

and (H) of this section, such information may be provided: \* \* \*

(ii) \* \* \* A central or parent organization shall indicate whether it has provided such information in the manner described in paragraphs (d)(5)(i) or (ii) of this section, and may not change the manner in which it provides such information without the consent of the Commissioner.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) Except as provided in paragraph (g)(1)(viii) of this section, an organization described in section 501(c) (other than a private foundation or a supporting organization described in section 509(a)(3)) the gross receipts of which in each taxable year are normally not more than \$50,000 (as described in paragraph (g)(3) of this section);

\* \* \* \* \*

(viii) A foreign organization (described in paragraph (k)(1) of this section) or a United States possession organization (described in paragraph (k)(2) of this section) (other than a private foundation or a supporting organization described in section 509(a)(3))—

(A) The gross receipts of which in each taxable year from sources within the United States (as determined under paragraph (k)(3) of this section) are normally not more than \$50,000 (as described in paragraph (g)(3) of this section); and

(B) That has no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

\* \* \* \* \*

(3) For purposes of paragraphs (g)(1)(iii) and (viii) of this section, the gross receipts (as defined in paragraph (g)(4) of this section) of an organization are normally not more than \$50,000 if:

(i) In the case of an organization that has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of \$75,000 or less during the first taxable year of the organization;

(ii) In the case of an organization that has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is \$60,000 or less; and

(iii) In the case of an organization that has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return

would be required to be filed, is \$50,000 or less.

\* \* \* \* \*

(5) An organization that is not required to file an annual return by virtue of paragraphs (g)(1)(iii) and (viii) of this section must submit an annual electronic notification as described in section 6033(i). See § 1.6033–6.

(6) \* \* \* This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

\* \* \* \* \*

(k) *Foreign organizations and United States possession organizations*—(1) *Foreign organization*. For purposes of this section, a *foreign organization* is any organization not described in section 170(c)(2)(A).

(2) *United States possession organization*. For purposes of this section, a *United States possession organization* is any organization created or organized in a possession of the United States.

(3) *Source of funds*. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts from gifts, grants, contributions or membership fees is determined by applying the rules found in § 53.4948–1(b) of this chapter. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts other than gifts, grants, contributions, and membership fees is determined by applying the rules in sections 861 through 865 and the regulations in this part issued under section 861 through 865. For purposes of applying this paragraph (k)(3) regarding United States possession organizations, a United States person does not include individuals who are *bona fide* residents of a United States possession.

(l) *Applicability date*—(1) *Generally*. This section applies to returns filed on or after January 30, 2020. Section 1.6033–2T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

(2) Paragraphs (a)(2)(ii)(F), (a)(2)(iii)(D)(1), (g)(1)(iii) and (viii), and (g)(3) of this section apply to annual information returns filed after May 28, 2020. Under section 7805(b)(7) an organization may choose to apply the paragraphs listed in this paragraph (l)(2) to returns filed after September 6, 2019.

#### PART 56—PUBLIC CHARITY EXCISE TAXES

■ **Par. 4.** The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

#### § 56.4911–9 [Amended]

■ **Par. 5.** In § 56.4911–9, amend paragraphs (d)(2) and (3) and (d)(4) introductory text by removing the language “1.6033–2(a)(2)(ii)(k)” and adding in its place “1.6033–2(a)(2)(ii)(M)”.

#### § 56.4911–10 [Amended]

■ **Par. 6.** In § 56.4911–10, amend paragraph (f)(1) by removing the language “1.6033–2(a)(2)(ii)(k)” and adding in its place “1.6033–2(a)(2)(ii)(M).”

**Sunita Lough,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 20, 2020.

**David J. Kautter,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2020–11465 Filed 5–26–20; 4:15 pm]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[Docket Number USCG–2015–1118]

RIN 1625–AA01

#### Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes new, deep-water anchorage grounds for the Hampton Roads area near Cape Charles, VA, and increases the size and relocates the existing quarantine anchorage from near Cape Charles to further south in the lower Chesapeake Bay. The intended effect is to protect the environment, facilitate safe navigation of maritime commerce and national defense assets, and more safely and effectively support commercial vessel anchoring needs in the lower Chesapeake Bay.

**DATES:** This rule is effective June 29, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2015–1118 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or

email Lieutenant Commander Peter Francisco, Waterways Management Division Chief, Sector Virginia, U.S. Coast Guard; telephone 757-668-5581, email *Peter.F.Francisco@uscg.mil*; or Mr. Jerry Barnes, Waterways Management Branch, Fifth Coast Guard District, U.S. Coast Guard; telephone 757-398-6230, email *Jerry.R.Barnes@uscg.mil*.

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##### I. Table of Abbreviations

AIS Automatic Identification System  
 ANPRM Advance notice of proposed rulemaking  
 CFR Code of Federal Regulations  
 COTP Captain of the Port  
 DHS Department of Homeland Security  
 EPA U.S. Environmental Protection Agency  
 FR Federal Register  
 NM Nautical miles  
 NPRM Notice of proposed rulemaking  
 § Section  
 U.S.C. United States Code  
 VADEQ Virginia Department of Environmental Quality

## II. Background Information and Regulatory History

After considering public responses to a notice of proposed rulemaking (NPRM), including feedback from several public meetings, the Coast Guard is establishing a new commercial anchorage ground, Anchorage R,<sup>1</sup> approximately 3 nautical miles (NM) west of Cape Charles, VA, and is increasing the size and relocating the existing quarantine anchorage from there to a more secluded location in the lower Chesapeake Bay, approximately 6 NM southwest of Fishermans Island, VA. The Coast Guard initiated this rulemaking to address growth in both size and volume of vessels entering the Hampton Roads area, the subsequent need for additional deep draft anchorage space, and the growing trend of deep draft vessels anchoring in the waters of the Chesapeake Bay between York Spit Channel and the town of Cape Charles, VA.

On April 19, 2016, we published an advance notice of proposed rulemaking (ANPRM)<sup>2</sup> to solicit public comments on amending certain anchorage regulations in Hampton Roads for the possible creation of a new anchorage in the lower Chesapeake Bay near Cape Charles, VA. We received 35 written responses to the ANPRM. On June 27, 2016, we published a 45-day extension to the comment period and announced two public meetings.<sup>3</sup> On August 16, 2016, we announced one additional meeting and reopened the comment period.<sup>4</sup> We scheduled the meetings to receive comments on the ANPRM to allow for greater public involvement. The meetings were held in Norfolk, VA, on July 19, 2016; Melfa, VA, on July 20, 2016; and Cape Charles, VA, on August 17, 2016. We heard from 20 speakers at these meetings. On December 16, 2016, we issued a news release<sup>5</sup> to inform the public that a review of comments and an environmental study would be conducted. In November 2017, we completed an environmental review.<sup>6</sup> In January 2018, the Center for Disease Control, the U.S. Navy Fleet Forces Command, and the U.S. Army Corps of Engineers, North Atlantic provided comments<sup>7</sup> identifying and addressing

<sup>1</sup> See “Anchorage Boundary Development” in the docket.

