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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Meloy Channel, U.S. Coast Guard Base Miami Beach, Florida; restricted area.

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 amend its regulations to establish a new restricted area in the waters surrounding the U.S. Coast Guard Base Miami Beach, Florida (Base Miami Beach). Base Miami Beach is composed of multiple U.S. Coast Guard (USCG) units, both land and waterside. The facility has one of the highest operational tempos in the USCG for both routine and emergency operations. The amendment to the regulations is necessary to enhance the USCG's ability to secure their shoreline to counter postulated threats against their personnel, equipment, cutters and facilities by providing stand-off corridors encompassing the waters immediately contiguous to Base Miami Beach. The amendment will also serve to protect the general public from injury or property damage during routine and emergency USCG operations and provide an explosive safety arc buffer during periodic transfer of ammunitions between units, including cutters.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2012-0009, 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-2012-0009, 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-2012-0009. 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 regulations.gov or e-mail. The 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 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, D.C. 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:

Executive Summary

The purpose of this regulatory action is to establish a restricted area in the waters surrounding the U.S. Coast Guard Base Miami Beach, Florida to counter postulated threats against their personnel, equipment, cutters and facilities by providing stand-off corridors encompassing the waters immediately contiguous to Base Miami Beach.

The Corps authority to establish this restricted area is 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).

Background

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 proposing to amend the regulations at 33 CFR part 334 by establishing a new restricted area in the waters near Meloy Channel, Government Cut Channel, and Miami Main Channel surrounding Base Miami Beach. The proposed amendment to this regulation will allow the Base Commander, U.S. Coast Guard Base Miami Beach to restrict passage of persons, watercraft, and vessels in waters contiguous to this Command, thereby providing greater security to the personnel, equipment, cutters, and facilities housed at the site.

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 (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). 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, 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 on 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. Add § 334.605 to read as follows:

§ 334.605 Meloy Channel, U.S. Coast Guard Base Miami Beach, Florida; restricted area.

(a) The area. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 25°46'20.07"N, longitude 080°08'50.94"W; thence to latitude 25°46'22.69"N, longitude 080°08'44.01"W; thence to latitude 25°46'22.02"N, longitude 080°08'42.14"W; thence to latitude 25°46'12.23"N, longitude 080°08'35.33"W; thence to latitude 25°46'09.13"N, longitude 080°08'40.74"W; thence to latitude 25°46'11.63"N, longitude 080°08'43.36"W; thence to latitude 25°46'17.22"N, longitude 080°08'47.17"W; thence to latitude 25°46'17.15"N, longitude 080°08'47.62"W; thence to latitude 25°46'17.63"N, longitude 080°08'49.33"W; thence to latitude 25°46'18.91"N, longitude 080°08'50.24"W; thence proceed directly to a point on the shoreline at latitude 25°46'18.76"N, longitude 080°08'50.71"W thence following the mean high water line to the point of beginning.

(b) The regulations. (1) The restricted area described in paragraph (a) of this section is only open to U.S. Government vessels. U.S. Government vessels include, but are not limited to, U.S. Coast Guard and Coast Guard Auxiliary vessels, Department of Defense vessels, state and local law enforcement and emergency services vessels, and vessels under contract with the U.S. Government. Warning signs notifying individuals of the restricted area boundary and prohibiting all unauthorized entry into the area will be posted along the property boundary and, as appropriate, on the piers of the MacArthur Causeway Bridge adjacent to the restricted area.

(2) All persons, vessels, and other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area described in paragraph (a) of

this section without prior approval from the Base Commander, U.S. Coast Guard Base Miami Beach or his/her designated representative.

(3) Fishing, trawling, net-fishing, and other aquatic activities are prohibited in the restricted area without prior approval from the Base Commander, U.S. Coast Guard Base Miami Beach or his/her designated representative.

(4) The restrictions described in paragraph (b) of this section are in effect 24 hours a day, 7 days a week.

(c) Enforcement. The regulations in this section shall be enforced by the Base Commander, U.S. Coast Guard Base Miami Beach and/or such persons or agencies as he/she may designate.

DATE_April 25, 2012

APPROVED_____

Richard C. Lockwood
Chief, Operations and Regulatory
Directorate of Civil Works

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