



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG- 2017-0937]

RIN 1625-AA00

Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet; Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. This action is necessary to provide for the safety of life on these navigable waters in Brooklyn, NY, during bridge replacement operations, both planned and unforeseen, until the new bridge is built and the existing bridge is removed. This regulation prohibits persons and vessels from being in the safety zone 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, 2018. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on October 1, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material may be received by the Coast Guard during the effective period.

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0937 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion for further instructions on submitting comments.**FOR**

**FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division, telephone 718-354-4195, email [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Mr. Craig Lapiejko, Coast Guard First District Waterways management Branch, telephone 617-223-8351, email [craig.d.lapiejko@uscg.mil](mailto:craig.d.lapiejko@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
FR	Federal Register
NPRM	Notice of proposed rulemaking
NYC DOT	New York City Department of Transportation
§	Section
TIR	Temporary Interim Rule
U.S.C.	United States Code

**II. Background Information and Regulatory History**

In a letter received by the Coast Guard on May 16, 2013 NYC DOT and their contractors outlined the first five phases of operations that require in-channel work in the construction and demolition of the Belt Parkway Bridge. On November 29, 2013, the Coast Guard published a NPRM titled “Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY” (78 FR 71546). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this bridge construction. During the comment period that ended December 20, 2013, we received no comments.

On May 12, 2014, the Coast Guard published a TIR and request for comments titled “Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY” (79 FR 26848). During the comment period that ended June 2, 2014, we received no comments.

On July 25, 2014 the Coast Guard published a correcting amendment titled “Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY” (79 FR 43255). There we corrected an inadvertent error included in one of the coordinates of the safety zone.

The NYC DOT has requested the USCG safety zone and the USCG bridge permit be extended until June 30, 2018, to complete all remaining contract operations in and over the channel, including, but not limited to, substructure concrete placements, steel erection, concrete bridge deck placements, installation of navigation lighting, channel clean up and final fathometric surveying. The Coast Guard is issuing this TIR with an effective date through December 31, 2018 in case of additional project delays due to unforeseen circumstances.

The Coast Guard is issuing this temporary interim 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. It would be impracticable and contrary to the public interest to delay promulgating this rule, for the reasons stated above. The Coast Guard will enforce the safety zone described in this rule to all vessel traffic during circumstances that pose an imminent threat to waterway users operating in the area. The Coast Guard will provide as much advanced notice as possible prior to enforcement.

### **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 the construction of the Belt Parkway replacement bridge over Gerritsen Inlet will be a safety concern for anyone within approximately 300 feet of the existing bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during bridge construction.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published November 29, 2013 or on our TIR published May 12, 2014. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM or in the previous TIR except for the effective period.

This rule establishes a safety zone from 12:01 a.m. on October 1, 2017 through December 31, 2018. The safety zone will cover all navigable waters within approximately 300 feet of the existing Belt Parkway Bridge over Gerritsen Inlet. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during bridge construction. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### **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, and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessel traffic will only be restricted from this safety zone for limited durations and the safety zone covers only a small portion of the navigable waterway. The Coast Guard will notify the public whenever the safety zone is being enforced and whenever enforcement is suspended through Broadcast Notice to Mariners via VHF-FM marine channel 16, First Coast Guard District Local Notice to Mariners at <https://www.navcen.uscg.gov>, Marine Safety Information Bulletins, or other appropriate means. The rule also allows people to seek permission to enter the zone. Additionally, NYC DOT has a Community Liaison for this project that also communicates with upstream mariners regarding the bridge project and channel status.

#### 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 received no comments from the Small Business Administration on this rulemaking. 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.

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 usually enforced for less than 1 hour that will prohibit entry within approximately 300 feet of the existing Belt Parkway Bridge over Gerritsen Inlet. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. 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.

### **VI. 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 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 TIR 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.

#### List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, 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.T01-0937 to read as follows:

§165.T01-0937 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.

(a) Location. The following area is a safety zone: All navigable waters of Gerritsen Inlet: Southeast of a line from 40°35'09.46"N, 073°54'53.92"W to 40°35'15.60"N, 073°54'42.07"W,

and Northwest of a line from 40°35'04.88"N, 073°54'45.43"W to 40°35'10.34"N, 073°54'35.71"W (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 Captain of the Port Sector New York (COTP), 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 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 regulation is enforceable 24 hours a day from 12:01 a.m. on October 1, 2017 through December 31, 2018.

(2) Prior to commencing or suspending enforcement of this regulation, the COTP and designated on-scene patrol personnel will notify the public whenever the regulation is being enforced and whenever enforcement is lifted, to include dates and times. The means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners, Marine Safety Information Bulletins, or other appropriate means.

(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 the 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: September 14, 2017.

M. H. DAY,  
CAPTAIN, U.S. Coast Guard  
Captain of the Port New York  
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