

### 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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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 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. Paragraph (34)(g) is applicable because this rule establishes a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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; 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. 0170.1.

■ 2. Add § 165.T11–146, to read as follows:

#### § 165.T11–110 Safety Zone; San Francisco Bay, California.

(a) *Location.* This safety zone will encompass the navigable waters from the surface to the sea floor, in the San Francisco Bay, and its limits will encompass a circular safety zone with a radius of 750-feet extending from and around the Crane Barge DOGBONE. This safety zone will move and continue to extend 750-feet from the Barge DOGBONE while it operates along the charted BART Transbay tube between the following two points: 37°47'50.97" N Latitude, by 122°23'17.01" W Longitude at the western extreme, and 37°48'25.65" N Latitude by

122°21'03.59" W Longitude at the eastern extreme.

(b) *Effective Dates.* This rule is effective from September 25, 2006 through December 31, 2006. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port (COTP) will cease enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the COTP San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative. The COTP's designated representative can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. 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.

The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

Dated: September 8, 2006.

**W.J. Uberti,**

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

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**BILLING CODE 4910–15–P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[COTP Western Alaska 06–003]

RIN 1625–AA00

#### Safety Zone; Gulf of Alaska, Narrow Cape, Kodiak Island, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, encompassing the navigable waters in the vicinity of Narrow Cape and Ugak Island. The zone is needed to protect persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak

Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative. The intended effect of this safety zone is to ensure the safety of human life and property during the rocket launch.

**DATES:** This temporary final rule is effective from 2 a.m. through 11:30 a.m., August 31, 2006 through September 30, 2006. The safety zones will be enforced each of these days from 2 a.m. through 11:30 a.m.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Detachment Kodiak, Kodiak, AK 99619. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Patrick Lee, Marine Safety Detachment, at (907) 486-5918.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

For similar reasons 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**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch.

**Background and Purpose**

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 6 a.m. and 11 a.m. during a five-day period between August 31, 2006 and September 30, 2006. The safety zone is necessary to protect

spectators and transiting vessels from the potential hazards associated with the launch. The duration of the safety zone period will allow time for proper surveillance to be conducted to ensure the public is clear of the hazard area prior to and immediately following the rocket launch. The Captain of the Port, Western Alaska will terminate the safety zone after rocket launch operations are complete.

**Discussion of Rule**

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for four (4) hours during a five-day period between August 31, 2006 and September 30, 2006. The size of the safety zone has been set to protect the public from potential hazards associated with the launch. The Pacific Range Support Team has identified a launch area exclusion zone from the area north of Narrow Cape to a point south of Ugak Island along the launch trajectory. The Captain of the Port, Western Alaska will enforce a single safety zone in support of their exclusion zone. The established safety zone includes the navigable waters in the vicinity of Narrow Cape and Ugak Island, within the boundaries defined by a line drawn from a point located at 57°29.8' North, 152°17.0' West, then southeast to a point located at 57°21.1' North, 152°11.2' West, then southwest to a point located at 57°19.9' North, 152°14.2' West, and then northwest to a point located at 57°25.4' North, 152°28.2' West, and then northeast to the point located at 57°29.8' North, 152°17.0' West. All coordinates reference Datum: NAD 1983.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

**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 cost 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) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory

policies and procedures of DHS is unnecessary. Because the hazardous situation is expected to last for approximately nine and a half (9.5) hours each day during the five-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have significant economic impacts 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 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.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska from north of Narrow Cape to South of Ugak Island from 2 a.m. to 11:30 a.m. each day from August 31 until September 30, 2006 until rocket launch operations are complete. Because the hazardous situation is expected to last for approximately nine and a half (9.5) hours of each day during the five-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

**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 this rule 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 economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. 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 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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation because this rule establishes a safety zone. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be 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 set out 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(g), 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.T17–072 to read as follows:

#### § 165.T17–072 Alaska Aerospace Development Corporation, Safety Zone; Gulf of Alaska, Narrow Cape, Kodiak Island, AK.

(a) *Location.* The established safety zone includes the navigable waters in the vicinity of Narrow Cape and Ugak Island, within the boundaries defined by a line drawn from a point located at 57°29.8” North, 152°17.0” West, then southeast to a point located at 57°21.1” North, 152°11.2’ West, then southwest to a point located at 57°19.9” North, 152°14.2’ West, and then northwest to a point located at 57°25.4’ North, 152°28.2’ West, and then northeast to the point located at 57°29.8’ North, 152°17.0’ West. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zones in this section will be enforced from 2 a.m. to 11:30 a.m. during each day of a five-day launch window period from August 31, 2006 to September 30, 2006.

(c) *Regulations.* (1) The Duty Officer at Marine Safety Detachment, Kodiak, Alaska can be contacted at telephone number (907) 486–5918 or (907) 539–5841.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones 1 contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, on-scene representative may be contacted at Marine Safety Detachment Kodiak.

Dated: August 30, 2006.

**M. R. DeVries,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

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