



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0642]**

**RIN 1625-AA00**

**Safety Zone; Electrical Cable Removal, Menominee River, Menominee, MI and  
Marinette, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters within 200 yards of a worksite removing overhead electrical cables along a line crossing the Menominee River in Menominee, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the removal of overhead electrical cables across the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative.

**DATES:** This rule is effective from 7 a.m. through 5 p.m. on October 27 and 28, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0642 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 Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email [Jeromy.N.Sherrill@uscg.mil](mailto:Jeromy.N.Sherrill@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**

The Coast Guard is issuing this temporary 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 the Coast Guard not made aware of the intended removal until October 13, 2020, and immediate action is needed to mitigate potential safety hazards associated with the process of removal, including the need to float the cables across the Menominee River. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to public interest by inhibiting the Coast Guard’s ability to protect against the known and anticipated hazards.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to elapse would be impracticable because immediate action is needed to mitigate potential safety hazards associated with the removal of the overhead electrical cables crossing the Menominee River.

### **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 Captain of the Port (COTP) Lake Michigan has determined that potential and actual safety hazards associated with the process of removing electrical cables from above the Menominee River will be a safety concern for anyone within 200 yards from the work site. This work is scheduled to take place on October 27 and October 28, 2020, on the Menominee River between Menominee, MI, and Marinette, WI. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while lines and electrical cables are being pulled across the river.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 7 a.m. through 5 p.m. on October 27 and October 28, 2020. The safety zone will cover all navigable waters of the Menominee River, between Menominee, MI and Marinette, WI, within 200 yards of a work site removing overhead electrical cables along a line crossing the river from coordinates 45.096326°N, 087.602092°W to 45.097197°N, 087.600601°W. The date and time of the enforcement period will be announced by the COTP Lake Michigan by Broadcast Notice

to Mariners. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while lines and electrical cables are being pulled across the river. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by 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, 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 characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of the Menominee River at Menominee, MI and Marinette, WI and is not anticipated to exceed two 10-hour periods in duration. 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 COTP Lake Michigan.

*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 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.

*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, 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 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 a safety zone lasting for a total of 20 hours that will prohibit entry within 200 yards of a worksite crossing the Menominee River for the removal of overhead electrical cables crossing the river. 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.T09-0642 to read as follows:

**§ 165.T09-0642 Safety Zone; Electrical Cable Removal, Menominee River, Menominee, MI and Marinette, WI.**

(a) *Location.* All navigable waters of the Menominee River within 200 yards of a line crossing the river from coordinates 45.096326°N, 087.602092°W to 45.097197°N, 087.600601°W.

(b) *Enforcement period.* The regulated area described in paragraph (a) is effective from 7 a.m. through 5 p.m. on October 27 and October 28, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The “designated representative” of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone must contact the COTP or designated representative to obtain permission to do so. The COTP or designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or designated representative.

Dated: October 20, 2020.

D. P. MONTORO,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Lake Michigan.

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