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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2019-0010]

Washington Channel, Fort McNair, Washington, DC; Restricted Area.

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

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to establish a restricted area in the Washington Channel adjacent to Fort McNair. Fort McNair is the headquarters of the Army's Military District of Washington and home of the National Defense University as well as the official residence of the U.S. Army's Vice Chief of Staff. Fort McNair requested a restricted area to fulfill Joint Base Myer-Henderson Hall (JBM-HH) security needs including Marine Helicopter Squadron (HMX) missions and protection of VIP quarters at Fort McNair. On August 8, 2019, the Corps published a proposed rule for the establishment of a restricted area in the Washington Channel adjacent to Fort McNair. After evaluating the comments received in response to that proposed rule, the proposal has been revised and the Corps is inviting public comment on the revised proposed rule text.

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

ADDRESSES: You may submit comments, identified by docket number COE-2019-0010, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments to docket number COE-2019-0010.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2019-0010, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (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-2019-0010. 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](http://www.regulations.gov) or e-mail. The [regulations.gov](http://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](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, we recommend

that you include your name and other contact information in the body of your comment and also include your contact information with any compact disk 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 Division, Washington, D.C. at 202-761-4922.

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 U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations at 33 CFR part 334 for the establishment of a restricted area in waters of the Washington Channel in Washington, D.C. In a memorandum dated April 16, 2020, Fort McNair submitted a revised request to the Corps for a proposed rule to establish this restricted area. The proposed restricted area is necessary to fulfill the current security needs of Fort McNair and Joint Base Myer-Henderson

Hall (JBM-HH) at these facilities. Fort McNair is the headquarters of the Army's Military District of Washington and home of the National Defense University as well as the official residence of the U.S. Army's Vice Chief of Staff.

The initial proposed rule as published in the August 8, 2019, issue of the Federal Register (84 FR 38893). Forty-eight comments were received in response to that proposed rule, and those comments can be viewed in the www.regulations.gov docket for this rulemaking activity (docket number COE-2019-0010).

The original proposal was to prohibit access within the proposed restricted area at all times, other than limited exceptions for fishing access. In response to the proposed rule, comments were received from the public stating the Washington Channel is increasingly utilized for regional transportation, water recreation, and cultural activities such as the District of Columbia's Holiday Boat Parade and the Blessing of the Fleet. Commenters expressed concern that the proposal would affect the ability of residents and visitors to enjoy these activities in the restricted area. Commenters also expressed concerns that restriction of the channel would significantly narrow the waterway, creating unsafe navigation conditions by forcing paddle boats, kayaks, sail boats and motor boats into the same space as larger water taxis and river cruise ships. To respond to the public comments, an alternative restricted area proposal was developed that would provide greater flexibility for mariners. The revised proposal would allow transient traffic offshore of Fort McNair at all times with the exception of National Security Special Events such as the State of the Union Address, State Funerals,

Presidential Inaugurations, Marine Helicopter Squadron (HMX) missions, and other periods of increased security. Other than during National Security Special Events and other periods of increased security, water craft would be able to transit, but not anchor, moor or loiter in the restricted area unless approved by the Commander, JBM-HH/Fort McNair or his/her designated representatives.

Procedural Requirements

a. Regulatory Planning and Review.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. The Corps has determined that this proposed rule is not a significant regulatory action. This determination is based on the size, duration, and location of the restricted area. The restricted area occupies only a portion of the waterway. Outside of National Special Security Events, a vessel that needs to transit the restricted area may do so, but must not anchor, moor or loiter in, the restricted area. During National Special Security Events, the vessel may transit the restricted area if the operator of the vessel obtains permission from the Commanding Officer, JBM-HH or his/her designated representative. Fishermen may be authorized controlled

access to the restricted area after registering with JBM-HH/Fort McNair officials and following specific access notification procedures.