<sup>2</sup> 81 FR 22939, April 19, 2016.

<sup>3</sup> 81 FR 41487, June 27, 2016.

<sup>4</sup> 81 FR 54531, August 16, 2016.

<sup>5</sup> See “Fifth District News Press Release” in the docket.

<sup>6</sup> See “Preliminary Record of Environmental Consideration” in the docket.

<sup>7</sup> See “Comments from U.S. Army Corps of Engineers, U.S. Navy Fleet Forces Command, and Center for Disease Control” in the docket.

adverse impacts from the proposed anchorage.

On June 22, 2018, after reviewing the oral and written comments in response to the ANPRM, the Coast Guard developed a proposed rule and published a notice of proposed rulemaking (NPRM).<sup>8</sup> The proposed anchorage in the NPRM modified the initially considered anchorage size, shape, and location to place the eastern border of the proposed anchorage further from the coast of Cape Charles and also proposed relocating the existing quarantine anchorage. As part of the NPRM, we announced three public meetings. One meeting was held in Norfolk, VA, on June 25, 2018 and two in Cape Charles, VA on July 10, 2018, one at 1 p.m. and the other at 6 p.m. At the three public meetings, 124 members of the community signed in and 72 members asked questions or stated their opinion of the proposal. The Captain of the Port (COTP), Coast Guard Sector Virginia (formerly named Coast Guard Sector Hampton Roads prior to February 6, 2020<sup>9</sup>), as well as staff from the Fifth Coast Guard District were present to answer questions and solicit public comment for the rulemaking docket. A total of 84 individuals and organizations submitted comments to the docket.

The legal basis and authorities for this rulemaking are found in 33 U.S.C. 471; 33 CFR 1.05-1; and Department of Homeland Security (DHS) Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

## III. Discussion of Comments on NPRM and Changes

This section provides a detailed discussion of public comments received during the NPRM’s comment period and public meetings. We received 84 written submissions to the docket in response to the NPRM. In addition, we hosted three public meetings to provide forums for obtaining public feedback on the NPRM.<sup>10</sup> We received no comments specifically addressing the relocation and increase in size of Anchorage Q, the quarantine anchorage. Therefore, we made no changes in the regulatory text to Anchorage Q. While some comments were supportive of new Anchorage R, the majority expressed concern with the Coast Guard’s proposed action to establish it. The comments we received spanned a range of topics, including

<sup>8</sup> 83 FR 29081, June 22, 2018.

<sup>9</sup> 85 FR 6804, February 6, 2020.

<sup>10</sup> See “2018 Public Meetings Summary” in the docket.

consideration of alternative anchorage locations; compliance with the National Environmental Policy Act (NEPA); compliance with the Coastal Zone Management Act (CZMA); risks of solid waste, coal residue, oil, and air pollution; requests for a no-discharge zone; risk of vessels dragging anchor; view from the shore; vessel congestion; negative impact on fisheries; risks of light pollution; risks of sewage discharge, risks of noise pollution; risks from ballast water discharges; security concerns; requests that vessels delay arrival or remain at sea; and requests for the Coast Guard to develop an anchoring management plan.

#### A. Anchorage Location

Vessels may anchor at any location absent specific restrictions. Many commenters opposed Anchorage R's proximity to Cape Charles, VA, and suggested the Coast Guard review other locations in the Hampton Roads area as alternatives, whether elsewhere in the Chesapeake Bay or offshore in the Atlantic Ocean.

A review of historical automatic identification system (AIS) data shows that vessels have been anchoring in the location of Anchorage R for years. The quarantine anchorage for the Hampton Roads area prior to this final rule, previous Anchorage Q, was located in waters that make up a portion of new Anchorage R. The quarantine anchorage, described in the current 33 CFR 110.168(a)(6) and visible on the 2019 version of U.S. Nautical Chart 12224,<sup>11</sup> was sited immediately east of the northern entrance to York Spit Channel and approximately 3.5 NM west of Cape Charles. We established it in 2005 because the previous quarantine anchorage did not provide adequate depth for visiting ships.

The "Background and Purpose" section of that final rule<sup>12</sup> identified anchorage berth K-3 in the Middle Ground waters off Newport News as the previous Hampton Roads quarantine anchorage, explaining that it was discontinued because the U.S. Army Corps of Engineers no longer maintained it. Historical versions of U.S. Nautical Chart 12245 from 2004<sup>13</sup> and earlier show charted depths in anchorage K-3 of less than 25 feet, which is too shallow for use by visiting deep draft vessels. The 2005 final rule further explained that we established

the new quarantine anchorage in "naturally deep water with charted depths in excess of 60 feet." This decision to locate the quarantine anchorage so far from its previous location (an approximately 43 NM channel transit) demonstrates that this area was the next best location, given the lack of maintained deep draft anchorages closer to the port, for meeting the port's concerns regarding navigational safety.

Additionally, we reviewed AIS data from 2011 through 2017<sup>14</sup> to identify historical anchoring practices of cargo ships visiting the Hampton Roads area. The data show that deep draft vessels were anchoring outside the maintained federal channel in the vicinity of Anchorage R throughout those years, which contributed to the Coast Guard proposing the anchorage. The AIS data show that deep draft vessels also anchored in designated anchorages closer to port facilities, including Anchorages A and B (in Lynnhaven Roads) which are controlled by the U.S. Navy.<sup>15</sup> The only other area not designated for anchorage where deep draft vessels were shown to anchor was the area of Lynnhaven Roads between Cape Henry Channel and Thimble Shoals Channel, immediately east of Tail of the Horseshoe Lighted Buoy 2T (Light List Number 7065) and approximately 2 NM north of Cape Henry, in the Naval Restricted Area described in 33 CFR 334.320. Beginning in 2015, increased Department of Defense and U.S. Navy use of Anchorages A and B and the finding of unexploded ordnance in the Naval Restricted Area, posing hazards to vessels should unexploded ordnance become fouled in anchors, displaced the vessels anchoring in those locations. This, in addition to growth in both size and volume of vessel traffic entering the Hampton Roads area, resulted in a growing number of vessels needing deep water anchorage grounds. As previously discussed, the best available deep water anchoring location in the Hampton Roads area were the waters east of York Spit Channel. AIS data show the growth of vessels anchoring there from 2011 through 2017.<sup>16</sup> The data also show the reduction of commercial cargo vessels anchoring in the Lynnhaven Roads area beginning in 2015<sup>17</sup> and declining so that no commercial cargo vessels are shown to anchor there in 2017.

