



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[Docket Number: 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 Corps of Engineers is proposing to establish a permanent restricted area in the Washington Channel adjacent to Ft. McNair. Ft. 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. Ft. McNair requests the restricted area to fulfill Joint Base Myer-Henderson Hall (JBM-HH) security needs including HMX missions and security needs at Ft. McNair including protection of VIP quarters. The restricted area is also needed to protect public health by preventing vessels from disturbing a planned environmental remediation area located near the Fort.

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.

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 disc 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](http://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, or Mr. Steve Elinsky, Corps of Engineers, Baltimore District, Regulatory Branch, at 410-962-4503.

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 of Engineers is proposing amendments to regulations in 33 CFR Part 334 for the establishment of a permanent restricted area in waters of the Washington Channel in Washington, D.C. In a memorandum dated September 15, 2017, Ft. McNair requested that the Corps establish this permanent restricted area. The proposed permanent restricted area is necessary to fulfill the current security needs of Ft McNair and Joint Base Myer-Henderson Hall (JBM-HH) at these facilities. Ft. 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.

### 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 made a determination this proposed rule is not a significant regulatory action. This regulatory action determination is based on the size, duration, and location of the restricted area. The restricted area occupies only a portion of the waterway and a vessel that needs to transit the restricted area may do so 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/Ft. 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 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 restricted area may be small entities, for the reasons stated in paragraph (a) above this 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 Ft McNair and JBM-HH Washington, D.C. Vessels can utilize navigable waters outside of the restricted area. Vessels may also 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 that the economic impact of the proposed restricted area would have practically no impact on the public, any anticipated navigational hazard 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 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, 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. We 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 final 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) Hazardous operations will be in effect on an indefinite 24-hour basis, seven days a week. All persons, vessels or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area except persons, vessels, or other craft authorized entry by the Commander, JBM-HH or his/her designated representatives.

(2) All persons, vessels or other craft shall clear the area when warned by patrol vessels or on-shore communication.

(3) The boundary of the restricted area will be demarcated with marker buoys and warning signs located at all or some of the coordinates listed in paragraph (a) of this section.

(c) Enforcement. Any person or vessel encroaching within the restricted area will be directed to immediately leave the restricted area. Failure to do so 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/Ft. McNair officials and following specific access notification procedures.

Dated: August 1, 2019.

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

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