

regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from the review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports, U.S. Munitions List.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp, p. 79; 22 U.S.C. 2658; Pub L. 105-261, 112 Stat.1920.

2. Section 121.1, paragraph (c) Category VIII is amended by revising Category VIII paragraphs (b) and (h) to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft and Associated Equipment

* * * * *

(b) Military aircraft engines, except reciprocating engines, specifically designed or modified for the aircraft in paragraph (a) of this category, and all specifically designed military hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) and digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)).

* * * * *

(h) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines.

Note: The Export Administration Regulations (EAR) administered by the Department of Commerce control any part or component (including propellers) designed exclusively for civil, non-military aircraft (see § 121.3 for the definition of military aircraft) and civil, non-military aircraft engines. Also, a non-SME component or part (as defined in § 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, that: (a) Is standard equipment; (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft); and (c) is an integral part of such civil aircraft, is subject to the control of the EAR. In the case of any part or component designated as SME in this or any other USML category, a determination that such item may be excluded from USML coverage based on the three criteria above always requires a commodity jurisdiction determination by the Department of State under § 120.4 of this subchapter. The only exception to this requirement is where a part or component designated as SME in this category was integral to civil aircraft prior to [effective date of the final rule]. For such part or component, U.S. exporters are not required to seek a commodity jurisdiction determination from State, unless doubt exists as to whether the item meets the three criteria above (See § 120.3 and § 120.4 of this subchapter). Also, U.S. exporters are not required to seek a commodity jurisdiction determination from State regarding any non-SME component or part (as defined in § 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, unless doubt exists as to whether the item meets the three criteria above (See § 120.3 and § 120.4 of this subchapter). These commodity jurisdiction determinations will ensure compliance with this section and the criteria of Section 17(c) of the Export Administration Act of 1979. In determining whether the three criteria above have been met, consider whether the same item is common to both civil and military applications without modification. Some examples of parts or components that are not common to both civil and military applications are tail hooks, radomes, and low observable rotor blades. "Standard equipment" is defined as a part or component manufactured in compliance with an established and published industry specification or an established and published government specification (e.g., AN, MS, NAS, or SAE). Parts and components that are manufactured and tested to established but unpublished civil aviation industry specifications and standards are also "standard equipment," e.g., pumps, actuators, and generators. A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards. Simply testing a part or component to meet a military specification or standard does not in and of

itself change the jurisdiction of such part or component unless the item was designed or modified to meet that specification or standard. Integral is defined as a part or component that is installed in the aircraft. In determining whether a part or component may be considered as standard equipment and integral to a civil aircraft (e.g., latches, fasteners, grommets, and switches) it is important to carefully review all of the criteria noted above. For example, a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify.

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Dated: April 2, 2008.

John C. Rood,
Acting Under Secretary for Arms Control and International Security, Department of State.
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 150 and 165

[Docket No. USCG-2007-0087]

RIN 1625-AA00, 1625-AA11, and 1625-AA87

Regulated Navigation Areas, Safety Zones, Security Zones, and Deepwater Port Facilities; Navigable Waters of the Boston Captain of the Port Zone

AGENCY: Coast Guard, DHS.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulated navigation areas around a recently constructed deepwater port facility in the waters of the Atlantic Ocean near the entrance to Boston Harbor and to establish safety and security zones around liquefied natural gas carriers (LNGCs) calling on these deepwater port facilities. The purpose of these regulated navigation areas is to protect vessels and mariners from the potential safety hazards associated with deepwater port operations, and to protect the LNGCs and deepwater port infrastructure from security threats or other subversive acts. All vessels, with the exception of LNGCs and deepwater port support vessels, would be prohibited from anchoring or otherwise deploying equipment that could become entangled in submerged infrastructure within 1000 meters of the submerged turret loading (STL) buoys associated with the deepwater port, and would be

prohibited from entering waters within 500 meters of the deepwater port STL buoys or the LNGCs using them. Additionally, this proposed rule would make minor amendments to the existing LNG security regulations for the Boston Captain of the Port (COTP) Zone to reflect multi-agency enforcement of those regulations.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0087 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

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

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LCDR Heather Morrison, Coast Guard Sector Boston, at 617–223–3028, e-mail: Heather.L.Morrison@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0087), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG–2007–0087) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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