It is apparent that deep draft vessels bound for Hampton Roads ports have chosen this area as the best available safe anchorage and will continue anchoring in the waters adjacent to York Spit Channel. Given the additional safety, security, and environmental protections provided by officially designating the waters as anchorage grounds, we are establishing Anchorage R with this rule.

Some commenters recommended we identify offshore anchoring options. We considered establishing an additional offshore quarantine anchorage prior to publishing the NPRM.<sup>18</sup> This notional anchorage was sited approximately 11 NM east of Virginia Beach, VA, immediately northeast of the entrance to the southern traffic separation scheme approaching Chesapeake Bay. We considered this location because it provided suitably deep water, was outside restricted zones, and was still within our geographic authority to establish anchorage grounds. However, the U.S. Army Corps of Engineers noted<sup>19</sup> that the National Oceanic and Atmospheric Administration warned of unexploded ordnance in the area per note B of U.S. Nautical Chart 12221.<sup>20</sup> This could pose dangers to vessels anchoring there. Additionally, U.S. Fleet Forces Command recommended against establishing the offshore anchorage<sup>21</sup> because it would interfere with critical U.S. Navy training activities. Therefore, we determined no viable offshore location is available to meet the anchorage needs of visiting deep draft vessels.

Other commenters requested we clarify why we chose this particular location to establish an anchorage. As explained above, we considered the loss of traditional anchorage areas in the Hampton Roads area, historical anchorage data and practices, the possibility of offshore anchorages, and the concerns for the safety and security of commercial and naval vessels when establishing this anchorage ground. We believe this rule provides additional controls over vessels anchoring there,

<sup>11</sup> See "NC12224\_2019" in the docket, which is a copy of U.S. Nautical Chart 12224, 28th Edition, corrected through February 26, 2019.

<sup>12</sup> 70 FR 29953, May 25, 2005.

<sup>13</sup> See "Anchorage K-3" in the docket, which is an excerpt of U.S. Nautical Chart 12245, 63rd Edition, May 2004.

<sup>14</sup> See "Historical Anchorage Use" in the docket.

<sup>15</sup> 33 CFR 110.168(e)(1).

<sup>16</sup> Slides 1-6 of "Historical Anchorage Use" in the docket.

<sup>17</sup> Slides 7-12 of "Historical Anchorage Use" in the docket.

<sup>18</sup> See graphic on page 2, red outline of Outer Quarantine Anchorage of the "Record of Environmental Consideration" in the docket.

<sup>19</sup> See page 1 of "Comments from U.S. Army Corps of Engineers, U.S. Navy Fleet Forces Command, and Center for Disease Control" in the docket.

<sup>20</sup> See "NC12221\_2019" in the docket, which is a copy of U.S. Nautical Chart 12221, 84th Edition, corrected through June 28, 2019. Note B is printed on the tan graphic of land south of Cape Charles in approximate position N 36°12', W 075°58'.

<sup>21</sup> See page 3 of "Comments from U.S. Army Corps of Engineers, U.S. Navy Fleet Forces Command, and Center for Disease Control" in the docket.

and provides an additional level of safety and environmental oversight.

One commenter suggested that due to AIS carriage requirements, only large commercial vessels were considered when determining the location of the anchorage grounds. Among other categories, 33 CFR 164.46(b)(1) specifies that AIS is required for all commercial vessels 65 feet or more in length, and towing vessels of 26 feet or longer and that have more than 600 horsepower. The Coast Guard examined the tracks of pleasure craft, sailing vessels, passenger and other vessels transiting the waters in and near Anchorage R including shallow draft vessels that call on Cape Charles. While AIS carriage is voluntary for many vessels, we believe sufficient data exists, and the location and size of Anchorage R accommodates the needs of large commercial vessels and safeguards routes used by smaller vessels. The southernmost boundary of Anchorage R established by this rule is intended to keep large commercial ships from anchoring within routes used predominately by smaller vessels to navigate to and from Cape Charles Harbor, such as Cherry Stone Channel Inlet. The Coast Guard maintains that applying Hampton Roads anchorage regulations to these waters improves navigation safety.

One comment stated “[t]here have been six closures of the Cape Charles Beach since the Coast Guard established this vessel anchorage just off the shore of the town of Cape Charles.” This comment incorrectly characterizes both the Coast Guard regulation and the timeline for establishing the anchorage. As mentioned above, data show vessels have been anchoring in the waters between York Spit Channel and the town of Cape Charles for years without Coast Guard direction or influence. Although this anchorage was suggested in our 2016 ANPRM and proposed in our 2018 NPRM, it will be “Coast Guard established” when it becomes effective 30 days after this final rule is published in the **Federal Register**.

#### *B. National Environmental Policy Act (NEPA) Compliance*

A number of comments suggested the Coast Guard is not meeting NEPA requirements by addressing the action using a categorical exclusion and not providing an environmental impact statement. The Coast Guard disagrees. In the above paragraphs, we document the practice of vessels anchoring in and around Anchorage R. This practice is not due to Coast Guard implemented plans or actions; rather, it is the result of larger and deeper draft vessels calling on the Port of Virginia and the loss of

available deep draft anchorage areas due to naval operations and the potential for unexploded ordinance. Regulations establishing or increasing the size of anchorage grounds generally do not individually or cumulatively have a significant effect on the human environment, and as such, are normally categorically excluded from further review. This is further discussed in Section V.F below. We continue to view the categorical exclusion as appropriate and are making no changes to the rule from the NPRM based on these comments.

#### *C. Coastal Zone Management Act (CZMA) Compliance*

Two Commonwealth of Virginia agencies, the Virginia Department of Environmental Quality (VADEQ)<sup>22</sup> and the Marine Resources Commission,<sup>23</sup> responded separately with the presumption that the Coast Guard would conduct a CZMA consistency review with the Commonwealth of Virginia for establishing the anchorage grounds. The VADEQ cited the federal regulations<sup>24</sup> that implement CZMA, 15 CFR 930.31, stating that they viewed this rulemaking as reasonably and foreseeably altering the uses of the coastal zone and should therefore be subject to a federal consistency determination.

Establishing the anchorage grounds does not create the practice of anchoring at Anchorage R, as vessels have been anchoring in the waters between York Spit Channel and the town of Cape Charles, VA for years. This practice will continue regardless of the Coast Guard’s action. Any effects associated with this activity are already occurring and will continue to occur. The Coast Guard’s ability to limit or preclude this activity is derived from its navigational safety authority. By imposing this rule, we are attempting to increase navigational safety of the existing users by extending existing regulations that govern anchoring practices in the Hampton Roads area to waters currently being used for anchoring by deep draft commercial vessels. Thus, the Coast Guard provided a no effects determination under 15 CFR 930.35, and we sent a letter<sup>25</sup> notifying the VADEQ of our negative determination on November 7, 2019.

