

election is effective with respect to marketable stock of a PFIC if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in paragraph (f) of this section) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(2) *Shareholders other than regulated investment companies.* For the first taxable year of a United States person (other than a regulated investment company) for which a section 1296 election is in effect with respect to the stock of a PFIC, such United States person shall, in lieu of the rules of paragraphs (c) and (d) of this section—

(i) Apply the rules of section 1291 to any distributions with respect to, or disposition of, section 1296 stock;

(ii) Apply section 1291 to the amount of the excess, if any, of the fair market value of such section 1296 stock on the last day of the United States person's taxable year over its adjusted basis, as if such amount were gain recognized from the disposition of stock on the last day of the taxpayer's taxable year; and

(iii) Increase its adjusted basis in the section 1296 stock by the amount of excess, if any, subject to section 1291 under paragraph (i)(2)(ii) of this section.

(3) *Shareholders that are regulated investment companies.* For the first taxable year of a regulated investment company for which a section 1296 election is in effect with respect to the stock of a PFIC, such regulated investment company shall increase its tax under section 852 by the amount of interest that would have been imposed under section 1291(c)(3) for such taxable year if such regulated investment company were subject to the rules of paragraph (i)(2) of this section, and not this paragraph (i)(3). No deduction or increase in basis shall be allowed for the increase in tax imposed under this paragraph (i)(3).

(4) The operation of the rules of this paragraph (i) is illustrated by the following examples.

**Example 1.** A, a United States person and a calendar year taxpayer, owns marketable stock in a PFIC that it acquired on January 1, 1995. At all times, A's PFIC stock was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election effective for taxable year 2003. At the close of taxable year 2003, the fair market value of A's PFIC stock exceeded its adjusted basis by \$10. Pursuant to paragraph (i)(2)(ii) of this section, A must treat the \$10 gain under section 1291 as if the stock were disposed of on December 31, 2003. Further, A will increase its adjusted basis in the PFIC stock by the \$10 in accordance with paragraph (i)(2)(iii) of this section.

**Example 2.** Assume the same facts as in *Example 1*, except that A is a RIC. In taxable year 2003, A would include \$10 of ordinary income under paragraph (c)(1) of this section, and such amount will not be subject to section 1291. A also must increase its tax imposed under section 852 by the amount of interest that would have been determined under section 1291(c)(3), and no deduction will be permitted for such amount. Finally, under paragraph (d)(1) of this section, A will increase its adjusted basis in the PFIC stock by \$10.

(j) *Effective Date.* The provisions of this section are applicable as of the date final regulations are published in the **Federal Register**.

**Par. 5.** Section 1.1296(e)–1 is amended by:

1. Revising paragraph (b)(2).
2. Adding paragraph (b)(3).
3. Revising both references to

“sections 958(a)(1) and (2)” in paragraph (f)(1) to read “section 1298(a)”.

The revision and addition reads as follows:

**§ 1.1296(e)–1 Definition of marketable stock.**

(b) \* \* \*

(2) *Special rule for year of initial public offering.* For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, such class of stock meets the requirements of paragraph (b)(1) of this section for such year if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the taxpayer's calendar year. In cases where a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of paragraph (b)(1) of this section in the calendar year of the offering if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days.

(3) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirements of paragraph (b)(1) or (2) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) or (2) of this section if there is a pattern of trades conducted to meet the requirement of paragraph (b)(1) or (2) of

this section. Similarly, paragraph (b)(2) of this section shall not apply to a public offering of stock that has as one of its principal purposes to avail itself of the reduced trading requirements under the special rule for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the trading requirements of paragraph (b)(1) of this section are satisfied in the subsequent calendar year.

\* \* \* \* \*

**Par. 6.** Section 1.6031(a)–1 is amended by:

1. Redesignating the text of paragraph (b)(1) as (b)(1)(i).

2. Adding a heading to newly designated paragraph (b)(1)(i).

3. Adding paragraph (b)(1)(ii).

The additions read as follows:

**§ 1.6031(a)–1 Return of Partnership income.**

\* \* \* \* \*

(b) \* \* \* (1) \* \* \* (i) *Filing requirement.* \* \* \*

(ii) *Special rule.* For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1296.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD01–02–092]**

**RIN 2115–AA97**

**Security Zone; Seabrook Nuclear Power Plant, Seabrook, NH**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone around the Seabrook Nuclear Power Plant in Seabrook, New Hampshire. This security zone will close off public access to all land and waters within 250-yards of the waterside property boundary of the plant. This action is

necessary to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

**DATES:** Comments and related material must reach the Coast Guard on or before September 30, 2002.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Portland, 103 Commercial Street, Portland, ME 04101. Marine Safety Office Portland maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780-3092.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-02-092), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address listed under **ADDRESSES** explaining why one may be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

##### Background and Purpose

In light of terrorist attacks on New York City and Washington, D.C. on September 11, 2001 a permanent

security zone is being proposed to safeguard the Seabrook Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Seabrook Nuclear Power Plant presents a possible target of terrorist attack due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. This proposed security zone prohibits entry into or movement within the specified area.

This proposed rulemaking will establish a security zone encompassing all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: Beginning at position 42°53'58" N, 070°51'06" W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53'46" N, 070°51'06" W.

We propose to establish a permanent security zone identical to one we created in a temporary final rule entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" that was published December 31, 2001 in the **Federal Register** (66 FR 67487). That temporary rule originally was effective until June 15, 2002. Its effective period was extended until August 15, 2002 by a temporary final rule with the same title published May 8, 2002 (67 FR 30807). Another extension will be published in the future to accommodate the time necessary for notice and comment rulemaking on this proposed rule. This proposed rulemaking is necessary to provide permanent protection of the waterfront areas of the Seabrook Nuclear Power Plant.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of the security zone proposed herein is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where

each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$250,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

##### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this proposed regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community, and signs will be posted informing the public of the boundaries of the zone.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard 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 will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, we feel this security zone will not have a significant economic impact on a substantial number of small entities. If you think 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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Publ. 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 proposed rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, at (207) 780–3092. 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 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 proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

### Energy Effects

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

### Environment

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

is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

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

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

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

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.106 to read as follows:

#### § 165.106 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53'58"N, 70°51'06"W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53'46"N, 70°51'06"W. All coordinates reference 1983 North American Datum (NAD 83)

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine (COTP).

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(3) No person may swim upon or below the surface of the water within the boundaries of this security zone.

(c) *Authority:* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1223, 1225 and 1226.

Dated: July 23, 2002.

**M.P. O'Malley,**

*Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.*

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