



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0971]

RIN 1625-AA08

Safety Zone; Overhead Cable Replacement, Maumee River,  
Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary Safety Zone on the waters of Maumee River, Toledo, Ohio, from 8:30 a.m. on November 27, 2012 until 6:30 p.m. on December 7, 2012. This safety zone will encompass all waters of Maumee River starting from the CSX Railroad Bridge at River Mile Marker 1.07 and ending 700 feet downriver from the CSX Railroad Bridge. This temporary Safety Zone is necessary to protect persons operating in the area.

DATES: This temporary final rule is effective [INSERT DATE OF publication in the FEDERAL REGISTER]. This rule has been enforced with actual notice since November 27, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0971. To view documents mentioned in this preamble as being available in the docket, go <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Kevin Biami, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6008, e-mail [Kevin.E.Biami@uscg.mil](mailto:Kevin.E.Biami@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, 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. Regulatory History and Information

On October 18, 2012, the Coast Guard established a temporary final rule (TFR) entitled Safety Zone; Overhead Cable Replacement, Maumee River, Toledo, OH (docket number

USCG-2012-0948) in support of the replacement of electrical cables suspended over the Maumee River. To coincide with the expected schedule of the cable replacement project, that TFR was effective from 9:30 a.m. on October 23, 2012 until 3 p.m. on October 26, 2012. However, due to an equipment failure, an unforeseen breakage of one of the electrical cables and inclement weather conditions, the contractor had requested an extension of the safety zone, and a subsequent TFR was established on October 26, 2012, extending the safety zone from 9:30 a.m. on October 27, 2012 until 3 p.m. on November 2, 2012. Due to the effects of Hurricane Sandy, the contractor was unable to complete the operation and has requested that a new safety zone be established from 8:30 a.m. on November 27, 2012 until 6:30 p.m. on December 7, 2012.

The Coast Guard is issuing this temporary final rule 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 notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this stage of the operation were not known to the Coast Guard until there was insufficient time remaining before the operation to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this Coast Guard operation.

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. Waiting for a 30 day effective period to run is impracticable and contrary to the public interest for the same reasons discussed in the preceding paragraph.

#### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

First Energy/Toledo Edison is replacing three overhead power cables that span across the Maumee River near the CSX Railroad Bridge on the Maumee River. All work will be near the CSX Railroad Bridge on the downriver side. The Captain of the Port Detroit has determined that this stage of the operation continues to pose certain public hazards, including possible entanglement of the power lines in a vessel's propellers if the power lines are dropped onto the Maumee River during the operation.

#### C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Detroit has determined that a safety zone is necessary to ensure the safety of participants and vessels during the operation. The temporary safety zone is established herein will be enforced from 8:30 a.m. on November 27, 2012 until 6:30 p.m. on December 7, 2012, and will be enforced from 8:30 a.m. until 6:30 p.m. on each day of this period.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated on scene representative. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16. All persons and vessels shall comply with

the instructions of the Coast Guard Captain of the Port, designated on scene patrol personnel, or operation personnel.

#### D. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

This 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 that Order. The Office of Management and Budget has not reviewed it under these Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will

be relatively small and enforced for relatively short time. Although the requesting organization, First Energy/Toledo Edison, is requesting a ten hour block each day for up to eleven days, First Energy/Toledo Edison estimates that the safety zone will only need to be active for forty minutes to three hours on each day. Also, the safety zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners

or operators of vessels intending to transit through the Maumee River, OH between 8:30 a.m. and 6:30 p.m. on November 27th, 28th, 29th, 30th, and December 1st, 2nd, 3rd, 4th, 5th, 6th and 7th 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule is expected to be in effect for only approximately forty minutes to three hours each day. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

### 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 rule so that they can better evaluate its effects on them. If this 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 section above.

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.

#### 4. 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).

#### 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 rule under that Order and determined that this rule does not have implications for federalism.

#### 6. 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.

#### 7. Taking of Private Property

This rule will 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.

#### 8. Civil Justice Reform

This 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.

#### 9. Protection of Children

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

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

#### 10. Indian Tribal Governments

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.

#### 11. Energy Effects

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

#### 12. Technical Standards

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

#### 13. Environment

We have analyzed this 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 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 rule involves a temporary safety zone and, therefore it is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An 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 rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping 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: 33 U.S.C. 1231; 46 U.S.C. Chapters 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.T09-0971 as follows:

§ 165.T09-0971 Safety Zone; Overhead Cable Replacement, Maumee River, Toledo, OH.

(a) Location. The following area is a temporary safety zone: all U.S. navigable waters of the Maumee River, Toledo, OH, starting from the CSX Railroad Bridge at River Mile Marker 1.07 and ending 700 feet down river from the CSX Railroad Bridge.

(b) Effective and enforcement period. This regulation will be enforced from 8:30 a.m. on November 27, 2012 until 6:30 p.m. on December 7, 2012. This regulation will be enforced from 8:30 a.m. until 6:30 p.m. on each day of this period.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other

actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, excepted as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a

safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) Notification. The Captain of the Port Detroit will notify the public that the safety zones in this section are or 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. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: November 21, 2012

J. E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port, Sector Detroit

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