<sup>22</sup> See “Comment Submitted by Bettina Rayfield, Commonwealth of Virginia” in the docket.

<sup>23</sup> See “Comment Submitted by Randy Owen, Commonwealth of Virginia, Marine Resources Commission” in the docket.

<sup>24</sup> 15 CFR 930 subpart C.

<sup>25</sup> See “USCG letter to VADEQ, Nov 7, 2019” in the docket.

Our letter prompted discussions with VADEQ, which included VADEQ forwarding to the Coast Guard via email a letter from the Marine Resources Commission dated December 5, 2019,<sup>26</sup> and a conference call regarding the Coast Guard’s negative determination on January 6, 2020.<sup>27</sup> The VADEQ formally objected to our negative determination in a letter<sup>28</sup> dated January 16, 2020, and maintained that insufficient information was supplied to determine if the Coast Guard’s action is consistent with the Commonwealth’s Fisheries Management and Subaqueous Land Management enforceable policies. We reviewed these policies and did not find any applicable to the Coast Guard’s action. Subsequent conversations with the VADEQ yielded no specific examples of inconsistent enforceable policies. It is our assessment that the VADEQ is focused on potential effects rather than on whether or not the Coast Guard’s action could be the cause of those effects.<sup>29</sup> We maintain that this administrative safety regulation does not cause any effects on the coastal zone, and that our rule is consistent to the maximum extent practicable with the CZMA enforceable policies promulgated by the Commonwealth of Virginia.

#### *D. General Environmental Concerns*

Currently, vessels anchor in the areas surrounding existing Anchorage Q between York Spit Channel and Cape Charles, VA, with no limitation to how many vessels may anchor in the area or how close to shore they may anchor. Numerous concerns submitted in the comments regarding the environment appear to address this current condition. We share these concerns, and by establishing Anchorage R, we are addressing environmental concerns in three ways.

First, creating this anchorage as part of 33 CFR 110.168 means that we are applying to these waters the anchorage regulations applicable to all other anchorage grounds in the Hampton Roads area, found in 33 CFR 110.168(c), “General regulations.” These regulations address port coordination and congestion, time limits, and vessel seaworthiness and readiness while also providing the COTP discretion in prescribing conditions and anchoring locations for vessels. The suite of regulations improves the overall safety

<sup>26</sup> See “VAMRC letter, Dec 5, 2019” in the docket.

<sup>27</sup> See “USCG letter to VADEQ, Jan 9, 2020” and “VADEQ letter to USCG, Jan 10, 2020” in the docket.

<sup>28</sup> See “VADEQ letter to USCG, Jan 16, 2020” in the docket.

<sup>29</sup> See “USCG letter to VADEQ, Feb 5, 2020” in the docket.

of the port and vessels anchoring in it. This reduces risks of collisions, groundings, and other incidents, which, in turn, reduces the overall environmental risk in those locations. Second, we are creating two additional requirements for vessels using Anchorage R, which we discuss in further detail in Section III.E below and have published in the regulatory text at the end of this document in § 110.168(e)(10). Third, by establishing the anchorage, we are establishing boundaries for the vessels using those waters, limiting the number of vessels anchoring in the vicinity of Cape Charles to around 30 depending on vessel size, and locating vessels so that they anchor approximately no closer than 3 nautical miles from shore. Thus, we conclude this administrative action positively impacts the environment.

#### *E. Solid Waste, Coal Residue, Oil, and Air Pollution Concerns*

A number of comments mentioned concerns regarding pollution from anchoring ships and requested the Coast Guard implement programs to monitor and reduce pollution potential. In the preamble to the NPRM,<sup>30</sup> we described the suite of international and federal treaties, laws, and regulations that protect navigable waters of the United States from pollution discharge from vessels. While those protections remain in place, we are further addressing pollution risks by adding requirements specifically for Anchorage R that were not proposed in the NPRM. New § 110.168(e)(10), “Anchorage R,” adds two requirements in addition to the general regulations for vessels using the anchorage. First, no vessel may transfer oil or chemicals in bulk to any other vessel without permission of the COTP. This provides the COTP the ability to control the conditions of lightering or transfer operations. Second, a non-self-propelled vessel (like a barge) must be tended by a towing vessel unless otherwise given permission by the COTP. This reduces the risk of vessels without the means of propulsion of breaking away or dragging anchor and then causing harm to themselves or other vessels by grounding or collision.

One commenter noted that, with winds out of the west, an oil spill from one of the vessels would arrive at the shore (approximately 7 hours) long before the vessel’s contracted oil spill response organization is required to show up (24 hours), and suggested the Coast Guard pre-stage additional spill

response resources on Virginia’s Eastern Shore. Section 311(j) of the Federal Water Pollution Control Act (FWPCA), amended by Section 4202, requires the preparation and submission of response plans by the owners or operators of certain vessels.<sup>31</sup> Plan holders, through their response plans, must address the extremely complex system for assembling, mobilizing, and controlling response resources to maintain statutory compliance as well as being prepared to oil spills within their area of operation. Plan holders are required to submit a response plan to the Coast Guard that identifies and ensures, by contract or other approved means, the availability of response resources (personnel and equipment) necessary to remove, to the maximum extent practicable, a worst case discharge, including a discharge resulting from fire or explosion, and to mitigate or prevent a substantial threat of such a discharge. We believe the additional restrictions placed on anchored vessels by this rule intended to significantly decrease the likelihood of an oil spill, combined with existing laws and regulations in place to prevent, mitigate, and respond to oil spills from vessels, are enough. Thus, we made no changes from the proposed rule to address local oil spill response capability.

#### *F. Sewage Pollution and Requests for No-Discharge Zone*

Twenty-three written comments and additional oral comments from public meetings expressed concern about the discharge of sewage into Chesapeake Bay in the area of the proposed anchorage. Regulations allow vessels to discharge treated effluent from Type I or II Marine Sanitation Devices in most parts of Chesapeake Bay. Untreated sewage may not be discharged. Sewage requirements are outlined in Section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322), with further regulations issued by the Coast Guard and the EPA found in 33 CFR 159.7 and 40 CFR part 140, respectively.<sup>32</sup> Given the suite of laws and regulations already in place to address sewage from ships, we are making no changes to address sewage concerns.