On May 14, 2007, the Maritime Administration (MARAD), in accordance with the Deepwater Port Act of 1974, as amended, issued a license to Excelerate Energy to own, construct, and operate a natural gas deepwater port, "Northeast Gateway." Northeast Gateway Deepwater Port (NEGDWP) is located in the Atlantic Ocean, approximately 13 nautical miles south-southeast of the City of Gloucester, Massachusetts, in Federal waters. The coordinates for its two submerged turret loading (STL) buoys are: STL Buoy A, Latitude 42°23'38" N, Longitude 070°35'31" W and STL Buoy B, Latitude 42°23'56" N, Longitude 070°37'00" W. The NEGDWP can accommodate the mooring, connecting, and offloading of two liquefied natural gas carriers (LNGCs) at one time. The NEGDWP operator plans to offload LNGCs by regasifying the liquefied natural gas (LNG) on board the vessels. The regasified natural gas is then transferred through two submerged turret loading buoys, via a flexible riser leading to a seabed pipeline that ties into the Algonquin Gas Transmission Pipeline for transfer to shore.

In order to protect mariners from the hazards associated with submerged deepwater port infrastructure and to ensure safety and security at and around LNGCs engaged in regasification and transfer operations at deepwater ports, the Coast Guard proposes to exercise its authority under the Ports and Waterway Safety Act (33 U.S.C. 1221, *et seq.*) to establish regulated navigation areas (RNAs) around the primary components of NEGDWP. The RNAs would prohibit vessels from anchoring or otherwise deploying equipment that could become entangled in submerged infrastructure within 1000 meters of the STL buoys associated with NEGDWP facilities. Specifically, in addition to anchoring, vessels would be precluded from engaging in commercial fishing in the RNAs using nets, dredges, or traps.

Under the authority of the Port and Waterways Safety Act (33 U.S.C. 1226) and the Magnuson Act (50 U.S.C. 191), the Coast Guard also proposes to place safety and security zones within the corresponding RNAs that would prohibit vessels from entering all waters within a 500-meter radius of the same STL buoys. The Coast Guard considers the RNAs that would be established by this rule as meeting the requirement and intent of the Deepwater Port Act of 1974, as amended, and as codified at 33 U.S.C. 1509(d). Accordingly, in addition to amending 33 CFR part 165 (Regulated Navigation Areas and Limited Access

Areas), this rulemaking would also amend a corresponding section in 33 CFR part 150 (Deepwater Ports: Operations). The proposed amendments to 33 CFR part 150 include amending that part to reflect a ship's routing measure—an "area to be avoided"—that is being concurrently established in consultation with the International Maritime Organization. The area to be avoided will be reflected on nautical charts of the affected area along with the restricted navigation areas that would be established by this proposed rulemaking.

This proposed rule would also promote safety and security of LNG transfer operations by amending the existing regulations regarding LNGCs in the Boston Captain of the Port (COTP) Zone, to place safety and security zones around LNGCs while they are anchored, moored, or otherwise engaged in regasification and transfer procedures with deepwater ports within the navigable waters of the United States in the Boston COTP Zone.

Regulations already exist that provide for safety and security zones around LNGCs while transiting, anchored, or moored in other portions of the Boston COTP Zone. These regulations can be found at 33 CFR 165.110. The current regulations provide for safety and security zones for LNGCs transiting the Boston COTP Zone, anchored in the Broad Sound, or moored at the Distrigas LNG facility in Everett, Massachusetts. This rule would amend those regulations to add safety and security zones around vessels calling at deepwater ports in the Boston COTP Zone and within the navigable waters of the United States, as defined in 33 CFR 2.36(a) (i.e., out to 12 nautical miles from the territorial sea baseline). The proposed rule would add definitions to make the rule more clear. The proposed rule would eliminate the definition of "navigable waters of the United States" currently found at 33 CFR 165.110(a) as that paragraph is duplicative of the standard definition found at 33 CFR 2.36(a). Without these proposed changes, the security zone around a transiting LNGC would cease to exist once the vessel moored to NEGDWP. This proposed rule would eliminate that potential gap in security coverage.

Finally, this proposed rule would amend the language describing who may enforce the safety and security zones surrounding LNGCs in the Boston COTP Zone to better reflect recently executed Memoranda of Agreement between the Coast Guard and the Commonwealth of Massachusetts, the City of Boston, and other local municipalities. Under the terms of these

agreements, State and local law enforcement officers may enforce, on behalf of the Coast Guard, maritime safety and security zones implemented by the Coast Guard under the authority of the Magnuson Act and the Port and Waterways Safety Act when falling within their respective jurisdictions. Copies of these agreements are available in the public docket for this rule where indicated in the **ADDRESSES** section, above.

