

adopted, will not have a significant economic impact on a substantial number of small entities. Rule 163 is, by its terms, available only to WKSIs. We believe that few, if any, small entities will be able to meet the \$700 million non-affiliate equity market capitalization threshold⁵⁸ or the \$1 billion non-convertible securities issuance threshold⁵⁹ to be considered WKSIs. For this reason, the proposed rule amendments, if adopted, should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,⁶⁰ a rule is “major” if it has resulted, or is likely to result, in:

- An annual effect on the U.S. economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments to Rule 163(c) would be a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on: (1) The potential effect on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment, or innovation.

X. Statutory Authority—Text of the Proposed Amendments

We are proposing the amendments pursuant to Sections 7, 10, 19, and 28 of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

⁵⁸ To satisfy this threshold, the worldwide market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates must be \$700 million or more as of a date within 60 days of the determination date. See Securities Act Rule 405 [17 CFR 230.405].

⁵⁹ To satisfy this threshold, the issuer must have issued for cash more than an aggregate of \$1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. See Securities Act Rule 405 [17 CFR 230.405].

⁶⁰ 5 U.S.C. 801 *et seq.*

For the reasons set out in the preamble, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.163 by revising paragraph (c) to read as follows:

§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.

* * * * *

(c) For purposes of this section, a communication is made by or on behalf of an issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the communication before it is made. *Provided, however*, an offering participant who is an underwriter or dealer may be an agent or representative of the issuer for purposes of this section if:

(1) The underwriter or dealer receives written authorization from the issuer to act as its agent or representative prior to making any communication in reliance on this exemption;

(2) The issuer authorizes or approves any written or oral communication before it is made by an underwriter or dealer authorized pursuant to the provision of this section to act as agent or representative of the issuer; and

(3) Any underwriter or dealer authorized pursuant to the provision of this section that has made any communication authorized pursuant to the provision of this section is identified in the prospectus contained in the registration statement or amendment that may be filed for the offering of the issuer's securities related to the communication.

* * * * *

By the Commission.

Dated: December 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30589 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

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

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise several existing danger zone and restricted area regulations and to 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 their water boundary security plan to provide adequate protection to Eglin personnel and resources.

DATES: Written comments must be submitted on or before January 27, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2009–0056, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2009–0056, in the subject line of the message.

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

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2009–0056. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov Web site is an anonymous access system, which means we will not know your identity or

contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

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

SUPPLEMENTARY INFORMATION: 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 proposing to amend the regulations in 33 CFR part 334 by updating and clarifying several of the existing regulations and establishing four new restricted areas in Florida within the Eglin Air Force Base (AFB) facilities and along the facility shoreline, at Eglin Reservation. 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 their water boundary security plan to provide adequate protection to Eglin personnel and resources by providing the Commanding Officer, Eglin AFB with the authority to restrict passage of persons, watercraft and vessels in waters contiguous to this facility.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). Unless information is obtained to the contrary during the comment period, the Corps expects that the proposed rule would have practically no economic impact on the public, and result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

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 proposes to amend 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 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 point 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 point at latitude 30°27'54.18" N, longitude 086°29'18.32" W; then following the shoreline at the mean high waterline easterly to point of origin.

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* The waters of Choctawhatchee Bay within an area bounded by a line connecting the following coordinates: Commencing at the northwest shore point 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 point latitude 30°29'08.7" N, longitude 086°15'00" W; then following the shoreline at the mean high waterline 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 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 Public Affairs.

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

(2) Enforcement of the regulations in this section will be accomplished utilizing the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, Force Protection Conditions levels are titled Normal, Alpha, Bravo, Charlie and Delta.

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 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, entry into the area will be prohibited to all persons and navigation. Notifications will be via Eglin water patrol and published in local news media in advance.

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

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 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 person 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.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin Field, Florida, and such agencies as he/she may designate.

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.* 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 from Harvey Lock, Louisiana.

(2) *The restricted areas.* (i) *Area 1.* 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 miles 334.6 and 216.4 from Harvey Lock, Louisiana.

(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 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 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°24'28.80" 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.* Experimental test operations will be conducted by the U.S. Air Force within the danger zone on an intermittent basis. Such test operations shall not exceed one hour, and shall not occur more than twice weekly. During periods when experimental test operations are underway, no person, vessel or other watercraft shall enter or navigate the waters of the restricted area.

(2) *The restricted areas.* (i) No person, vessel or other watercraft shall enter the areas identified in paragraph (a)(2) of this section without permission of Eglin AFB or 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 are active 24 hours a day, 7 days a week.

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

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 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) With the exception of local, State, and Federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the areas described in paragraph (a) of this section for any reason without the permission of the Commander, 96 Air Base Wing, Eglin AFB, and his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is 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, and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished utilizing the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, Force Protection Conditions levels are titled Normal, Alpha, Bravo, Charlie and Delta.

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 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) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

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

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 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) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

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

9. Add § 334.746 to read as follows:

§ 334.746 US 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 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 restriction in paragraph (b)(1) of this section is 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 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) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

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

§ 334.750 [Removed]

11. Remove § 334.750.

Dated: December 17, 2009.

