

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This proposed rule applies only to the Kentucky program and therefore does not affect tribal programs.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In

making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 20, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD05-02-099]

RIN 1625-AA11 (Formerly RIN 2115-AE84)

**Regulated Navigation Area in Hampton Roads, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Coast Guard proposes to revise the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use. **DATES:** Comments and related material must reach the Coast Guard on or before May 29, 2003.

**ADDRESSES:** You may mail comments and related material to the Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Marine Safety Division of the Fifth Coast Guard District maintains the public docket for this rulemaking. The docket, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the Coast Guard Fifth District, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398-6387, 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 (CGD05-02-099), 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. You may submit a request for a meeting by writing to the Marine Safety Division 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

#### History

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS *Cole*. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation

community in the United States. The ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters.

On October 24, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 53712). The temporary final rule required that all vessels of 300 gross tons or greater to reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels. In June 2002, this temporary final rule was extended in the **Federal Register** (67 FR 41337). On December 22, 2002, we republished this temporary final rule in the **Federal Register** (68 FR 2201). We have received no comments since the original publication of this rule.

On December 27, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 66753). The temporary rule expanded the geographic definitions of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and added new port security measures. The port security measures require that vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined, check-in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area.

The vessel may enter the Regulated Navigation Area upon authorization and approval by the Captain of the Port or his representative. A vessel that receives permission to enter the Regulated Navigation Area remains subject to a Coast Guard port security boarding. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF-FM channel 13 or 16, call (757) 444-5209/5210 or (757) 441-3298 for the Captain of the Port Duty Officer. In June 2002, this temporary final rule was extended in the **Federal Register** (67 FR 41337). On December 22, 2002, we republished this temporary final rule in the **Federal Register** (68 FR 2884). We have received no comments since the original publication of this rule.

This rule proposes to make permanent the above two temporary rules as well as update the Regulated Navigation Area to encompass aspects of navigational safety and security in a post September 11, 2001 environment. The reporting and speed limit restrictions will enable the COTP to closely monitor vessel movements in the Regulated Navigation Area.

### Discussion of Proposed Rule

#### Regulated Navigation Area

*Offshore Zone:* The proposed rule would expand the geographical definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia.

*Inland Zone:* The geographical boundaries of the inland waters included in the existing Regulated Navigation Area would be unchanged under the proposed rule.

#### Definitions

The proposed rule would expand the definition section of the existing Regulated Navigation Area to define I-664 Bridge, Designated Representative of the Captain of the Port, Offshore waters, Inland waters, and Coast Guard Patrol Commander.

#### Applicability

This section would be unchanged by the proposed rule.

#### Regulations

*Anchoring Restrictions:* No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside the anchorage designated in 33 CFR 110.168 unless the vessel has the permission of the Captain of the Port or has an emergency. Vessels may not anchor within the confines of

Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port.

*Anchoring Detail Requirements:* The proposed rule would not change the Anchoring Detail Requirements section, but places it immediately after the Anchoring Restrictions section.

*Secondary Towing Rig Requirements:* This section would be unchanged by the proposed rule.

*Thimble Shoals Channel Controls:* The proposed rule would combine the Draft Limitation section and Traffic Direction sections of the existing Regulated Navigation Area into one section.

*Restrictions on Vessels with Impaired Maneuverability:* The proposed rule would simplify this section by preventing vessels over 100 gross tons, with impaired maneuverability, from entering the Regulated Navigation Area without the permission of the Captain of the Port. The proposed rule would require vessels over 100 gross tons that experience impaired maneuverability, while operating within the Regulated Navigation, to report the impairment to the Captain of the Port.

*Emergency Procedure:* The proposed rule would simplify this section by removing many of the existing restrictions. The proposed rule would allow any vessel experiencing an emergency to deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment. The proposed rule would require that vessels over 100 gross tons with an emergency that is within two nautical miles of the CBBT or I-664 Bridge Tunnel to notify the Captain of the Port of its location and the nature of the emergency as soon as possible.

*Vessel Speed Limits:* The proposed rule would consolidate the Vessel Speed Limits sections into one section. The proposed rule would incorporate the vessel speed limit for the Norfolk Harbor Reach, as originally published as a temporary final rule in the **Federal Register** (66 FR 53712). Under the proposed rule vessels 300 gross tons or greater may not transit through the Southern Branch of the Elizabeth River alongside Naval Station Norfolk Restricted Area at a speed in excess of 8 knots. This speed restriction does not apply to public vessels as defined in 33 U.S.C. 1321(a)(4). The vessel speed limits on Little Creek and the Southern Branch of the Elizabeth River would be unchanged by the proposed rule.

