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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2024-1093]**

**RIN 1625-AA00**

**Safety Zone; Cable Laying Corridor, Atlantic Ocean, Virginia Beach, Virginia**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary moving safety zone to surround nearshore operations conducted by a cable laying barge. Cable lay and burial operations will create navigational hazards moving along a corridor from shore extending seaward 12 NM. This action is necessary to provide for the safety of life on these navigable waters near Virginia Beach, Virginia. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Virginia 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 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. A shorter comment period is necessary for this rule to provide ample time to review and address comments on the proposed rule prior to the day the rule

is needs to take effect to protect the public from the hazards it addresses.

**ADDRESSES:** You may submit comments identified by docket number USCG-2024-1093 using the Federal Decision-Making 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. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Justin Strassfield, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: (757) 668-5581; or [virginiawaterways@uscg.mil](mailto:virginiawaterways@uscg.mil) .

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CLB	Cable Laying Barge
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NM	Nautical Miles
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

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

On December 3, 2024, Dominion Energy notified the Coast Guard with a request for a moving safety zone to encompass the operations conducted by the CLB ULISSE, to extend 1000-yards from the center of the barge. The Sector Virginia COTP has determined that potential hazards associated with the anchorage arrangements necessary

for the cable laying barge to conduct operations would be a safety concern for anyone within a 1000-yard radius of the barge.

The purpose of this proposed rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-yard radius of the CLB during its operations. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

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

The COTP is proposing to establish a safety zone on January 25, 2025, for 365 days. The safety zone would cover all navigable waters within 1000 yards of the CBL ULISSE, only while it conducts cable handling and burial in the Atlantic Ocean beginning roughly 300 yards from the shore of the State Military Reservation in Virginia Beach, Virginia out to 12 NM, the U.S. Territorial Seas border. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 365-day period. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Due to the stability required for the cable laying and burial process, the multipoint anchorage configurations used are highly dynamic and create large unseen hazards to navigation requiring someone familiar with the current anchoring positions to determine if safe transit corridors exist or if a transiting vessel must avoid the full 1000 yards radius of the zone to mitigate the hazards present. A designated representative, in communication with the anchor handling vessels, can communicate these hazards and possible safe transit corridors, decreasing the burden on the non-project vessels seeking access through or around the zone. 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 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. This NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic would be able to safely transit around this safety zone to the east initially without losing sight of land and the impact the nearshore recreational boaters near Rudee Inlet in Virginia Beach, Virginia would be reduced further as the CLB moves further from shore, providing safe transit options to the west along the shoreline.

*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 zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would 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 proposed 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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed 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. 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 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. 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 potential effects of this proposed 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 guide 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 the establishment of safety zones to protect the public from hazards created by cable laying and burial operations, as well as the anchoring configurations, required for the operations of the CLB ULISSE. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. 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.

*Submitting comments.* We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-1093 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

## 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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-1093 to read as follows:

#### **§ 165.T05-1093 Safety Zone; Cable Laying Corridor, Atlantic Ocean, Virginia Beach, Virginia.**

- (a) *Location.* The following area is a moving safety zone: Any navigable waters located within 1000 yards in all directions from the Cable Laying Barge (CLB) ULISSE while operating off the coast of Virginia Beach, Virginia while it conducts work within 12 nm of the shore. The CLB operations will occur within a perimeter enclosed by positions: 36° 49' 4.8" N, 75° 57' 43.2" W; 36° 49' 13.9" N, 75° 42' 39.8" W; 36° 47' 11.7" N, 75° 41' 50.8" W and 36° 48' 28.8" N, 75° 57' 43.2" W.
- (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 Sector Virginia (COTP) in the enforcement of the safety zone. The term also includes the master of a U.S.-flagged vessel supporting the CLB ULISSE for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through this safety zones, or to notify vessels and individuals of the actual hazards present if they have entered the safety zone and inform them of the safe direction to which they should depart.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (a) of this section unless authorized by the COTP, or designated representative. If a vessel or person is notified by the COTP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately depart in a safe manner following the directions given.

(2) Mariners requesting to transit this safety zone must first contact the designated representative who will be monitoring VHF-FM channels 13 and 16 while work is ongoing. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the moving safety zone.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law

enforcement agency.

- (e) *Enforcement period.* This section will be subject to enforcement from January 25, 2025, until January 25, 2026. If cable laying work is completed before January 25, 2026, or for a different reason the COTP determines the zone need no longer be enforced, they will issue a general permission to enter.

Dated: December 26, 2024.

**Peggy M. Britton,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Sector Virginia.*

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