

Attn: David Olson, CECW-CO-R

ID: LFG-2018-0031

United States Army Corps of Engineers

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Sent via: Electronic mail

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Re: Docket Number, COE-2017-0011

Mr. Olson,

The United States Army Corps of Engineers is proposing to amend an existing permanent danger zone in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. JBLE-Eustis contains a military port berthing numerous Army vessels and conducts exercises to include small craft testing and live fire training activities. It has been asserted that the proposed amendment is necessary to protect the public from hazards associated with training and mission operations, and to protect government assets, missions, and the base population in general. It has also been asserted that the proposed amendment increases the restricted areas and creates danger zones surrounding the existing installation and firing ranges.

The proposed regulations that are associated with the agenda item are as follows: (1) For the restricted areas defined in paragraphs (a)(1) and (a)(2) of this section: (i) All vessels will contact the 3rd Port Harbor Master on marine channel 12 or 68 prior to entering or transiting these restricted areas. (ii) The passage of fishing vessels to or from authorized traps, or the transit of commercial vessels, will be coordinated with the 3rd Port Harbor Master on marine channel 12 or 68. (iii) The harvesting and cultivation of oyster beds or the setting of fish traps within these restricted areas will be allowed provided the commercial fisherman coordinate access to these areas with the 3rd Port Harbor Master on marine channel 12 or 68. (iv) The Commander, Joint Base Langley-Eustis will, to the extent possible, give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Department of Defense use of the restricted areas. (2) For the restricted areas defined in paragraphs (a)(3), (a)(4), and (a)(5) of this section: (i) Entry into these areas is for official government purposes only, or as authorized by the Commander, Joint Base Langley-Eustis. (ii) Entry will be coordinated and conducted in accordance with the policies and procedures established by the Commander, Joint Base Langley-Eustis. (3) For the danger zones defined in paragraphs (a)(6) and (a)(7) of this section: (i) Persons, vessels or other craft shall not enter or remain in the danger zone when firing is or will soon be in progress unless authorized to do so by the enforcing agency. (ii) Advance notice of the schedule of small arms firing will be provided via the Joint Base Langley-Eustis web page. (iii) All projectiles will be fired to land within the impact area on the Fort Eustis peninsula. Neither the Department of the Army nor the Department of the Air Force will be responsible for damages by such projectiles to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within these danger zones. (c) Enforcement. The regulations of this section shall be enforced by the

Commander of the Joint Base Langley-Eustis, in Virginia, and such agencies that the commander may designate.

Pursuant to the authorities as listed in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1)¹ and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the United States Army Corps of Engineers is proposing amendments to regulations in 33 CFR² part 334 for the establishment of new restricted areas and danger zones. The establishment of the new restricted areas and danger zones would apply to the waters of the James River, Skiffes Creek and the Warwick River in Newport News, Virginia. In a memorandum dated April 28, 2017, the United States Department of the Air Force requested that the United States Army Corps modify 33 CFR 334.280 to establish permanent restricted areas and danger zones. The proposed permanent restricted areas and danger zones are necessary to protect the public from hazards associated with training and mission operations, and to fulfill the current security needs of the United States Department of the Air Force to protect government assets, missions, and the base population in general at the facility. The proposed modification expands the restricted areas to surround JBLE-Eustis and establishes danger zones adjacent to the JBLE-Eustis firing ranges.

Pursuant to Executive Order 12866, Executive Orders 12866 and 13563, direct agencies are required to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget, and pursuant to Office of Management and Budget guidance, it is exempt from the requirements of Executive Order 13771. The United States Army Corps has determined the proposed rule, as far as this agenda item is concerned, is not a significant regulatory action. This regulatory action determination is based on the proposed rules governing the restricted areas, which allow any vessel that needs to transit the restricted areas to do so if the operator of the vessel obtains permission from Commander, JBLE-Eustis, and/or other persons or agencies as he/she may designate.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires federal agencies of the United States to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The United States Army Corps certifies that under 5 U.S.C. 605(b), that the rule that is a part of this agenda item, would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted areas or danger zones may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted areas and danger zones are necessary to protect vessels and personnel assigned to JBLE-Eustis by implementing a waterside security program. They are also necessary to protect the public. Small entities can also utilize navigable waters outside of the restricted areas and danger zones. Small entities that need to transit the restricted areas and danger zones may do so as long as vessel operators obtain

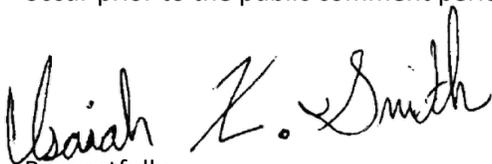
¹ It should be noted that “U.S.C” stands for United States Code.

² It should be noted that “CFR” stands for Code of Federal Regulations.

permission from the Commander, Joint Base Langley-Eustis, and/or other persons or agencies as he/she may designate. The restricted areas are necessary for security of JBLE-Eustis. The danger zones area necessary for protect the public from hazards associated with training and mission operations. Unless information is obtained to the contrary during the comment period, the United States Army Corps expects that the economic impact of the proposed restricted areas and danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this restricted area and danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the United States Army Corps expects that the regulation that is a part of this agenda item, 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.³ The United States Army Corps will provide an environmental assessment after the public notice period is closed and all comments have been received and have been considered. This should be reviewed under the National Environmental Policy Act and this issue should be in compliance with the National Environmental Policy Act.

The proposed rule as far as this agenda item is concerned, 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. The United States Army Corps has also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking. So in conclusion, I am not in opposition to the United States Army Corps proposal however, I would like to to be clear that prior to the public comment period closing as far as this docket number is concerned, or as far as any docket number is concerned that is association with the United States Army Corps in the future, I believe that it is imperative for the United States Army Corps should provide an environmental impact statement prior to the public comment period closing. Even if the United States Army Corps plans on providing an environmental assessment after the public comment period has closed, I believe that it would be proper for this to occur prior to the public comment period closing.


Respectfully,

Isaiah X. Smith

³ While it may be true that the United States Army Corps proposal may not have a significant impact to the quality of the human environment, whatever that means, I do believe that the United States Army Corps should provide an environmental impact statement prior to the public comment period closing. While the United States Army Corps is going to be proving an environmental assessment with the public comment period has closed, I believe that it would be proper for this to occur prior to the public comment period closing.