

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[CGD05-04-043]

RIN 1625-AA01

#### Anchorage Grounds, Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the anchorage regulations in the Port of Hampton Roads. Infrastructure improvements and increases in vessel traffic and draft entering the port have prompted this proposed rulemaking. The proposed changes to this regulation will ensure that the Hampton Roads Anchorage Grounds continue to safely support current and future vessel anchoring demands.

**DATES:** Comments must be received on or before December 27, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Room 401, Portsmouth, VA 23704-5004. Commander (oan), 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 the Fifth Coast Guard District 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 (oan), (757) 398-6285, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-04-043), 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.

### Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one 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**.

### Background and Purpose

Recreational, public, and commercial vessels use the Hampton Roads Anchorage Grounds. General regulations covering the anchorage of vessels in the port are set out in 33 CFR 110.168. In June 1986, the U.S. Army Corps of Engineers (USACE) completed a study of the Norfolk Harbor, including its anchorages. The study is entitled, "General Design Memorandum 1, Norfolk Harbor and Channels, Virginia, Main Report." Comments from the Coast Guard, Navy, Virginia Port Authority, Virginia Pilots Association and Hampton Roads Maritime Association requesting improvements to Anchorages F and K were considered in the study. Anchorage F currently has two 400-yard radius berths. The USACE, in 1998, constructed a single 500-yard radius berth for Anchorage F and is currently maintaining the anchorage at a project depth of 50 feet. This proposed rule would change Anchorage F to a single 500 yard radius berth to reflect the construction completed by the USACE in 1998. The USACE was congressionally authorized in November

of 1986 to increase the channel depth of Anchorage F to 55 feet deep, *see* H. Doc. 99-85, 99th Cong., 1st session.

Improvements were also proposed by the Coast Guard to the Newport News Middle Ground, Anchorage K, by increasing the easternmost berth, K-1 from a swing radius of 400 yards to one of 500 yards. In addition, Berth K-2, currently maintained at 40 feet, would be deepened to 45 feet. The increase in size to Berth K-1, the increase in depth to Berth K-2 and the increase in depth to Anchorage F have all been congressionally authorized and will be scheduled once the increase in arrivals of vessels with deeper drafts support the project. The circular boundaries for Berth K-1, referred to as East Anchorage, and Berth K-2, referred to as West Anchorage, will be shown on future chart editions for the area when the final rule for this regulation is published.

It is proposed that Anchorage K be separated into an upper and lower section, and divided by the Fairway for Shallow Draft Vessels and Tows. This would restrict vessels from anchoring inside the limits of that channel.

A new quarantine anchorage, new Anchorage Q, is proposed to replace Berth K-3, which is currently not maintained by the USACE. The new quarantine anchorage would be located east of York Spit Channel between Chesapeake Channel Lighted Buoy 36 and Chesapeake Channel Lighted Buoy 38 west of Cape Charles. The new anchorage would be located in naturally deep water with charted depths in excess of 60 feet and would have two 500-yard, swing-radius berths.

Current trends indicate that shipping companies will call on the Port of Hampton Roads using larger, deeper draft vessels, thereby creating a need for fewer trips when visiting the port of Hampton Roads in the future. With the increase in size, The Navigation Plan for the Port of Hampton Roads, conducted by the USACE in February of 2000, indicated that by the year 2010 almost 40 percent of containerized cargo will be moved on ships capable of carrying 4,000 twenty-foot trailer equivalent units (TEU). Some "Mega Ships" already in service are capable of carrying up to 6,000 TEUs. The average container ship calling on the port today carries between 1,500 and 4,000 TEUs. The bulk carriers that call on the Port

of Hampton Roads have also increased in size and will play a significant role in the port's future design considerations. In addition to the projected increase in the size of vessels calling on the Port of Hampton Roads, there are two infrastructure improvement projects in the port that affect the anchorage grounds. In September 2001, APM Terminals North America, Inc. (Maersk) purchased 570 acres of property located on the Elizabeth River, south of Craney Island. Dredging has begun in the vicinity of Anchorage P for the development of a major marine container handling facility on this property. The first ship is due to moor at this new terminal sometime in

2007. Anchorage P lies between the future terminal and the Federal navigation channel. Parts of Anchorage P will be made unusable following completion of the terminal and the approach channels. Maersk has requested the discontinuation of Anchorage P.

