

§ 73.352 Paracoccus pigment.

(a) *Identity.* (1) The color additive paracoccus pigment consists of the heat-killed, dried cells of a nonpathogenic and nontoxicogenic strain of the bacterium *Paracoccus carotinifaciens* and may contain added calcium carbonate to adjust the astaxanthin level.

(2) Color additive mixtures for fish feed use made with paracoccus pigment may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Paracoccus pigment shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such impurities may be avoided by good manufacturing practice:

(1) Physical state, solid.

(2) Lead, not more than 5 milligrams per kilogram (mg/kg) (5 parts per million (ppm)).

(3) Arsenic, not more than 2 mg/kg (2 ppm).

(4) Mercury, not more than 1 mg/kg (1 ppm).

(5) Heavy metals (as Pb), not more than 10 mg/kg (10 ppm).

(6) Astaxanthin, not less than 1.75 percent.

(c) *Uses and restrictions.* Paracoccus pigment may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of astaxanthin in finished feed, from paracoccus pigment when used alone or in combination with other astaxanthin color additive sources listed in this part 73, shall not exceed 80 mg/kg (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with § 501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing paracoccus pigment shall be declared in accordance with

§§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore, batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: November 5, 2009.

Leslye M. Fraser,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 239

[DOD-2009-OS-0090]

RIN 0790-A158

Homeowners Assistance Program—Application Processing

AGENCY: Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On September 30, 2009, DoD published an interim final rule implementing the Homeowners Assistance Program (HAP), with an effective date of September 30, 2009 (74 FR 50109-50115). This notice is being published to invite additional public comment on the interim final rule. Any timely public comments received will be considered and any changes to the final rule will be published in the **Federal Register**. The public comment period is being extended for 60 days.

DATES: The effective date of the HAP interim final rule remains September 30, 2009. Additional comments must be received on or before January 15, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and

docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Deanna Buchner, (703) 602-4353.

Dated: November 9, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, HI

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

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations at 33 CFR 334.1380 for the existing danger zone in the vicinity of Kaneohe Bay, Hawaii. The amendment reflects the current operational and safety procedures at the Ulupau Crater Weapons Training Range and highlights a change in the hours that weapons firing may occur. The amendment also expands the boundaries of the existing danger zone. These regulations are necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the United States Marine Corps. **DATES:** *Effective date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or by e-mail at david.b.olson@usace.army.mil, or Ms. Susan A. Meyer, Corps of Engineers, Honolulu District, Regulatory Branch, at 808-438-2137 or by e-mail at susan.a.meyer@usace.army.mil.

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 is amending the danger zone regulations at

33 CFR 334.1380 to reflect current operational and safety procedures at the Ulupau Crater Weapons Training Range, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii and highlight a change in the hours that weapons firing may occur. The amendment also provides more detailed times, dates, and extents of restrictions. The dimensions of the danger zone have increased, from the original distance of 3,900 yards from a point on Mokapu Peninsula to 3.8 nautical miles from that same point.

The proposed rule was published in the August 31, 2007, issue of the **Federal Register** (72 FR 50303) with the docket number COE-2007-0027 and approximately 23 comments were received from 13 commenters. One commenter said that a draft Environmental Impact Report should have been available for public comment at the same time as the proposed rule. Two other commenters requested a copy of the draft EA for review and comment. Another commenter requested clarification on the Corps' authority to amend the danger zone and promulgate regulations at 33 CFR part 334. One commenter objected to the expansion of the danger zone on the basis of potential impacts to sensitive marine wildlife and organisms, including existing designated wildlife protected areas. The same commenter requested that submerged lands surrounding the crater be treated with sensitivity and respect based on the view these areas are ceded lands belonging to the Hawaiian monarchy. Three other commenters stated that the coordinates for Point E of the expanded danger zone do not appear to be correct and one of the three commenters interpreted the proposed rule to amend/expand the prohibited area. Lastly, eight commenters expressed no objections to the proposed amendment.

In the August 31, 2007, proposal the Corps made a preliminary determination that the proposed rule does not require the preparation of an Environmental Impact Statement, and that an environmental assessment would be prepared for the final rule. The regulations governing the National Environmental Policy Act (NEPA) do not require draft environmental assessments to be available for public comment. Federal agencies are only required to solicit public comments during the preparation of Environmental Impact Statements. Given the administrative nature of the proposed rule and the substance of the comments received, we have determined that an environmental assessment is the appropriate mechanism for complying

with NEPA requirements. Public input on the proposed action was solicited using **Federal Register** noticing and local public noticing. Public comments received in response to the notices were documented and fully considered during final agency decision making.

Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Act of 1918 (40 Stat. 892; 33 U.S.C. 3) grant authority to the Secretary of the Army to establish danger zones and to regulate navigation within them for the protection of life and property.

