

October 15, 2009, the extended due date to file A's 2008 Form 1040, falls within the postponement period described in the IRS's published guidance, A's return is timely if filed on or before December 2, 2009. However, the payment due date, April 15, 2009, preceded the postponement period. Thus, A will continue to be subject to failure to pay penalties and accrual of interest during the postponement period.

*Example 7.* (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040 for the 2008 taxable year. The joint return is due on April 15, 2009. After credits for taxes withheld on wages and estimated tax payments, H and W owe tax for the 2008 taxable year. H and W's principal residence is in County J in State W.

(ii) On March 3, 2009, severe flooding strikes County J. On March 6, 2009, certain counties in State W (including County J) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on March 6, 2009, the IRS determines that County J in State W is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after March 3, 2009, and on or before June 1, 2009, has been postponed to June 1, 2009.

(iii) Because H and W's principal residence is in County J, H and W are affected taxpayers. April 15, 2009, the due date for filing the 2008 joint return, falls within the postponement period described in the IRS published guidance. Therefore, H and W's joint return without extension will be timely if filed on or before June 1, 2009. Similarly, H and W's 2008 income taxes will be timely paid if paid on or before June 1, 2009.

(iv) On April 30, 2009, H and W timely file Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return." H and W's extension will be deemed to have been filed on April 15, 2009. Thus, H and W's 2008 income tax return will be timely if filed on or before October 15, 2009.

(v) H and W did not request or receive an extension of time to pay. Therefore, the payment of tax due with the 2008 joint return will be timely if paid on or before June 1, 2009. If H and W fail to pay the tax due on the 2008 joint return by June 1, 2009, H and W will be subject to failure to pay penalties and accrual of interest beginning on June 2, 2009.

*Example 8.* The facts are the same as in *Example 7* except that H and W file the joint 2008 return and pay the tax due on April 15, 2009. Later, H and W discover additional deductions that would lower their taxable income for 2008. On June 1, 2012, H and W file a claim for refund under section 6511(a). The amount of H and W's overpayment exceeds the amount of taxes paid on April 15, 2009. Section 6511(a) generally requires that a claim for refund be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. Section 6511(b)(2)(A) includes within the lookback period the period of an extension of time to

file. Thus, payments that H and W made on or after June 1, 2009 would be eligible to be refunded. Because the period from April 15, 2009 to June 1, 2009 is disregarded, the payments H and W made on April 15, 2009 (including withholding or estimated tax payments deemed to have been made on April 15, 2009) would also be included in the section 6511(b)(2)(A) lookback period. Thus, H and W are entitled to a full refund in the amount of their overpayment.

*Example 9.* (i) H and W, individual calendar year taxpayers, entered into an installment agreement with respect to their 2006 tax liabilities. H and W's installment agreement required H and W to make regularly scheduled installment payments on the 15th day of the month for the next 60 months. H and W's principal residence is in County K in State X.

(ii) On May 1, 2009, severe flooding strikes County K. On May 5, 2009, certain counties in State X including County K) are determined by the Federal government to be disaster areas within the meaning of section 1033(h)(3), and are eligible for assistance under the Stafford Act. Also on May 5, 2009, the IRS determines that County K in State X is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after May 1, 2009 and on or before July 1, 2009, has been postponed to July 1, 2009.

(iii) Because H and W's principal residence is in County K, H and W are affected taxpayers. Pursuant to the IRS's grant of relief under section 7508A, H and W's installment agreement payments that become due during the postponement period are suspended until after the postponement period has ended. H and W will be required to resume payments no later than August 15, 2009. Skipped payments will be tacked on at the end of the installment payment period. Because the installment agreement pertains to prior year tax liabilities, interest and penalties will continue to accrue. H and W may, however, be entitled to abatement of the failure to pay penalties incurred during the postponement period upon establishing reasonable cause.

(g) *Effective/applicability date.* This section applies to disasters declared after January 15, 2009.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 6, 2009.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E9-767 Filed 1-14-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2560

RIN 1210-AB24

#### Civil Penalties Under ERISA Section 502(c)(4)

##### Correction

In rule document Z8-31188 beginning on page 17 in the issue of Friday, January 2, 2009 make the following correction:

On page 17, in the second column, in the **DATES** heading, March 3, 2008 should read March 3, 2009.

[FR Doc. Z8-31188 Filed 1-14-09; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1236]

RIN 1625-AA87

#### Security Zone; Steam Generator Transit, Captain of the Port Zone San Diego; San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving security zone around steam generators as they transit through and when moored in the Captain of the Port (COTP) zone San Diego. This security zone is needed to prevent vessels from transiting in the vicinity of the generators to help ensure the safety and security of the operation. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port, San Diego, or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. on January 2, 2009, to 11:59 p.m. on January 22, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-1236 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278-7267. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it was impracticable since the logistical details of the steam generators transit in the Captain of the Port Zone San Diego was not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The issuance of the final approval and permitting was so recent that the rule would be made effective less than 30 days after publication.

**Background and Purpose**

Steam Generators will be transiting to San Onofre Nuclear Power Plant. Due to the operational significance of the cargo the Captain of the Port is establishing a security zone to prevent vessels from transiting the area and to protect the generators and personnel from potential damage and injury.

**Discussion of Rule**

The Coast Guard is establishing a temporary moving security zone that will be enforced from 11:59 p.m. on January 2, 2009, to 11:59 p.m. on January 22, 2009. The limits of the security zone

will include all waters of the Pacific Ocean extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of the steam generators while underway and 100 yards on all sides when moored in the navigable waters of COTP zone San Diego.

