



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0238]**

**RIN 1625-AA00**

**Safety Zone; Delaware River; Baker Range, DE and NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing two temporary moving safety zones in the Baker Range portion of the Delaware River. This action is necessary to provide for the safety of life and navigation on this portion of the Delaware River during submarine power cable laying operations. This regulation prohibits persons and vessels from entering or transiting through the safety zone without prior authorization from the Captain of the Port Delaware Bay or a designated representative.

**DATES:** This rule is effective from August 19, 2019 through December 31, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0238 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 on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay,

Waterways Management Division; telephone (215) 271-4814, e-mail  
Edmund.J.Ofalt@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background Information and Regulatory History**

On October 2, 2018, the Harlan Electric Company notified the Coast Guard of construction activities in the Delaware River involving submerged cable laying operations. The submerged cable laying operation was originally scheduled to begin on July 1, 2019, and continue through September 20, 2019. In response to the notification, on May 3, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) that proposed a moving safety zone around the cable laying operations in the Baker Range portion of the Delaware River (84 FR 19003, May 3, 2019). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this cable laying project. During the comment period that ended June 3, 2019, we received one supportive comment.

On July 29, 2019, Harlan Electric Company notified the Coast Guard of its updated intentions to conduct cable laying operations, and debris removal as needed. Due to the nature of the equipment needed for anticipated debris removal, the Coast Guard is adding an additional safety zone to address the risks posed by debris removal

operations in the navigable channel. Harlan Electric Company also informed the Coast Guard of a new construction start date.

The Coast Guard is issuing this temporary rule with two safety zones and different effective dates without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a second notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the start of the construction activities in the Delaware River. The rule must be in force by August 19, 2019 when the cable laying project will commence. We are taking immediate action to ensure the safety of vessels and the general public from hazards associated with the submerged cable laying operations.

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 respond to the potential safety hazards associated with submarine cable laying operations within the main navigational channel.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The

Captain of the Port Delaware Bay has determined that potential hazards associated with submarine cable laying operations will be a safety concern for anyone within 300 yards of the cable laying barge ULISSE and any associated equipment. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone during cable laying and debris removal operations that will take place in and around the main navigational channel in the Baker Range portion of the Delaware River.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM. The comment was supportive of the safety zone and did not suggest changes to the proposed rule. However, we made two changes to the regulatory text of this rule from the proposed rule in the NPRM because the party responsible for the construction provided us with new information regarding the cable laying project after the comment period closed.

The first change is to the effective dates of the work. Due to unforeseen project delays, the start date for the portion of the project that will impact the navigational channel is now anticipated to be August 19, 2019. Subsequently, the end date for these operations is now anticipated to be on or about December 31, 2019. Due to the adjustments in start and end dates, the enforcement dates have been adjusted accordingly.

The second change adds a safety zone to address potential dredge vessels that may need to move large obstructions from the river bottom to achieve the required depth for the cable. This second zone applies to all navigable waters within 300 yards of dredge equipment within and in the vicinity of the Baker Range portion of the Delaware River. Adding this second zone also required minor changes throughout the regulatory

text to make wording and regulation structure consistent with multiple zones instead of just one zone.

This rule establishes two safety zones from August 19, 2019, through December 31, 2019. Safety zone one encompasses all navigable waters within 300 yards of ULISSE and associated equipment during submarine cable laying operations. Safety zone two encompasses all navigable waters within 300 yards of dredging vessels and equipment within the Baker Range portion of the Delaware River.

The duration of these safety zones is intended to ensure the safety of vessels and these navigable waters during submarine cable laying operations and debris removal within and in the vicinity of the Baker Range portion of the Delaware River. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative. However, vessels may transit either safety zone without contacting the COTP or a designated representative if the vessel maintains the minimum safe speed to reduce wake and maintain steerage, if the vessel contacts ULISSE and arranges safe passage, and if the vessel can complete its transit through the zone when cable laying or debris removal operations are not occurring within the Baker Range Channel.

## **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, and 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, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around and through these safety zones which would impact a small designated area of the Delaware River for approximately four hours at a time for no more than four months. Working vessels will be in communication with inbound commercial traffic and ensure that the obstruction periods take place when the impact will be minimal. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the zones and even provides the opportunity for vessels to transit the zones without permission under certain conditions.

#### *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 received no comments from the Small Business Administration on this

rulemaking. 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 the 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 the rule would 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.

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 actions by 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 Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide 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 do not individually or cumulatively have a significant effect on the human environment. This rule involves two moving safety zones that will prohibit entry within 300 yards of the cable laying barge ULISSE and associated equipment as well as dredge vessels working within, and in the vicinity of, the Baker Range portion of the Delaware River. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*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 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.T05-0238 to read as follows:

**§ 165.T05-0238 Safety Zone; Delaware River; Baker Range, PA.**

(a) Location. The following areas are safety zones:

(1) Safety zone one includes all navigable waters within 300 yards of the barge ULISSE while it is exhibiting lights or shapes indicating it is restricted in its ability to maneuver per § 83.27 of this chapter during submarine cable laying operations in and around Baker Range on the Delaware River.

(2) Safety zone two includes all navigable waters within 300 yards of the dredge exhibiting lights or shapes indicating it is restricted in its ability to maneuver per § 83.27 of this chapter while removing debris in support of ULISSE cable laying operations in and around Baker Range on the Delaware River.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) In accordance with the general safety zone regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone contact the COTP or the COTP's representative via VHF-FM Channel 16. 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.

(3) Vessels may, without prior authorization from the COTP or COTP's representative, transit safety zone one if they meet all of the following criteria and safety zone two if they meet the criteria in paragraphs (c)(3)(i) and (ii) of this section:

(i) Vessel must contact the ULISSE and arrange for safe passage.

(ii) Vessel shall maintain the minimum safe speed to reduce wake and maintain steerage.

(iii) Vessel may begin, and must complete, its transit through safety zone one only when ULISSE is not conducting cable laying operations within Baker Range Channel. Cable laying operations within the channel will be announced via Broadcast Notice to Mariners, are expected to last approximately 4 hours at a time, and will be visually signaled by ULISSE displaying lights or shapes exhibiting restricted in ability to maneuver.

(d) Enforcement. 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 period. Enforcement of the safety zone will begin August 19, 2019, and continue through December 31, 2019.

Dated: August 13, 2019.

Scott E. Anderson,  
Captain, U. S. Coast Guard,  
Captain of the Port, Delaware Bay.

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