The danger zone represents a public safety buffer beyond the physical boundaries of the training range to further reduce the safety threat to the boating public. The geographical nature of the crater combined with the use of man-made measures makes the crater secure from unintended projectiles exiting its confines, although a very slight possibility exists that a projectile could ricochet or otherwise be inadvertently fired beyond the confines of the crater. Under current conditions, sensitive wildlife areas, including designated protected areas, are encompassed within the existing boundaries of the danger zone. Since munitions are not intentionally fired into waters surrounding Ulupau Crater and the probability of an unintended projectile exiting the crater is negligible, an expanded danger zone will not incrementally change, modify or otherwise adversely impact sensitive marine species and organisms that inhabit or are supported by the waters and protected areas occurring within the danger zone. Marine resources, including endangered species, migratory shorebirds, and other seabirds that occupy designated protected areas will remain adequately protected by the MCBH under obligations of pre-existing agreements. For similar reasons, submerged lands will not be directly or indirectly adversely affected by the expanded danger zone.

The coordinates for Point E of the danger zone were not correct in the proposed rule, and in the final rule we have eliminated Point E altogether. In the final rule the amended danger zone is defined by a reduced number of coordinates, from six points (Points A, B, C, D, E and the starting point) to four points (Points A, B, C and the starting point). The boundaries of the amended danger zone form a pie-shaped area with an arc having a 3.8 nautical-mile radius at its center point (Point B). When compared to the irregularly shaped area described in the proposed rule, this modified configuration is less problematic to monitor and patrol, and

is less complicated for the boating public to interpret and chart. The reduced number of coordinates and minor changes to the configuration simplify the boundaries of the danger zone, but do not appreciably change the overall size of the amended danger zone as it was depicted in the proposed rule. The amended danger zone is defined by three points extending seaward a distance of 3.8 nautical miles between radial lines bearing 357.1° true and 124.9° true, respectively, from a starting point on Mokapu Peninsula at latitude 21° 27' 11.84" N, longitude 157° 43' 53.83" W. The three seaward points are as follows:

Point A: Latitude 21°30'59.66" N,

Longitude 157°44'05.97" W

Point B: Latitude 21°29'16.58" N,

Longitude 157°40'30.19" W

Point C: Latitude 21°25'01.79" N,

Longitude 157°40'33.70" W

The prohibited area is defined as a 500-yard wide zone within the waters of Kaneohe Bay contiguous with the shoreline of the MCBH, which remains off limits to the public for military security and public safety. While a portion of the amended danger zone overlaps the existing prohibited area, the 500-yard wide prohibited area will not expand or otherwise change as a result of this action.

Procedural Requirements

a. Review Under Executive Order 12866

This final 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

This final 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). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have a 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 determined the amendment does not have a significant impact on

the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period is closed and considered all comments received on the public notice. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This final 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 stated 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 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 § 334.1380 to read as follows:

§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

(a) *The danger zone.* The area within a sector extending seaward a distance of 3.8 nautical miles between radial lines bearing 357.1° true and 124.9° true, respectively, from a starting point on Mokapu Peninsula at latitude 21°27'11.84" N, longitude 157°43'53.83" W, and overlapping the existing 500-yard wide prohibited area. The danger zone is defined as a pie-shaped area bounded by the landward starting point on Mokapu Peninsula and the three seaward points forming an arc with a 3.8 nautical-mile radius at its center (Point B) with a radial line bearing 56.9° true. The three seaward points have the following coordinates:

Point A: Latitude 21°30'59.66" N,
Longitude 157°44'05.97" W
Point B: Latitude 21°29'16.58" N,
Longitude 157°40'30.19" W

Point C: Latitude 21°25'01.79" N,
Longitude 157°40'33.70" W

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 11 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the MCBH Range Manager, AC/S G-3 (telephone number 808-257-8816/17).

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is scheduled. Passage of vessels through the danger zone when weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCBH Kaneohe Bay military personnel utilizing by hailing the vessel on VHF channel 16 or contacting directly by U.S. Navy surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The enforcing agency.* The regulations shall be enforced by the Commanding Officer, MCB Hawaii, Kaneohe Bay and such agencies as he/she may designate.

Dated: November 5, 2009.

Michael G. Ensich,
Chief, Operations, Directorate of Civil Works.
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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL

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

ACTION: Correcting amendments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) published a document in the **Federal Register** on July 23, 2009 (74 FR 36400), revising the restricted areas at Cape Canaveral Air Force Station, Patrick Air Force Base (AFB), Florida. The revision included the establishment of a restricted area within the waters of the Atlantic Ocean offshore of the Cape Canaveral Air Force Station. The regulation included information regarding the boundaries of the new restricted area, including a reference to the offshore (eastern) boundary as being 1.5 miles offshore of the mean high water line. The final rule did not reference the type of mile unit to be used for the boundary line of the restricted area. The intent was to use nautical miles as the unit type. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of the restricted area, we are also correcting those coordinates. This document corrects the final regulation by revising this section.

DATES: *Effective date:* November 16, 2009.

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

SUPPLEMENTARY INFORMATION: On July 23, 2009 (74 FR 36400), the Corps published a document in the **Federal Register** establishing a new restricted area at Cape Canaveral Air Force Station, Patrick AFB, Florida. Section 334.595(a) of the final rule did not specify the type of mile unit to use to define the area. Nautical miles are to be used to define this restricted area. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of this restricted