Discussion of Proposed Rule

The Coast Guard would establish a regulated navigation area in which vessels may not anchor within 1000 meters of the STL buoys for NEGDWP as described above. Additionally, safety and security zones within the RNA would be established to prohibit vessels, other than LNGCs and support vessels as defined in 33 CFR 148.5, from entering waters within 500 meters of the aforementioned STL buoys.

The Coast Guard also proposes to establish safety and security zones encompassing all waters within a 500-meter radius of vessels carrying LNG while they are anchored, moored, or attached to or otherwise engaged in regasification or transfer procedures with deepwater ports.

Additionally, the Coast Guard intends to amend 33 CFR Part 150 to reflect a recommendatory ship's routing measure—an "area to be avoided"—that is being concurrently established with, but separate and apart from, this rulemaking in consultation with the International Maritime Organization.

Finally, this proposed rule would alter the existing language of the regulations for LNGCs operating in the Boston COTP Zone to reflect the fact that federal, state, and local, law enforcement personnel may enforce such zones within their respective jurisdictions on behalf of the COTP.

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.

The USCG and MARAD are responsible for processing license applications to own, construct, and operate deepwater ports. To meet the requirements of the National Environmental Policy Act of 1969 (NEPA), the Coast Guard, in cooperation with MARAD, prepared an Environmental Impact Statement (EIS)

in conjunction with reviewing the NEGDWP licensing application. Among other things, the EIS assessed the potential economic impacts associated with the construction and operation of NEGDWP, including the no anchoring and limited access areas that would be implemented by this rule. That EIS is available in the public docket for the licensing application (USCG-2005-22219) at <http://www.regulations.gov>.

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. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or fish within 1000 meters of the STL Buoys for NEGDWP. The impact on small entities is expected to be minimal because vessels wishing to transit the Atlantic Ocean in the vicinity of the deepwater port may do so, provided they remain more than 500 meters from NEGDWP's STL Buoys and any LNGC vessels calling on the deepwater port, and provided they refrain from anchoring or deploying nets, dredges, or traps, within 1000 meters of the STL Buoys. Vessels wishing to fish in the area may do so in nearby and adjoining areas when otherwise permitted by applicable fisheries regulations.

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 LCDR Heather Morrison, Coast Guard Sector Boston, at 617-223-3028, e-mail: *Heather.L.Morrison@uscg.mil*. 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

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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 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. 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 rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (4321-4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A

preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, and Reporting and recordkeeping requirements.

33 CFR Part 165

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

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 150 and 165 as follows:

PART 150—DEEPWATER PORTS: OPERATIONS

1. The authority citation for Part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

2. In § 150.940, add paragraph (c) to read as follows:

§ 150.940 Safety zones for specific deepwater ports.

* * * * *

(c) *Northeast Gateway Deepwater Port (NEGDWP).*

(1) *Location.* The safety zones for the NEGDWP consist of circular zones, each with a 500-meter radius and centered on each of the deepwater port's two submerged turret loading (STL) buoys. STL Buoy "A" is centered at the following coordinates: 42°23'38" N, 070°35'31" W. STL Buoy "B" is centered at the following coordinates: 42°23'56" N, 070°37'00" W. Each safety zone encompasses, within the respective 500-meter circles, the primary components of NEGDWP, including a submerged loading turret (buoy) and a pipeline end manifold (STL/PLEM). Each safety zone is located approximately 13 miles south-southeast of the City of Gloucester, Massachusetts, in Federal waters.

(2) *No anchoring area.* Two mandatory no anchoring areas for NEGDWP are established for all waters within circles of 1,000-meter radii

centered on the submerged turret loading buoy positions set forth in paragraph (c)(1) of this section.

(3) *Area to be avoided.* An area to be avoided (ATBA) that is approximately 2.8625 square nautical miles in size has been established surrounding the safety zones and no anchoring areas described in paragraphs (c)(1) and (2), of this section, and is bounded as follows:

Starting at point (i) 42°24'17" N, 070°35'16" W; then a rhumb line to point (ii) 42°24'35" N, 070°36'46" W; then an arc with a 1250 m radius centered at point (iii) 42°23'56" N, 070°37'00" W, to a point (iv) 42°23'17" N, 070°37'15" W; then a rhumb line to point (v) 42°22'59" N, 070°35'45" W; then an arc with a 1250 m radius centered at point (vi) 42°23'38" N, 070°35'31" W, to start.

(4) *Regulations.* (i) In accordance with the general regulations set forth in 33 CFR 165.23 and elsewhere in this part, no person or vessel may enter the waters within the boundaries of the safety zones described in paragraph (c)(1) of this section unless previously authorized by the Captain of the Port (COTP) Boston, or his/her authorized representative.