*Port Security Requirements:* The proposed rule would incorporate the additional port security measures for all vessels over 300 gross tons, as originally

published as a temporary final rule in the **Federal Register** (66 FR 66753). Under the proposed rule the additional port security measures would require that vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined to do the following: Obtain authorization from the Captain of the Port, or the designated representative of the Captain of the Port, prior to entering the Regulated Navigation Area. Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification. Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway. The designated representative of the Captain of the Port shall be contacted on VHF-FM channel 12, or by calling (757) 444-5209, (757) 444-5210, or (757) 668-5555. All vessels entering or remaining in the Regulated Navigation Area may be subject to a vessel port security inspection. Vessels awaiting a port security inspection or Captain of the Port authorization to enter may be directed to anchor in a specific location.

The proposed rule would expand port security measures for vessels over 300 gross tons operating inside inland waters. All vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons, must receive authorization from the Captain of the Port prior to any vessel movement. This requirement would enable the Captain of the Port to maintain maritime domain awareness.

#### *Waivers*

This section would be unchanged by the proposed rule.

#### *Control of Vessels within the Regulated Navigation Area*

The proposed rule would make minor grammatical and syntax changes to the existing section.

#### *Deleted Sections*

Section (d)(11), Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Transits of the Elizabeth River would be deleted under the proposed rule. This section is no longer necessary because the Coast Guard published 33 CFR 165.2025, Protection of Naval Vessels, which creates a naval vessel protection zone around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States.

Section (d)(12), Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River would be deleted under the proposed rule. Liquefied Petroleum Gas and Liquefied Natural Gas Carriers will be addressed in a future notice of proposed rulemaking.

Section (d)(13), Restrictions on the Use of the Elizabeth River Ferry Dock at the Foot of High Street, Portsmouth, Virginia would be deleted under the proposed rule. The Elizabeth River Ferry Dock has been removed and replaced by a cove at the Foot of High Street, Portsmouth, Virginia. This section was a necessary safety measure to avoid potential collisions between Elizabeth River traffic and the Elizabeth River Ferry when the ferry operated from the then existing dock. Since the dock has been removed and the Elizabeth River Ferry embarks and disembarks passengers within a cove, there is no longer a need for this section.

Additional grammar and syntax changes have been made throughout this proposed rule.

#### *Regulatory Evaluation*

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

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 not necessary. The 8 knot speed limit restriction for the Norfolk Harbor Reach would apply to vessels 300 gross tons or greater. The speed limit requirements would only be in effect for less than 4 miles, and based on the typical vessel speed of 10 knots, the actual delay for each vessel will be approximately 6 minutes in each direction. The proposed port security measures would affect only those vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads. The additional changes to the proposed rule would clarify and simplify existing regulations, and remove unnecessary restrictions.

Based upon the information received in response to this NRPM, the Coast Guard intends to carefully consider the costs and benefits associated with this

rulemaking. Accordingly, comments, information and data are solicited on the economic impact of any proposed recommendation for changes to the Fifth Coast Guard District regulations as mentioned in *Background and Purpose*, above.

#### *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 following entities, some of which might be small entities: Shipping companies, towing companies, dredging companies, commercial fishing vessels, small passenger vessels and recreational vessels that operate within the Regulated Navigation Area.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed rule would limit the speed of vessels 300 gross tons or greater transiting Norfolk Harbor Reach to 8 knots. The proposed rule would institute additional port security measures for vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads. Vessels under 300 gross tons would be exempt.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a 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 (Pub. L. 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

Commander Roger Smith, Marine Safety Division, Fifth Coast Guard District, (757) 398–6389.

#### *Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### *Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### *Environment*

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

#### **List of Subjects in 33 CFR 165**

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Revise § 165.501 to read as follows:

**§ 165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.**

(a) *Location.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) *Offshore zone.* A line drawn due East from the mean low water mark at the North Carolina and Virginia border at latitude 36°33'03" N, longitude 75°52'00" W, to the Territorial Seas boundary line at latitude 36°33'05" N, longitude 75°36'51" W, thence generally Northeastward along the Territorial Seas boundary line to latitude 38°01'39" N, longitude 74°57'18" W, thence due West to the mean low water mark at the Maryland and Virginia border at latitude 38°01'39" N, longitude 75°14'30" W, thence South along the low water mark on the Virginia coast, and eastward of the Colregs Demarcation Lines across Chincoteague Inlet, Assawoman Inlet, Gargathy Inlet, Metompkin Inlet, Wachapreague Inlet, Quinby Inlet, Great Machipongo Inlet, Sand Shoal Inlet, New Inlet, Ship Shoal Inlet and Little Inlet, to the Colregs Demarcation Line across the mouth of Chesapeake Bay, continuing south along the Virginia low water mark and eastward of the Colregs Demarcation Line across Rudee Inlet to the point of beginning. All positions reference NAD 83.

(2) *Inland Zone.* The waters enclosed by the shoreline and the following lines:

(i) A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light.

(ii) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(iii) A line drawn across the James River along the eastern side of U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(iv) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(v) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(vi) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(vii) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(viii) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I-64 highway bridge, Chesapeake, Virginia.