Fifteen comments expressed concern regarding either incomplete or ineffective treatment of sewage, or of the nutrient levels contained in properly

treated effluent, and stated that no sewage discharges should take place at all within the proposed anchorage area. Many of these called for the creation of a no-discharge zone concurrently with the anchorage. The creation of a no-discharge zone is beyond the scope of this rulemaking. The EPA may establish a no-discharge zone for certain geographic areas when requested by a state.<sup>33</sup>

One comment recommended the Coast Guard ensure Regional Response Team III<sup>34</sup> was aware of the recommendations to create a no-discharge zone and to ask the Team to consider creating a no-discharge zone throughout the Chesapeake Bay. The Coast Guard sees that notification to the state, and not the Regional Response Team, is the more appropriate notification to ensure appropriate authorities are aware of the requests. Because Anchorage R is entirely within Commonwealth of Virginia waters, we sent a letter<sup>35</sup> dated November 7, 2019 to the Virginia Department of Environmental Quality,<sup>36</sup> notifying them of this rulemaking and the comments received requesting consideration of a no-discharge zone. Due to the concerns regarding navigation safety and vessel proximity to shore, we are not delaying publication of this rule while other authorities consider the requests for a no-discharge zone.

#### *G. Risk of Vessels Dragging Anchor*

Some comments expressed concerns with risks of ships dragging anchor. In the preamble to the NPRM,<sup>37</sup> we described existing regulations intended to minimize the chances of vessels dragging anchor. Some of these regulations apply to all deep draft vessels operating in U.S. waters, but some are specific to the regulations for vessels using Hampton Roads, VA, anchorages, including § 110.168(c)(8), (9), (10), and (15). Additionally, we

<sup>33</sup> See the EPA website discussing no discharge zones: <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs>.

<sup>34</sup> Regional Response Team III is the regional component of the National Response System within which the Chesapeake Bay fully resides. For more information on the Team, visit: [https://www.nrt.org/site/site\\_profile.aspx?site\\_id=35](https://www.nrt.org/site/site_profile.aspx?site_id=35).

<sup>35</sup> See document titled “USCG letter to VADEQ, Nov 7, 2019” in the docket.

<sup>36</sup> The Virginia Department of Environmental Quality is the state agency with authority of Virginia’s No Discharge Zone Program: <https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/NoDischargeZoneDesignations.aspx>.

<sup>37</sup> See section III.1, third paragraph of “Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA” on the docket.

<sup>30</sup> See section III.1, second paragraph of “Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA” on the docket.

<sup>31</sup> Implementing regulations are found in 33 CFR part 155.

<sup>32</sup> See the EPA website providing an overview of vessel sewage discharge laws and regulations: <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-statutes-regulations-and-related-laws-and>.

created a new requirement specific to Anchorage R, § 110.168(e)(10)(ii) found in the regulatory text at the end of this document which requires that a non-self-propelled vessel (like a barge) must be tended by a towing vessel unless otherwise given permission by the COTP. This reduces the risk of vessels without the means of propulsion of breaking away or dragging anchor and causing harm to themselves or other vessels by grounding or collision.

One comment expressed concern regarding a cargo vessel grounding of April 15, 2014, where a vessel dragged anchor under gale force winds and grounded off the shore of Virginia Beach, VA. By creating Anchorage R, we are requiring that vessels otherwise anchoring near the town of Cape Charles have a higher state of readiness to prepare for and respond to environmental conditions that could cause them to drag anchor, like the sudden onset of gale force winds, and thus reduce the chances of groundings, collisions, and pollution spills.

#### *H. Concerns About Views From the Shore*

We received numerous comments opposing anchorage R due to the negative impacts of view from the shore, including potential decreased property values and diminished tourism appeal. As we note above, vessels have been anchoring in the deep waters between York Spit Channel and Cape Charles of their own volition and without anchorage boundaries to guide them. In the NPRM,<sup>38</sup> we explained how we changed the boundaries of the anchorage described in the ANPRM in an effort to propose an anchorage with boundaries that would keep vessels from anchoring as close to shore as they had been (as close as 1.5 NM, or, 3,000 yards). The eastern boundary of the anchorage is designed to anchor vessels no closer than approximately 2.8 NM from shore. Considering the maximum number of vessels that visited those waters at any one time in 2017 and 2018, we view the design of the anchorage as a balanced fit between view concerns, available water for anchoring, and peak usage. Therefore, we are not changing the boundary of the anchorage from that proposed in the NPRM.

#### *I. Concerns About Vessel Congestion and Anchorage Duration*

Many comments noted concern about vessel congestion, suggesting that the port complex should not be extending

northward into the Chesapeake Bay. The number of vessels calling on the Hampton Roads area is beyond the Coast Guard's control, and denying vessels calling on the port access to safe anchoring grounds is counter to safety and environmental stewardship. We are establishing Anchorage R to provide controls over those vessels choosing to anchor in the naturally deep water near Cape Charles.

Other comments noted concerns that vessel stays within the anchorage should be limited and specified various lengths. The general regulations for Hampton Roads anchorages (33 CFR 110.168(c)(2)) state that except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains permission from the COTP. Since no such time limit previously existed for vessels anchoring in the area of Anchorage R (except those within the limits of old Anchorage Q), vessels were able to remain anchored indefinitely. We find that the 30-day limit is sufficient to address anchorage duration.

#### *J. Concerns About Negative Impact on Fisheries*

Many comments raised general concerns about impacts to fisheries. We contend that these comments are not applicable to the Coast Guard's action of establishing the anchorage grounds for the same reasons described in the discussions above regarding compliance with the NEPA and the CZMA. The comments pertain to the presence and number of vessels already anchoring in the area, not about the Coast Guard's administrative controls this anchorage will provide. We find that the action of establishing Anchorage R has no adverse effect; the risks to fisheries from anchored vessels in the waters of Anchorage R pre-exist the Coast Guard's designation of the anchorage. We are making no changes based on these comments.

#### *K. Concerns About Light Pollution*

A number of comments discussed concerns with potential interference to migrating birds, light trespass, and non-conformance with Northampton County requirements for dark sky-type lighting. Like other pollution or water use concerns, we find the action of establishing Anchorage R has no adverse effect; the existence of the lights from anchored vessels in the waters of Anchorage R pre-exists the Coast Guard's designation of the anchorage. We are making no changes based on light pollution-related comments.

One commenter cited a study concluding that artificial light at night

may have a negative effect on nocturnally migrating birds and suggested the Coast Guard incorporate light pollution measures during bird migration periods. We are not able to incorporate such measures with this rulemaking. Vessels operating on U.S. waters are required to follow the Inland Navigation Rules which govern the behavior of vessels underway, at anchor, and in other conditions, including prescribing the lights which vessels must exhibit. These rules<sup>39</sup> require vessels greater than 100 meters (328 feet) in length at anchor to illuminate their decks and exhibit the fore and aft all-around lights required for smaller vessels. Because the Inland Rules are both designed to be in harmony with International Regulations for Preventing Collisions at Sea and put specific responsibility on masters and crew to comply with them,<sup>40</sup> this rulemaking may not counter or interfere with the Inland Rules. The Coast Guard may establish special anchorage areas, which allow anchored vessels to be unlighted,<sup>41</sup> but this type of anchorage is not applicable for use at Anchorage R for two reasons. First, unlighted vessels in these anchorage areas must be 65 feet or less in length; the majority of vessels anchoring in the waters of Anchorage R exceed this length. Second, such areas should be located where general navigation will not be endangered by unlit vessels. The waters of Anchorage R are located adjacent to York Spit Channel, the primary north-south thoroughfare for deep draft vessels transiting the lower Chesapeake Bay. Also, the anchorage ground itself is intended to be navigated by vessels arriving and departing at night, where unlighted vessels would increase navigation risk.

