

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[CGD05–03–195]

RIN 1625–AA01

#### Anchorage Grounds; Delaware Bay and River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulations that govern Anchorage 5, southeast of Pea Patch Island, due to U.S. Army Corp of Engineers dredging operations in the anchorage. This regulation will help ensure the safety of vessels anchoring in Anchorage 5 while dredging operations are ongoing. Mariners must receive approval from the Captain of the Port Philadelphia before using the anchorage and

**DATES:** This rule is effective from December 9, 2003, until December 31, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–195 and are available for inspection or copying at Coast Guard Fifth District, 431 Crawford Street, Portsmouth, Virginia, 23704, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Roger Smith, Coast Guard Fifth District Marine Safety Division, at (757) 398–6389.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

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

(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. On November 28, 2003, a contractor for the Army Corps of Engineers began conducting dredging operations, which are potentially hazardous to mariners in New Castle Range Ship Channel and in Anchorage 5 southeast of Pea Patch Island. Publishing an NPRM, allowing for a comment period, and/or waiting 30 days after publication before making this regulation effective is impracticable and contrary to public interest. Immediate action is needed to protect mariners against the potential hazards associated with the dredging operation. Advance notification will be made to affected mariners via marine information broadcasts.

##### Background and Purpose

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of New Castle Range Ship Channel to maintain the 46-foot project depth.

To reduce the hazards associated with dredging the channel, mariners must receive approval from the Captain of the Port Philadelphia before using Anchorage 5 while the operations are ongoing.

##### Discussion of Temporary Final Rule

Currently in paragraph (b)(2) of 33 CFR 110.157, vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 5. However, because of underwater dredge piping in Anchorage 5 southeast of Pea Patch Island, the Coast Guard is temporarily adding paragraph (b)(12) in 33 CFR 110.157 to protect mariners from encountering hazards within Anchorage 5. All vessels desiring to use Anchorage 5 must obtain permission from the Captain of the Port 24 hours prior to anchoring. The Coast Guard expects that vessels normally permitted to anchor in Anchorage 5 will make arrangements to anchor elsewhere during the dredge operations, as there are 15 other anchorages in the local area.

##### Regulatory Evaluation

This temporary rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 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) because we expect the economic impact of this rule to be so minimal. There are fifteen other anchorages in the local area for use by mariners. Also, New Castle Range is not near any critical infrastructure or marine terminals and Anchorage 5 is rarely used by the public or by the river pilots.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

Therefore, the Coast Guard certifies under section 605(b) of the regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the pilots association, the supply boat providers, and the tugboat operators. However, there are fifteen other anchorages in the local area for use by these small businesses. This temporary regulation will not have a significant impact on a substantial number of entities for the following reasons: Anchorage 5 is rarely used, as other anchorages are more convenient to these businesses. In addition, the New Castle Range is not near any critical infrastructure or marine terminals.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 (1-888-743-3247).

#### Collection of Information

This rule calls 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 rule under that Order and have determined that this rule 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this 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 temporarily restricting the usage of Anchorage 5 and concluded under figure 2-1, paragraph (34)(f), of Commandant Instruction M16475.ID, that this rule is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

#### PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05-1(g). Department of Homeland Security Delegation No. 0170.1.

■ 2. From December 9, 2003, until December 31, 2003, add temporary § 110.157(b)(12) to read:

#### § 110.157 Delaware Bay and River.

\* \* \* \* \*

(b) \* \* \*

(12) All vessels desiring to use Anchorage 5 southeast of Pea Patch Island must obtain permission from the Captain of the Port 24 hours prior to anchoring. The Captain of the Port

means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via channels 13 and 16 on VHF marine band radio.

\* \* \* \* \*

Dated: December 9, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03-31391 Filed 12-19-03; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No.: 2003-P-001]

RIN 0651-AB57

#### Changes to Implement the 2002 *Inter Partes* Reexamination and Other Technical Amendments to the Patent Statute

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The 21st Century Department of Justice Appropriations Authorization Act contains a title relating to intellectual property. The patent-related provisions in the intellectual property title of the 21st Century Department of Justice Appropriations Authorization Act include provisions permitting a third party requester in an *inter partes* reexamination proceeding to appeal a final decision by the Board of Patent Appeals and Interferences (BPAI) to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and to participate in the patent owner's appeal of a final decision by the BPAI to the Federal Circuit. The patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act also include technical amendments to the provisions directed to *inter partes* reexamination, 18-month publication of patent applications and provisional rights, and issuance of patents. The United States Patent and Trademark Office (Office) is revising the rules of practice to implement the patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act, and other miscellaneous changes