

Dated: July 24, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in

chronological order by “*Date of final publication*” to read as follows:

**§ 938.15 Approval of Pennsylvania regulatory program amendments.**

\* \* \* \* \*

| Original amendment submission date | Date of final publication | Citation/description  |
|------------------------------------|---------------------------|---|
| February 25, 2002                  | August 15, 2003           | 25 Pa. Code 210.11; 210.13–210.19; 211.101–211.103; 211.111–211.115; 211.121–211.125; 211.131–211.133; 211.141; 211.151–211.162; 211.171–211.173; 211.181–211.182 |

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD01–02–104]

RIN 1625–AA00, AA11

**Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) and two safety and security zones. The rule regulates the circumstances under which certain vessels may enter, transit or operate within the RNA and excludes all vessels from operating within the prescribed safety and security zones without first obtaining authorization from the Captain of the Port. This action is necessary to ensure public safety and prevent sabotage or other subversive acts.

**DATES:** This rule is effective August 16, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–104, and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION CONTACT:** Lieutenant A. Logman, Waterways

Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled “Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone” in the **Federal Register** (68 FR 13643). We received two (2) letters commenting on the proposed rule. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective on August 16, 2003, in less than 30 days after **Federal Register** publication. Delaying publication is unnecessary for the following reasons: Several of the permanent regulations described herein have been in effect as temporary regulations since December 10, 2001 with no adverse impact; the public has had significant and adequate advanced knowledge of the intent to implement these as permanent regulations through the notice and comment rulemaking process, as well as through outreach to the maritime community by the Captain of the Port (COTP) Long Island Sound; and the NPRM stated this regulation was designed to replace temporary security measures expiring on August 15, 2003. Thus the public has had significant advanced knowledge of these regulations and that it was necessary that they be effective by August 16, 2003. Any delay encountered in this regulation’s effective date would also be contrary to public interest. As discussed in the *Background and Purpose* section below, these regulations are necessary to address potential terrorist threats in the Long Island Sound Marine Inspection and Captain of the Port Zone on a permanent basis. If the temporary regulations were to expire on August 15,

2003 without permanent regulations being implemented, vessels, waterfront facilities, the maritime community, public infrastructure, and the public in general in the Long Island Sound Marine Inspection and Captain of the Port Zone would be left vulnerable to possible sabotage or other subversive acts, accidents or other causes of a similar nature.

**Background and Purpose**

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, NY inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks are likely.

Vessels operating within the Long Island Sound Marine Inspection and Captain of the Port (COTP) Zone present potential targets of terrorist attack or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. Following the September 11 attacks, we published a temporary rule (67 FR 517–520, January 4, 2002), which was effective December 10, 2001, that established a temporary regulated navigation area (RNA) and safety and security zones in the Long Island Sound Marine Inspection and COTP Zone. We revised the temporary rule three times (67 FR 40859–40861, June 14, 2002, 67 FR 69132, November 15, 2002, and 68 FR 12304, March 14, 2003) to extend its effective period to August 15, 2003. These temporary measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts while we assessed the security environment within the area and determined the need for and

advisability of permanent security measures.

The Coast Guard is now establishing a permanent RNA and two permanent safety and security zones within Long Island Sound as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. This permanent RNA incorporates the provisions of the temporary RNA that have been in place since December 10, 2001, and expands the operating requirements for vessels within the RNA. This rule also establishes two permanent safety and security zones. The zones have been tailored to fit the needs of security, while minimizing the impact on the maritime community.

#### Discussion of Comments and Changes

We received two (2) letters commenting on the notice of proposed rulemaking. The first comment letter recommended that proposed regulation 33 Code of Federal Regulations (CFR) 165.153(d)(3) be amended to include not only towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo, but rather to include all primary towing vessels engaged in towing. The section has been revised to include all towing vessels engaged in towing. In addition, we have included a provision in the rule that exempts towing vessels engaged in coastwise trade. This revision reflects the intention of the proposed rulemaking, which was, in part, to facilitate trade in the COTP Long Island Sound Zone consistent with the needs of safety and security. This exemption permits coastwise tug and barge units to move freely within United States waters.