Regarding light trespass and Northampton County lighting requirements, Anchorage R requires vessels to anchor further from the Northampton shoreline and is an improvement over the Coast Guard taking no action. One comment requested the Coast Guard consider adding lighting rules specific to Anchorage R that would be compatible with the Northampton County Zoning Ordinance<sup>42</sup> requirements. As

<sup>39</sup> Rules for lighting anchored vessels are found in 33 CFR 83 subpart C, "Lights and Shapes," Rules 20, 21, 22, and 30.

<sup>40</sup> Rule 1, "Application," (33 CFR 83.01) describes the how the Inland Navigation Rules interact with the international community and preempt state and local rules "within the same field." Rule 2, "Responsibility," (33 CFR 83.02) describes master and crew responsibilities.

<sup>41</sup> See 33 CFR 109.10.

<sup>42</sup> At the time of this rulemaking, general lighting standards for Northampton County are found in

<sup>38</sup> See section III.4 of "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA" on the docket.

discussed above, this rulemaking may not counter lighting requirements of the Inland Navigation Rules.

#### L. Concerns About Noise Pollution Risks

Many comments noted concerns of hearing noises made by ships, adding to the nuisance of the vessels anchoring offshore Cape Charles. We find that the action of establishing Anchorage R has no adverse effect; the existence of the noise produced by anchored vessels in the waters of Anchorage R pre-exists the Coast Guard's designation of Anchorage R as an anchorage ground.

#### M. Risks of Ballast Water Discharge and Invasive Species Concerns

A number of comments expressed concerns regarding the negative impact on the environment caused by discharge of ballast water in Anchorage R. One specifically warned that the proximity of the anchorage to aquaculture sites increased those sites' exposure to potential nonindigenous shellfish pathogens which could be introduced by ships at anchor discharging ballast water. We find that the action of establishing Anchorage R has no adverse effect; the risks posed by vessels anchoring in the area existed before our designation of the anchorage.

Vessels carry ballast water to add weight in specific locations, allowing the ship to control or maintain trim, draught, stability, or hull stresses it encounters due to adverse sea conditions or changes in cargo weight, fuel and water. We are committed to protecting U.S. waters from invasive species and work closely with the international community to find solutions that minimize ballast water risks while maintaining maritime trade.<sup>43</sup> Commercial vessels such as those that anchor near Cape Charles, VA, as well as those that transit, anchor, moor, or otherwise use waters in the Hampton Roads area must meet federal requirements<sup>44</sup> for ballast water management. These stipulate that ballast water obtained in overseas coastal areas that might contain invasive species be exchanged with ocean water 200 miles from shore or treated with

section 154.2.112 of Northampton Zoning Ordinance, on page 105.

<sup>43</sup> See the USCG website for ballast water management frequently asked questions: [https://www.dco.uscg.mil/Portals/9/MSD/BWMS/Ballast\\_Water\\_FAQs.pdf?ver=2018-06-06-123015-850](https://www.dco.uscg.mil/Portals/9/MSD/BWMS/Ballast_Water_FAQs.pdf?ver=2018-06-06-123015-850).

<sup>44</sup> Regulations for ballast water management in waters of the United States are in 33 CFR part 151 subpart D. Further guidance for ballast water management systems at the time of this rulemaking are in Navigation and Vessel Inspection Circular 01-18, "Ballast Water Management for Control of Non-indigenous Species in Waters of the United States."

onboard systems to prevent the discharge of viable living organisms.

#### N. Security Concerns

Some comments asked whether having unattended foreign ships anchored in the Chesapeake Bay is a security concern. Vessel security is of vital importance, which is why the United States enacted the Maritime Transportation Security Act and the Coast Guard issued supporting regulations,<sup>45</sup> and continues to work closely with the international community in the implementation and enforcement of the International Ship and Port Facility Security Code.<sup>46</sup> Together, these requirements ensure seagoing vessels and their operating companies have rigorous security requirements for training, security planning, physical and operational security measures, and record keeping. Furthermore, federal requirements mandate that U.S. vessels in commercial service and foreign vessels entering port must provide an advance notice of arrival<sup>47</sup> to the Coast Guard. The vessel's notice of arrival is vetted by numerous federal agencies to ensure compliance with applicable safety and security laws prior to the vessel and its crews entering U.S. waters. Regarding foreign crewmembers, U.S. Customs and Border Protection (CBP) screen and provide escort protocol for those individuals who are seeking to go ashore. All crewmembers must remain onboard the vessel unless clearance from CBP has been obtained. As noted previously, we view the action of creating Anchorage R as having no adverse effects; security requirements for anchored vessels remain unchanged whether the anchorage exists or not.

#### O. Requests That Vessels Delay Arrival or Remain at Sea Instead of Anchoring

Five comments recommended the Coast Guard consider requiring ships to remain offshore or otherwise delay their arrival. In Section III.A above, we explained that vessels have been anchoring in the vicinity of Anchorage R with no restrictions and will continue to do so; the logistical, safety, and economic factors that vessels consider when determining whether to delay arrival are outside the scope of this rulemaking. We have protocols for barring or delaying vessels from port entry based on safety, security, and

<sup>45</sup> 33 CFR part 104.

<sup>46</sup> See the International Maritime Organization site discussing international maritime security requirements for vessels: [http://www.imo.org/en/OurWork/Security/Guide\\_to\\_Maritime\\_Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx](http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx).

<sup>47</sup> 33 CFR part 160, subpart C.

environmental compliance factors. Every arriving vessel, whether destined for a pier or an anchorage, is individually vetted against these factors. However, we do not bar a vessel from port entry based on its intended destination alone.

We received supporting comments describing the importance of having safe, protected anchorage space for conducting maintenance and other activities that would otherwise be too unsafe to conduct in offshore conditions, noting the area of Anchorage R as the best location for such activities in the Hampton Roads area. We made no changes based on these comments.