b. Impact on Small Entities.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the proposed restricted area may be small entities, this proposed rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted area is necessary to address the current security needs at Fort McNair and JBM-HH Washington, D.C. Vessels can utilize navigable waters outside of the restricted area. Also, vessels or other craft can transit, but not anchor, moor or loiter in, the restricted area unless approved by the Commander, JBM-HH/Fort McNair or his/her designated representatives transit the restricted area as long as they obtain permission from the Commanding Officer, JBM-HH or his/her designated representative. Unless information is obtained to the contrary during the comment period, the Corps expects the proposed restricted area would have no economic impact on the public, nor create any navigational hazards or

interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action, the Corps expects that this proposed 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, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 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.

e. Congressional Review Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, 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 33 CFR 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 § 334.225 to read as follows:

§334.225 Washington Channel, Fort Lesley J. McNair, Washington, D.C.;

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 38° 52' 18.776"N, longitude -077° 1' 9.436"W; thence to latitude 38° 52' 17.696"N, longitude -077° 1' 13.345"W; thence to latitude 38° 52' 12.798"N, longitude -077° 1' 12.114"W; thence to latitude 38° 52' 17.559"N, longitude -077° 1' 9.706"W; thence to latitude 38° 51' 43.667"N, longitude -077° 1' 9.771"W; thence to latitude 38° 51' 41.135"N, longitude 077° 1'9.45"W; thence to latitude

38° 51' 38.723"N, longitude -077° 1' 6.921"W; thence to latitude 38° 51' 38.257"N, longitude -077° 1' 3.101"W; thence to latitude 38° 51' 40.069"N, longitude -077° 0' 57.895"W; thence to latitude 38° 51' 41.708"N, longitude -077° 0' 54.969"W; thence to latitude 38° 51' 41.918"N, longitude -077° 0' 53.911"W; thence to latitude 38° 51' 43.571"N, longitude -077° 0' 55.143"W. The datum for these coordinates is NAD-83.

(b) The regulations: (1) All persons, vessels, or other craft are prohibited from anchoring, mooring or loitering within the restricted area without the permission of the Commander, Joint Base Myer Henderson Hall (JBM-HH)/Fort McNair or his/her designated representatives. The restriction will be in place 24 hours a day, 7 days a week. During National Special Security Events (NSSEs) and other periods of increased security, all persons, vessels, or other craft are prohibited from anchoring, mooring, loitering, or transiting the restricted area. At other times, all persons, vessels, or other craft can transit, but must not anchor, moor or loiter in, the restricted area unless approved by the Commander, JBM-HH/Fort McNair or his/her designated representatives.

(2) The boundary of the restricted area will be demarcated with marker buoys and warning signs located at all or some of the coordinates at approximately 75-150 meters from the shoreline of Fort McNair listed in paragraph (a) of this section.

(3) Closure notification. During temporary closures for known events, boaters will be notified of closure of the restricted area to transit by Local Notices to Mariners (LNMs). For unforeseen events requiring closure, Broadcast Notices

to Mariners (BNMs), Safety Marine Information Broadcasts (SMIBs), or direction from shore, or any combination of these, will be used to alert boaters.

(c) Enforcement. The restricted area will be jointly enforced by the Commander, Joint Base Myer Henderson Hall (JBM-HH)/Fort McNair or any such agencies he/she designates and the Metropolitan Harbor Patrol. The U.S. Coast Guard also has enforcement authority under Title 14, United States Code, Section 522. During NSSEs and other periods of increased security, all persons, vessels, or other craft are prohibited from anchoring, mooring, loitering, or transiting the restricted area. At other times, all persons, vessels, or other craft can transit but must not anchor, moor or loiter in the restricted area unless approved by the Commander, JBM-HH/Fort McNair. The areas identified in paragraph (a) of this section will be monitored 24 hours a day, 7 days a week. If any person or vessel encroaching within the areas identified in paragraph (a) of this section is directed to immediately leave the restricted area and fails to do so, such failure to comply could result in forceful removal and/or criminal charges.

(d) Exceptions. Fishermen may be authorized controlled access to the restricted area after registering with JBM-HH/Fort McNair officials and following specific access notification procedures.

Thomas P. Smith,
Chief, Operations and Regulatory Division,
Directorate of Civil Works.