(ix) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(x) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(xi) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(xii) A line drawn across Lynnhaven Inlet along the northern side of Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:  
*CBBT* means the Chesapeake Bay Bridge Tunnel.

*Coast Guard Patrol Commander* is a Coast Guard commissioned, warrant or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

*Designated representative of the Captain of the Port* means a person, including the duty officer at the Coast Guard Marine Safety Office Hampton Roads, the Joint Harbor Operations Center watchstander, or the Coast Guard or Navy Patrol Commander who has been authorized by the Captain of the Port to act on his or her behalf and at his or her request to carry out such orders and directions as needed. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

*Inland waters* means waters within the COLREGS Line of Demarcation.

*I-664 Bridge Tunnel* means the Monitor Merrimac Bridge Tunnel.

*Thimble Shoal Channel* consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Channel Lighted Gong Buoy 17, thence to Thimble Shoal Channel Lighted Buoy 19, thence to Thimble Shoal Channel Lighted Buoy 21, thence to Thimble Shoal Channel Lighted Buoy 22, thence to Thimble Shoal Channel Lighted Buoy 18, thence to Thimble Shoal Channel Lighted Buoy 2, thence to the beginning.

*Thimble Shoal North Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Thimble Shoal Channel Lighted Buoy 18.

*Thimble Shoal South Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence

to Thimble Shoal Lighted Gong Buoy 17, thence to Thimble Shoal Lighted Buoy 19, thence to Thimble Shoal Lighted Buoy 21.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement;

(2) Servicing aids to navigation; or

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations—(1) Anchoring Restrictions.*—(i) No vessel over 65 feet long may anchor or moor in the inland zone of the Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, with these exceptions:

(ii) The vessel has the permission of the Captain of the Port.

(iii) Only in an emergency, when unable to proceed without endangering the safety of persons, property, or the environment, may a vessel anchor in a channel.

(iv) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Anchoring detail requirements.*—A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I-664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(3) *Secondary towing rig requirements on Inland Waters.*—(i) A vessel over 100 gross tons may not be towed in the inland zone of the Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be

equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(iii) Be of sufficient strength for towing the vessels.

(iv) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(v) Be fitted with recovery pickup lines led outboard of the vessel's hull.

(4) *Thimble Shoal Channel controls.*—

(i) A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Masters should consider the squat of their vessel based upon vessel design and environmental conditions. Channel crossings shall be made as perpendicular to the channel axis as possible.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(iii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(5) *Restrictions on vessels with impaired maneuverability.*—(i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by heavy weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port.

(ii) *After entry.* A vessel over 100 gross tons, which is underway in the Regulated Navigation Area, that has its ability to maneuver become impaired for any reason, shall, as soon as possible, report the impairment to the Captain of the Port.

(6) *Requirements for navigation charts, radars, and pilots.*—No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board:

(i) Corrected charts of the Regulated Navigation Area. Instead of corrected paper charts, warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

(ii) An operative radar during periods of reduced visibility;

(iii) When in inland waters, a pilot or other person on board with previous experience navigating vessels on the

waters of the Regulated Navigation Area.

(7) *Emergency procedures.*—(i) Except as provided in paragraphs (d)(7)(b) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I-664 Bridge Tunnel shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(8) *Vessel speed limits.*—(i) Little Creek. A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(ii) Southern Branch of the Elizabeth River. A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(iii) *Norfolk Harbor Reach.* Nonpublic vessels of 300 gross tons or more may not proceed at a speed over 8 knots between the Elizabeth River Channel Lighted Gong Buoy 5 of Norfolk Harbor Reach (southwest of Sewells Point) at approximately 36°58'00" N, 076°20'00" W, and gated Elizabeth River Channel Lighted Buoys 17 and 18 of Craney Island Reach (southwest of Norfolk International Terminal at approximately 36°54'17" N, 076°20'11" W).

(9) *Port security requirements.*—Vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall not enter the Regulated Navigation Area, move within the Regulated Navigation Area, or be present within the Regulated Navigation Area, unless they comply with the following requirements:

(i) Obtain authorization to enter the Regulated Navigation Area from the designated representative of the Captain of the Port prior to entry. All vessels entering or remaining in the Regulated Navigation Area may be subject to a Coast Guard boarding.

(ii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification.

(iii) Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway.

(iv) The designated representative of the Captain of the Port shall be contacted on VHF-FM channel 12, or by calling (757) 444-5209, (757) 444-5210, or (757) 668-5555.

(v) In addition to the authorities listed in this Part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(e) *Waivers.*—(1) The Captain of the Port may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of vessels within the regulated navigation area.*—(1) When necessary to prevent damage, destruction or loss of any vessel, facility or port infrastructure, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed for the maritime, commercial or security interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: April 16, 2003.

**James D. Hull,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA-D-7560]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that