

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.
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Original amendment submission date	Date of final publication	Citation/description
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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.
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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

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

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

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

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.