Persons and vessels are prohibited from entering into or transiting through this security zone unless authorized by the Captain of the Port, or his designated representative. By prohibiting all vessel traffic from entering the waters surrounding these generators, the security of the cargo will be enhanced. U.S. Coast Guard personnel will enforce the security zone.

The Captain of the Port may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

The Coast Guard will issue a Broadcast Notice to Mariners to further ensure the local boating traffic is aware of the security zone and its geographical boundaries. Vessels or persons violating this section will be subject to both criminal and civil penalties.

The security zone will be effective from 11:59 p.m. on January 2, 2009, to 11:59 p.m. on January 22, 2009. A Broadcast Notice to Mariners will notify the public on the specific days of transit.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the security zone. The affected area will be relatively small in size and will only briefly affect the transits of other vessels.

**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.

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.

We anticipate that the security zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would only affect those small portions of the waterways immediately surrounding the military operations within the COTP Zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterways so owners and operators can make necessary preparations. Traffic may also be allowed to pass through the security zone with the permission of the Coast Guard patrol commander or COTP.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

### Collection of Information

This 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.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction 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)(g), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are 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 amends 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–132 to read as follows:

#### § 165.T11–132 Security zone; Steam generator transit, Captain of the port zone San Diego; San Diego, California.

(a) *Location.* The security zone will include all waters of the Pacific Ocean extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of the steam generators, while underway and 100 yards on all side when moored in the navigable waters of COTP zone San Diego, as defined in 33 CFR 3.55–15.

(b) *Enforcement Period.* This section will be enforced from 11:59 p.m. on January 2, 2009, to 11:59 p.m. on January 22, 2009. If the need for the security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this security zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section:

*Designated representative,* means any Commissioned, Warrant, and Petty Officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port to assist in enforcement of this section.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center (COMCEN). The COMCEN may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the

Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies in the enforcement of this section.

Dated: January 2, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9-849 Filed 1-14-09; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2003-0064, FRL-8762-8]

RIN 2060-AL75

**Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** The EPA is taking final action on one part of the September 14, 2006 **Federal Register** proposed rule for the New Source Review (NSR) program. The purpose of the proposed rule was to clarify for sources and permitting authorities three aspects of the NSR program—aggregation, debottlenecking, and project netting—that pertain to how to determine what emissions increases and decreases to consider in determining major NSR applicability for modified sources. This final action addresses only aggregation.

This action retains the current rule text for aggregation and interprets that rule text to mean that sources and permitting authorities should combine emissions when activities are “substantially related.” It also adopts a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur three or more years apart.

With respect to the other two components of the originally proposed rule, the EPA is taking no action on the proposed rule for project netting and, by way of a separate document published in the “Proposed Rules” section of this **Federal Register**, is withdrawing the

proposed provisions for debottlenecking.

**DATES:** This final rule is effective on February 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-2380; fax number: (919) 541-5509, e-mail address: [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

| Industry group                         | SIC <sup>a</sup>        | NAICS <sup>b</sup>  |
|--|-------------------------|---|
| Electric Services .....                | 491 .....               | 221111, 221112, 221113, 221119, 221121, 221122.   |
| Petroleum Refining .....               | 291 .....               | 324110.   |
| Industrial Inorganic Chemicals .....   | 281 .....               | 325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.                                 |
| Industrial Organic Chemicals .....     | 286 .....               | 325110, 325132, 325192, 325188, 325193, 325120, 325199.   |
| Miscellaneous Chemical Products .....  | 289 .....               | 325520, 325920, 325910, 325182, 325510.   |
| Natural Gas Liquids .....              | 132 .....               | 211112.   |
| Natural Gas Transport .....            | 492 .....               | 486210, 221210.   |
| Pulp and Paper Mills .....             | 261 .....               | 322110, 322121, 322122, 322130.   |
| Paper Mills .....                      | 262 .....               | 322121, 322122.   |
| Automobile Manufacturing .....         | 371 .....               | 336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213. |
| Pharmaceuticals .....                  | 283 .....               | 325411, 325412, 325413, 325414.   |
| Mining .....                           | 211, 212, 213 .....     | 21.   |
| Agriculture, Fishing and Hunting ..... | 111, 112, 113, 115 .... | 11.   |

<sup>a</sup> Standard Industrial Classification.

<sup>b</sup> North American Industry Classification System.

Entities potentially affected by the subject rule for this proposed action also include state, local, and tribal governments.

*B. How is this preamble organized?*

The information presented in this preamble is organized as follows:

**I. General Information**

A. Does this action apply to me?

B. How is this preamble organized?

**II. Background**

**III. Aggregation**

A. Overview

B. EPA’s Policy on Aggregation

C. Retention of Current Rule Text

D. Environmental Impact

**IV. Project Netting**

**V. Statutory and Executive Order Reviews**

A. Executive Order 12866: Regulatory Planning and Review

B. Paperwork Reduction Act

C. Regulatory Flexibility Analysis

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 12899: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

L. Judicial Review

**VI. Statutory Authority**

**II. Background**

The reader is referred to 67 FR 80187-88 (December 31, 2002) for an overview of the NSR program of the Clean Air Act (CAA) and to 71 FR 54237 (September 14, 2006) for background on this rulemaking.