulations.* (1) All persons, vessels and other craft are permitted access to the restricted area described in paragraph (a) of this section. Any person or vessel within the restricted area will be subject to identification checks by U.S. Air Force patrol boats. During times of high security threats against Eglin AFB, all entry, transit, anchoring or drifting within the restricted area

described in paragraph (a) of this section for any reason is not allowed without the permission of the Commander, Eglin AFB, Florida, or his/her authorized representative.

(2) The area identified in paragraph (a) of this section and the associated restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, Florida and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished in accordance with the active security level as defined by the Department of Defense Force Protection Condition (FPCON) System.

§ 334.750 [Removed]

■ 11. Remove § 334.750.

Dated: November 29, 2011.

Michael G. Ensich,

Chief, Operations and Regulatory Directorate of Civil Works.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900-AO20

Servicemembers' Group Life Insurance Traumatic Injury Protection Program—Genitourinary Losses

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule that amends the regulations governing the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program by adding certain genitourinary (GU) system losses to the TSGLI Schedule of Losses and defining terms relevant to these new losses. This amendment is necessary to make qualifying GU losses a basis for paying GU-injured Servicemembers TSGLI benefits. The intended effect is to expand the list of losses for which TSGLI payments can be made.

DATES: *Effective Date:* This interim final rule is effective December 2, 2011. Comments must be received on or before January 31, 2012.

Applicability Date: VA will apply this rule to injuries incurred on or after October 7, 2001.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO20—Servicemembers' Group Life Insurance Traumatic Injury Protection Program—Genitourinary Losses." Copies of comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available to view online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Congress established the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program to provide financial assistance to severely injured Servicemembers who suffer a traumatic injury directly resulting in a TSGLI scheduled loss. See Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, sec. 1032, 119 Stat. 231, 257. Until now, injuries to the genitourinary (GU) system were not specifically included in the TSGLI Schedule of Losses at 38 CFR 9.20(f), although Servicemembers who sustain GU system injuries often are eligible for TSGLI payments for other losses under the Schedule incurred as a result of the same traumatic event that caused the GU loss. For example, a Servicemember who suffers GU injuries may be eligible for a TSGLI payment if hospitalized for 15 consecutive days. 38 CFR 9.20(f)(20).

A recent Department of Defense (DoD) report showed that, from 2009 to 2010, the proportion of war casualties who arrived at Landstuhl Regional Medical Center in Germany suffering from GU injuries increased from 4.8 percent to 9.1 percent. DoD also found that approximately 570 Servicemembers sustained GU injuries involving the

genitalia between October 7, 2001, and May 2, 2011. Joint Theater Trauma Registry Ad Hoc Report for October 7, 2001, to May 2, 2011, Institute for Surgical Research (May 5, 2011). In addition, the United States Army Institute of Surgical Research at Fort Sam Houston found that 5 percent of Servicemembers on the Joint Theater Trauma Registry who were admitted as a result of trauma in overseas contingency operations between October 2001 and January 2008 had one or more GU injuries. Faye B. Serkin *et al.*, *Combat Urologic Trauma In US Military Overseas Contingency Operations*, 69 J. Trauma Suppl. 1 S175 (2010). Recent consultation with medical experts at the National Naval Medical Center (NNMC) in Bethesda, Maryland, and Brooke Army Medical Center (BAMC) in San Antonio, Texas, where many injured Servicemembers are treated, revealed that there has been a recent increase in the number of GU injuries experienced by Servicemembers. As a result, the Secretary of Veterans Affairs has decided to add certain GU system losses to the TSGLI Schedule of Losses for which a TSGLI benefit is payable.

In the TSGLI Schedule of Losses codified at 38 CFR 9.20(f), VA is redesignating current paragraphs (19) and (20) as paragraphs (20) and (21), respectively, and adding GU system losses as the new paragraph (19). The medical experts report that, generally, GU injuries treated at NNMC and BAMC involve severe damage to the perineum consisting of complete loss of the genitalia or significant damage resulting in partial or complete loss of GU functional capacity. The NNMC and BAMC medical experts also stated that erectile dysfunction is common in male Servicemembers whom they have treated following severe GU injuries. BAMC specialists noted that the majority of the recent GU injuries treated at their facility are the result of dismantled complex blast injuries, which have increased recently because military personnel in combat zones are now conducting more walking patrols, which place them outside the protection of their armored vehicles. VA is therefore adding anatomical loss and loss of use of the penis as a scheduled loss for which \$50,000 in TSGLI benefits is payable.

VA is defining "anatomical loss of the penis" in new § 9.20(e)(6)(xxi) as amputation of the glans penis or any portion of the shaft of the penis above the glans penis (*i.e.*, closer to the body), or damage to the glans penis or shaft of the penis that requires reconstructive surgery. Because this definition and