In addition, the comment indicated to us that combining the inspection and advanced authorization requirements into one regulation in proposed section 165.153(d)(3) may have been confusing with respect to the two distinct requirements imposed. To clarify these requirements, section 165.153(d)(3) has been revised into two separate regulations for inspection and authorization, located in the final rule in sections 165.153(d)(3) and 165.153(d)(4), respectively. Subsequent paragraphs (4) through (8) in the proposed regulation 165.153(d) have been renumbered as paragraphs (5) through (9), respectively.

The second letter contained 12 distinct comments and/or recommendations regarding the proposed regulations. Each of these comments, and the response taken to each in the final regulations, are addressed below:

The first comment questioned the need for defining "public vessels" both in sections 165.153(b) and (c)(3). We agree that this is unnecessary repetition of the definition of "public vessels;" as such, the definition of "public vessels" has been removed from the final rule in section 165.153(b).

The second comment asked for clarification regarding the definition of "commercial vessel." Specifically, the comment asked whether a commercial vessel is a vessel in commercial service or a vessel engaged in commerce. The proposed regulation used the term "commercial vessel" as the title of section 165.153(d)(6). While the content of this section is clear in its applicability of the vessel operating requirements to those vessels in commercial service, the use of the term "commercial vessel" in this section is potentially confusing. This regulation was intended to apply to those vessels engaged in commercial service, as that term is defined in section 165.153(c)(1). For clarification, the title of the final rule section 165.153(d)(7) has been changed to "vessels engaged in commercial service." In addition, the text of the regulation has been revised to prohibit vessels from entering within a 100-yard radius of any vessel "engaged in commercial service," vice the proposed regulation language of "vessel in commercial service."

The third comment asked whether "engaged in commerce" used in the definition of public vessel in proposed section 165.153(c)(3) differs from the definition of "commercial service" in proposed section 165.153(c)(1). The definitions were intended to be the same in the proposed regulation. The use of "engaged in commerce" in the proposed regulation has been revised to read "engaged in commercial service"; this reflects the intention of the original proposed regulation, and is consistent with the derivation of the definition of "public vessel," which is found in title 46 United States Code, sections 2101(24)(A) and (B).

The fourth comment asked whether the tonnage threshold in proposed section 165.153(d)(2) applies to individual vessels or whether these apply to the combined tonnage of towing vessels and their tows. As proposed, and as implemented here, the tonnage limitation applies to individual vessels. The standard industry practice is for the tugboat operator to issue the security call for both manned and unmanned barges. It was not the intention of the proposed regulation to require vessels under tow to make their own security call in addition to that made by the tugboat. In addition, this

section was only intended to address vessels engaged in towing of barges, and was not intended to encompass recreational vessels or commercial assistance towing. The final regulation located in section 165.153(d)(2) has been revised as a result of this comment to include all vessels engaged in towing barges.

The fifth comment recommended applying an exemption for vessels in innocent passage to proposed regulation 165.153(d)(4), since one was applied in proposed section 165.153(d)(3). Innocent passage, as defined under Articles 18 and 19 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS II), involves "navigation through the territorial sea for the purpose of (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility." Proposed section 165.153(d)(4) (now section 165.153(d)(5)) requires vessels over 1600 gross tons operating within three nautical miles from the territorial sea baseline to receive COTP authorization prior to vessel movements. As the internationally recognized rights of "innocent passage" could potentially be impacted in this proposed section as well as proposed section 165.153(d)(3), we addressed this comment in regards to both proposed sections and made appropriate changes in the regulation.

The inspection and authorization requirements in proposed section 165.153(d)(3) (now final sections 165.153(d)(3) and (d)(4)) were intended to require all vessels bound for a port or place in the United States, and not otherwise exempted, to be inspected and/or obtain COTP authorization prior to entering within three nautical miles of the territorial sea baseline. It contained a complete exemption for vessels in innocent passage. The intention of the requirements in proposed section 165.153(d)(4) (now section 165.153(d)(5)) was for vessels over 1600 gross tons, operating within three nautical miles of the territorial sea baseline or within internal waters, to be required to receive authorization prior to any intentional vessel movements. As originally proposed, these two sections, 165.153(d)(3) and (d)(4) were intended to protect against vessels entering within or operating within three nautical miles of the territorial sea baseline and in the internal waters of the United States. These vessels present potential security concerns which these regulations were designed to protect against.

