

**DEPARTMENT OF DEFENSE****Department of the Army; Corps of Engineers****33 CFR Part 334**

RIN 0710-AA57

**United States Marine Corps Restricted Area and Danger Zone, Brickyard Creek and Tributaries, and the Broad River, Marine Corps Air Station, Beaufort, SC****AGENCY:** United States Army Corps of Engineers, DoD.**ACTION:** Notice of Proposed Rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing regulations to establish a restricted area and one danger zone in Brickyard Creek (including a portion of the Atlantic Intracoastal Waterway), Mulligan Creek, Albergottie Creek and Salt Creek in the vicinity of the Marine Corps Air Station (MCAS) in Beaufort, South Carolina. The MCAS restricted area will contain six sections that are contiguous to Brickyard, Albergottie and Salt Creeks, and two sections that are located on the northern border of the MCAS that encompasses Mulligan Creek. In addition, the proposed regulations will establish a restricted area in the Broad River in the vicinity of Laurel Bay Military Family Housing Area, which is associated with the Marine Corps Air Station. The purpose of these regulations is to provide effective security in the vicinity of the Marine Corps Air Station and the Laurel Bay Military Family Housing Area and to protect the public from the hazards of small arms fire within the Danger Zone.

**DATES:** Comments must be received on or before August 30, 2004.**ADDRESSES:** Send comments to U. S. Army Corps of Engineers, Attn: CECW-O 441 G Street, NW., Washington, DC 20314-1000.**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters, U.S Army Corps of Engineers, Washington, DC, at (202) 761-7610, or Mr. Dean Herndon, Corps of Engineers, Charleston District, at (843) 329-8044.**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 proposes to amend the restricted area regulations at 33 CFR 334 by adding Section 334.475, which would establish a restricted area (including eight sections) and one danger zone in the

vicinity of the Marine Corps Air Station and one restricted area in the vicinity of the Laurel Bay Military Family Housing Area in Beaufort, South Carolina. The sections of the restricted area are described in detail in the regulation below and identified as (a)(1) through (a)(9). The proposed danger zone will encompass an area to be used as a firing range for small arms and is listed as (a)(10). The public currently has unrestricted access to navigable waters adjacent to the Marine Corps Air Station and the Laurel Bay Military Family Housing Area. The Commander, Marine Corps Air Bases, Eastern Area is seeking authorization from the Corps of Engineers to establish restricted areas in waters of the United States adjacent to the Marine Corps Air Station and Laurel Bay Military Family Housing Area in Beaufort, South Carolina. The District Engineer's preliminary review indicates that this request is not contrary to the public interest.

**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**

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps of Engineers proposes to amend 33 CFR part 334 as follows:

**PART 334—DANGER ZONES 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 334.475 would be added to read as follows:

**§ 334.475 Brickyard Creek and tributaries and the Broad River at Beaufort, SC.**

(a) *The areas:* (1) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude (lat) 32.457226°, longitude (long) 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to lat. 32.458580°, long. 80.689181°, thence to lat. 32.460413°, long. 80.689228°, thence to lat. 32.461459°, long. 80.689418°, thence to lat. 32.464015°, long. 80.690294°, thence to lat. 32.470255°, long. 80.690965°, thence to lat. 32.471309°, long. 80.691196°, thence to lat. 32.475084°, long. 80.692455°, thence to lat. 32.478161°, long. 80.691546°, thence to lat. 32.479191°, long. 80.691486°, thence to lat. 32.481817°, long. 80.691939°, thence to lat. 32.493001°, long. 80.689835°, thence to lat. 32.494422°, long. 80.688296°, thence to lat. 32.49727°, long. 80.69172° on the east shore of the Marine Corps Air Station (MCAS), at its intersection with the Station's property boundary line, thence heading south along the eastern shoreline of the MCAS to a point along the northern shoreline of Mulligan Creek at lat. 32.48993°, long. 80.69836°, thence southwesterly across Mulligan

Creek to the shoreline of the MCAS, lat. 32.48771°, long. 80.70424°, thence continuing along the eastern shoreline to its intersection with Albergottie Creek, lat. 32.45360°, long. 80.70128, thence continuing along the southern shoreline of the MCAS to the intersection of Salt Creek with U.S. Highway 21, lat. 32.45047°, long. 80.73153°, thence back down the southern creek edge of Salt and Albergottie Creeks, thence back to the starting point at the confluence of Albergottie Creek and the AIWW, lat. 32.457226°, long. 80.687770°. **Note:** Situated within the boundaries of the area described in paragraph (a)(1) of this section are the areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and the danger zone described in paragraph (a)(10) of this section. Since additional regulations apply to these sections, they are excluded from the area described in paragraph (a)(1) given that they are more strictly regulated.

