

imputation under section 7872 (relating to the treatment of below-market loans) is exempted from its provisions.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 3.** The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 4.** Section 25.2207A-1 is amended by adding the text of paragraph (b) to read as follows:

§ 25.2207A-1 Right of recovery of gift taxes in the case of certain marital deduction property.

* * * * *

(b) *Failure of a person to exercise the right of recovery.* (1) The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery could have been obtained. *See* § 25.2511-1. The transfer is considered to be made when the right to recovery is no longer enforceable under applicable law and is treated as a gift even if recovery is impossible. A delay in the exercise of the right of recovery without payment of sufficient interest is a below-market loan. Section 1.7872-5T of this chapter describes factors that are used to determine, based on the facts and circumstances of a particular case, whether a loan otherwise subject to imputation under section 7872 (relating to the treatment of below-market loans) is exempted from its provisions.

(2) The transferor subject to section 2519 may execute a written waiver of the right of recovery arising under section 2207A before that right of recovery becomes unenforceable. If a waiver is executed, the transfer of the unrecovered amounts by the transferor is considered to be made on the later of—

(i) The date of the valid and irrevocable waiver rendering the right of recovery no longer enforceable; or

(ii) The date of the payment of the tax by the transferor.

* * * * *

■ **Par. 5.** Section 25.2519-1 is amended as follows:

■ **1.** Paragraph (c)(1) is amended by adding a sentence to the end of the paragraph.

■ **2.** The paragraph heading for paragraph (c)(4) is revised and the text of paragraph (c)(4) is added.

■ **3.** Paragraph (g) introductory text is revised.

The additions and revisions read as follows:

§ 25.2519-1 Dispositions of certain life estates.

* * * * *

(c) * * * (1) * * * See paragraph (c)(4) of this section for the effect of gift tax that the donee spouse is entitled to recover under section 2207A.

* * * * *

(4) *Effect of gift tax entitled to be recovered under section 2207A on the amount of the transfer.* The amount treated as a transfer under paragraph (c)(1) of this section is further reduced by the amount the donee spouse is entitled to recover under section 2207A(b) (relating to the right to recover gift tax attributable to the remainder interest). If the donee spouse is entitled to recover gift tax under section 2207A(b), the amount of gift tax recoverable and the value of the remainder interest treated as transferred under section 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A-1(b).

* * * * *

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, that section 2503(e) is not applicable to the amount deemed transferred, and that the gift taxes on the amount treated as transferred under paragraph (c) are offset by S's unified credit. The examples are as follows:

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03-18018 Filed 7-17-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 2, 26, 62, 64, 95, 100, 120, and 165

46 CFR Parts 7 and 28

[USCG-2001-9044]

RIN 1625-AA30

Territorial Seas, Navigable Waters, and Jurisdiction

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule conforms the Coast Guard's definitions of jurisdictional terms to existing law. We have made these changes so that our regulatory definitions will reflect statutory changes and Presidential proclamations affecting our jurisdiction. These changes are intended to clarify how the Coast Guard interprets its jurisdiction to enforce treaties, laws, and regulations of the United States.

DATES: This final rule is effective August 18, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2001-9044 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Alex Weller, Office of Maritime and International Law, U.S. Coast Guard, telephone 202-267-0097. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 22, 1975, we published a rule in the **Federal Register** entitled "Jurisdiction and Navigable Waters" that established general duties and jurisdiction regulations in part 2 of Title 33 of the Code of Federal Regulations (33 CFR part 2) (40 FR 49326). Most of those regulations have not changed since 1975.

In an effort to conform the Coast Guard's definitions of jurisdictional

terms to existing law, we published a notice of proposed rulemaking (NPRM) on August 14, 2002, entitled "Territorial Seas, Navigable Waters, and Jurisdiction" (67 FR 52906)(USCG–2001–9044, under former DOT RIN 2115–AG13). And on September 18, 2002, we published a correction to that proposed rule noting that we did not intend to omit the contents of a footnote in our proposed revision of 33 CFR part 2 (67 FR 58752). No public hearing was requested and none was held.