A complete exception for vessels in "innocent passage", as proposed in section 165.153(d)(3) and sought by the comment in section 165.153(d)(4) would permit any vessel bound for a port or place in the United States to transit within three nautical miles of the territorial sea baseline without invoking the regulation's inspection and authorization requirements. This would negate the operation and purpose of these protective measures. As a result, proposed sections 165.153 (d)(3) and (d)(4) were rewritten, and references to "innocent passage" were changed as described herein to allow certain exceptions as allowable or required by Treaty and Law, while still allowing for effective regulation.

Innocent passage rights will and must be impacted in certain situations in final sections 165.153(d)(3), (d)(4), and (d)(5), to maintain the purpose and effectiveness of this regulation. For example, any vessel transiting to a port in United States internal waters, by definition, is considered in "innocent passage" while still in the territorial sea (which includes the area within three nautical miles of the territorial sea baseline) during its transit. Final sections 165.153(d)(3), (d)(4), and (d)(5) impact the right of "innocent passage" because they impose requirements which vessels must meet before entering within three nautical miles of the territorial sea baseline when they are bound for ports or places in United States.

Even when within three nautical miles of the territorial sea baseline, these vessels are in "innocent passage" if they are en route to a United States port in United States internal waters because they are still within United States territorial waters and "proceeding to or from internal waters" as per Article 18 of UNCLOS II. Yet, if the COTP were not permitted to impose requirements on vessels in these situations, sections 165.153(d)(3), (d)(4), and (d)(5) of this regulation would be meaningless, and potentially dangerous vessels claiming "innocent passage" bound for United States internal ports could transit up to the territorial sea baseline without being investigated by the COTP.

Thus, with regards to innocent passage, only those vessels which are not bound for a port or place in the United States will be exempted from the requirements of sections 165.153(d)(3), (d)(4), and (d)(5). These vessels are of minimal security interest to the COTP. Additionally, under 33 U.S.C. 1223(d) such vessels are statutorily exempted from the requirements herein (33 U.S.C. 1223(d) falls under the Port and

Waterways Safety Act, which is one of the authorities under which this regulation is promulgated).

Vessels "bound for a port or place located in the United States or that must transit the internal waters of the United States" as dictated in final sections 165.153(d)(3), (d)(4), and (d)(5) will be subject to these regulations, even if in "innocent passage" by definition under Article 18 1. (b) of the UNCLOS II. Such vessels are not exempted from the Port and Waterways Safety Act under 33 U.S.C. 1223(d). In addition, imposing certain conditions on vessels in "innocent passage" is supported by Article 21 under UNCLOS II, which states that coastal nations may adopt laws and regulations relating to innocent passage through the territorial sea with respect to, among other items, "the safety of navigation and the regulation of maritime traffic \* \* \*, \* \* \* the protection of navigational aids and facilities and other facilities or installations \* \* \* and \* \* \* the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State."

The sixth comment addressed the appropriateness of proposed section 165.153(d)(3)'s applicability to all tonnages and recreational vessels, as many of the vessels impacted by this section are not required to carry radios, making it impossible for them to obtain authorization. Proposed section 165.153(d)(3) specifically exempted recreational vessels from these requirements, as well as other vessels. The intention of this section was to be able to monitor those vessels not engaged in commercial service arriving into the United States from a foreign port and ensure compliance with appropriate customs and immigration requirements. As such, this exemption has been narrowed and we have revised final rule sections 165.153(d)(3) and (d)(4) to exempt only those vessels not engaged in commercial service whose last port of call was in the United States. Vessels to which the regulation applies may obtain authorization from the Captain of the Port, Long Island Sound, in several ways, including via marine radio, telephone, facsimile, or letter. Final rule sections 165.153(d)(3) and (d)(4) have been revised to include these options for contacting the COTP.

