

(g) *Destruction.* (1) Property not otherwise disposed of may be destroyed.

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR Subpart 101–45.9.

(3) When destroyed, the fact, manner, and date of destruction and the type and quantity destroyed must be certified by the official actually destroying the property.

(4) No duly authorized officer of NOAA shall be liable for the destruction or other disposition of property made pursuant to this section.

(h) *Record-keeping.* A disposal form will be completed each time property is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the property. These forms will be available to the public.

#### **§ 904.510 Return of seized property.**

(a) *Return.* In cases where NOAA, in its sole discretion, determines that forfeiture of seized property would not be in the best interest of the Government, NOAA will make a reasonable attempt to determine the party that the facts of record indicate has a predominant ownership interest in the seized property and, provided such a determination can be made, will arrange for return of the seized property to that party by appropriate means.

(b) *Notice.* NOAA will mail notice of the return of property by registered or certified mail, return receipt requested, to the owner, consignee, or other party the facts of record indicate has an interest in the seized property. The notice will describe the seized property, state the time, place, and reason for the seizure and return, and will identify the owner or consignee, and if appropriate, the bailee of the seized property. The notice of the return also will state that the party to whom the property is being returned is responsible for any distribution of the property to any party who holds a valid claim, right, title or interest in receiving the property, in whole or in part. The notice also will provide that on presentation of the notice and proper identification, and the signing of a receipt provided by NOAA, the seized property is authorized to be released.

[FR Doc. 04–22598 Filed 10–6–04; 1:20 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 110**

[CGD05–03–036]

RIN 1625–AA01

#### **Baltimore Harbor Anchorage Project**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of the anchorages in Baltimore Harbor, MD. Since publication of the previous supplemental notice of proposed rulemaking (SNPRM), the Coast Guard also proposes to change the requirements for visitors on board vessels carrying Certain Dangerous Cargoes (CDC) and to reinstate time restrictions, inadvertently excluded from the notice of proposed rulemaking (NPRM) and previous SNPRM, for vessels anchored in designated anchorage grounds. This supplemental notice of proposed rulemaking solicits comments for those changes plus all original changes in the NPRM and the two changes published in the first SNPRM. An explanation of the additional changes can be found in the “Discussion of Rule” section of this document.

**DATES:** Comments and related material must reach the Coast Guard on or before December 13, 2004.

**ADDRESSES:** 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 CGD05–03–036 and are available for inspection or copying at Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA, 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6285, email: [trmartin@lantd5.uscg.mil](mailto:trmartin@lantd5.uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

The Coast Guard encourages 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 (CGD05–03–036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, 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 proposed rule in view of them.

#### **Regulatory Information**

On July 2, 2003, we published a notice of proposed rulemaking (NPRM) (68 FR 39503) entitled Baltimore Harbor Anchorage Project in the **Federal Register**. We received one phone call commenting on the NPRM. No public hearing was requested, and none was held.

On January 14, 2004 we published a supplemental notice of proposed rulemaking (SNPRM) (69 FR 2095) also entitled Baltimore Harbor Anchorage Project in the **Federal Register**. Since then some point coordinates outlining Anchorages 1, 2, 5, 6, and 7 have been refined through telephone and email correspondences with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers better aligning the new anchorages with the Federal Navigation project.

In the NPRM and previous SNPRM, with the exception of specific time limitations in three of the anchorages, the regulatory text omitted the language from the current regulation regarding the length of time a vessel may remain anchored in the general anchorages. The changes to this rule do not affect the time limitations set out in the current regulation and therefore, that language will be reinstated in the regulatory text in the final rule.

#### **Background and Purpose**

The U.S. Army Corps of Engineers received Congressional authorization for the Baltimore Harbor Anchorage project in September 2001. The objective of this project was to increase the project depths of Anchorages 3 and 4 to 42ft and 35ft respectively. The original Federal anchorage project for Baltimore Harbor was designed to accommodate cargo ships with maximum drafts of 33ft and lengths of 550ft. The new dimensions of the anchorages were changed to accommodate larger ships calling on the Port that routinely approach 1000ft length, with drafts of 36 to 38 feet or more. The new

coordinates established for Anchorages 2, 3, and 4, also accommodate the widening of the Dundalk West Channel, a north/south Federal navigation project located between Anchorage 3 and Anchorage 4 and widening of the Dundalk East Channel, bordering Anchorage 4. Anchorage 3 was divided into two sections: Anchorage 3 Lower (2200' × 2200' × 42ft mean lower low water (MLLW)) and Anchorage 3 Upper (1800' × 1800' × 42ft MLLW). Anchorage 4 was also modified (1850' × 1800' × 35ft MLLW).