A little more than 3 months after we published our NPRM, the Maritime Transportation Security Act of 2002 (MTSA) was enacted (Pub. L. 107–295, 116 Stat. 2064). The MTSA extended the territorial seas jurisdiction from 3 to 12 nautical miles for two domestic statutes by amending section 1 of title XIII of the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 ("Magnuson Act"), 50 U.S.C. 195, and section 4(b) of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1203(b)).

On the same date the MTSA was enacted, November 25, 2002, the Homeland Security Act of 2002 (HLSA) (Pub. L. 107–296, 116 Stat. 2135) was also enacted. The HLSA established the Department of Homeland Security (DHS) and directed the transfer of the Coast Guard from the Department of Transportation to DHS.

Regulatory amendments reflecting these recent MTSA, non-discretionary changes in jurisdiction and revisions to reflect our move to DHS under the HLSA, concern only interpretations, agency organization, and rules of agency procedure, and thus, under 5 U.S.C. 553(b)(A), are exempt from the rulemaking notice requirement. Therefore, we have included these MTSA and HLSA changes in this final rule. All changes in the rule based on the recent passage of MTSA and HLSA are described below in the *Discussion of Comments and Changes* section.

Background and Purpose

This rule changes definitions of jurisdictional terms, primarily in 33 CFR part 2, to reflect current statutes and other legal authorities on which these definitions are based. In the preamble of our NPRM, we discussed various legal authorities on which we based the proposed changes to our jurisdictional regulations (67 FR 52906–52908, August 14, 2002). The Coast Guard uses the definitions for these jurisdictional terms—e.g., "internal waters," "inland waters," "navigable waters," "territorial sea," "exclusive economic zone," "high seas," and "waters subject to the jurisdiction of the

United States"—to enforce treaties, laws, and regulations of the United States.

Discussion of Comments and Changes

We received three letters commenting on the proposed rule. And, in response, we have incorporated changes in the final rule. The final rule also reflects changes from the proposed rule based on the November 25, 2002 enactment of the MTSA and HLSA.

Navigable Waters

One commentator wrote that our proposed definition of "navigable waters" differed from the U.S. Environmental Protection Agency's (EPA's) definition in 40 CFR part 110 (specifically in 40 CFR 110.1) and that with respect to the Federal Water Pollution Control Act Amendments, known as the Clean Water Act, EPA has the primary federal responsibility to define this jurisdictional term. We agree that EPA has the primary federal responsibility to define this term with respect to the Clean Water Act.

After conferring with the EPA, we have decided not to revise the text in 33 CFR 2.05–25, as we proposed. Instead, all we have revised in that section is: (1) The section number itself—to § 2.36—to conform to the renumbering of sections in 33 CFR part 2, and (2) we removed the footnote. As we explained in our September 18, 2002, correction (67 FR 58752), the contents of that footnote have been moved to the note for § 2.5, Specific definitions control. Also, because we had included references to paragraph (b) of our proposed § 2.36 in §§ 2.38, 62.3, 64.06, and 100.05, we have had to change those four references to paragraph (a) to reflect the corresponding § 2.36 language in the final rule.

The EPA, jointly with the Army Corps of Engineers (ACOE), has already issued an "Advanced Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of 'Waters of the United States'" (68 FR 1991, January 15, 2003). As we did in our NPRM, the EPA and ACOE's ANPRM discusses the U.S. Supreme Court's decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)(SWANCC), interpreting "waters of the United States" and "navigable waters" as used in the Clean Water Act. To ensure that our definitions are consonant with the EPA's and ACOE's, we will await the results of their rulemaking before amending our corresponding definitions in redesignated § 2.36. In the meantime, it should be understood that we are not taking a position in this rulemaking on

the definitions of those terms in the SWANCC case.

