



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: Temporary Final Rule

SUMMARY: The Coast Guard is establishing 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 temporary 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.

DATES: This rule is effective from October 1, 2018 through April 30, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0343 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 e-mail Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617-223-4000, e-mail 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	Federal Register
NPRM	Notice of proposed rulemaking
TFR	Temporary Final Rule
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

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.

In response, on July 17, 2018, the Coast Guard published a Notice of proposed rulemaking (NPRM) titled “Safety Zone, S99 Alford Street Bridge-Emergency Grid Replacement Project, Mystic River, Charlestown and Everett, MA,” (83 FR 33165). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended on August 16, 2018, we received zero (0) comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The COTP Boston has determined that potential hazards exist associated with the emergency replacement of the steel grid deck on all four bascule spans of the S99 Alford Street Bridge. Potential hazards include the use of the waterway underneath the bridge to conduct heavy lift operations, as well as possible falling equipment and materials. This rule is needed to protect personnel, vessels, and the marine environment on navigable waters within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett, Massachusetts, during these emergency repairs.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on July 17, 2018. There are no changes to the regulatory text of this rule from the proposed rule in the NPRM.

The rule establishes a safety zone enforceable 24 hours a day from 12:01 a.m. on October 1, 2018, to 11:59 p.m. on April 30, 2019. The safety zone covers 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 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.

The Coast Guard will notify the public about this safety zone through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, and Local Notice to Mariners. Moreover, the Coast Guard will 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 will be given to the public to the greatest extent possible.

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 size, location, duration, and time-of-year of the safety zone. We expect the adverse economic impact of this rule to be minimal since we will provide ample notice of the safety zone effective dates and vessels will be able to enter the 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.

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 will 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 will 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 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 zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant 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.

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, which guides 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 establishing 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. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket

where indicated under ADDRESSES.

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 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:

(1) *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.

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

(c) Enforcement Periods. 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: September 06, 2018

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

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