(2) That portion of Mulligan Creek located on the southern side of the MCAS runway, beginning at a point on the eastern shoreline of Mulligan Creek at lat. 32.48993°, long. 80.69836°, thence southwesterly across Mulligan Creek to the shoreline of the MCAS, lat. 32.48771°, long. 80.70424°, thence continuing in a northerly direction along the eastern shoreline of the MCAS, thence in a northeasterly direction along the southern side of the MCAS runway, thence back down the eastern shoreline of Mulligan Creek to its starting point, lat. 32.48993°, long. 80.69836°.

(3) That area adjacent to the Atlantic Intracoastal Waterway (AIWW), situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the west side of the AIWW navigational channel at lat. 32.463732°, long. 80.690208°, thence continuing in a northerly direction along the western channel edge of the AIWW to lat. 32.467999°, long. 80.690749°, thence turning in a westerly direction and continuing to lat. 32.467834°, long. 80.700080°, on the eastern shore of the MCAS, thence heading in a southward direction along the shoreline to lat. 32.463692°, long. 80.698440°, thence turning in a westerly direction and returning back to the starting point on the west edge of the AIWW channel, lat. 32.463732°, long. 80.690208°.

(4) That area contiguous to Albergottie Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS at lat. 32.452376°, long. 80.708263°, thence continuing in a northerly direction

along the shoreline, up to the shoreline adjacent to Kimes Avenue and back down the opposite shoreline in a southerly direction to a point at lat. 32.450643°, long. 80.715653°, thence turning in an easterly direction and returning back to the starting point at lat. 32.452376°, long. 80.708263°.

(5) That area contiguous to Salt Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS and the edge of Salt Creek at lat. 32.45194°, long. 80.724473°, thence continuing in a northerly direction along the shoreline of the MCAS and continuing on to its intersection again with Salt Creek and adjacent to U.S. Highway 21, thence turning and continuing along the shoreline of Salt Creek in an easterly direction and returning back to the starting point at lat. 32.45194°, long. 80.724473°.

(6) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude (lat) 32.457226°, longitude (long) 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to lat. 32.458580°, long. 80.689181°, thence to lat. 32.460413°, long. 80.689228°, thence to lat. 32.461459°, long. 80.689418°, thence to lat. 32.464015°, long. 80.690294°, thence to lat. 32.470255°, long. 80.690965°, thence to lat. 32.471309°, long. 80.691196°, thence to lat. 32.475084°, long. 80.692455°, thence to lat. 32.478161°, long. 80.691546°, thence to lat. 32.479191°, long. 80.691486°, thence to lat. 32.481817°, long. 80.691939°, thence to lat. 32.493001°, long. 80.689835°, thence to lat. 32.494422°, long. 80.688296°, thence crossing the AIWW channel in a southeasterly direction to a point on the east side of the AIWW and the marsh edge of bank, lat. 32.49343°, long. 80.68699°, thence southward along the edge of the AIWW and the waterward marsh edge of Ladies Island to a point on the west shoreline of Pleasant Point Peninsular, lat. 32.45806°, long. 80.68668°, thence back across the AIWW navigational channel to the point of beginning, lat. 32.457226°, long. 80.687770°.

(7) That portion of Mulligan Creek, beginning at its northern mouth and confluence with McCalleys Creek, lat. 32.50763°, long. 80.69337°, thence proceeding in a westerly direction along the northern shoreline of Mulligan Creek to its intersection with Perryclear Drive bridge crossing, lat. 32.50534°,

long. 80.69960°, thence back down the southern shoreline to its starting point at McCalleys Creek, lat. 32.50763°, long. 80.69337°.

(8) That portion of Mulligan Creek, beginning at the Perryclear Drive bridge crossing, lat. 32.50534°, long. 80.69960°, thence proceeding in a southwesterly direction along the northern shoreline of Mulligan Creek to the terminus of its western tributary, thence back down its southern shoreline to the terminus of its eastern terminus located at the northern end on the MCAS runway, lat.