High Seas

We received two comments expressing concern that our definition of "high seas" in proposed § 2.32(d) would include the exclusive economic zones of both the United States and other nations and that this might undermine the doctrine that U.S. statutes are presumed not to apply outside of U.S. territory unless Congress expresses a clear statement of extraterritorial application. In response to these comments, the Coast Guard conferred with the Department of State, U.S. Navy, and other federal agencies, and has revised both § 2.32(c) and (d) to read:

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et. seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (e.g., The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in 2.30), territorial sea (as defined in 2.22), or internal waters of the United States or any other nation.

We also received a comment that we are not required to include the Great Lakes as a discrete part of our "high seas" definition in § 2.32(a). We agree and have deleted the reference to the Great Lakes in that paragraph dealing with special maritime and territorial jurisdiction under 18 U.S.C. 7.

Exclusive Economic Zone

In conferring with the Department of State about the proposed rule, it was suggested that we insert the word "including" after the "United States" in proposed § 2.30 to match language in the President's Exclusive Economic Zone Proclamation 5030 of March 10, 1983 (97 Stat. 1557) and that we make certain other textual changes. We agree, and have made those revisions. Specifically, we have deleted a reference to the Covenant and the United Nations Trusteeship Agreement, and added reference to Guam, American Samoa, the U.S. Virgin Islands, and any other territory or possession over which the United States exercises sovereignty. Finally, we have clarified the rights of

the United States and all other nations in the waters of the exclusive economic zone (EEZ) as stated in Presidential Proclamation 5030.

Vessel Bridge-to-Bridge Radiotelephone Act

We have revised 33 CFR 2.22(a)(i) and 26.02, and 46 CFR 7.5 to reflect the MTSA's extension of the application of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201–1208, to all waters of the United States territorial sea described in Presidential Proclamation 5928. Specifically, to reflect MTSA's sec. 321 amendment of 33 U.S.C. 1203(b), we added the Vessel Bridge-to-Bridge Radiotelephone Act to statutes listed in our territorial seas definition in 33 CFR 2.22(a)(1); changed the reference to the territorial sea definition in 33 CFR 26.02 from § 2.22(a)(2) to § 2.22(a)(1); and in 46 CFR 7.5, Rules for establishing boundary lines, we changed the “3 miles” territorial sea reference to “12 nautical miles”.

Magnuson Act

When we drafted our proposed rule, the Magnuson Act, which amended the Act of June 15, 1917, applied in the United States territorial sea out to a seaward limit of 3 nautical miles. Sec. 104 of the MTSA expanded the Act of June 15, 1917's reach to 12 nautical miles. We added the Act of June 15, 1917, as amended, to 33 CFR 2.22(a)(i), and revised paragraph (c) in 33 CFR 165.9, Geographical application of limited and controlled access areas and regulated navigation areas, to reflect that now both the terms “navigable waters of the United States” in the Ports and Waterways Safety Act, as amended (33 U.S.C. 1221–1232), and “territorial waters of the United States” in the Magnuson Act have the same seaward limit—12 miles.

Authority Citations

The authority citations for CFR parts in the final rule differ from those in our proposed rule. These differences reflect recent jurisdictional changes created by the MTSA and organizational changes caused by the HLSA. Also, we have converted the U.S. Code citation for the Ports and Waterways Safety Act, as amended, from “(33 U.S.C. 1221 *et seq.*)” to the more specific “(33 U.S.C. 1221–1232).” This helps clarify that regulations in 33 CFR part 100, for example, issued under authority of 33 U.S.C. 1233, are not issued under the authority of the PWSA.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because we are merely conforming our jurisdictional definitions to reflect authority given to the Coast Guard by current statutes and Presidential proclamations.

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.

We are merely conforming our jurisdictional definitions to statutory authority and presidential proclamations. Therefore, 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking by providing the phone number and address of Alex Weller to address questions concerning provisions of the rulemaking.

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 impose 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 does not create 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Where a statute does not mandate a change, we will revise the existing language to maintain the status quo for geographical scope. These changes should also be categorically excluded. The Coast Guard believes that merely updating the regulations to reflect movement of the boundary of the territorial sea from 3 nautical miles to 12 nautical miles from shore will not have any impact on the environment. An “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are available in the

docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 2

Administrative practice and procedure, Law enforcement.