(ii) Notwithstanding paragraph (c)(4)(i) of this section, tankers and support vessels, as defined in 33 CFR 148.5, operating in the vicinity of NEGDWP are authorized to enter and move within such zones in the normal course of their operations following the requirements set forth in 33 CFR 150.340 and 150.345, respectively.

(iii) All other vessel operators desiring to enter or operate within the safety zones described in paragraph (c)(1) of this section must contact the COTP or the COTP's authorized representative to obtain permission by calling the Sector Boston Command Center at 617-223-5761. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's authorized representative.

(iv) No vessel, other than a support vessel or tanker calling on NEGDWP, may anchor in the area described in paragraph (c)(2) of this section.

PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. In § 165.110, revise paragraphs (a), (c)(2), and (c)(3); and add paragraph (b)(4) to read as follows:

§ 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) *Definitions.* As used in this section—

Authorized representative means a Coast Guard commissioned, warrant, or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port (COTP) Boston.

Deepwater port means any facility or structure meeting the definition of deepwater port in 33 CFR 148.5.

Support vessel means any vessel meeting the definition of support vessel in 33 CFR 148.5.

(b) * * *

(4) *Vessels calling on a deepwater port.* All waters within a 500-meter radius of any LNGC engaged in regasification or transfer, or otherwise moored, anchored, or affixed to a deepwater port listed in 33 CFR 150.490 and falling within the waters of the Boston COTP Zone, as defined in 33 CFR 3.05-10.

(c) * * *

(2) No person or vessel may enter the waters within the boundaries of the safety and security zones described in paragraph (b) of this section unless previously authorized by the COTP Boston, or his/her authorized representative. However, LNGCs and support vessels, as defined in 33 CFR 148.5, operating in the vicinity of NEGDWP are authorized to enter and move within such zones in the normal course of their operations following the requirements set forth in 33 CFR 150.340 and 150.345, respectively.

(3) All vessels operating within the safety and security zones described in paragraph (b) of this section must comply with the instructions of the COTP or his/her authorized representative.

5. Add § 165.117 to read as follows:

§ 165.117 Regulated Navigation Areas, Safety and Security Zones: Deepwater Ports, First Coast Guard District.

(a) *Location.* (1) Regulated navigation areas. All waters within a 1,000-meter radius of the geographical positions set forth in paragraph (a)(3) of this section are designated as regulated navigation areas.

(2) *Safety and security zones.* All waters within a 500-meter radius of the geographic positions set forth in paragraph (a)(3) of this section are designated as safety and security zones.

(3) *Coordinates.* (i) The geographic coordinates forming the loci for the regulated navigation areas, safety, and security zones for Northeast Gateway Deepwater Port are: 42°23'38" N, 070°35'31" W; and 42°23'56" N, 070°37'00" W.

(ii) [Reserved]

(b) *Definitions.* As used in this section—

Authorized representative means a Coast Guard commissioned, warrant, or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port (COTP) Boston.

Deepwater port means any facility or structure meeting the definition of deepwater port in 33 CFR 148.5.

Dredge means fishing gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

Support vessel means any vessel meeting the definition of support vessel in 33 CFR 148.5.

Trap means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats used for fishing. Also called a pot.

(c) *Applicability.* This section applies to all vessels operating in the regulated navigation areas set forth in paragraph (a) of this section, except—

(1) Those vessels conducting cargo transfer operations with the deepwater ports whose coordinates are provided in paragraph (a)(3) of this section,

(2) Support vessels operating in conjunction therewith, and

(3) Coast Guard vessels or other law enforcement vessels operated by or under the direction of an authorized representative of the COTP Boston.

(d) *Regulations.* (1) No vessel may anchor or engage in commercial fishing using nets, dredges, or traps (pots) in the regulated navigation areas set forth in paragraph (a)(1) of this section.

(2) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within the safety and security zones designated in paragraph (a)(2) of this section is prohibited unless authorized by the COTP Boston, or his/her authorized representative.

(3) Notwithstanding paragraph (d)(2) of this section, tankers and support vessels, as defined in 33 CFR 148.5, operating in the vicinity of NEGDWP are authorized to enter and move within such zones in the normal course of their operations following the requirements set forth in 33 CFR 150.340 and 150.345, respectively.

(4) All vessels operating within the safety and security zones described in paragraph (a)(2) of this section must

comply with the instructions of the COTP or his/her authorized representative.

Dated: March 26, 2008.

