

movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Commander, Sector Boston; will be a U.S. Coast Guard commissioned officer, warrant officer or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port (COTP) or the COTP's designated representative to obtain permission by calling the Sector Boston Command Center at 617-223-5761. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

(5) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(c) All coordinates reference 1983 North American Datum (NAD83).

Dated: June 18, 2009.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[Docket No. USCG-2009-0045]

RIN 1625-AA01

#### Anchorage Regulations; Port of New York

**AGENCY:** Coast Guard, DHS.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** By this direct final rule, the Coast Guard is revising the southern boundary of Anchorage Ground No. 20-F in Upper New York Bay. This action is necessary so that the Anchorage Ground does not extend into the Port Jersey Federal Channel that is being expanded as part of the Port of New York/New Jersey Harbor Deepening Project. This action is intended to increase the safety of life and property for the Port of New York/New Jersey, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of commercial vessels and commerce.

**DATES:** This rule is effective September 29, 2009, unless an adverse comment, or

notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before August 31, 2009 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by August 31, 2009, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0045 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, e-mail or call Mr. Jeff Yunker, Waterways Management Division, telephone 718-354-4195, e-mail

[jeff.m.yunker@uscg.mil](mailto:jeff.m.yunker@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### *Submitting comments:*

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0045), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0045" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments 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 that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

##### *Viewing comments and documents:*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0045 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### *Privacy Act:*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

### Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by August 31, 2009, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

### Background

This rule is necessary to ensure the safety of navigation for vessels operating in the area as well as for vessels involved with the Port Jersey Federal Channel deepening project. The current boundary of Anchorage Ground No. 20–F overlaps the expanded boundary of Port Jersey Federal Channel that is being deepened as part of the U.S. Army Corps of Engineers Port of New York/New Jersey harbor deepening project. Without the changes implemented by this rule, vessels could mistakenly anchor within the expanded Port Jersey Federal Channel while other vessels are dredging the channel in preparation for larger vessels with a deeper draft to moor at facilities adjacent to Port Jersey Federal Channel. Revising the southern boundary of Anchorage Ground No. 20–F to where it no longer interferes with the Port Jersey Federal Channel will

remove the current authorization for vessels to mistakenly anchor within a Federal Channel, and therefore remove this hazardous condition for vessels navigating in this area.

In addition to revising the southern boundary of the anchorage zone, the two geographic coordinates that make up the northern boundary are being updated to datum NAD 83. The physical location of these points are not moving, however there are slight changes in the coordinates that reflect the update in datum.

### Discussion of the Rule

This rule revises the southern boundary of Anchorage Ground No. 20–F in Upper New York Bay by moving it northward, thus reducing the overall size of the anchorage. This change to the boundary is necessary because the adjacent Port Jersey Federal Channel is being expanded into the current Anchorage Ground No. 20–F boundary as part of the Port of New York/New Jersey harbor deepening project. The revised southern boundary would be moved to the north by approximately 130 yards. This rule further modifies the geographic coordinates of the two northern points of the anchorage so as to conform with datum NAD 83. The physical location of the two northern points do not change and there will be no resulting change in these two points on the current navigational charts, only the geographic position descriptions are revised based on the updated reference datum.

### Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

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.

This determination is based on the fact that the expansion of the Port Jersey Federal Channel has already been approved through the U.S. Army Corps of Engineers permitting process. Due to the progress of this channel expansion, the southern area of this Anchorage Ground is no longer available for vessels to anchor within as vessels under contract to the U.S. Army Corps of

Engineers have been, and continue to dredge in what is the south end of the current boundary of Anchorage Ground No. 20–F.

### 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.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to anchor within the southern portion of Anchorage Ground No. 20–F.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will still be able anchor, or stem the tide, to the east of the two charted commercial mooring buoys located within the northern portion of Anchorage Ground No. 20–F. This revision is due to the Port of New York/New Jersey harbor deepening project that includes the expansion of the Port Jersey Federal Channel. This project has been well publicized to the maritime community through the Local Notice to Mariners, Coast Guard Homeport Web site at <http://homeport.uscg.mil/newyork>, monthly project update meetings held by the U.S. Army Corps of Engineers, and regularly scheduled Harbor Safety, Navigation and Operations Committee meetings.

Therefore, 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. Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

### 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 the rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options or compliance, please consult Mr. Jeff Yunker at the address listed under

**ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 (1-888-734-3247).

### 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 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 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 rule will 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 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 create 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(f) of the Instruction. This rule involves the reduction in the size of an existing anchorage area. Under figure 2-1, paragraph (34)(f) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

### 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, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.155, by revising paragraph (d)(7) to read as follows:

#### § 110.155 Port of New York.

\* \* \* \* \*

(d) \* \* \*

(7) *Anchorage No. 20-F.* All waters bound by the following points: 40°40'12.2" N, 074°03'39.9" W; thence to 40°39'53.9" N, 074°03'09.6" W; thence to 40°39'38.9" N, 074°03'19.5" W; thence to 40°39'53.5" N, 074°03'53.7" W; thence to the point of origin (NAD 83).

(i) See 33 CFR 110.155 (d)(9), (d)(16), and (l).

(ii) [Reserved]

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Dated: May 28, 2009.

**Dale G. Gabel,**

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

[FR Doc. E9-15603 Filed 6-30-09; 8:45 am]

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