Dredging for the Baltimore Harbor Anchorage was completed in May 2003.

#### Discussion of Rule

Since the previous SNPRM was published, the Coast Guard proposed additional changes by refining the positions of three coordinates surrounding Anchorages 2. The coordinates appeared to enter or come close to entering the Federal navigation project when viewed in automatic computer aided drafting (AUTOCAD) software. The proposed changes will remove any ambiguity in boundary lines when depicted on NOAA charts. The following three points outlining Anchorage 2 were changed:

<i>Latitude</i>	<i>Longitude</i>
(1) 39°14'56.1" N	76°33'37.1" W
(2) 39°15'14.8" N	76°32'59.6" W
(3) 39°14'41.1" N	76°32'27.2" W

The new positions are:

<i>Latitude</i>	<i>Longitude</i>
(1) 39°14'56.96" N	76°33'37.15" W
(2) 39°15'14.19" N	76°32'57.76" W
(3) 39°14'41.37" N	76°32'27.38" W

Since the width of Fort McHenry Channel was decreased from 800 feet to 700 feet Anchorage 1 has been positioned closer to the channel using USACE coordinates to facilitate access to that anchorage. The four points defining Anchorage 1 were changed and are reflected in the proposed regulation.

Although not maintained by the USACE the coordinates defining Anchorages 5, 6, and 7 have been adjusted to better align those anchorages with the Federal navigation project.

The language requiring non-crewmembers to carry a pass issued by the Captain of the Port (COTP) while visiting ships at anchor carrying dangerous cargo or Class I (explosive) materials has been removed. The Coast Guard may include the requirement to carry a pass in the future. The remaining language allows the COTP to request all visitors to anchored vessels carrying dangerous cargo to carry a form of

identification prescribed in the vessel's security plan. This proposed change will incorporate language consistent with other anchorage regulations.

Time restrictions inadvertently left out of the NPRM and previous SNPRM have been reinstated throughout the regulation. In § 110.158 paragraph (a) time restrictions are listed in subparagraphs (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), and (7)(B).

#### Regulatory Evaluation

This proposed 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).

The deepening of Anchorage 3 and Anchorage 4 within the Port of Baltimore accommodates deep draft vessels waiting for an open berth. The Coast Guard does not expect that these new regulations will adversely impact maritime commerce.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed would not have a significant economic impact on a substantial number of small entities. This proposed may affect the following entities, some of which might be small entities: The owners or operators of vessels used for chartering, taxi, ferry services, or any other marine traffic that transit this area of Fort McHenry Channel in Baltimore Harbor. Changes to Anchorage No. 3 and Anchorage No. 4 may change the vessel routing through this area of the harbor. Deepening the anchorages and changing the coordinates for the anchorages will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the new anchorage areas. The new coordinates for the anchorages are a change in

dimension, the size of which will remain proportional to its current size, and their location will not interfere with commercial traffic.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the proposed so that they could better evaluate its effects on them and participate in the rulemaking process. If the proposed would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Timothy Martin at the address listed (see ADDRESSES).

#### Collection of Information

This proposed 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 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 proposed rule will not result in such expenditure, we do discuss possible effects in the section titled Small Entities in this preamble.

#### Taking of Private Property

This proposed rule would not effect 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 proposed 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 proposed 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 create and environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This proposed 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 proposed 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.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule changes the size of Anchorage No. 2, Anchorage No. 3 and Anchorage No. 4 and modifies the regulated uses of these anchorages.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

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

Anchorage Regulations  
For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise § 110.158 to read as follows:

**§ 110.158 Baltimore Harbor, MD.**

All positions in this section use North American Datum 1983.