Likewise, the construction of the Norfolk International Terminal North (NIT North) approach channel, which passes through the existing Anchorage M, has rendered that anchorage unusable. This proposed rule would discontinue Anchorage M.

To further enhance the safety of the port anchorages, this rule proposes to amend the regulations of the boundaries

of Berths 3 and 4 within Explosive Anchorage G. Currently, these berths overlap each other and pose a potential hazard to anchored vessels. The proposed rule would separate the berths, eliminating the risk of collision as a result of overlapping swing circles.

The proposed rule would rename existing Anchorage R as Anchorage M, rename existing Anchorage T as Anchorage N, rename existing Anchorage U, The Hague, as Anchorage O, The Hague.

The proposed rule would eliminate existing Anchorages Q and S. The proposed changes are listed in the following Table:

Current anchorage [33 CFR 110.168(a)]	Proposed change
A—Cape Henry Naval Anchorage (1) .....	No change.
B—Chesapeake Bay, Thimble Shoals Channel Naval Anchorage (CBTSC) [(2)(i)].	No change.
C—CBTSC Naval Anchorage [(2)(ii)] .....	No change.
D—CBTSC Naval Anchorage [(2)(ii)] .....	No change.
E—Commercial Explosive Anchorage [(2)(iv)] .....	No change.
E—1 Explosive Handling Berth [(2)(iv)(A)] .....	No change.
F—Hampton Bar [(3)(i)] .....	No changes to anchorage limits. One 500-yard swing radius berth would replace two 400 yard swing radius berths. Single berth dredged to a depth of 50 feet in 1998, authorized depth 55 feet. New regulations would be included in part [(e)(3)] excluding vessels with drafts less than 45 ft from using Anchorage F without permission from the Captain of the Port. Previously, vessels with a draft less than 40 ft and a length of less than 700 ft were excluded.
F—1 [(3)(i)(A)] .....	Designation would refer to 500 yard berth.
F—2 [(3)(i)(B)] .....	Discontinue F—2.
G—Hampton Flats Naval Explosives Anchorage [(3)(ii)] .....	New center positions created for Berths 3 and 4, which would remove overlapping circumferences.
G—1 Explosives Handling Bert [(3)(ii)(A)] .....	No change.
G—2 Explosives Handling Bert [(3)(ii)(B)] .....	No change.
G—3 Explosives Handling Bert [(3)(ii)(C)] .....	A new center position would replace current center position to remove overlapping circumferences with G—4.
G—4 Explosives Handling Bert [(3)(ii)(D)] .....	A new center position would replace current center position to remove overlapping circumferences with G—3.
H—Newport News Bar [(3)(iii)] .....	No change.
I—Newport News [(4)(i)] .....	No change to existing boundary lines. A new center position is proposed for Berth I—2.
I—1 [(4)(i)(A)] .....	No change.
I—2 [(4)(i)(B)] .....	A new center position would replace current center position removing ambiguous boundary lines.
J—Newport News Middle Ground [(4)(ii)] .....	No change.
K—Newport News Middle Ground [(4)(iii)] Anchorage [(3)(ii)] .....	Replace boundary lines for K—1 and K—2 with berth circumferences. The CG proposes to remove K—3. Separate Anchorage K into an Upper and Lower section.
K—1 East Anchorage [(4)(iii)(A)] .....	K—1 would have a 400 yard swing radius and be maintained at a depth of 45 ft. Future plans include increasing the swing radius to 500 yards.
K—2—West Anchorage [(4)(iii)(B)] .....	K—2 would have a 400 yard swing radius and be maintained at a depth of 40 ft. Future plans include increasing the depth to 45 ft.
K—3—Quarantine Berth [(4)(iii)(C)] .....	We propose to remove K—3 and establish a new quarantine anchorage adjacent to Cape Charles, east of York Spit Channel.
L—Craney Island Flats [(4)(iv)] .....	No change.
M—Norfolk Harbor Channel Anchorages (NHCA) [(5)(i)] .....	Old Anchorage M would be eliminated.
N—NHCA [(5)(ii)] .....	Old Anchorage N would be eliminated.
O—NHCA [(5)(iii)] .....	Old Anchorage O would be eliminated.
P—Lambert's Point [(6)(i)] .....	We would eliminate Anchorage P.
Q—Elizabeth River Anchorage (ERA)[(6)(ii)] .....	Old Anchorage Q would be eliminated.
R—ERA, Port Norfolk [(6)(iii)] .....	Current Anchorage R would be redesignated Anchorage M.
S—ERA, Port Norfolk [(6)(iv)] .....	We would eliminate Anchorage S.
T—ERA, Hospital Point [(6)(v)] .....	We would rename Anchorage T Anchorage N.
U—The Hague [(7)] .....	We would discontinue the use of the Anchorage U designation. Current Anchorage U would be redesignated Anchorage O.

