



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0897]**

**RIN 1625-AA00**

**Safety Zone; Isle of Wight Bay, Ocean City, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters in Isle of Wight Bay. This action is necessary to provide for the safety of personnel and vessels at and immediately adjacent to the Harry W. Kelley Memorial (US-50) Bridge during submarine electrical cable replacement operations which will occur from January 27, 2020, through February 3, 2020, daily from 6 a.m. until 10 p.m. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

**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 USCG-2019-0897 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2570, email Courtney.E.Perry@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Maryland Department of Transportation notified the Coast Guard that it will be conducting an installation of submarine cables from January 27, 2020, through February 3, 2020, within the navigation channel at the Harry W. Kelley Memorial (US-50) Bridge located in Ocean City, MD. The installation operations will be conducted at all hours during this time period. Vessels will not be able to use the navigation channel to pass through the draw span, daily from January 27, 2020, through February 3, 2020, from 6 a.m. until 10 p.m. Divers will be working from a barge and floating platforms which will impede 75 to 125 feet of the channel. On site marine equipment and vessels will be operated by Covington Machine and Welding, Inc. of Annapolis, MD or its subcontractors. Vessels engaged in work for this project will utilize marine band radio

VHF-FM channel 13. The navigable waters outside of the navigation channel, in the vicinity of the bridge, will be unobstructed during this time and may be used at mariners' discretion. The COTP Maryland-National Capital Region has determined potential hazards associated with the installation of submarine electrical cables would be a safety concern for anyone at and immediately adjacent to the bridge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters at and immediately adjacent to the Harry W. Kelley Memorial (US-50) Bridge during this project. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The Coast Guard is proposing to establish a safety zone January 27, 2020, through February 3, 2020 from 6 a.m. until 10 p.m. The safety zone will cover all navigable waters of the Isle of Wight Bay encompassed by a line connecting the following points beginning at 38°19'57.2" N, 075°05'26.0" W, thence to 38°19'56.9" N, 075°05'24.8" W, thence to 38°19'55.6" N, 075°05'25.3" W, thence to 38°19'55.9" N, 075°05'26.6" W, and back to the beginning point, located at Ocean City, MD. The regulated area is approximately 100 feet in width and 180 feet in length.

This regulation would require that the bridge owner post a sign facing the northern and southern approaches of the navigation channel labeled "CABLE WORK—DANGER—STAY AWAY" affixed to the sides of the on-scene marine equipment and vessels operating within the area of the safety zone. This provides on-scene notice of the safety zone. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word "DANGER" will be 10 inch black

block letters centered on the sign with the words “CABLE WORK” and “STAY AWAY” in 6 inch black block letters placed above and below the word “DANGER,” respectively, on a white background.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, including publication in the *Federal Register*, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

The duration of enforcement of the zone is intended to ensure the safety of vessels and these navigable waters throughout the submarine electrical cable installation. Except for marine equipment and vessels operated by Covington Machine and Welding, Inc. or its subcontractors, no vessel or person will be permitted to enter the safety zone without permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. 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 and Executive orders and discuss First Amendment rights of protestors.

##### *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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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.

This regulatory action determination is based on the size, duration, and the time-of-year of the safety zone. The proposed submarine cable installation is being planned during the winter/non-peak season, when vessel transits in this section of the federal navigation channel are unlikely. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. This safety zone would impact a small designated area of Isle of Wight Bay for approximately 8 days and coincides with the non-peak season for recreational boating.

#### *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 Coast Guard 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 intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule will not have a significant economic impact on any vessel owner or operator.

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

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 this rule were to affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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.

#### *C. Collection of Information*

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

#### *D. Federalism and Indian Tribal Governments*

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

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it does 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. 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.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 a safety zone lasting approximately eight days that would prohibit use of navigable waters at or adjacent to the Harry W. Kelley Memorial (US-50) Bridge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01. A preliminary Record of Environmental Consideration supporting this determination is 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.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER**

**INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **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 is proposing 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0897 to read as follows:

#### **§ 165.T05-0897 Safety Zone; Isle of Wight Bay, Ocean City, MD**

- (a) *Location.* The following area is a safety zone: All navigable waters of Isle of

Wight Bay, encompassed by a line connecting the following points beginning at 38°19'57.2" N, 075°05'26.0" W, thence to 38°19'56.9" N, 075°05'24.8" W, thence to 38°19'55.6" N, 075°05'25.3" W, thence to 38°19'55.9" N, 075°05'26.6" W, and back to the beginning point, located at Ocean City, MD. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section---

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the security zone described in paragraph (a) of this section.

*Marine equipment* means any vessel, barge or other equipment operated by Covington Machine and Welding, Inc. or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. Except for marine equipment, all vessels within this safety zone at the time it is implemented are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A “CABLE WORK—DANGER—STAY AWAY” sign facing the northern and southern approaches of the navigation channel will be posted on the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section will be enforced daily January 27, 2020, through February 3, 2020, from 6:00 a.m. until 10 p.m.

Dated: December 12, 2019.

**Joseph B. Loring,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Sector Maryland-NCR.*

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