#### P. Requests That the Coast Guard Develop an Anchoring Management Plan

Five comments recommended the Coast Guard develop an anchor management plan, some of which proposed specific provisions for the Coast Guard to consider. We agree with the following two proposed provisions and have amended the language of the regulation in this final rule to meet the intent of the proposals:

First, "[n]o lightering, bunkering, or lube oil transfers shall take place at Cape Charles Anchorage without the permission of the USCG COTP." We agree and have included provisions about the transfer of oil in new paragraph (e)(10)(i) of the regulatory text at the end of this document.

Second, "[t]ugs with barges shall be in attendance of their tows or barges. Any towing vessel that is departing the anchorage but leaving its tow at anchor within the anchorage shall inform the USCG COTP of the estimated time of returning to the barge, continuously monitor VHF Channels 13 and 16, and by any means appropriate monitor the position and status of the tow." We agree with the intent of the proposal, and generally believe that no unattended barges should be left at Anchorage R. We have added paragraph (e)(10)(ii) of the regulatory text at the end of this document to address potential dangers presented by unattended barges.

We agree with the intent of the following proposed provisions we have quoted below but, as indicated, we believe that they are already fully addressed by existing, applicable regulations:

"Restrict vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which are considered necessary for safe operation under the circumstances" and "restrict entering or

departing the anchorage in severe weather conditions.” Existing regulations require vessels bound for or departing from ports or places within the navigable waters of the United States to notify the Coast Guard of hazardous conditions either on board the vessel or caused by the vessel or its operation. These regulations further provide the COTP the authority to issue special orders to vessels when justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, other temporary hazardous circumstances, or the condition of the vessel.<sup>48</sup> These regulations are sufficient to insure the safety of the vessels during hazardous conditions, and fully address the intent on the proposed provisions.

“Vessels shall display the appropriate anchoring lights at nights and during periods of low visibility while at anchor.” This is already required by Rule 30 of the Inland Navigation Rules.<sup>49</sup>

“Vessels required to carry and use Automatic Identification System<sup>50</sup> should operate their AIS while at anchor.” This is already required by 33 CFR 164.46(d)(2)(v), which mandates “the continual operation of AIS and its associated devices (e.g., positioning system, gyro, converters, displays) at all times while the vessel is underway or at anchor. . . .”

“A vessel must maintain an anchor watch and must have procedures to detect a dragging anchor” and “No vessel may anchor in a ‘dead ship’ state (propulsion or control unavailable for normal operations) without the prior approval of the USCG COTP and must have propulsion available within 30 minutes in case of anchor dragging or other situation.” This is generally already addressed in navigation safety regulations.<sup>51</sup> Coast Guard Sector Virginia receives requests from vessel operators that desire to go into a “dead ship” state and depending on current and expected environmental conditions, the request may be denied or an assist tug may be required to be on site during the dead ship period in order to ensure compliance with that regulation.

“Whenever it is detected that a vessel’s anchor is dragging, the person in charge of the vessel shall immediately notify the COTP.” Any situation where a vessel drags anchor and is unable to make immediate effective corrective action would be considered a hazardous condition,

which is required to be reported immediately to the Coast Guard.<sup>52</sup> Also, see the discussion in Section III.G above.

“Prohibiting anchorage of any vessel that has machinery or hull damage that poses a threat to the safety of the port.” A vessel operator is already required to notify the Coast Guard immediately of any marine casualty or hazardous condition. Existing COTP authority gives the Coast Guard the authority to direct the movement of a vessel in such circumstances, and existing anchorage regulations in § 110.168(c)(3) cover this case.

“Be prepared to get underway as directed by the USCG COTP.” This is already generally addressed in § 110.168(c)(9) of the Hampton Roads Anchorage regulations.

We do not agree with proposed provisions that would make any requirement that a vessel must notify COTP for routine operations because Coast Guard Sector Virginia does not currently have a Vessel Traffic Service capability as found in some other parts of the country where such routine tracking of vessels would take place through mandatory vessel check-ins.

We do not agree with a proposed provision to implement additional ballast water discharge restrictions. The Coast Guard has established a standard for allowable concentration of living organisms in ships’ ballast water discharged into waters of the United States, and we believe this standard is sufficient.<sup>53</sup>

#### *Q. Requests To Extend the Comment Period*

Some comments requested an extended comment period. Given the attention focused on this issue by our publication of the ANPRM and public meetings on the ANPRM, the Coast Guard believes that the opportunities provided by the NPRM comment period and accompanying public meetings were sufficient for public comment.

#### *R. Anchorage Proponents*

Seven comments supported a new, deep-water anchorage due to the growing maritime infrastructure in the Hampton Roads area. With limited availability of a deep draft anchorage in the existing naval anchorages, we believe this rule enhances navigation safety and more safely and effectively supports commercial vessel anchoring needs in the lower Chesapeake Bay. Five comments were generally supportive of the anchorage. One

written comment suggested the anchorage would have a positive impact on fisheries.

#### **IV. Discussion of the Final Rule**

The Coast Guard is establishing a new Anchorage R and relocating and increasing the size of the existing Quarantine Anchorage Q. This reflects our consideration of all comments received on the NPRM and our preliminary Record of Environmental Consideration, which we developed after issuing an ANPRM. This rule will more effectively establish a new deep-water anchorage ground for commercial vessels to support the new and projected growth in vessel traffic throughout the Hampton Roads area. Anchorage R will be located in naturally deep water with charted depths between 25 and 101 feet. Depths in the northern portions of the anchorage range from 45 to 101 feet. Depths in the southern portion range from 25 to 45 feet.

The 7.9 NM long eastern boundary of Anchorage R is located generally 3 NM west of Cape Charles, VA. The southernmost boundary is 3.9 NM long and runs parallel with and 500 yards north of the existing Regulated Navigation Area.<sup>54</sup> The western boundary of the anchorage grounds runs parallel along, and no less than 500 yards east of York Spit Channel for 13.9 NM, including an 11.2 NM length between Lighted Buoy 24 and 38 and then continuing northeast for 2.7 NM beyond Lighted Buoy 38. The anchorage is 0.6 NM long at its northern boundary.

The Coast Guard is moving the existing Quarantine Anchorage (Anchorage Q), from the current location 3.5 NM to the west of Cape Charles, VA, and east of York Spit Channel between Lighted Buoys 36 to 38, relocating it 6 NM southwest of Fishermans Point, VA. The new location runs 625 yards west of York Spit Channel between buoys 16 and 18. The eastern boundary of Anchorage Q runs parallel to York Spit Channel for 2.2 NM. The southernmost boundary is 1.3 NM from the emergency restricted area outside the Chesapeake Bay Bridge Tunnel. The westernmost boundary is 2.2 NM. The northernmost boundary is 450 yards southwest of York River Entrance Channel and runs for 1.3 NM. Its size is increasing from approximately 1.1 to 1.7 square miles.