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 62

Navigation (water).

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, Penalties.

33 CFR Part 100

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

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 165

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

46 CFR Part 7

Law Enforcement, Vessels.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 2, 26, 62, 64, 95, 100, 120, and 165 and 46 CFR parts 7 and 28 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 2—JURISDICTION

■ 1. Revise part 2 to read as follows:

PART 2—JURISDICTION

Subpart A—General

Sec.

2.1 Purpose.

2.5 Specific definitions control.

Subpart B—Jurisdictional Terms

2.20 Territorial sea baseline.

2.22 Territorial sea.

2.24 Internal waters.

2.26 Inland waters.

2.28 Contiguous zone.

2.30 Exclusive Economic Zone.

2.32 High seas.

2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

2.36 Navigable waters of the United States, navigable waters, territorial waters.

2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Subpart C—Availability of Jurisdictional Decisions

2.40 Maintenance of decisions.

2.45 Decisions subject to change or modification and availability of lists and charts.

Authority: 14 U.S.C. 633, 33 U.S.C. 1222, 80 Stat. 931 (49 U.S.C. 108); Pub. L. 107–296, 116 Stat. 2135, 2249; Department of Homeland Security Delegation No. 0170.

PART 2—JURISDICTION

Subpart A—General

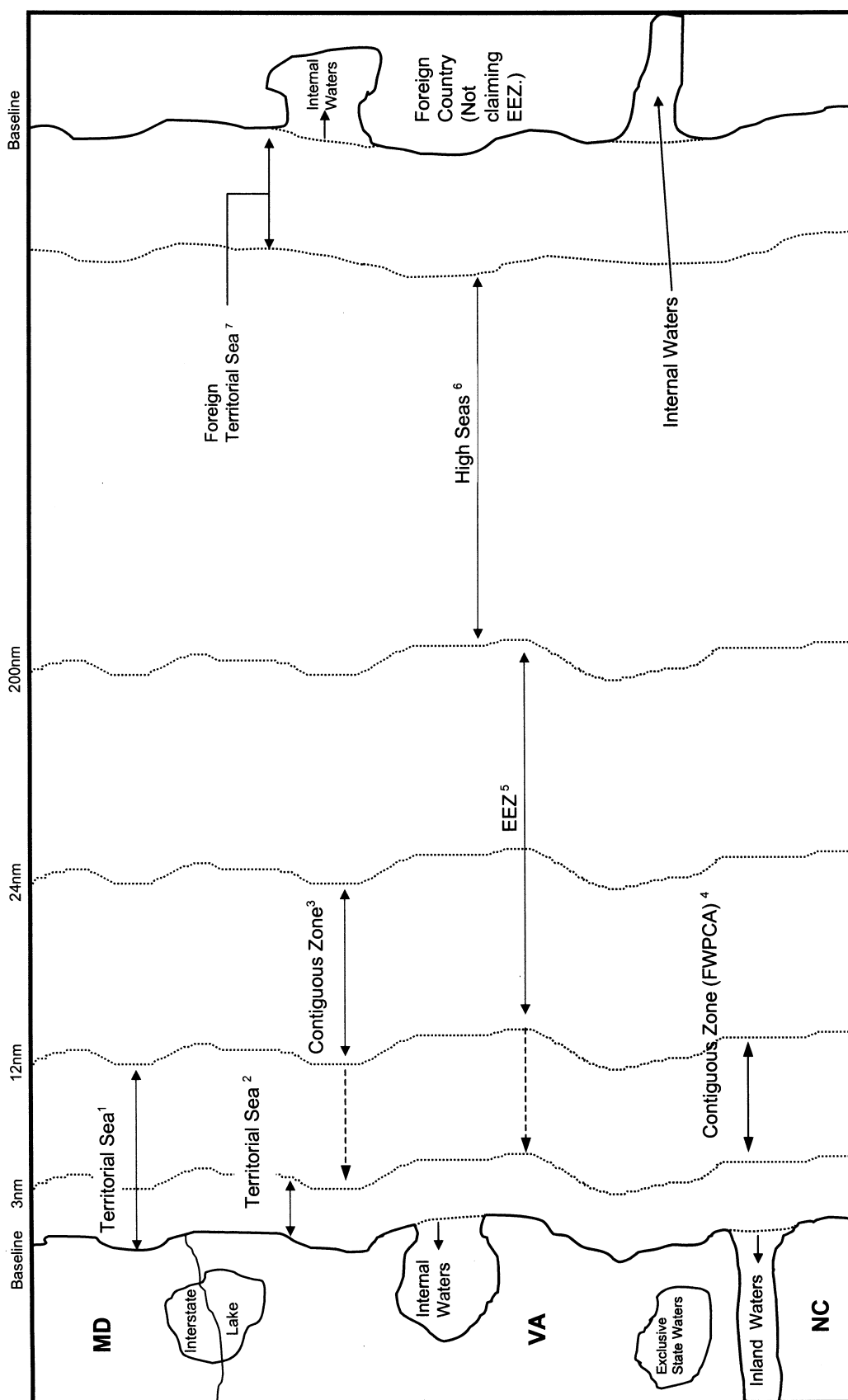
§ 2.1 Purpose

(a) The purpose of this part is to define terms the Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters in cases where specific jurisdictional definitions are not otherwise provided.

(b) Figure 2.1 is a visual aid to assist you in understanding this part.

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FIGURE 2.1. JURISDICTIONAL AREAS



¹ Territorial sea for purposes identified in § 2.22(a)(1).

² Territorial sea for purposes identified in § 2.22(a)(2).

³ Contiguous zone as described in § 2.28(b), varies with territorial sea width for particular purpose involved.

⁴ Contiguous zone as described in § 2.28(a), for Federal Water Pollution Control Act purposes.

