

as a liability of P at the time of the Year 2 transfer. In this example, because P and S2 had no agreement regarding the satisfaction of the nonrecourse liability, S2 would be treated as assuming \$350 of the nonrecourse liability.

#### *E. Requirements of an Agreement To Satisfy a Liability*

The IRS and Treasury are considering whether proposed rules should set forth the requirements of an agreement between the transferor and the transferee regarding which party will satisfy a liability, and how such an agreement must be evidenced.

#### *F. Acts Constituting Satisfaction of a Liability*

The IRS and Treasury are also considering whether proposed rules should provide that, for purposes of determining whether a person is expected to satisfy a liability, such person's expected payment (of money or property, including property securing the liability) to the creditor or to a person indemnified with respect to the liability will be considered. The IRS and Treasury request comments regarding whether an agreement to indemnify a person with respect to a liability, and any other agreement, should be treated as an agreement to satisfy a liability.

#### *G. Collateral Consequences of Satisfaction of a Liability*

The IRS and Treasury believe that, if a liability is satisfied by a person other than the person that the rules of section 357(d) treat as having assumed the liability, the consequences of such satisfaction are determined under general Federal income tax principles. For example, the satisfaction may be treated as a deemed payment that is characterized as a capital contribution or a distribution. The IRS and Treasury are considering proposing regulations confirming this result in the context of section 357(d).

#### *H. Application of Principles of Section 357(d) Regulations in Other Contexts*

As described above, section 357(d) was designed to address the amount of a nonrecourse liability that is treated as assumed by a transferee of property when multiple properties secure the liability, but the transferor either retains or transfers to other transferees some of the property securing the liability. The regulations under section 1001 provide that the amount realized in connection with a sale or other disposition of property includes the amount of liabilities from which the transferor is discharged as a result of the sale or disposition. Section 1.1001-2(a)(1). The

IRS and Treasury request comments regarding whether any differences in the amount of liabilities treated as assumed are appropriate for exchanges under section 1001 as opposed to exchanges under sections 351 and 361, or, alternatively, whether the rules adopted under section 357 should also apply for purposes of computing amount realized in transactions governed by section 1001.

In addition, section 7701(g) provides that, for purposes of subtitle A of the Code, in determining the amount of gain or loss with respect to any property, the fair market value of such property is treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject. Comments are requested regarding whether the rule of section 7701(g) should be consistent with those of section 357(d) and the regulations thereunder.

Furthermore, as described above, the rules of section 357(d) also apply to certain Code provisions that are not listed in section 357(d), including section 1031, which permits the nonrecognition of gain or loss on certain exchanges of property of like kind. The IRS and Treasury request comments concerning whether the rules described above should also apply for purposes of these other provisions that specifically invoke section 357(d) as well as other provisions that do not specifically invoke section 357(d).

Finally, certain provisions of the Code, including sections 304 and 336, continue to distinguish between a liability assumed and a liability to which property is subject. Given that the legislative history of section 357 reflects that Congress intended to eliminate the distinction between the assumption of a liability and the acquisition of an asset subject to a liability, the IRS and Treasury are considering whether the proposed rules should provide that, for purposes of sections 304 and 336, and certain other statutory provisions, property is transferred subject to a liability if and only if the liability is assumed under the rules proposed under section 357.

#### *I. The Basis of Property Received in Exchange for the Assumption of a Liability*

At this time, the IRS and Treasury are not considering modifying section 362(d) or displacing general Federal income tax principles that apply for purposes of determining basis under section 1012, including those principles set forth in *Estate of Franklin v. Commissioner*, 544 F.2d 1045 (9th Cir. 1976). Nonetheless, the IRS and

Treasury invite comments regarding the extent to which those rules or principles should be modified to reflect the proposal of rules governing the amount of liability treated as assumed in connection with a transfer of property.

Dated: February 24, 2003.

**William D. Alexander,**  
*Associate Chief Counsel (Corporate).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01-03-012]

RIN 1625-AA00 (Formerly RIN 2115-AA97)

#### Safety and Security Zones; New London Harbor, CT—Security Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the boundaries of the security zone in the waters adjacent to the General Dynamics Electric Boat Corporation (EB) facility in Groton, CT. The proposed rule is necessary to better protect the facility, U.S. Naval Vessels and other vessels located at the facility, material storage areas, and adjacent residential and industrial areas from sabotage or other subversive acts, accidents or incidents of a similar nature, and to specify the horizontal datum employed to describe the geographic coordinates that establish zone boundaries. This security zone would exclude all vessels from operating within the prescribed security zone without first obtaining authorization from the Captain of the Port, Long Island Sound.

