

operations impinged upon the navigable portion of the channel.

In light of the foregoing, immediate action was required to establish additional regulations for vessels operating in the vicinity of Bergen Point while U.S. Army Corps of Engineers dredging operations continued. On June 25, 2002, we published a temporary final rule (TFR) in the **Federal Register** (67 FR 42723) establishing additional restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull. Those restrictions were only expected to be effective until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet.

Due to the recent extension of the Army Corps of Engineers' dredging project, it is necessary to continue enforcement of the provisions currently codified in 33 CFR 165.165(d)(10). This TFR will essentially re-institute those operating requirements from the expiration of the current TFR through the expected completion of the project. These circumstances provide good cause for not publishing an NPRM. Similarly, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to restrict commercial vessel transits in the waterway and protect the maritime public from the hazards associated with changing vessel traffic patterns during this dredging project.

Background and Purpose

The United States Army Corps of Engineers and the Port Authority of New York/New Jersey commenced an extensive channel-dredging project in the Kill Van Kull in April 1999. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) were relocated to facilitate dredging of the Bergen Point West Reach of the Kill Van Kull. Since these buoys were relocated, one vessel collided with the Bergen Point Buoy and moved it off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey while re-

establishing the buoy on its assigned location. More than half of the vessels over 700 feet long transiting this area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. Instead, they had to depart from the temporary boundaries of the channel and proceed through a portion of the closed area north of the Kill Van Kull Lighted Buoy 10. There were also several near collisions between tugs and barges in this area.

In order to protect life, property and the marine environment, the Coast Guard established the following additional requirements for commercial vessels transiting Bergen Point West Reach of the Kill Van Kull (Work Areas (4) and (5) of the dredging project):

Tug Requirements. All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

Tidal Current Restrictions. Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water (as measured from the Bergen Point current station).

Astern Tows. Hawser tows are not permitted unless an assist tug accompanies the tow.

Sustained winds from 20 to 34 knots. In sustained winds from 20 to 34 knots: (A) Cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) Tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

Sustained winds greater than 34 knots. In sustained winds greater than 34 knots, vessels 300 gross tons or greater, and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Nearly identical restrictions had been imposed during a previous dredging project conducted in the same area from 1991 to 1992. Those regulations were instituted after three groundings, which resulted in one oil spill and one channel blockage. In anticipation of the current dredging project, the Coast Guard worked closely with local pilots and commercial waterway users to devise a system of regulations that would reduce the likelihood of similar mishaps from recurring. After extensive consultation, computer simulations and other analysis, we concluded that the regulations codified at 33 CFR 165.165 would adequately protect the interests of safe navigation in the vicinity of Bergen Point during the U.S. Army

Corps of Engineers' navigation improvement project. As previously discussed, actual experience with those regulations demonstrated the need for additional restrictions on commercial vessels operating in that area. Vessel Traffic Service New York met with Pilots and Tug companies operating in the port to explain the need for these restrictions. Additional restriction for navigation in the vicinity of Bergen Reach were developed. On June 25, 2002, we published a "Temporary final rule; request for comments" in the **Federal Register** (67 FR 42723), which codified those requirements as 33 CFR 165.165(d)(10). No comments were received, and the TFR provisions proved to be effective in preserving the interests of safe navigation in the vicinity of the Bergen Reach.

We had anticipated that those restrictions would only be necessary until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet. Due to these extensions in the dredging project, the Coast Guard is enacting this TFR to maintain requirements identical to those currently codified at 33 CFR 165.165(d)(10) through September 30, 2004.

Discussion of Temporary Rule

This rule essentially extends the provisions currently codified at 33 CFR 165.165(d)(10) by re-instituting identical requirements once that TFR expires. This TFR is necessary because the Army Corps of Engineers has extended its dredging project in the Kill Van Kull for approximately 18 months and expanded the scope of the project to dredge an additional five feet from the channel.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full