The seventh comment raised concern with excluding primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo from the inspection and authorization requirements of proposed regulation 165.153(d)(3). Specifically, it questioned why this requirement was not

applicable to tank barges carrying petroleum, and questions why these vessels are considered less of a safety and security threat. As discussed above, this section is being expanded to include all towing vessels engaged in towing in coastwise trade. This exemption permits coastwise tug and barge units to move freely within United States waters.

The eighth and ninth comments raised concern with the ability of vessels to contact commercial vessels which are moored or anchored to request permission to enter the restricted navigation area imposed by proposed section 165.153(d)(6). This comment recommended that anchored or moored commercial vessels be required to maintain a continuous radio watch, and also recommended that the regulation provide for delegation of the authority to authorize entry into the zone by the licensed master or operator of the vessel to subordinates. As discussed above in paragraph 3, the scope of the requirement in the final rule has been clarified to include vessels engaged in commercial service, vice all commercial vessels, which significantly limits the scope of this regulation. For example, this requirement would not apply to a small passenger vessel moored at a marina which is not engaged in carrying passengers or goods. The master of a vessel is responsible for ensuring compliance with this regulation, however, nothing in this regulation prohibits the master from developing procedures/orders for the crew to ensure its operation is in compliance with the laws and/or regulations herein. As such, it is unnecessary to specifically address the delegation of this authority in the regulatory text. Vessels seeking permission to enter within 100-yards of a vessel engaged in commercial service should use all means available to communicate with the vessel; if unable to contact the vessel to obtain permission, vessels are not permitted to enter within this 100-yard zone. No changes have been made to the final rule based on this comment.

The tenth comment raised questioned whether section 165.153(d)(6) created a "no authorized entry zone" around commercial vessels of any size. There is no size limitation within this regulation; the prohibition on entry within 100-yards of a vessel engaged in commercial service applies to all vessels engaged in commercial service, irrespective of size. No changes have been made to the final rule based on this comment.

The eleventh comment questions whether safety and security zones can be implemented around anchored Coast

Guard vessels in proposed regulation section 165.154(a)(2), because proposed section 165.153(b) excludes “public vessels” from the applicability of the regulations. The public vessel exclusion in section 165.153 only applies to that section. It does not apply to those regulations in section 165.154. Even if this exclusion was applicable to section 165.154, it would not exclude creation of safety and security zones around Coast Guard vessels: the applicability section addresses who the regulation may be enforced against, not what regulations may be imposed. No changes have been made to the final rule based on this comment.

The twelfth and final comment of this letter recommended allowing other federal, state and municipal agencies to assist the Coast Guard in enforcement of proposed sections 165.153(d)(5)–(7), as is provided in section 165.153(d)(1). Section 165.153(d)(1) provides that the U.S. Navy and other Federal, State and municipal agencies may assist the U.S. Coast Guard in the enforcement of the speed restrictions imposed in the vicinity of Naval Submarine Base New London. Title 33 CFR 6.04–11 provides that the Captain of the Port may enlist the aid of Federal, State, municipal and private agencies to assist in the enforcement of regulations. It is not necessary to restate this authority in the regulatory text. No changes have been made to the regulatory text of the final rule based on this comment.

Lastly, a definition of “territorial sea baseline” has been included as section 165.153(c)(4). This definition adopts the definition of “territorial sea baseline” as found in 33 CFR subchapter A, and aids in clarity of the requirements imposed by section 165.153.

#### **Regulatory Evaluation**

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

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around each of

the safety and security zones; it is contemplated that vessels will be able to operate elsewhere within the RNA once the Captain of the Port has determined that the vessels do not pose a threat to individuals, other vessels or waterfront facilities; to the extent that the rule tracks the provisions of temporary rules that have been in place since December 10, 2001, our experience demonstrates that it not burdensome on the maritime public; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential for some minimal impact from the rule, the Coast Guard considers it de minimus in comparison to the compelling national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

#### **Small Entities**

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

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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Long Island Sound and the Thames River covered by the RNA and/or safety and security zones.