⁵ Exclusive Economic Zone (EEZ) is measured from the seaward limit of the territorial sea, as variously defined in § 2.22(a), to a distance of 200 nautical miles from the baseline. The inner (shoreward) boundary of the EEZ will vary for particular purposes.

⁶ High seas as defined in § 2.32(d). When a nation has not proclaimed an EEZ, the high seas begin at the seaward edge of their territorial sea.

⁷ The U.S. recognizes territorial sea claims of other nations up to a maximum distance of 12 nautical miles from the baseline.

§ 2.5 Specific definitions control.

In cases where a particular statute, regulation, policy or procedure provides a specific jurisdictional definition that differs from the definitions contained in this part, the former definition controls.

Note to § 2.5: For example, the definition of “inland waters” in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2003(o)) would control the interpretation of inland navigation rules created under that Act and the “inland waters” definition in 46 CFR 10.103 would control regulations in 46 CFR part 10. Also, in various laws administered and enforced by the Coast Guard, the terms “State” and “United States” are defined to include some or all of the territories and possessions of the United States. The definitions in §§ 2.36 and 2.38 should be considered as supplementary to these statutory definitions and not as interpretive of them.

Subpart B—Jurisdictional Terms

§ 2.20 Territorial sea baseline.

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.

Note to § 2.20: Charts depicting the territorial sea baseline are available for examination in accordance with § 1.10–5 of this chapter.

§ 2.22 Territorial sea.

(a) With respect to the United States, the following apply—

(1) *Territorial sea* means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, for—

(i) Statutes included within subtitle II, title 46, U.S.C.; the Ports and Waterways Safety Act, as amended (33 U.S.C. 1221–1232); the Act of June 15, 1917, as amended (50 U.S.C. 191–195); and the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201–1208), and any regulations issued under the authority of these statutes.

(ii) Purposes of criminal jurisdiction pursuant to Title 18, United States Code.

(iii) The special maritime and territorial jurisdiction as defined in 18 U.S.C. 7.

(iv) Interpreting international law.