T.V. Skuby,

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

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 53

RIN 2900-AM26

Assistance to States in Hiring and Retaining Nurses at State Veterans Homes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to establish a mechanism for States to obtain payments from VA to assist a State veterans home in the hiring and retention of nurses for the purpose of reducing nursing shortages at the home. This rule would implement provisions of the Veterans Health Programs Improvement Act of 2004.

DATES: Comments on the proposed rule must be received on or before June 10, 2008.

ADDRESSES: Written comments may be submitted through www.regulations.gov; by mail or hand-delivery to Director, Regulations Management (OOREG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM26-Assistance to States in Hiring and Retaining Nurses at State Veterans Homes." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Jacquelyn Bean, Chief, State Veterans Home Per Diem Program, at (202) 461-6771, or Christa M. Hojlo, PhD, Director, State Veterans Home Clinical and Survey Oversight, at (202) 461-6779; Veterans Health Administration (114),

Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document proposes to establish a new 38 CFR part 53 consisting of regulations captioned "PAYMENTS TO STATES FOR PROGRAMS TO PROMOTE THE HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES" (referred to below as the proposed regulations). The proposed regulations provide a mechanism for a State to obtain payments from VA to assist a State Veterans Home (SVH) in the hiring and retention of nurses for the purpose of reducing nursing shortages at that home. These regulations would implement provisions in section 201 of the Veterans Health Programs Improvement Act of 2004 (Pub. L. 108-422), which are codified at 38 U.S.C. 1744.

Definitions

Definitions applicable to the proposed regulations are set forth at § 53.02. We included definitions of *nurse*, *State*, *SVH*, and *State representative*.

We propose to define *nurse* to mean an individual who is a registered nurse, a licensed practical nurse, a licensed vocational nurse, or a nursing assistant certified in the State in which payment is made and who is a bedside care giver (e.g., this would not include an individual acting in the capacity of an advance practice nurse, an administrative nurse, or a director of nursing). We also propose that the terms *nurses* and *nursing* shall be construed consistent with this definition. The proposed definition of *nurse* reflects the intent of the law (38 U.S.C. 1744) to reduce shortages of nurses who provide direct bedside care for veterans at least a majority of the time. H. Rep. No. 108-538, at 5 (2004) (law intended to assist State homes "in hiring nurses to care for veterans"). Advance practice nurses, administrative nurses, and directors of nursing generally do not provide direct bedside care, and therefore, would generally not be eligible for participation in the proposed program. We are particularly interested in soliciting comments on the proposed definition of *nurse*.

We propose to define *State* consistent with 38 U.S.C. 101(20) to cover places where an SVH could be located, including the States, Territories, and possessions of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

Under 38 U.S.C. 1744(b), a State is eligible for nurse hiring and retention payments if it receives per diem payments from VA for domiciliary care,

nursing home care, adult day health care, and hospital care. Accordingly, we propose to define *State Veterans Home*, consistent with VA's per diem programs, to include State facilities approved by VA for the purpose of providing domiciliary, nursing home, adult day health, and hospital care for certain disabled veterans.

We propose to define *State representative* to mean the official who would have authority to sign the application on behalf of the State and would otherwise be the State contact for actions under the regulations.

Decisions and Notifications

Under the proposed regulations, authority would be delegated to the Chief Consultant, Geriatrics and Extended Care, to make all determinations regarding payments. The Chief Consultant would also provide written notice to State representatives concerning approvals, denials, or requests for additional information under the regulations.

General Requirements for Payments

Proposed § 53.11 would provide for payments to a State for an employee incentive program to reduce the shortage of nurses at a SVH if the requirements of proposed § 53.11(a) are met. Except as discussed below, these requirements restate the provisions of 38 U.S.C. 1744.

To be eligible for payments under proposed § 53.11(a)(3), the SVH must have a nursing shortage that is documented by credible evidence, including but not limited to SVH records showing vacancies, SVH records showing overtime use, and reports documenting that nurses are not available in the local area. This is intended to implement the section 1744(e) requirement that an application describe the nursing shortage at the SVH and to ensure that payments are made only when an actual nursing shortage exists.

Under section 1744(c), a State may use VA's payments only to provide funds for an employee incentive scholarship program or other employee incentive program designed to promote the hiring and retention of nurses and reduce a nursing shortage. Consistent with section 1744(c), proposed § 53.11(a)(4) would limit the use of VA's payments to nursing incentives and expressly prohibit using the funds for any other purpose, such as covering all or part of a nurse's standard employee benefits (e.g., salary, health insurance, or retirement plan). Accordingly, under the proposed regulations, an "employee