Current anchorage [33 CFR 110.168(a)]	Proposed change
Q—Quarantine Anchorage .....	We proposed to establish a new quarantine anchorage adjacent to Cape Charles east of York Spit Channel.

### Discussion of Proposed Rule

No changes are proposed for Anchorage grounds A, B, C, D, and E. Regulations for Anchorage F would establish one 500 yard radius berth (F-1) that would replace the two 400 yard radius berths. Under our proposed regulations, vessels with a draft less than 45 feet would not be able to anchor in berth F-1 without permission from the Captain of the Port. Currently, vessels with a draft less than 40 feet and a length of less than 700 feet are excluded from using Anchorage F without permission from the Captain of the Port. Anchorage berth F-2 would be discontinued.

New center positions have been calculated for Berths G-3 and G-4 to separate intersecting circumferences. This action would remove any ambiguity and address safety concerns involving overlapping swing circles. Berths G-1 and G-2 would remain unchanged.

A new center position has been calculated for Berth I-2 to position it entirely within the boundary surrounding Anchorage I. The new position will move the berth northeast and remove any ambiguity associated with the limits of Anchorage I or Berth I-2.

No changes are proposed for Anchorages H and J. There are no ongoing improvement projects occurring in Anchorage K other than those required to maintain the two 400 yard radius berths. The circular boundary lines for Berth K-1, East Anchorage, and for Berth K-2, West Anchorage, would be shown on future chart editions instead of the current linear berth boundaries. Berth K-3 would be discontinued. No changes are proposed for Anchorage L.

Anchorage M, formerly referred to as Anchorage R, and Anchorage N, formerly referred to as Anchorage T, would remain available for small boat usage. Anchorage O, formerly referred to as Anchorage U, or The Hague, would also remain available for small boat usage.

A new anchorage would be established to replace the current quarantine berth designated K-3. The current language in 33 CFR 110.168 listing specific regulations for Berth K-3 will be removed. The new quarantine anchorage would be designated Q and located east of York River Spit Channel

between Chesapeake Channel Lighted Buoy 36 and Chesapeake Channel Lighted Buoy 38. Two berths, Q-1 and Q-2, each having a radius of 500 yards, would be designated within Anchorage Q. Specific regulations for Quarantine Anchorage, Anchorage Q, formerly Berth K-3, have been added to section (e) of the revised regulation. The letter designations P, R, S, T, and U would be discontinued.

### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed rule changes complement current anchorage usage and waterway modifications made by the USACE resulting in minimal impact.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the owners or operators of small pleasure craft wishing to anchor in the Elizabeth River anchorages that would be discontinued due to shallow natural water depths.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a

comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District (oan), at (757) 398-6285. 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.

### Collection of Information

The 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 proposed 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental

Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This 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 would not create an environmental risk to health or risk to safety that might 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 would 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 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. The proposed rule deals directly with establishing, disestablishing and renaming anchorage areas.

A draft "Environmental Analysis Check list" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make a final decision on whether the rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

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 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 § 110.168 to read as follows:

#### § 110.168 Hampton Roads, Virginia, and adjacent waters (Datum: NAD 83).

(a) *Anchorage Grounds*. (1) *Anchorage A (Naval Anchorage)*. The waters bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'33.0" N.	76°02'47.0" W.
36°57'02.8" N.	76°03'02.6" W.
36°56'45.0" N.	76°01'30.0" W.
36°55'54.0" N.	76°01'37.0" W.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages*.

(i) *Anchorage B (Naval Anchorage)*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'58.0" N.	76°06'07.0" W.
36°57'11.0" N.	76°03'02.1" W.
36°55'48.8" N.	76°03'14.0" W.
36°56'31.8" N.	76°06'07.0" W.
36°57'04.0" N.	76°06'07.0" W.
36°57'08.5" N.	76°06'24.5" W.

(ii) *Anchorage C (Naval Anchorage)*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'54.8" N.	76°09'41.5" W.
36°58'18.8" N.	76°07'18.0" W.
36°57'27.0" N.	76°07'37.5" W.
36°58'04.0" N.	76°10'00.0" W.