32.49531°, long. 80.70658°, thence back down the southern shoreline to its starting point at Perryclear Drive bridge crossing, lat. 32.50534°, long. 80.69960°.

(9) (Laurel Bay Military Family Housing Area) That section of the Broad River, beginning on the western shoreline of Laurel Bay Military Family Housing Area boundary line, at lat. 32.449295°, long. 80.803205°, thence proceeding in a northerly direction along the shoreline to the housing area northern boundary line at lat.

32.471172°, long. 80.809795°, thence proceeding a distance of 500' into the Broad River, lat. 32.471185°, long. 80.811440°, thence proceeding in a southerly direction and maintaining a distance of 500' from the shoreline to lat. 32.449222°, long. 80.804825°, thence back towards the shoreline to the point of beginning at lat. 32.449295°, long. 80.803205°.

(10) (Danger zone). That portion of Mulligan Creek located adjacent to the MCAS firing range and the restricted area described in paragraph (a)(4) of this section, beginning at a point on the western shoreline of Mulligan Creek at lat. 32.48771°, long. 80.70424°, thence northeasterly across Mulligan Creek to the opposite shoreline at lat. 32.48993°, long. 80.69836°, thence continuing in a southeasterly direction to an upland island bordering the northern shoreline of Mulligan Creek at lat. 32.48579°, long. 80.69706°, thence turning in a southwesterly direction and crossing Mulligan Creek to a point on the eastern shoreline of the MCAS at lat. 32.48533°, long. 80.70240°, thence continuing along the eastern shoreline of the MCAS to its starting point at lat. 32.48771°, long. 80.70424°.

(b) *The Regulation:* (1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(8) of this section at any time.

(2) The public shall have unrestricted access and use of the waters described in paragraph (a)(6) of this section whenever the MCAS is in Force Protection Condition Normal, Alpha or

Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(6) of this section shall proceed at normal speed and shall under no circumstances anchor, fish, loiter or photograph in any way until clear of the restricted area.

(3) The public shall have unrestricted access and use of the waters described in paragraphs (a)(1), (a)(7) and (a)(9) of this section whenever the MCAS is in Force Protection Condition Normal Alpha or Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft are prohibited from entering the waters described in paragraphs (a)(1), (a)(7) and (a)(9) of this section, unless they first obtain an escort or other approval from the Commander, MCAS, Beaufort, South Carolina.

(4) Unauthorized personnel, vessels and other watercraft shall not enter the danger zone described in paragraph (a)(10) of this section at any time.

(5) All restricted areas and danger zones will be marked with suitable warning signs.

(6) It is understood that none of the restrictions herein will apply to properly marked Federal vessels performing official duties.

(7) It is further understood that unauthorized personnel will not take photographs from within the above described restricted areas.

(c) *Enforcement:* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer, MCAS Beaufort, or persons or agencies as he/she may authorize including any Federal Agency, State, Local or County Law Enforcement agency, or Private Security Firm in the employment of the facility, so long as the entity undertaking to enforce this Restricted Area has the legal authority to do so under the appropriate Federal, State or local laws.

Dated: June 29, 2004.

**Michael B. White,**

*Chief, Operations, Directorate of Civil Works.*  
[FR Doc. 04-16923 Filed 7-28-04; 8:45 am]

**BILLING CODE 3710-92-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[R07-OAR-2004-KS-0001; FRL-7793-7]

#### Approval and Promulgation of Operating Permits Program; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing approval of revisions to the Kansas Operating Permits Program. On April 22, 2004, the state of Kansas requested a revision for the purpose of increasing emission fees for the Title V Operating Permits Program, revising the late fee provisions, and other minor revisions.

**DATES:** Comments on this proposed action must be received in writing by August 30, 2004.

**ADDRESSES:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's revision to the operating permits program as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 14, 2004.

**U. Gale Hutton,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 04-17295 Filed 7-28-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[R07-OAR-2004-IA-0002; FRL-7793-9]

#### Approval and Promulgation of Operating Permits Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing approval of a revision to the Iowa Operating Permits Program for the purpose of revising the definition of stationary source categories in the state rule. The revised definition will be consistent with the Federally-approved rules, including the provisions of the New Source Review Program and with EPA's major source definition.

**DATES:** Comments on this proposed action must be received in writing by August 30, 2004.

**ADDRESSES:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's revision to the operating permits program as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action,