Michael G. Ensich,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9-30659 Filed 12-24-09; 8:45 am]

BILLING CODE 3720-58-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2010-6; Order No. 363]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule; notice of availability of rulemaking petition.

SUMMARY: The Postal Service has proposed adjustments to the methodology of a key element in the Periodicals cost model. If adopted, the adjustments could affect the price of postage for periodical publications. The Commission is establishing a docket to consider this proposal and invites public comment.

DATES: Comments are due: January 11, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot file submit their views electronically should contact the person identified in "FOR FURTHER INFORMATION CONTACT" by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6824 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: On December 11, 2009, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider changes in the methods approved for use in periodic reporting.¹ Proposal

Twenty-Nine is part of a developing methodology for estimating the ratio of machine-sorted flats (automated or mechanical) to total sorted flats in the Incoming Secondary operation. The Postal Service refers to this as the "In-Plant IS Coverage Factor." It is a key element in the Postal Service's Periodicals cost model. The In-Plant IS Coverage Factor is currently an input into the calculation of the Auto/Mech Factor. The Auto/Mech factor represents the percent of Periodicals that arrive at plants with mechanized sorting equipment that receive a mechanized incoming secondary sort. The percentage of Periodicals that receive a mechanized incoming secondary sort (*i.e.* the In-Plant IS Coverage Factor) depends on two things: the percentage of Periodicals volume arriving at plants with mechanized flat sorting equipment (also referred to as the Mechanized Coverage Factor), and the percentage of Periodicals that receive a mechanized incoming secondary sort once they arrive at a plant with mechanized flat sorting equipment. (Some flats will be rejected by the flat sorting machine within the plant.) In mathematical terms, the In-Plant IS Coverage Factor is the product of the Auto/Mech Factor and the Mechanized Coverage Factor.

As part of the changes made prior to the FY 2008 Annual Compliance Report (ACR), the Commission approved the use of MODS and RPW data to directly calculate the In-Plant IS Coverage Factor.² The previous method assumed that the Auto/Mech factor was 85 percent. The Mechanized Coverage Factor had previously been updated in Docket No. R2006-1. In Docket No. RM2009-1, the Commission considered the Postal Service's proposal to directly calculate the In-Plant IS Coverage Factor as the ratio of non-carrier route flats sorted on mechanized sorting equipment and recorded in MODS reports and the volume of non-carrier route flats recorded in the RPW. The Commission approved the modification, but noted that the directly measured In-Plant IS Factor "is an imperfect proxy for the mechanization rate for the incoming secondary flat bundle sorting operation."³

In its FY 2008 ACR, the Postal Service estimated the In-Plant IS Coverage Factor using the newly approved

method, and also re-ordered the mathematical relation between the In-Plant IS Coverage Factor, the Mechanized Coverage Factor, and the Auto/Mech Factor. Doing this resulted in a value for the Auto/Mech Factor of approximately 99 percent. The Commission rejected this derived Auto/Mech Factor. It viewed the formula revision which produced this result as an unapproved methodology change. It was also concerned that the very high derived value of the Auto/Mech Factor indicated that the use of this revised formula could easily produce the illogical conclusion that more than 100 percent of flats arrived at plants with mechanized sorting equipment. *See* FY2008 Annual Compliance Determination, at 55-56.

This year, in anticipation of the FY 2009 ACR, the Postal Service proposed to again calculate the In-Plant IS Coverage Factor using MODS and RPW data, but promised to take remedial steps if the resulting coverage factor was too close to 100 percent.⁴ The Commission approved that modification but recommended that the Postal Service consider revising it in certain respects to avoid an estimate that is unrealistically high.⁵ Meanwhile, the Postal Service filed a proposal to use data from somewhat different sources to calculate the Mechanized Coverage Factor.⁶ That proposal is still pending Commission approval.

In Proposal Twenty-Nine in the instant docket, the Postal Service recognizes that its current method for calculating an Auto/Mech factor for sorting flats when applied to FY 2009 data produces results that are unreasonably close to 100 percent. It ascribes this, in large part, to the growing volume of "fletters," *i.e.*, "slim-jim" sized letters. These are designed to take advantage of favorable letter rates. The Postal Service says that they are difficult to process on letter-sorting equipment, and, therefore, end up with increasing frequency being diverted to flat sorting equipment. It asserts that fletters raise the Total Piece Handling (TPH) counts of mail representing

⁴ Docket No. RM2009-10, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Three Through Nineteen), July 28, 2009, Proposal Twelve, at 3.

⁵ *See* Docket No. RM2009-10, PRC Order No. 339, Order on Analytic Principles Used in Periodic Reporting (Proposals Three Through Nineteen), November 13, 2009, at 35.

⁶ *See* Docket No. RM2010-4, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Twenty-Two Through Twenty-Five), October 23, 2009, Proposal Twenty Five, Modification 1.

¹ Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytic Principles (Proposal Twenty-nine), December 11, 2009 (Petition).

² *See* Docket No. RM2009-1, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Further Proposed Methodology Changes for the FY 2008 ACR, Proposal Twelve, November 4, 2008.

³ *See* Docket No. RM2009-1, PRC Order No. 170, Order Concerning Costing Methods Used in Periodic Reporting (Proposal Twelve), January 12, 2009, at 14.