(iii) *Anchorage D (Naval Anchorage)*. The waters bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'49.0" N.	76°10'32.8" W.
36°58'04.0" N.	76°10'02.1" W.
36°57'31.2" N.	76°07'54.8" W.
36°55'24.1" N.	76°08'28.8" W.

(iv) *Anchorage E (Commercial Explosive Anchorage)*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'58.7" N.	76°13'47.0" W.
36°59'08.2" N.	76°10'33.8" W.
36°58'13.0" N.	76°10'51.8" W.
36°59'02.0" N.	76°14'10.2" W.

(A) *Explosive Handling Berth E–1 (Explosives Anchorage Berth)*: The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°59'05.0" N.	76°11'23.0" W.

(3) *Hampton Roads Anchorages*. (i) *Anchorage F, Hampton Bar*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'51.6" N.	76°19'12.0" W.
36°59'25.2" N.	76°18'48.5" W.
36°58'49.1" N.	76°19'33.8" W.
36°59'25.0" N.	76°20'07.0" W.

(A) *Anchorage Berth F–1*. The waters bounded by a line connecting the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°59'29.1" N.	76°19'15.1" W.

(ii) *Anchorage G, Hampton Flats (Naval Explosives Anchorage)*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'25.0" N.	76°20'07.0" W.
36°58'49.1" N.	76°19'33.8" W.
36°57'41.4" N.	76°21'07.7" W.
36°57'34.6" N.	76°21'26.7" W.
36°57'31.1" N.	76°22'01.9" W.
36°58'07.0" N.	76°22'03.0" W.
36°58'54.8" N.	76°21'42.6" W.

(A) *Explosives Handling Berth G-1*. The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°57'50.0" N.	76°21'37.0" W.

(B) *Explosives Handling Berth G-2*. The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'14.0" N.	76°21'01.5" W.

(C) *Explosives Handling Berth G-3*. The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'34.2" N.	76°20'31.4" W.

(D) *Explosives Handling Berth G-4*. The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'54.9" N.	76°20'03.2" W.

(iii) *Anchorage H, Newport News Bar*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'07.0" N.	76°22'03.0" W.
36°57'31.1" N.	76°22'01.9" W.
36°57'18.0" N.	76°24'11.2" W.
36°57'38.3" N.	76°24'20.0" W.
36°57'51.8" N.	76°22'31.0" W.

(4) *James River Anchorages*. (i) *Anchorage I, Newport News*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'06.7" N.	76°24'44.3" W.
36°56'22.6" N.	76°24'28.0" W.
36°56'03.0" N.	76°24'37.0" W.
36°57'53.7" N.	76°26'41.5" W.
36°58'23.0" N.	76°27'11.0" W.
36°58'48.5" N.	76°27'11.0" W.
36°58'35.4" N.	76°26'38.4" W.
36°57'51.7" N.	76°26'02.8" W.
36°57'30.6" N.	76°25'34.5" W.

(A) *Anchorage Berth I-1*. The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'08.5" N.	76°25'21.6" W.

(B) *Anchorage Berth I-2*. The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'23.8" N.	76°25'46.0" W.

(ii) *Anchorage J, Newport News Middle Ground*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'21.0" N.	76°22'22.1" W.
36°56'46.5" N.	76°22'39.3" W.
36°56'25.3" N.	76°23'48.0" W.
36°57'10.2" N.	76°24'09.9" W.

(iii) *Anchorage K Upper, Newport News Middle Ground*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'56.4" N.	76°20'30.5" W.
36°57'08.5" N.	76°20'31.0" W.
36°56'48.8" N.	76°20'20.1" W.
36°56'45.0" N.	76°20'32.0" W.
36°56'45.0" N.	76°21'37.7" W.
36°56'59.2" N.	76°22'31.5" W.
36°57'21.0" N.	76°22'22.1" W.
36°57'28.1" N.	76°21'11.7" W.

(A) *Anchorage Berth K-1*. The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'30.5" N.	76°20'45.3" W.

(B) *Anchorage Berth K-2*. The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'16.8" N.	76°21'09.5" W.

(iv) *Anchorage K Lower, Newport News Middle Ground*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°55'59.9" N.	76°22'11.7" W.
36°55'59.9" N.	76°24'00.0" W.
36°56'25.3" N.	76°23'48.0" W.
36°56'46.5" N.	76°22'39.3" W.
36°56'53.1" N.	76°22'34.5" W.
36°56'38.5" N.	76°21'39.1" W.
36°56'38.5" N.	76°20'47.0" W.

