

**DEPARTMENT OF DEFENSE****Department of the Army, Corps of Engineers****33 CFR Part 334****United States Navy Restricted Area, Kennebec River, Bath Iron Works Shipyard, ME**

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing regulations to establish a restricted area on the west side of the Kennebec River in the vicinity of the Bath Iron Works (BIW) Shipyard from just south of the Carlton (Route 1) highway bridge to the southern end of the Bath Iron Works Shipyard facility in Bath, Maine. These regulations will enable the Navy to enhance security around vessels constructed, moored and launched at the facility. The regulations will safeguard military vessels and United States government contractor facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of Navy use of the area and its security measures.

**DATES:** Written comments must be submitted on or before March 18, 2002.

**ADDRESSES:** U. S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Richard Roach, Corps of Engineers, New England District, at (978) 318-8211 or (800) 343-4789.

**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 in 33 CFR part 334 by adding Section 334.45 which establishes a restricted area in the Kennebec River, off of the Bath Iron Worksshipyard on the western shore of the Kennebec River South of the Route 1 highway bridge in Bath, Maine. The public currently is restricted from using the area by Coast Guard Regulations under the Port Safety Act. To better protect vessels and personnel stationed at the facility and

the general public, The Navy, Supervisor of Shipbuilding, Conversion and Repair at BATH Iron Works has requested the Corps of Engineers establish a Restricted Area. This will enable the Navy to keep persons and vessels out of the area at all times, except with the permission of the Navy Supervisor of Shipbuilding at Bath Iron Works.

**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 (Public Law 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 of Engineers 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 the **FOR FURTHER INFORMATION CONTACT**, paragraph.

*(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 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. Section 334.25 is added to read as follows:

**§ 334.25 Kennebec River, Bath Iron Works Shipyard, Bath, Maine, Restricted Area.**

(a) *The area.* The waters within an area beginning on the western shore at latitude 43°54'40.7" N, longitude 69° 48' 44.8 " W; thence easterly to latitude 43°54'40.7 " N, longitude 69°48' 36.8" W; thence southeasterly to latitude 43° 54' 10.4" N, longitude 069° 48' 34.7" W; thence southwesterly to latitude 43° 53' 55.1 " N, longitude 69° 48' 39.1 " W; thence westerly to latitude 43° 53' 55.1 " N, longitude 69° 48' 51.8 " W; thence northerly along the westerly shoreline to the point of origin.

(b) *The regulations.* No persons, swimmers, vessels, or other craft, except: those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, may pass through the restricted area unless specific authorization is granted by the Supervisor of Shipbuilding, United States Navy, Bath, Maine, or other persons or agencies as he/she may designate.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Supervisor of Shipbuilding, Bath Iron Works, Bath, Maine, and/or other persons or agencies as he/she may designate.

(2) Federal and State Law enforcement vessels and personnel may enter the restricted area at any time to enforce their respective laws.

Dated: January 14, 2002.

**Charles M. Hess,**

*Chief, Operations Division, Directorate of Civil Works.*

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