(a) Anchorage Grounds

(1) *Anchorage No. 1, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°15'13.51" N	76°34'07.76" W
39°15'11.01" N	76°34'11.69" W
39°14'52.98" N	76°33'52.67" W
39°14'47.90" N	76°33'40.73" W

(ii) No vessel shall remain in this anchorage for more than 12 hours without permission from the Captain of the Port.

(2) *Anchorage No. 2, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°14'46.23" N	76°33'25.82" W
39°14'56.96" N	76°33'37.15" W
39°15'08.55" N	76°33'37.65" W

*Latitude Longitude*

39°15'19.28" N	76°33'24.49" W
39°15'19.33" N	76°33'14.32" W
39°15'14.19" N	76°32'57.76" W
39°15'06.87" N	76°32'45.48" W
39°14'41.37" N	76°32'27.38" W
39°14'30.93" N	76°32'33.52" W
39°14'46.27" N	76°32'49.69" W
39°14'43.76" N	76°32'53.62" W
39°14'57.51" N	76°33'08.13" W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(3) *Anchorage No. 3, Upper, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°14'32.48" N	76°33'11.31" W
39°14'46.23" N	76°33'25.82" W
39°14'57.51" N	76°33'08.13" W
39°14'43.76" N	76°32'53.62" W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(4) *Anchorage No. 3, Lower, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°14'32.48" N	76°33'11.31" W
39°14'46.27" N	76°32'49.69" W
39°14'30.93" N	76°32'33.52" W
39°14'24.40" N	76°32'39.87" W
39°14'15.66" N	76°32'53.58" W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(5) *Anchorage No. 4, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°13'52.91" N	76°32'29.60" W
39°14'05.91" N	76°32'43.30" W
39°14'07.30" N	76°32'43.12" W
39°14'17.96" N	76°32'26.41" W
39°14'05.32" N	76°32'13.09" W
39°14'00.46" N	76°32'17.77" W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(6) *Anchorage No. 5, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°14'07.89" N	76°32'58.23" W

Latitude	Longitude
39°13'34.82" N	76°32'23.66" W
39°13'22.25" N	76°32'28.90" W
39°13'21.20" N	76°33'11.94" W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(7) *Anchorage No. 6, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°13'42.98" N	76°32'19.11" W
39°13'20.65" N	76°31'55.58" W
39°13'34.00" N	76°31'33.50" W
39°14'01.95" N	76°32'02.65" W
39°13'51.01" N	76°32'18.71" W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(8) *Anchorage No. 7, Dead ship anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	Longitude
39°13'00.40" N	76°34'10.40" W
39°13'13.40" N	76°34'10.81" W
39°13'13.96" N	76°34'05.02" W
39°13'14.83" N	76°33'29.80" W
39°13'00.40" N	76°33'29.90" W

(ii) The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

(b) *Definitions.* As used in this section:

*Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

*Dangerous cargo* means certain dangerous cargo as defined in § 160.203 of this title.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and all vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor and Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any

pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of an anchorage. Only the vessel that holds the revocable permit may use the anchorage during the period that the permit is in effect.

(5) Upon notification by the Captain of the Port to shift its position, a vessel at anchor shall get underway and shall move to its new designated position within 2 hours after notification.

(6) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(7) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(8) No vessel shall anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.*

(1) This paragraph (d) applies to every vessel, except a U.S. naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold a form of identification prescribed in the vessel's security plan.

(3) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the identification prescribed by paragraph (d)(2) of this section to any Coast Guard Boarding Officer who requests it.

(4) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(5) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a bravo flag in a prominent location and by night a fixed red light.

Dated: September 28, 2004.

**Ben Thomason III,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 04-22745 Filed 10-8-04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-04-179]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Mantua Creek, Paulsboro, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the regulations that govern the operation of the S.R. 44 bridge over Mantua Creek, at mile 1.7, in Paulsboro, New Jersey. The bridge will be closed to navigation from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005. The extensive structural, mechanical, and electrical repairs and improvements necessitate this closure.

**DATES:** Comments and related material must reach the Coast Guard on or before November 26, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, VA 23704-5004. The Fifth Coast Guard District 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, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6227.