**DATES:** Comments and related material must reach the Coast Guard on or before July 7, 2003.

**ADDRESSES:** You may mail comments and related material to Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/MSO Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m.

and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468-4429.

**SUPPLEMENTARY INFORMATION:**

**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 (CGD01-03-012), 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 submission 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 Coast Guard Group/Marine Safety Office Long Island Sound 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**

The Captain of the Port previously established a security zone in the waters adjacent to the General Dynamics Electric Boat Corporation (EB) facility in Groton, CT in order to protect the facility from subversive attack. The existing security zone is described in 33 CFR 165.140(a)(1). This proposed rule would expand the safety zone's southern boundaries to encompass waters adjacent to the southern end of the EB facility. The proposed rule would expressly reference the geographic coordinates describing the zone boundaries in terms of North American Datum of 1983 (NAD 83).

**Discussion of Proposed Rule**

The EB facility is located on the Thames River in Groton, Connecticut. Electric Boat designs, constructs and provides lifecycle support of U.S. Navy submarines. A security zone has been in place around this facility for several

years. Its coordinates are codified in 33 CFR 165.140(a)(1).

The current security zone does not encompass waters adjacent to the EB facility waterfront, and leaves vital vessel construction and material storage areas at the facility's southern end vulnerable to unauthorized access, sabotage, terrorist or other subversive acts. The proposed rule would expand the security zone boundaries to encompass waters adjacent to the southern end of the EB facilities. This added area will result in a zone that greatly increases the security of the facility by protecting vital vessel construction and material storage areas. These measures are necessary to safeguard the EB facilities, employees, vessels, adjacent industrial facilities and residential areas from sabotage or terrorist acts.

The proposed zone has been tailored to fit the needs of security, while minimizing the impact on the maritime community. The proposed rule explicitly adopts North American Datum of 1983 (NAD 83) to identify the geographic coordinates establishing the proposed security zone.

No person or vessel may enter or remain in a prescribed security zone at any time without the permission of the COTP. Each person or vessel in the security zone shall obey any direction or order of the COTP. The COTP 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 COTP.

Any violation of the security zone proposed herein is punishable by, among others, civil penalties (not to exceed \$27,500 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, and the regulations promulgated thereunder.

**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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed regulation may have some impact on the public, but the potential impacts will be minimized for the following reasons: The security zone encompasses only a small portion of the Thames River, including pier and industrial areas not suitable for commercial or recreational vessel transit; there is no impact on the navigable channel in the Thames River by the increased security zone area at the southern portion of the Electric Boat property; the security zone minimally impacts the channel, but this slight overlap is necessary to provide sufficient security for naval vessels and Electric Boat infrastructure, and leaves ample room for vessels to navigate around the security zone in the channel; moreover, the proposed zone's encroachment on the navigable channel is actually less than that posed by the existing security zone. While recognizing the potential for some minimal impact from the proposed rule, the Coast Guard considers it de minimus in comparison to the compelling national interest in protecting the naval vessels under construction and undergoing maintenance at the Electric Boat Facility, as well as protecting adjacent industrial facilities and residential areas from possible acts of terrorism, sabotage or other subversive acts, accidents, or other causes of a similar nature.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the security zone.

For the reasons outlined in the Regulatory Evaluation section above,

this proposed rule would not have a significant impact on a substantial number of small entities.

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

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

#### Collection of Information

This 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 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 concern an environmental risk to health or risk to safety that may 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under *ADDRESSES*.

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard 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; Department of Homeland Security Delegation No. 0170.

2. Revise § 165.140(a)(1) to read as follows:

#### § 165.140 New London Harbor, Connecticut—security zone.

\* \* \* \* \*

(a)(1) Security Zone A. The waters of the Thames River west of the Electric Boat Corporation Shipyard enclosed by a line beginning at a point on the shoreline at 41°20'16" N, 72°04'47" W; then running west to 41°20'16" N, 72°04'57" W; then running north to 41°20'26" N, 72°04'57" W; then northwest to 41°20'28.7" N, 72°05'01.7" W; then north-northwest to 41°20'53.3" N, 72°05'04.8" W; then north-northeast to 41°21'02.9" N, 72°05'04.9" W; then east to a point on shore at 41°21'02.9" N, 72°04'58.2" W. All coordinates are NAD 83.

\* \* \* \* \*

Dated: April 11, 2003.

**Joseph J. Coccia,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

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#### POSTAL SERVICE

#### 39 CFR Part 111

#### Eligibility Requirements for Certain Nonprofit Standard Mail Matter

**AGENCY:** Postal Service.