(v) *Anchorage Berth L, Craney Island Flats*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°56'48.8" N.	76°20'20.1" W.
36°56'04.2" N.	76°20'23.7" W.
36°55'59.9" N.	76°22'11.7" W.

(5) *Elizabeth River Anchorages*. (i) *Anchorage M, Port Norfolk*. The waters

bounded by a line connecting the following points:

Latitude	Longitude
36°51'45.7" N.	76°19'31.5" W.
36°51'45.8" N.	76°19'20.7" W.
36°51'37.8" N.	76°19'24.3" W.
36°51'32.5" N.	76°19'31.1" W.
36°51'40.7" N.	76°19'37.3" W.
36°51'45.7" N.	76°19'31.5" W.

(ii) *Anchorage N, Hospital Point*. The waters bounded by a line connecting the following points:

Latitude	Longitude
36°50'50.0" N.	76°18'00.0" W.
36°51'05.4" N.	76°18'22.4" W.
36°50'36.7" N.	76°17'52.8" W.
36°50'33.6" N.	76°17'58.8" W.
36°50'49.3" N.	76°18'09.0" W.
36°50'50.3" N.	76°18'07.8" W.
36°50'56.2" N.	76°18'12.5" W.
36°51'01.8" N.	76°18'32.3" W.

(iii) *Anchorage O, The Hague*. The waters of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(iv) *Anchorage Q, Quarantine Anchorage*. The waters bounded by a line connecting the following points:

Latitude	Longitude
37°17'13.7" N.	76°06'41.6" W.
37°17'30.3" N.	76°05'53.9" W.
37°16'25.0" N.	76°05'18.4" W.
37°16'08.4" N.	76°06'06.0" W.

(A) *Anchorage Berth Q-1*. The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
37°17'05.7" N.	76°06'08.9" W.

(B) *Anchorage Berth Q-2*. The waters bounded by the arc of a circle with a radius of 500 yards with the center located at:

(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 § 160.204 of this title.

*U.S. naval vessel* means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

(c) *General regulations*. (1) Except as otherwise provided, this section applies

to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or to 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, upon application, assign a vessel to a specific berth within an anchorage for a specified period of time.

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

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If an application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit with which the vessel must comply.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor must get underway at once or signal for a tug. The vessel must move to its new location within 2 hours after notification.

(9) 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 communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time must have two anchors in place, unless the Captain of the Port waives this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at a mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port

the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage must be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) must be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) if its steering or main propulsion equipment is impaired.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* This paragraph applies to every vessel, except a naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must be anchored or moored within Anchorage Berth E-1.

(2) Each vessel, including each tug and stevedore boat, used for loading or unloading dangerous cargoes or Class 1 (explosive) materials in an anchorage, must carry a written permit issued by the Captain of the Port.

(3) 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 valid identification.

(4) 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, must present the pass or other form of identification prescribed by paragraph (d)(4) of this section to any Coast Guard boarding officer who requests it.

(5) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(4) of this section.

(6) 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.

(7) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display

by day a red flag (Bravo flag) in a prominent location and by night a fixed red light.

(e) *Regulations for Specific Anchorages.* (1) *Anchorages A, B, C, and D.* Except for a naval vessel, military support vessel, or vessel in an emergency situation, a vessel may not anchor in Anchorages A, B, C, or D without the permission of the Captain of the Port. The Captain of the Port must consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorages A, B, C, or D.

(2) *Anchorage E.* (i) A vessel may not anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port must give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may at any time revoke a permit to anchor in Anchorage E issued under the authority of paragraph (e)(4)(i) of this section.

(iv) A vessel may not anchor in Anchorage Berth E-1, unless it is handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E-1 without the permission of the Captain of the Port, if the berth is occupied by a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(3) *Anchorage F.* A vessel having a draft less than 45 feet may not anchor in Anchorage F without the permission of the Captain of the Port. No vessel may anchor in Anchorage F for a longer period than 72 hours without permission from the Captain of the Port. Vessels expecting to be at anchor for more than 72 hours must obtain permission from the Captain of the Port.

