

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean Off John F. Kennedy Space Center, FL; Restricted Area

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

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is revising its regulations by establishing a new restricted area in the Atlantic Ocean off the coast of the John F. Kennedy Space Center (KSC), Florida. The KSC is the main launch facility for the National Aeronautics and Space Administration (NASA) and they need to have the capability to secure their shoreline at KSC. This amendment to the existing regulations is necessary to enhance KSC's ability to secure their shoreline to counter postulated threats to their facilities and to provide for safe launch operations.

DATES: *Effective date:* July 19, 2010.

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: 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 regulations in 33 CFR part 334 by establishing a new restricted area in Florida offshore of the KSC facilities. The modification to the regulations is described below.

The proposed rule was published in the February 25, 2010, issue of the *Federal Register* (75 FR 8570), and its regulations.gov docket number is COE-2010-0001. No comments were received in response to the proposed rule.

The amendment to this regulation will allow the Director, KSC to restrict passage of persons, watercraft, and vessels in waters contiguous to this facility during launch operations and whenever there is a perceived threat to the facility.

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 to 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 **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This regulation does not impose an enforceable duty on 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 (Public Law 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. Add § 334.525 to read as follows:

§ 334.525 Atlantic Ocean off John F. Kennedy Space Center, FL; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the

United States, as defined at 33 CFR part 329, contiguous to the area offshore of the John F. Kennedy Space Center (KSC), Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the southwest portion of the area, at latitude 28°35.008' N, longitude 80°34.448' W, thence directly to latitude 28°35.716' N, longitude 80°32.938' W, thence follow the mean high water line northerly at a distance of 1.5 nautical miles to a point at latitude 28°43.566' N, longitude 80°39.094' W, thence proceed westerly to terminate at a point on the shoreline at latitude 28°43.566' N, longitude 80°41.189' W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section will be closed when it is deemed necessary by the Director, KSC or his/her designee during launch operations or to address any perceived threat to the facilities. 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 restricted area when it is closed, unless they have the permission of the Director, KSC or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with little advance notice. Closure of the area shall be noticed by warning statements displayed on the electronic marquee signs located at the gates of the KSC and on an electronic marquee sign located on the north side of the Port Canaveral ship channel between the Trident and Poseidon wharfs during the duration of the closure. If time permits, additional information will be published in area newspapers and announced on marine radio broadcast.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, KSC and/or such persons or agencies as he/she may designate.

Date: June 7, 2010.

Approved:

Michael G. Ensich,

Chief, Operations, Directorate of Civil Works.

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