(v) Any other treaty, statute, or regulation, or amendment thereto,

interpreted by the Coast Guard as incorporating the definition of territorial sea as being 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(2) Unless otherwise specified in paragraph (a)(1) of this section, *territorial sea* means the waters, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(3) In cases where regulations are promulgated under the authority of statutes covered by both paragraphs (a)(1) and (a)(2) of this section, the Coast Guard may use the definition of territorial sea in paragraph (a)(1) of this section.

(b) With respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.

§ 2.24 Internal waters.

(a) With respect to the United States, *internal waters* means the waters shoreward of the territorial sea baseline.

(b) With respect to any other nation, *internal waters* means the waters shoreward of its territorial sea baseline, as recognized by the United States.

§ 2.26 Inland waters.

Inland waters means the waters shoreward of the territorial sea baseline.

§ 2.28 Contiguous zone.

(a) For the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), *contiguous zone* means the zone, 9 nautical miles wide, adjacent to and seaward of the territorial sea, as defined in § 2.22(a)(2), that was declared to exist in Department of State Public Notice 358 of June 1, 1972 and that extends from 3 nautical miles to 12 nautical miles as measured from the territorial sea baseline.

(b) For all other purposes, *contiguous zone* means all waters within the area adjacent to and seaward of the territorial sea, as defined in § 2.22(a), and extending to 24 nautical miles from the territorial sea baseline, but in no case extending within the territorial sea of another nation, as declared in Presidential Proclamation 7219 of September 2, 1999 (113 Stat. 2138).

§ 2.30 Exclusive Economic Zone.

(a) With respect to the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and any other territory or possession over which the United States

exercises sovereignty, *exclusive economic zone* means the zone seaward of and adjacent to the territorial sea, as defined in § 2.22(a), including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline (except where otherwise limited by treaty or other agreement recognized by the United States) in which the United States has the sovereign rights and jurisdiction and all nations have the high seas freedoms mentioned in Presidential Proclamation 5030 of March 10, 1983.

(b) Under customary international law as reflected in Article 56 of the 1982 United Nations Convention on the Law of the Sea, and with respect to other nations, *exclusive economic zone* means the waters seaward of and adjacent to the territorial sea, not extending beyond 200 nautical miles from the territorial sea baseline, as recognized by the United States.

§ 2.32 High seas.

(a) For purposes of special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. 7, *high seas* means all waters seaward of the territorial sea baseline.

(b) For the purposes of section 2 of the Act of February 19, 1895, as amended (33 U.S.C. 151) and the Inland Navigational Rules Act of 1980 (33 U.S.C. Chapter 34), *high seas* means the waters seaward of any lines established under these statutes, including the lines described in part 80 of this chapter and 46 CFR part 7.

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (*e.g.*, The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in § 2.30), territorial sea (as defined in § 2.22), or internal waters of the United States or any other nation.

§ 2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

(a) *Waters subject to tidal influence and waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

(b) *Mean high water* is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

§ 2.36 Navigable waters of the United States, navigable waters, and territorial waters.

(a) Except as provided in paragraph (b) of this section, *navigable waters of the United States, navigable waters*, and *territorial waters* mean, except where Congress has designated them not to be navigable waters of the United States:

(1) Territorial seas of the United States;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters of the United States not subject to tidal influence that:

(i) Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage, or

(ii) A governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce.

(b) *Navigable waters of the United States and navigable waters*, as used in sections 311 and 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1321 and 1322, mean:

(1) Navigable waters of the United States as defined in paragraph (a) of this section and all waters within the United States tributary thereto; and

(2) Other waters over which the Federal Government may exercise Constitutional authority.

§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Waters subject to the jurisdiction of the United States and waters over which the United States has jurisdiction mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(a).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

Subpart C—Availability of Jurisdictional Decisions

§ 2.40 Maintenance of decisions.

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions thereof, in order to determine its jurisdiction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the portion of the territorial sea is located.

§ 2.45 Decisions subject to change or modification and availability of lists and charts.

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10–5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

■ 2. The authority citation for part 26 is revised to read as follows:

Authority: 14 U.S.C. 2, 33 U.S.C. 1201–1208; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation

No. 0170. Rule 1, International Regulations for the Prevention of Collisions at Sea.

