



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0908]

RIN 1625-AA00

Safety Zone, Submarine Cable Replacement Operations, Kent Island Narrows; Queen Anne's County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of Kent Island Narrows in Queen Anne's County, MD. This action is necessary to provide for the safety of mariners and their vessels on navigable waters during submarine cable replacement operations at the Kent Island Narrows (MD-18B) Bridge. This action is intended to restrict vessel traffic movement to protect mariners from potential safety hazards associated with the bridge project. Entry into this zone would be prohibited unless specifically authorized by the Captain of the Port Baltimore or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0908] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0908) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

This rule involves the installation of a submarine cable within a federal navigation channel requiring divers, a barge, and support boats during a 13-day period in December 2013. The bridge operation regulations for Kent Island Narrows listed in 33 CFR 117.561 do not apply to this activity.

C. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security

Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones. The purpose of this safety zone is to protect public boaters and their vessels from potential safety hazards associated with the electrical submarine cable replacement operations at the Kent Island Narrows (MD-18B) Bridge.

D. Discussion of Proposed Rule

The Maryland State Highway Administration will replace a submarine cable across the federal navigation channel at the Kent Island Narrows (MD-18B) Bridge over the Kent Island Narrows in Queen Anne's County, Maryland, scheduled from 8 a.m. on December 2, 2013 through 6 p.m. on December 15, 2013.

According to the Maryland State Highway Administration, the work in early December 2013 is necessary because a waterway construction restriction does not allow this type of work between December 15, 2013 and March 15, 2014, and further delaying the submarine cable work until March 2014 would have a larger impact to those mariners using the federal navigation channel. The designated work site extends approximately 55 feet northward from the south side of the bridge, 55 feet southward from the south side of the bridge, 74 feet eastward of the federal navigation channel centerline, and 70 feet westward of the federal navigation channel centerline. Although outside the federal navigation channel, portions of Kent Island Narrows will

remain open to marine traffic during the work and the bridge can be operated if necessary.

Through this regulation, the Coast Guard proposes to establish a temporary safety zone. The zone would encompass all waters of Kent Island Narrows, within an area bounded by the following points: from position latitude 38°58'14.5"N, longitude 076°14'50.2"W; thence easterly to position latitude 38°58'14.1"N, longitude 076°14'48.4"W; thence southerly to position latitude 38°58'12.3"N, longitude 076°14'49.0"W; thence westerly to position latitude 38°58'12.8"N, longitude 076°14'50.8"W; thence northerly to point of origin at position latitude 38°58'14.5"N, longitude 076°14'50.2"W. The zone would be enforced daily from 6 a.m. to 6 p.m., from 8 a.m. on December 2, 2013 to 6 p.m. on December 15, 2013.

The effect of this safety zone would be to restrict marine navigation in the regulated area during daily work activity. Vessels and persons would be allowed to transit the waters of Kent Island Narrows outside the safety zone.

This rule would require that, with the exception of Maryland State Highways Administration support vessels, entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented would be required to depart the zone. To seek

permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the work activity is complete.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it

under those Orders. Although this regulation would restrict access to this area, the effect of this proposed rule would not be significant because: (i) the Coast Guard would give advance notification via maritime advisories so mariners can adjust their plans accordingly, (ii) the safety zone would not be activated, and thus subject to enforcement, daily from 6 p.m. to 6 a.m., from 8 a.m. on December 2, 2013 to 6 p.m. on December 15, 2013, and (iii) although the safety zone would apply to the entire width of the federal navigation channel and not the entire width of Kent Island Narrows, vessel traffic not constrained by draft or height may be able to transit safely around the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities,

some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Kent Island Narrows daily from 6 a.m. to 6 p.m., from 8 a.m. on December 2, 2013 to 6 p.m. on December 15, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for 12 hours during the day. Although the safety zone would apply to the entire width of the federal navigation channel, vessel traffic could pass safely around the safety zone. Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks

and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42

U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone in the Kent Island Narrows to maintain public safety during submarine cable replacement operations at the Kent Island Narrows (MD-18B) Bridge. This action is necessary to protect persons and property during the project. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306,

3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0908 to read as follows:

§ 165.T05-0908 Safety Zone, Submarine Cable Replacement Operations, Kent Island Narrows; Queen Anne's County, MD.

(a) Location. The following area is a safety zone: all waters of Kent Island Narrows, within an area bounded by the following points: from position latitude 38°58'14.5"N, longitude 076°14'50.2"W; thence easterly to position latitude 38°58'14.1"N, longitude 076°14'48.4"W; thence southerly to position latitude 38°58'12.3"N, longitude 076°14'49.0"W; thence westerly to position latitude 38°58'12.8"N, longitude 076°14'50.8"W; thence northerly to point of origin at position latitude 38°58'14.5"N, longitude 076°14'50.2"W, located in Queen Anne's County, Maryland. All coordinates refer to datum NAD 1983.

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05-0908.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) With the exception of Maryland State Highways Administration support vessels, entry into or remaining in this

zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed as directed while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) Definitions. As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

Maryland State Highways Administration Support Vessels means all vessels engaged in submarine cable replacement operations under the auspices of the Maryland State Highways Administration's authorization for repairs at the MD-18B Bridge across Kent Island Narrows in Queen Anne's County, Maryland.

(d) Enforcement periods. This section will be enforced daily from 6 a.m. to 6 p.m., from 8 a.m. on December 2, 2013 to 6 p.m. on December 15, 2013.

Dated: October 24, 2013

Kevin C. Kiefer
Captain, U.S. Coast Guard
Captain of the Port Baltimore.

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