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9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number **USCG-2017-0486**]

RIN 1625-AA00

Safety Zone; Kosciuszko Bridge Approach Spans Demolition, Newtown Creek, Brooklyn and Queens, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Newtown Creek, NY within 2,000 feet of the existing Kosciuszko Bridge at mile 2.1. This action is necessary to provide for the safety of life on these navigable waters during the explosives demolition of the approach spans on each adjacent shoreline. This rulemaking prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2017. For the purposes of enforcement, actual notice will be used from July 22, 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-2017-0486 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 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

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FDNY	New York City Fire Department
FR	Federal Register
NPRM	Notice of proposed rulemaking
NYSDOT	New York State Department of Transportation
OSHA	Occupational Safety and Health Administration
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

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. On April 25, 2017, NYSDOT notified the Coast Guard that the contractor requires a short term closure of Newtown Creek for the energetic felling of the existing Kosciuszko Bridge approach spans over land using shaped charges. The shaped charges make multiple precise cuts in the steel bridge spans at the same instant. This allows the approach spans to fall directly to the ground below. There will be no debris field outside of the limits of the bridge. The tentative, primary demolition dates are the early morning hours of July 22 or 23, 2017. The tentative back-up dates for these operations are the early morning hours of July 29 or 30, August 5 or 6, and August 12 or 13, 2017. To ensure public safety the contractor requested the USCG establish a safety zone within 600-feet of the existing bridge for a three-hour duration during these operations. NYSDOT stated FDNY was working with the explosives demolition

subcontractor and would provide a final exclusion zone limit during these operations in early May 2017.

On May 15, 2017 the contractor notified the Coast Guard that the distance requested for the exclusion zone is 1,200 from the existing bridge during the explosives demolition. However, the subcontractor stated this is a preliminary distance for discussion purposes only. The final distance would not be provided until the contract is awarded and the subcontractor meets with NYSDOT, the general contractor, security forces, and other stakeholders. Due to this expanded distance and late notification the Coast Guard was unable to include this request within the existing bridge demolition rulemaking (Docket Number USCG-2016-1048) for this bridge replacement project. The safety zone distance is to ensure that persons are not exposed to air overpressure (noise) levels above the 140 decibel impact guidelines under OSHA regulations codified at 29 CFR 1910.95 Table G-16 – PERMISSIBLE NOISE EXPOSURES, Footnote 1. The Coast Guard proposes to make this rule enforceable through December 31, 2017, and to a greater distance (2,000 feet) than currently requested (1,200 feet), as a contingency for any unforeseen delays or revisions to the bridge approach spans demolition schedule or safety requirements based upon the final FDNY safety requirements.

The Coast Guard is making this temporary rule effective less than 30 days after publication in the Federal Register pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication for good cause. 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** because waiting 30 days would be impracticable and contrary to the public interest. It is impracticable and contrary to the public interest to

provide a full 30-days notice because this rule must be effective on July 22 or 23, 2017 to limit delays to NYSDOT and contractor schedules as part of this \$555 million dollar infrastructure improvement project. FDNY requires the contractor to conduct the explosives demolition in the early morning hours on a weekend to reduce the impact to vehicle traffic on the bridge. This time frame is also expected to reduce the impact on vessel traffic in Newtown Creek. If this rule is not made effective by this date, then it would inhibit the Coast Guard's ability to perform its statutory mission to ensure the safety of the maritime public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with these operations will be a safety concern for anyone within up to 2,000-feet of the existing approach spans to the Kosciuszko Bridge at mile 2.1 over Newtown Creek. The purpose of this rule is to ensure the safety of individuals on the navigable waters within up to 2,000 feet of the approach spans of the existing Kosciuszko Bridge before, during, and after the explosive demolition operations.

IV. Discussion of the Rule

This rule establishes a safety zone from July 22 through December 31, 2017. The safety zone will cover all navigable waters of Newtown Creek within up to 2,000 feet of the existing approach spans to the Kosciuszko Bridge at mile 2.1 over Newtown Creek during the explosive demolition operations. The duration of the zone is intended to ensure the safety of individuals and these navigable waters before, during, and after the explosive demolition operations tentatively scheduled for the early morning hours on July 22 or 23, 2017. Backup dates for these operations are July 29 or 30, August 5 or 6, and August 12 or 13, 2017.

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.

This regulatory action determination is based on the size, location, and duration of the safety zone. Although vessel traffic will not be able to safely transit around this safety zone, enforcement of the safety zone will be limited in duration. The boundaries of the safety zone will be limited to the length upstream, and downstream, from the bridge as determined by FDNY for the explosives detonation to remain in compliance with existing OSHA Permissible Noise Exposure regulations. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter 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 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 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 a safety zone lasting approximately three hours that will prohibit entry within a maximum of 2,000 feet of the existing approach spans to the Kosciuszko Bridge. 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 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 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, and 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, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0486 to read as follows:

§165.T01-0486 Safety Zone; Kosciuszko Bridge Approach Spans Demolition, Newtown

Creek, Brooklyn and Queens, NY.

(a) Location. The following area is a safety zone: All waters from surface to bottom of Newtown Creek within 2,000 feet of the existing approach spans to the Kosciuszko Bridge at mile 2.1, between a line drawn from the following approximate positions: 40°43'46.7"N., 073°56'10.5"W. to 40°43'44.3"N., 073°56'11.6"W and from 40°43'22.9"N., 073°55'29.0"W. to 40°43'20.3"N., 073°55'36.0"W.

(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 safety zone is effective from July 22, 2017 to December 31, 2017 but will only be enforced when active approach span demolition 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: June 22, 2017.

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

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