We made five changes to the regulatory text from that published in the NPRM. The first two are rules specific to Anchorage R. We added paragraphs (e)(10)(i) and (ii) in response to comments submitted to the docket

<sup>48</sup> 33 CFR 160 subparts B and C.

<sup>49</sup> 33 CFR 83.30.

<sup>50</sup> 33 CFR 164.46.

<sup>51</sup> 33 CFR 164.19.

<sup>52</sup> 33 CFR 160.216.

<sup>53</sup> 33 CFR 151, subpart D.

<sup>54</sup> 33 CFR 165.501.

and reiterated in public meetings addressing environmental vulnerabilities unique to the characteristics of the Cape Charles area, explained in the “Discussion of Comments” section above. They restrict bulk transfers of oil and hazardous material and require non-self-propelled vessels to be attended by towing vessels. The other three changes to the regulatory text address that the coordinates for anchorages (Q) and (R) are based on the World Geodetic System (WGS84). In our introductory text of § 110.168(a) “Anchorage Grounds” we added “Unless otherwise stated, . . .” to the beginning of the sentence. The sentence now reads “Unless otherwise stated, all coordinates in this section for anchorage grounds are based on North American Datum of 1983 (NAD 83).” We added the following clarification to both sentences of paragraphs (a)(6) and (7) “. . . , which are based on the World Geodetic System (WGS84) . . .” Both sentences now read “The waters bound by a line connecting the following points, which are based on the World Geodetic System (WGS84):”

The regulatory text, including the coordinates mention above, appears at the end of this document. You may find an illustration of the anchorage grounds in the “Anchorage Boundary Development” document in the docket.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and historical vessel traffic data pertaining to the anchorage locations. The regulation would ensure approximately 18 square miles of new anchorage grounds are designated, applying

existing regulations for anchorages in the Hampton Roads area to vessels anchoring between York Spit Channel and the town of Cape Charles, VA, and would ensure approximately 1.7 square miles of anchorage grounds are available for vessels that requires an examination by public health, customs, or immigration authorities. This regulatory action provides for needed commercial deep draft anchorage while enhancing the navigational safety and environmental stewardship of large naval and commercial vessels transiting the lower Chesapeake Bay.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to use the anchorage may be small entities, for the reasons stated in section IV.A above, this rule would not have a significant economic impact on any vessel owner or operator. The towns and communities along the west coast of Eastern Shore of Virginia have an economy based on tourism and numerous small entities and businesses. The addition of Anchorage R will regulate and move vessels that are currently anchoring in the general vicinity away from the shore and beaches, lessening impacts these small entities may currently experience. Two comments were received claiming significant impact to small entities, citing the small business and municipalities in the Cape Charles area. The Coast Guard disagrees that this regulation would have a negative effect compared to the alternative that the no action would have to small entities; vessels are already anchoring in this area.

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. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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). 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.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

### E. 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 (adjusted for inflation) 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.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending the regulations for Hampton Roads and adjacent water anchorages by establishing an anchorage, Anchorage R, approximately 3 NM west of Cape Charles, VA and increasing the size of and relocating the existing Quarantine Anchorage, Anchorage Q, to a more secluded position that is 6 NM southwest of Fishermans Point, VA. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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, 2071; 46 U.S.C. 70034; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.168:

- a. Revise the section heading;
■ b. Add paragraph (a) introductory text;
■ c. Revise paragraph (a)(6); and
■ d. Add paragraphs (a)(7) and (e)(10).

The additions and revisions to read as follows.

§ 110.168 Hampton Roads, Virginia and adjacent waters.

(a) Anchorage grounds. Unless otherwise stated, all coordinates in this section for anchorage grounds are based on North American Datum of 1983 (NAD 83).

\* \* \* \* \*

(6) Anchorage Q. Quarantine Anchorage. The waters bound by a line

connecting the following points, which are based on the World Geodetic System (WGS84):

Table with 2 columns: Latitude and Longitude. Rows: 37°05'40" N 076°08'12" W, 37°05'40" N 076°07'19" W, 37°03'46" N 076°05'58" W, 37°03'46" N 076°06'51" W

(7) Anchorage R. The waters bound by a line connecting the following points, which are based on the World Geodetic System (WGS84):

Table with 2 columns: Latitude and Longitude. Rows: 37°19'10" N 076°05'00" W, 37°12'00" N 076°05'00" W, 37°09'08" N 076°08'19" W, 37°11'23" N 076°08'49" W, 37°19'10" N 076°05'46" W

\* \* \* \* \*

(e) \* \* \*

(10) Anchorage R. (i) No vessel using Anchorage R may conduct oil or hazardous material transfer operations subject to 33 CFR part 156 except with permission of the COTP.

(ii) Any non-self-propelled vessel using Anchorage R must have a towing vessel in attendance except with permission of the COTP not to have a towing vessel in attendance.

Dated: May 6, 2020.

Keith M. Smith,

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

[FR Doc. 2020-10100 Filed 5-27-20; 8:45 am]

BILLING CODE 9110-04-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1213

[FDMS No. NARA-20-0009; Agency No. NARA-2020-03f4]

RIN 3095-AC04

Administrative Guidance Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule codifies our policies and procedures for reviewing and clearing administrative guidance documents.

DATES: Effective July 7, 2020, unless we receive adverse comments by June 29, 2020 that warrant revising or rescinding this rulemaking.

ADDRESSES: You may submit comments, identified by RIN 3095-AC04, by either of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov. Search for RIN 3095-AC04 and follow the site's instructions for submitting comments.

• Mail (for paper, flash drive, or CD-ROM submissions. Include RIN 3095-AC04 on the submission): National Archives and Records Administration; Regulation Comments Desk, Suite 4100; 8601 Adelphi Road; College Park, MD 20740-6001.

We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at regulation\_comments@nara.gov, or by telephone at 301.837.3151.

SUPPLEMENTARY INFORMATION: This rule codifies internal policies and procedures on developing, reviewing, and clearing guidance documents, which ensure that all guidance documents receive appropriate review before we issue them. This rule also responds to Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents (October 9, 2019), which requires Federal agencies to issue final regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents. As a result, this rule incorporates requirements from the E.O. that were not otherwise in our internal procedures, primarily a requirement for a centralized guidance portal on our website and a requirement that the comment period for significant guidance documents be at least 30 days, except when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.

The procedures contained in this rule apply to all guidance documents. We define guidance documents as established by OMB and the E.O.: Any statement we make of agency policy or interpretation concerning a statute, regulation, or technical matter within our jurisdiction that we intend to have general applicability and future effect on the behavior of regulated parties, but which we do not intend to have the force or effect of law in its own right on non-Governmental regulated parties, and for which a statute does not otherwise require us to follow the rulemaking procedures of the Administrative Procedure Act.

We review guidance documents before we issue them so they are written in plain language and do not impose any substantive requirements above and