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9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2018-0343]

**RIN 1625-AA00**

**Safety Zone, S99 Alford Street Bridge - Emergency Grid Replacement Project,**

**Mystic River, Charlestown and Everett, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for the navigable waters within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett, Massachusetts from October 1, 2018 through April 30, 2019. The safety zone is necessary to protect personnel, vessels and the marine environment from potential hazards created during the emergency replacement of the steel grid deck on all four bascule spans of the S99 Alford Street Bridge. This proposed rule would prohibit vessels and persons from being in the safety zone unless authorized by the Captain of the Port Boston 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 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0343 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, 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>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

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

On April 6, 2018, the City of Boston notified the Coast Guard that the Massachusetts Department of Transportation’s Highways Division will be conducting emergency repairs to the S99 Alford Street Drawbridge at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts from May 2018 through the summer of 2019. The emergency repairs consist of replacing the steel grid bridge decking on all four bascule spans. To complete these repairs by the summer of 2019 and still maintain regional transportation, each side span of the bascule bridge will need to be closed at different times. To make the necessary repairs, workers will need to use barges in the waterway underneath the bridge span to access the side spans. Bridge span closures and

use of the waterway underneath the bridge to effectuate the repairs are scheduled to commence on October 1, 2018, and be completed by April 30, 2019.

Hazards from bridge span closures and use of the waterway underneath include heavy lift operations, falling equipment and materials, and construction vessels. The Captain of the Port (COTP) Boston has determined that potential hazards associated with the bridge repairs would be a safety concern for anyone in or on Mystic River waters within 150-yards of the bridge. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Boston or a designated representative. The Coast Guard will notify the public through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, and Local Notice to Mariners. Moreover, the Coast Guard would issue a Safety Marine Information Broadcast via marine channel 16 (VHF-FM) fourteen (14) days in advance of the commencement of the Safety Zone. If the project is completed before April 30, 2019, enforcement of the safety zone will be suspended and notice given to the public to the greatest extent possible.

The purpose of this rulemaking is to protect personnel, vessels and the marine environment from potential hazards created during repairs on the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts. The Coast Guard proposes this rulemaking is under authority in 33 U.S.C. 1231.

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

The Coast Guard proposes to establish a safety zone starting at 12:01 a.m. on October 1, 2018, and to make it effective to 11:59 p.m. on April 30, 2019. The safety zone would cover all navigable waters within 150-yards of the S99 Alford Street Bridge,

at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts. The duration of the zone is intended to ensure the safety of vessels, the maritime public, construction workers, and these navigable waters during the repairs on the S99 Alford Street Bridge over the main channel of the Mystic River. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Boston or a designated representative.

#### **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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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-year of the safety zone. We expect the adverse economic impact of this proposed rule to be minimal since we will provide ample notice of the safety zone effective dates and vessels will be able to enter safety zone when construction equipment is not

occupying the channel. Although this regulation may have some adverse impact on the public, the potential impact will be minimal because boating season for vessels on the Mystic River usually concludes around mid-October and consequently the amount of traffic in this waterway during the effective period for the safety zone is limited.

This safety zone is of similar dimension and a shorter duration to the one established in 2011 (73916 FR/Vol. 77, NO. 239) for the original rehabilitation of the bridge. The regulatory text we are proposing appears at the end of this document.

Notification of the emergency repairs to the Alford Street Drawbridge and the associated safety zone will be made to mariners through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, and Local Notice to Mariners. Moreover, the Coast Guard would issue a Safety Marine Information Broadcast via marine channel 16 (VHF-FM) fourteen (14) days in advance of the commencement of the Safety Zone. The rule would allow vessels to seek permission to enter the zone when the channel is not being occupied by construction equipment.

#### 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 (Public Law 104-121), we want to assist small entities in understanding this proposed 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. 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 contact 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 effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, 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 a temporary safety zone extending 150 yards around a bridge to complete emergency repairs to the S99 Alford Street Bridge during a seven month period when boating traffic is minimal on the Mystic River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01,

Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed 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.

**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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, visit  
<http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **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 proposes 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:** 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 a new §165.T01-0343 to read as follows:

### **§ 165.T01-0343 Safety Zone, S99 Alford Street Bridge - Emergency Grid**

#### **Replacement Project, Mystic River, Charlestown and Everett MA.**

- (a) **Location.** The following area is a safety zone: All navigable waters of the Mystic River between Charlestown and Everett, Massachusetts from surface to bottom, within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River

between Charlestown and Everett, Massachusetts.

(b) Definitions. As used in this section --:

*Designated representative* means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been designated by the Captain of the Port (COTP) Boston, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston to enforce this section.

(c) Enforcement period. This section is enforceable 24 hours a day from 12:01 a.m. on October 1, 2018, through 11:59 p.m. on April 30, 2019. When enforced as deemed necessary by the COTP Boston, vessels will be prohibited from entering this safety zone during the emergency grid replacement on the bridge.

(d) Regulations. The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP Boston or the COTP's designated representatives. However, any person or vessel permitted to enter the safety zone must comply with the directions and orders of the COTP Boston or the COTP's designated representatives.

(2) To obtain permission required by this regulation, individuals may reach the COTP Boston or a COTP designated representative via Channel 16 (VHF-FM) or

617-223-5757 (Sector Boston Command Center).

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

Dated: July 11, 2018

Eric. J. Doucette  
Captain, U.S. Coast Guard  
Captain of the Port Boston

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