(4) *Anchorage G.* (i) Except for a naval vessel, a vessel may not anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring Class 1 (explosive) materials in Anchorage G, naval vessels must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels are berthed at the Ammunition Barge Mooring Facility, located at latitude 36° 58' 34" N., longitude 76° 21' 12" W., no other vessel, except a vessel that is receiving or offloading Class 1 (explosive) materials, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility. Vessels transferring class 1 (explosive) materials must display by day a red flag (Bravo

flag) in a prominent location and by night a fixed red light.

(iv) Whenever a vessel is handling or transferring Class 1 (explosive) materials while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port must consult with the Commander, Naval Base Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) A vessel located within Anchorage G may not handle or transfer Class 1 (explosive) materials within 400 yards of Norfolk Harbor Entrance Reach.

(vi) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring Class 1 (explosive) materials.

(vii) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of Anchorage F or H.

(5) *Anchorage I: Anchorage Berths I-1 and I-2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth I-1 or I-2 without the permission of the Captain of the Port.

(6) *Anchorage K: Anchorage Berths K-1 and K-2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth K-1 or K-2 without the permission of the Captain of the Port.

(7) *Anchorage N.* Portions of this anchorage are a special anchorage area under § 110.72aa of this part during marine events regulated under § 100.501 of this chapter.

(8) *Anchorage O.* (i) A vessel may not anchor in Anchorage O unless it is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage O without the permission of the Captain of the Port.

(9) *Anchorage Q: Quarantine Anchorage.* (i) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities may anchor in Anchorage Q.

(ii) Every vessel using Anchorage Q must be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and must promptly vacate Anchorage Q after being examined and released by authorities.

(iii) When any vessel using Anchorage Q is under the charge of a pilot, the pilot shall remain on board while the vessel is in Anchorage Q.

(iv) Any non-self-propelled vessel using Anchorage Q shall have a tugboat in attendance while undergoing

examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

(v) Any non-self-propelled vessel using Anchorage P shall have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

Dated: September 2, 2004.

**Ben Thomason III,**

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

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### 33 CFR Part 325

RIN 0710-AA51

#### Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties

**AGENCY:** U.S. Army Corps of Engineers, DoD.

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

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is issuing an advance notice of proposed rulemaking (ANPRM) to obtain early comment on issues related to fulfilling the requirements of Section 106 of the National Historic Preservation Act in the Corps Regulatory Program. Specifically, we are soliciting comments on how our permit application processing procedures should be revised as a result of the 1992 amendments to the National Historic Preservation Act and the Advisory Council on Historic Preservation's revised regulations on protection of historic property. We are also soliciting suggestions for facilitating government-to-government consultation with American Indian and Alaska Native governments, as well as consultation with State Historic Preservation Officers, Tribal Historic Preservation Officers, Native Hawaiian organizations, interested organizations, the regulated public, and other interested parties during the rulemaking process. Comments received in response to this ANPRM will be used to determine the course of action for revising our permit processing procedures for the protection of historic properties.

**DATES:** Submit comments on or before November 26, 2004.

**ADDRESSES:** Written comments should be sent to the U.S. Army Corps of Engineers, Attn: CECW-MVD (David B. Olson), 441 "G" Street, NW., Washington, DC 20314-1000, or by e-mail to

*david.b.olson@hq02.usace.army.mil.*

Electronic comments should be submitted in ASCII format or portable document format, to ensure that those comments can be read. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson at 202-761-4922 or access the U.S. Army Corps of Engineers Regulatory home page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Army Corps of Engineers (Corps) issues Department of the Army (DA) permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) for certain activities in waters of the United States. The procedures for processing DA permits are found at 33 CFR part 325. We issue approximately 7,000 individual permits and 78,000 general permit verifications each year. In addition, many minor activities are authorized each year by non-reporting general permits.

On June 29, 1990 (55 FR 27000), we issued regulations at 33 CFR part 325, Appendix C to establish procedures to fulfill the requirements of Section 106 of the National Historic Preservation Act (NHPA) and other historic preservation laws applicable to the Corps Regulatory Program. Since Appendix C was issued, the NHPA was amended in 1992 and the Advisory Council on Historic Preservation (ACHP) revised its regulations at 36 CFR part 800 on December 12, 2000 (65 FR 77698), and July 6, 2004 (69 FR 40544).

In the March 8, 2002, issue of the **Federal Register** (67 FR 10822) we published a notice to solicit comments on how the Corps should address the changes to the NHPA and 36 CFR part 800. In response to that notice, we received 41 comments. Comments were received from Indian tribes, State Historic Preservation Officers, historic preservation organizations, industry groups, and individuals. Most