



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2017-0327]**

**RIN 1625-AA00**

**Safety Zone; Danvers River, Beverly, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the navigable waters within a 300-yard radius of the swing span portion of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge, at mile 0.05 on the Danvers River, between Salem and Beverly, Massachusetts. The safety zone is needed to protect personnel, vessels and the marine environment from potential hazards created during removal and replacement of the swing span portion of the MBTA Railroad Bridge. When enforced, this regulation prohibits entry of vessels or people into the safety zone unless authorized by the Captain of the Port (COTP) Boston or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 1, 2017. For the purposes of enforcement, actual notice will be used from June 20, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2017-0327 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 Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617-223-4000, e-mail [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
MBTA	Massachusetts Bay Transportation Authority
NAD 83	North American Datum 83
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 23, 2017, Sector Boston was made aware of a bridge rehabilitation project that includes the replacement of the swing span portion of MBTA Railroad Bridge, which spans the Danvers River in Beverly and Salem, Massachusetts. The COTP Boston has determined that the potential hazards associated with the bridge rehabilitation project will be a safety concern for anyone within the work area.

The project is scheduled to begin on June 5, 2017 and be completed by November 1, 2017. During this project, removal and replacement of the swing span will take place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone will be enforced during different periods when work barges and gantry cranes will be placed in the navigable channel or when other hazards to

navigation arise. The Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) 24 hours in advance to any period of enforcement or as soon as practicable in response to an emergency. If the project is completed prior to November 1, 2017, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners.

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 an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the construction work is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to protect the safety of the public and waterway users.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest for the same reasons specified above.

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

The legal basis for this temporary rule is 33 U.S.C. 1231. The COTP Boston has determined that potential hazards associated with the bridge rehabilitation project starting on June 5, 2017 and continuing through November 1, 2017 will be a safety concern for anyone within the

work zone. This rule is needed to protect personnel, vessels, and the marine environment within the safety zone while the bridge rehabilitation project is completed.

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

This rule establishes a safety zone from June 5, 2017 through November 1, 2017. The safety zone will cover all navigable waters from surface to bottom of the Danvers River, MA within a 300-yard radius of the swing span portion of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge. The duration of the zone is intended to protect people, vessels, and the marine environment in these navigable waters during the bridge rehabilitation project. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any scheduled enforcement period. The regulatory text we are enforcing appears at the end of this document.

#### **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 13563 emphasizes the importance of quantifying

both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this rulemaking is not a significant regulatory action for the following reasons: 1) the safety zone only impacts a small designated area of the Danvers River, 2) the zone will only be enforced when work barges and gantry cranes will be placed in the navigable channel during removal and replacement of the swing span or if necessitated by an emergency, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Boston or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners.

#### 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 all of the reasons discussed in the REGULATORY PLANNING AND REVIEW Section, 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 contact 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 contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### 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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 enforcing a temporary safety zone during the removal and replacement of the swing span MBTA Railroad Bridge, which spans the Danvers River in Beverly and Salem, Massachusetts. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) for Categorically Excluded Actions will be 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.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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:** 33 U.S.C. 1231; 50 U.S.C. 191; 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.T01-0327 to read as follows:

#### **§ 165.T01-0327 Safety Zone – Massachusetts Bay Transportation Authority/AMTRAK Bridge – Danvers River, Beverly, MA.**

(a) Location. The following area is a safety zone. All navigable waters of the Danvers River, MA within a 300-yard radius of the swing span portion of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge in position 42°32.355' N, 070°53.28' W (NAD 83).

(b) Effective and enforcement period. This section is effective on June 20, 2017, through November 1, 2017, but will only be enforced during removal and replacement of the swing span portion of the MBTA Railroad Bridge or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Boston.

(c) Regulations. When this safety zone is enforced, the regulations in paragraphs (c)(1) through (3) of this section, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP) or the COTP's representatives. However, any vessel that is granted permission by the COTP or the COTP's representatives must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via Channel 16 (VHF-FM) or 617-223-5757 (Sector Boston Command Center).

(d) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

(e) Notification. Coast Guard Sector Boston will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners for the purpose of enforcement of temporary safety

zone. Sector Boston will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(f) COTP representative. The COTP's representative may be any Coast Guard commissioned, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

C. C. Gelzer  
Captain, U.S. Coast Guard  
Captain of the Port Boston

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