This rule will not have a significant impact on a substantial number of small entities because the safety and security zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the area are deemed to be low. The regulations imposed under the RNA will impact a minimal number of commercial and recreational vessels, as several of the regulations only apply to

large commercial vessels. The regulated areas around ferry vessels and vessels engaged in commercial service will minimally impact those vessels to whom these regulations apply while waiting for authorization to enter the regulated area from the licensed operator, licensed master, or the designated COTP on-scene patrol. Moreover, the ferry vessel regulated navigation area only applies to vessels of 300 gross tons or greater; the 100-yard regulated navigation area around commercial vessels leaves ample room for vessels to navigate outside of this area. To the extent that this rule tracks the provisions of temporary rules that have been in place since December 10, 2001 our experience demonstrates that it has not been burdensome on the maritime public.

#### **Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this 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 call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### **Collection of Information**

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

#### **Federalism**

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

determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. 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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, 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 Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.153 to read as follows:

#### § 165.153 Regulated Navigation Area: Long Island Sound Marine Inspection and Captain of the Port Zone.

(a) *Regulated Navigation Area location.* All waters of the Long Island Sound Marine Inspection and Captain of the Port (COTP) Zone, as delineated in 33 CFR 3.05–35, extending seaward 12 nautical miles from the territorial sea baseline, are established as a regulated navigation area (RNA).

(b) *Applicability.* This section applies to all vessels operating within the RNA excluding public vessels.

(c) *Definitions.* The following definitions apply to this section:

*Commercial service* means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

*Ferry* means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Has provisions only for deck passengers or vehicles, or both;

(3) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(4) Offers a public service of a type normally attributed to a bridge or tunnel.

*Public vessels* means vessels owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commercial service.

*Territorial sea baseline* means the line defining the shoreward extent of the territorial sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), 21 I.L.M. 1261. Normally, the territorial sea baseline is the mean low water line along the coast of the United States.

(d) *Regulations.* (1) Speed restrictions in the vicinity of Naval Submarine Base New London and Lower Thames River. Unless authorized by the Captain of the Port (COTP), vessels of 300 gross tons or more may not proceed at a speed in excess of eight knots in the Thames River from New London Harbor channel buoys 7 and 8 (Light List numbers 21875 and 21880 respectively) north through the upper limit of the Naval Submarine Base New London Restricted Area, as that area is specified in 33 CFR 334.75(a). The U.S. Navy and other Federal, State and municipal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

(2) *Enhanced communications.* Vessels of 300 gross tons or more and all vessels engaged in towing barges must issue security calls on marine band or Very High Frequency (VHF) radio channel 16 upon approach to the following locations:

(i) Inbound approach to Cerberus Shoal; and

(ii) Outbound approach to Race Rock Light (USCG Light List No. 19815).

(3) All vessels operating within the RNA that are bound for a port or place located in the United States or that must transit the internal waters of the United States, must be inspected to the satisfaction of the U. S. Coast Guard, before entering waters within three nautical miles from the territorial sea baseline. Vessels awaiting inspection will be required to anchor in the manner directed by the COTP. This section does not apply to vessels operating exclusively within the Long Island Sound Marine Inspection and COTP Zone, vessels on a single voyage which depart from and return to the same port or place within the RNA, all towing vessels engaged in coastwise trade, vessels in innocent passage not bound

for a port or place subject to the jurisdiction of the United States, and all vessels not engaged in commercial service whose last port of call was in the United States. Vessels requiring inspection by the COTP may contact the COTP via marine band or Very High Frequency (VHF) channel 16, telephone at (203) 468-4401, facsimile at (203) 468-4418, or letter addressed to Captain of the Port, Long Island Sound, 120 Woodward Ave., New Haven, CT 06512.

(4) All vessels operating within the RNA that are bound for a port or place located in the United States or that must transit the internal waters of the United States, must obtain authorization from the Captain of the Port (COTP) before entering waters within three nautical miles from the territorial sea baseline. Vessels awaiting COTP authorization to enter waters within three nautical miles from the territorial sea baseline will be required to anchor in the manner directed by the COTP. This section does not apply to vessels operating exclusively within the Long Island Sound Marine Inspection and COTP Zone, vessels on a single voyage which depart from and return to the same port or place within the RNA, all towing vessels engaged in coastwise trade, vessels in innocent passage not bound for a port or place subject to the jurisdiction of the United States, and all vessels not engaged in commercial service whose last port of call was in the United States. Vessels may request authorization from the COTP by contacting the COTP via marine band or Very High Frequency (VHF) channel 16, telephone at (203) 468-4401, facsimile at (203) 468-4418, or letter addressed to Captain of the Port, Long Island Sound, 120 Woodward Ave., New Haven, CT 06512.

