

List of Subjects in 33 CFR Part 117

Bridges.

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); § 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.243 is revised to read as follows:

§ 117.243 Nanticoke River.

The draw of the Norfolk Southern Railway Bridge across the Nanticoke River, at mile 39.4, at Seaford, Delaware will operate as follows:

(a) From March 15 through November 15 the draw will open on signal for all vessels except that, from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(b) At all times from November 16 through March 14 the draw will open on signal if at least 2½ hours notice is given.

(c) When notice is required, the owner operator of the vessel must provide the bridge tender with an estimated time of passage by calling 717–541–2151/2140.

Dated: March 31, 2003.

James D. Hull,

*Vice Admiral, U. S. Coast Guard,
Commander, Fifth Coast Guard District.*

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DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD01–03–017]

RIN 1625–AA11

Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is amending a Regulated Navigation Area (RNA) to add restrictions on vessels transiting the Bergen Point West Reach of the Kill Van

Kull during U.S. Army Corps of Engineers dredging operations in that area. This action is necessary to provide for the safety of life and property on navigable waters during dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: This rule is effective from March 30, 2003 to September 30, 2004.

Comments and related material must reach the Coast Guard on or before June 9, 2003.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–017 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material to the Coast Guard at the address under **ADDRESSES**. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Coast Guard, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the

Coast Guard finds that good cause exists for not publishing an NPRM. The U.S. Army Corps of Engineers is conducting an extensive navigation improvement project in Kill Van Kull and Newark Bay, New York and New Jersey. The project, which is being conducted in nine distinct phases, began in April 1999 and will continue through approximately April 2005. In anticipation of the project and its probable impact on navigation, the Coast Guard worked with local pilots and maritime users to develop restrictions on vessels transiting the area during dredging operations. As a result of that cooperative process, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 72219) on December 31, 1998, discussing our intention to establish a Regulated Navigation Area (RNA) for Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On April 15, 1999, we published a Final Rule in the **Federal Register** (64 FR 18577) codifying the RNA at 33 CFR 165.165.

Once dredging operations began in the Bergen Point portion of the navigation improvement project, it has become evident that the provisions of the original RNA were insufficient to ensure safe navigation on that portion of the waterway. 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) had to be relocated to facilitate dredging of the Kill Van Kull. Once those buoys were relocated, the Bergen Point Buoy was hit and moved off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey to re-establish the buoy on-station. More importantly, other vessels were unable to navigate successfully within the temporary channel boundaries. More than half of the vessels over 700 feet long transiting the area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. And there were several near collisions between tugs and barges operating in the area. We determined that a significant risk of similar mishaps existed unless additional regulations were prescribed for vessels operating in the vicinity of Bergen Point while continued dredging

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

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

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, 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.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it revises a Regulated Navigation Area. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**. 165 as follows:

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, in 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(g), 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From March 30, 2003 to September 30, amend § 165.165 to add paragraph (d)(10) to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey.

* * * * *

(d) * * *

(10) *Bergen Point West Reach*. In addition to the requirements in paragraphs (d)(1) through (d)(9) of this section, the following provisions apply to vessels transiting in or through Work Areas (4) and (5):

(i) *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, excluding tugs with tows, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

(ii) *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.

(iii) *Astern tows*: Hawser tows are not permitted unless an assist tug accompanies the tow.

(iv) *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).

(v) *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).

Dated: March 28, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2002-5B]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office's interim rule governing the form,

content, and manner of service of notices of termination of transfers and licenses granted by authors on or after 1978 is being adopted as a final rule with one change. Beginning on January 1, 2003, copyright owners have been able to serve notices of termination on certain copyright transferees and licensees under an interim rule effective on that date. The Office is now adopting an additional amendment that was set forth in the proposed rule published in the **Federal Register** on December 20, 2002.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202)707-8380. Fax: (202)707-8366.

SUPPLEMENTARY INFORMATION: Section 203 of the Copyright Act, 17 U.S.C. 203, provides that under certain circumstances, authors may terminate grants of transfers or licenses of copyright entered into after January 1, 1978. Such terminations may be made during a five-year period commencing 35 years after the execution of the grant or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant. January 1, 2003, was the first date on which a termination could be made pursuant to section 203. In order to have regulations in place by January 1, the Copyright Office published an interim rule on December 23, 2002. 67 FR 78176.

On December 20, 2002, the Copyright Office published a notice of proposed rulemaking governing termination of transfers and licenses pursuant to section 203 of the Copyright Act. Notice of Proposed Rulemaking, Notice of Termination, 67 FR 77951. The Office proposed to amend 37 CFR 201.10, the existing regulation governing notices of termination under section 304 of the Copyright Act, 17 U.S.C. 304, by adding provisions relating to terminations under section 203.

On December 23, 2002, the Office published an interim rule, effective January 1, 2003, which differs from the proposed rule in only one respect. The proposed rule amended § 201.10(b)(1)(i) of the Copyright Office regulations to require that a notice of termination pursuant to section 17 U.S.C. 304 must identify whether the termination is made under section 304(c) or section 304(d). Because this proposed amendment would change established practice with respect to terminations under section 304(c), and because the