



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1048]

RIN 1625-AA00

Safety Zone; Kosciuszko Bridge Construction, Newtown Creek, Brooklyn and Queens, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two safety zones on the navigable waters of Newtown Creek, NY. The first safety zone is within 500 feet of the two barges and assist vessels to be used for the removal and loading of the existing center span from the Kosciuszko Bridge at mile 2.1. The second is from approximately 370 yards south (upstream) of the Kosciuszko Bridge at mile 2.1 and Newtown Creek's confluence with the East River at mile 0.0 during transport of the existing center span to an offsite location. This action is necessary to provide for the safety of life on these navigable waters during the lowering and securing of the existing bridge's center span onto two barges within the Federal navigation channel and during the barge's outbound transit through Newtown Creek to the East River tentatively scheduled during April-May, 2017. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port New York 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-2016-1048 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 Mr. Jeff Yunker, Sector New York Waterways Management Division; telephone 718-354-4195, email jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port New York
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
NYSDOT	New York State Department of Transportation
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard issued a Bridge Permit dated August 21, 2013 approving the location and construction of the Kosciuszko Bridge across Newtown Creek, mile 2.1, between the Boroughs of Queens and Brooklyn, NY. The bridge carries Interstate 278, also known as the Brooklyn-Queens Expressway over Newtown Creek. On May 23, 2014 the New York State Department of Transportation awarded a \$554 million dollar contract to design and build the replacement bridge. On December 4, 2014 construction began on the eastbound replacement bridge. All vehicle traffic is expected to be shifted onto this new bridge in the spring of 2017.

Once traffic has been shifted to the new bridge the existing bridge will be demolished and replaced with a new bridge carrying Interstate 278 westbound traffic over Newtown Creek.

On November 29, 2016, NYSDOT notified the Coast Guard that it will be lowering the existing center span from the Kosciuszko Bridge over Newtown Creek at mile 2.1 onto two barges within the Newtown Creek Federal navigation channel, securing the center span to the barges for transit, rotating the barges, and towing the barges through Newtown Creek to the East River for final upland disposal. The center span is 259 feet long, 88 feet 8 inches wide, 46 feet high, and weighs 2,400 tons. This operation is dependent on the ongoing construction of the new eastbound span of the new Kosciuszko Bridge being built adjacent to, and south (upstream) of, the existing bridge and tides during daylight hours. NYSDOT has identified April 1-24, May 1-23, and May 30-31, 2017 as being conducive to this operation. The Coast Guard proposes to make this rule enforceable through December 31, 2017 as a contingency for any unforeseen delays to the bridge construction schedule. The loading and securing of the bridge span to the two barges is expected to take a minimum of 24-hours and the towing time to the East River is expected to be one hour. The entire process is expected to last at least 48 hours. Hazards from this operation include accidental falling debris. The two barges will block at least 109 feet of the 130 foot wide Newtown Creek Federal navigation channel during loading, securing, and towing operations. The COTP has determined that potential hazards associated with these operations would be a safety concern for anyone within a 500-foot radius of the tugs and barges.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-foot radius of the two barges and assist vessels when loading, securing, and transporting the center span of the Kosciuszko Bridge through Newtown Creek before, during, and after the operations. The Coast Guard proposes this rulemaking under authority in 33 U.S.C.

1231.

III. Discussion of Proposed Rule

The COTP proposes to establish two safety zones for approximately 48 hours between April 1 and May 31, 2017. The safety zone would cover all navigable waters of Newtown Creek within 500 feet of the two barges and assist vessels to be used for the removal and loading of the existing center span from the Kosciuszko Bridge at mile 2.1 and within 500 feet of two barges and their assist vessels in Newtown Creek from approximately 370 yards south (upstream) of the existing Kosciuszko Bridge at mile 2.1 and Newtown Creek's confluence with the East River during transport of the existing center span to an offsite location. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the loading, securing, rotating the two barges for transit, and transporting the center span of the Kosciuszko Bridge through Newtown Creek. No vessel or person would be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

The regulatory text we are proposing appears at the end of this document.

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zones. Vessel traffic would not be able to transit around these safety zones as the two barges carrying the Kosciuszko Bridge center span would block a minimum of 109 feet of the 130 foot wide Federal navigation channel for approximately 48 hours during the loading, and securing of the center span on to the barges, and then rotating the barges in preparation for towing through Newtown Creek. During the approximate one-hour transit time from the bridge site to the East River vessels would not be able to meet or overtake the two barges with three assist tugs as the combined width of these vessels would be 109 feet and the Federal navigation channel is only 130 feet wide. However, the New York City Department of Environmental Protection, U.S. Concrete, Bayside Fuel Oil Depot, and the U.S. Environmental Protection Agency all reported the requested 48-hour channel closure would not negatively impact their operations south (upstream) of the bridge. U.S. Concrete stated they require at least two weeks’ notice if the closure is anticipated to last longer than 48 hours. Facilities downstream of the bridge would not be required to move vessels moored at their facility as long as they do not extend into the Federal navigation channel and would be able to depart the facility before, or after, the two barges carrying the bridge span are towed past the facility. Moreover, the Coast Guard would issue a Local Notice to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

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.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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 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 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 a stationary safety zone lasting approximately 48 hours and a moving safety zone lasting approximately one hour that would prohibit transit within 500 feet of the two barges and assist vessels carrying the bridge span. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist 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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

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 record keeping requirements, Security measures, and 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, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1048 to read as follows:

§165.T01-1048 Safety Zone; Kosciuszko Bridge Construction, Newtown Creek, Brooklyn and Queens, NY.

(a) Location. (1) The following area is a safety zone: All waters from surface to bottom of Newtown Creek within 500 feet of the two barges and assist vessels while lowering and securing the existing Kosciuszko Bridge center span at mile 2.1 to the two barges. This area is bound by the following approximate positions: northwest of a line drawn from 40°43'34.9"N, 073°55'42.0"W to 40°43'36.8"N, 073°55'39.8"W (approximately 500 feet south (upstream) of the Kosciuszko Bridge at mile 2.1), and southeast of a line drawn from 40°43'40.6"N, 073°55'52.8"W to 40°43'43.1"N, 073°55'49.9"W (approximately 500 feet downstream of the Kosciuszko Bridge at mile 2.1) (NAD 83).

(2) The following area is a moving safety zone: All waters from surface to bottom of Newtown Creek within 500 feet of the two barges and assist vessels while transiting Newtown Creek between Latitude 40°43'30.0"N (approximately 370 yards south (upstream) of the Kosciuszko Bridge at mile 2.1), and east of a line drawn from the following approximate positions: 40°44'17.1"N, 073°57'45.6"W to 40°44'10.4"N, 073°57'45.6"W (at the confluence with the East River) (NAD 83).

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

(1) Designated representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP to act on his or her behalf. A 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 vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement periods. (1) This section is effective from April 1 to December 31, 2017 but will only be enforced when active center span lowering, securing, and towing operations are in progress.

(2) The Coast Guard will rely on marine broadcasts and local notice to mariners to notify the public of the time and duration that the safety zone will be enforced.

Violations of this safety zone may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: January 18, 2017

Michael H. Day,
Captain, U.S. Coast Guard,
Captain of the Port New York.

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