(5) Vessels over 1,600 gross tons operating in the RNA within three nautical miles from the territorial sea baseline that are bound for a port or place located in the United States or that must transit the internal waters of the United States must receive authorization from the COTP prior to transiting or any intentional vessel movements, including, but not limited to, shifting berths, departing anchorage, or getting underway from a mooring. This section does not apply to vessels in innocent passage not bound for a port or place subject to the jurisdiction of the United States.

(6) *Ferry vessels.* Vessels of 300 gross tons or more are prohibited from entering all waters within a 1200-yard radius of any ferry vessel transiting in any portion of the Long Island Sound Marine Inspection and COTP Zone without first obtaining the express prior

authorization of the ferry vessel licensed operator, licensed master, COTP, or the designated COTP on-scene patrol.

(7) *Vessels engaged in commercial service.* No vessel may enter within a 100-yard radius of any vessel engaged in commercial service while that vessel is transiting, moored, or berthed in any portion of the Long Island Sound Marine Inspection and COTP zone, without the express prior authorization of the vessel's licensed operator, master, COTP, or the designated COTP on-scene representative.

(8) *Bridge foundations.* Any vessel operating beneath a bridge must make a direct, immediate and expeditious passage beneath the bridge while remaining within the navigable channel. No vessel may stop, moor, anchor or loiter beneath a bridge at any time. No vessel may approach within a 25-yard radius of any bridge foundation, support, stanchion, pier or abutment except as required for the direct, immediate and expeditious transit beneath a bridge.

(9) This section does not relieve any vessel from compliance with applicable navigation rules.

■ 3. Add § 165.154 to read as follows:

**§ 165.154 Safety and Security Zones: Long Island Sound Marine Inspection Zone and Captain of the Port Zone.**

(a) *Safety and security zones.* The following areas are safety and security zones:

(1) *Dominion Millstone Nuclear Power Plant Safety and Security Zones.* (i) All waters north and north east of a line running from Bay Point, at approximate position 41-18.57 N, 072-10.41 W, to Millstone Point at approximate position 41-18.25 N, 072-09.96 W.

(ii) All waters west of a line starting at 41-18.700 N, 072-09.650 W, running south to the eastern most point of Fox Island at approximate position 41-18.400 N, 072-09.660 W. All coordinates are North American Datum 1983.

(2) *Coast Guard Vessels Safety and Security Zones.* All waters within a 100-yard radius of any anchored Coast Guard vessel. For the purposes of this section, Coast Guard vessels includes any commissioned vessel or small boat in the service of the regular Coast Guard and does not include Coast Guard Auxiliary vessels.

(b) *Regulations.* (1) The general regulations contained in § 165.23 and § 165.33 of this part apply.

(2) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within this zone is prohibited unless

authorized by the Captain of the Port Long, Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 8, 2003.

**Vivien S. Crea,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 207-4213; FRL-7544-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Revised Final Standards for the Acceleration Simulation Mode Exhaust Emissions Test

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision amends Pennsylvania's SIP-approved Enhanced Vehicle Inspection and Maintenance Program (or I/M program) to implement final tailpipe test standards for the Acceleration Simulation Mode (ASM) tailpipe emissions test. This is being done through the substitution of revised ASM test standards in place of the previously adopted and SIP-approved final ASM test standards. Under Pennsylvania's SIP-approved I/M program, ASM testing is conducted only in the Philadelphia I/M program area comprised of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. Therefore, this action affects only motorists in those counties subject to the ASM test as part of the I/M program for the Philadelphia area. The intended effect of this action is to approve Pennsylvania's SIP revision request. This action is being taken under authority of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective on September 15, 2003.