

Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that the overwhelming majority of vessels transiting through the Bergen Point portion of the Kill Van Kull that would be required by this regulation to utilize tug assistance would most likely employ that service as a matter of prudence even in the absence of a regulation; only those vessels that would not observe that "best practice" will be affected; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; identical regulations have been in effect since June 25, 2002 without undue burden on waterway users; under current practice, we have had six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established; moreover, each of the provisions of this rule could be imposed upon individual vessels transiting through Bergen Point under the existing authority of the Vessel Traffic Services New York.

Advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information and electronic mail broadcasts, at New York Harbor Operations Committee meetings, and on the Internet at <http://www.harborops.com>.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit Bergen Point West Reach of the Kill Van Kull. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Kill Van Kull

accommodates approximately 26,000 vessel transits annually; the overwhelming majority of vessels that would be required to utilize tug assistance while transiting the Bergen Point portion of the Kill Van Kull would employ that service as a matter of prudence even in the absence of a regulation; only the small percentage of vessels not observing this "best practice" will be affected by this regulation; moreover, we know of no specific small entities among that small number; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; the restrictions imposed by this rule are identical to those that have been enforced since June 25, 2002 and which have not been unduly burdensome on waterway users; we currently have six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established.

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.

Assistance for Small Entities

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 temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. 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 Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

Small business 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 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 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal