



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: Temporary final rule.

SUMMARY: The Coast Guard is establishing 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 daily, from 6 a.m. until 10 p.m on January 27, 2020, through February 3, 2020. This rule will 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.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 3, 2020. For the purposes of enforcement, actual notice will be used from January 27, 2020, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0897 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this 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 | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

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 of the day throughout this time period. In response, on December 17, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled **Safety Zone; Isle of Wight Bay, Ocean City, MD** (84 FR 68858). We stated why we issued the NPRM and allowed for commenting on our proposed regulatory action. We received no comments during the comment period which ended on January 2, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to mitigate the potential hazards to personnel and vessels navigating immediately adjacent to the Harry W. Kelley Memorial (US-50) Bridge during this time.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Maryland-National Capital Region has determined that the potential hazards associated with the installation of submarine electrical cables would be a safety concern for anyone at and immediately adjacent to the Harry W. Kelley Memorial Bridge during these operations. The purpose of this rule is to ensure the safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM, which was published on December 17, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from January 27, 2020, through February 3, 2020, that will be enforced daily from 6 a.m. until 10 p.m. The safety zone will cover all navigable waters of the Isle of Wight Bay, in Ocean City, MD encompassed by an area 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. The zone is established

to ensure the safety of vessels and the navigable waters before, during, and after the scheduled submarine cable installation. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this 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, additionally, we 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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this 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.

This regulatory action determination is based on the size, duration, and the time-of-year of the safety zone. The submarine cable installation is being planned during the winter/non-peak season, when vessel transit in this area of the channel is unlikely. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. This safety zone will impact a small designated area of the Isle of Wight Bay for approximately 8 days, but 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 rule will 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 reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 rule. If this rule will effect 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on the actions of employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will 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 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 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under the Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and the 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 determined that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This 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. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

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.

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 amends 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: January 16, 2020.

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Sector Maryland-NCR.
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