

proposing to amend the regulations in 33 CFR part 334 by establishing a new restricted area in Florida offshore of the KSC facilities. The proposed amendment 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.* The 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.* 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 will have practically no economic impact on the public, or 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 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 Reform Act (Pub. L. 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 rule.

#### 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. 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 following 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 proceeding 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.

Dated: February 19, 2010.

**Michael G. Enschi,**  
Chief, Operations, Directorate of Civil Works.  
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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R01–OAR–2009–0705; A–1–FRL–9118–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Determination of Attainment of the 1997 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that the Providence (All of Rhode Island) moderate 1997 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that shows the area has monitored attainment of the 8-hour ozone NAAQS for the 2006–2008 monitoring period. In addition, preliminary ozone data for 2009 show the area continues to attain the 1997 8-hour ozone NAAQS. If this proposed determination is made final, under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS.

**DATES:** Written comments must be received on or before March 29, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0705 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax:* (617) 918–0047.

4. *Mail:* “Docket Identification Number EPA–R01–OAR–2009–0705,” Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2009–0705. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.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, EPA recommends 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, 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. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental

Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail [Burkhart.Richard@epa.gov](mailto:Burkhart.Richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA's Analysis of the Relevant Air Quality Data?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

#### **I. What Action Is EPA Taking?**

EPA is proposing to determine that the Providence (All of Rhode Island) moderate 8-hour ozone nonattainment area (hereafter the Rhode Island (RI) area) has attained the 1997 8-hour NAAQS for ozone. This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2006–2008 monitoring period. In addition, preliminary ozone data for 2009 show this area continues to attain the 1997 ozone NAAQS.

#### **II. What Is the Effect of This Action?**

If this determination is made final, under the provisions of EPA's ozone implementation rule (*see* 40 CFR Section 51.918), the requirements for the Rhode Island moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the ozone NAAQS. As discussed further below, this action also affects the Federal Implementation Plan (FIP) clock started for Rhode Island in 2008. This proposed action, if

finalized, would not constitute a redesignation to attainment under the Clean Air Act (CAA) section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment.

For the Rhode Island area, EPA started a FIP clock on March 24, 2008 (73 FR 15416) for failure to submit attainment demonstration and Reasonable Further Progress (RFP) SIPs. That same notice also started a highway sanctions clock and an offset sanctions clock for Rhode Island. This proposed action, if finalized, will stay the FIP clock started on March 24, 2008, for both the attainment demonstration and the RFP SIP. The highway and offset sanctions clocks were previously stopped for these areas since Rhode Island submitted the required SIPs and EPA has determined them complete. If the area subsequently violates the 8-hour standard before it is redesignated to attainment, the FIP clock would restart for Rhode Island for these SIPs.

If this determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent CAA requirements.

#### **III. What Is the Background for This Action?**

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The entire state of Rhode Island was designated as a moderate ozone nonattainment area. Recent air quality data, however, indicate that the Rhode Island area is now attaining the 1997 8-hour ozone standard.

#### **IV. What Is EPA's Analysis of the Relevant Air Quality Data?**

The EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 CFR part 50 and recorded in the AQ5 database, for Rhode Island, from 2006 through 2008. On the basis of that review, EPA has concluded that the area

attained the 1997 8-hour ozone standard at the end of the 2008 ozone season, based on three years of complete, quality-assured and state-certified 2006–2008 ozone data. In addition, preliminary ozone data for 2009, show the area continues to attain the 1997 8-hour ozone NAAQS.

Under EPA regulations at 40 CFR Part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at

an ozone monitor is less than or equal to 0.08 parts per million (ppm) (i.e., 0.084 ppm, based on the rounding convention in 40 CFR part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitor within the area, then the area is meeting the NAAQS. (See 69 FR 23857 (April 30, 2004) for further information.) Also, the data completeness requirement is met when the average percent of days with valid

ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

Table 1 shows the fourth-highest daily maximum 8-hour average ozone concentrations for the Rhode Island nonattainment area monitors for the years 2006–2008, and the ozone design values for these same monitors based on 2006–2008.

TABLE 1—FOURTH-HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (PARTS PER MILLION) IN THE RHODE ISLAND AREA

State	Site ID	Site location	4th high 2006	4th high 2007	4th high 2008	Design value (2006–2008)
RI .....	440030002	West Greenwich .....	0.079	0.089	0.074	0.080
RI .....	440071010	East Providence .....	0.081	0.088	0.077	0.082
RI .....	440090007	Narragansett .....	0.081	0.083	0.081	0.081

EPA's review of these data indicates that the Rhode Island ozone nonattainment area has met the 1997 8-hour ozone NAAQS. In addition, preliminary ozone data for 2009, show the area continues to attain the 1997 8-hour ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters pertaining to this rulemaking action. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

#### V. Proposed Action

EPA is proposing to determine that the Rhode Island 1997 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone standard, based on complete, quality-assured data through 2008, and preliminary data for 2009 indicating continuing attainment. As provided in 40 CFR Section 51.918, if EPA finalizes this determination, it would suspend the requirements for Rhode Island to submit planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.

#### VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized; result in the suspension of certain Federal requirements, and would not

impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 12, 2010.

#### H. Curtis Spalding,

*Regional Administrator, EPA New England.*

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