■ 3. In § 26.02, add, in alphabetical order, the definition of “territorial sea” to read as follows:

§ 26.02 Definitions.

* * * * *

Territorial sea means all waters as defined in § 2.22(a)(1) of this chapter.

* * * * *

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

■ 4. The authority citation for part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1222, 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 5. In § 62.3, revise paragraph (g) to read as follows:

§ 62.3 Definition of terms.

* * * * *

(g) *Navigable waters of the United States*. The term navigable waters of the United States is defined in § 2.36(a) of this chapter.

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

■ 6. The authority citation for part 64 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 7. In § 64.06, add, in alphabetical order, a definition of “navigable waters of the United States” to read as follows:

§ 64.06 Definition of terms.

* * * * *

Navigable waters of the United States means those waters described in § 2.36(a) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

* * * * *

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

■ 8. The authority citation for part 95 is revised to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.

■ 9. In § 95.010, add, in alphabetical order, a definition of “waters subject to the jurisdiction of the United States” to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Waters subject to the jurisdiction of the United States means those waters described in § 2.38 of this chapter.

PART 100—MARINE EVENTS

- 10. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.

- 11. In § 100.05, add paragraph (e) to read as follows:

§ 100.05 Definition of terms used in this part.

* * * * *

(e) *Navigable waters of the United States* means those waters described in § 2.36(a) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

PART 120—SECURITY OF PASSENGER VESSELS

- 12. The authority citation for part 120 is revised to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

- 13. In § 120.110, revise the definitions of “high seas” to read as follows:

§ 120.110 Definitions.

* * * * *

High seas means the waters defined in § 2.32(d) of this chapter.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 14. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195; 46 U.S.C. Chapter 701; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

- 15. Add § 165.9 to read as follows:

§ 165.9 Geographic application of limited and controlled access areas and regulated navigation areas.

(a) *General.* The geographic application of the limited and controlled access areas and regulated navigation areas in this part are determined based on the statutory authority under which each is created.

(b) *Safety zones and regulated navigation areas.* These zones and areas are created under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232. Safety zones established under 33 U.S.C. 1226 and

regulated navigation areas may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(c) *Security zones.* These zones have two sources of authority—the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232, and the Act of June 15, 1917, as amended by both the Magnuson Act of August 9, 1950 (“Magnuson Act”), 50 U.S.C. 191–195, and sec. 104 the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064). Security zones established under either 33 U.S.C. 1226 or 50 U.S.C. 191 may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(d) *Naval vessel protection zones.* These zones are issued under the authority of 14 U.S.C. 91 and 633 and may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 nautical miles from the baseline.

TITLE 46—SHIPPING**PART 7—BOUNDARY LINES**

- 16. The authority citation for part 7 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151, 1222; Department of Homeland Security Delegation No. 0170.

§ 7.5 [Amended]

- 17. In § 7.5(a), remove the distance “3 miles” and add, in its place, the distance “12 nautical miles”.

- 18. Revise § 7.105 to read as follows:

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5′ N, longitude 82°11.2′ W; along the 12-mile line which marks the seaward limits of the territorial sea (as defined in 33 CFR 2.22(a)(1)) to Rio Grande, Texas at approximate position latitude 25°58.6′ N, longitude 96°55.5′ W.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

- 19. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.

- 20. In § 28.50, revise the definitions of “boundary lines” and “coastline”, to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Boundary lines means the lines described in part 7 of this chapter. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets, and rivers. In some areas, they are along the 12-mile line that marks the seaward limits of the territorial sea and, in other areas, they come ashore.

* * * * *

Coastline means the territorial sea baseline as defined in 33 CFR 2.20.

* * * * *

Dated: May 28, 2003.

Calvin M. Lederer,

Acting Chief Counsel, U.S. Coast Guard.

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 3**

RIN 2900–AL36

Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases by adding cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation benefits for cirrhosis based on scientific and medical research showing a higher risk of death from cirrhosis in former WWII POWs than in the general population.

DATES: Effective Date: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron St, Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal**