

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[COTP Western Alaska-04-001]

RIN 1625-AA00

**Safety Zones; Gulf of Alaska, Narrow Cape, Kodiak Island, AK**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska. These zones are needed to protect persons and vessels operating in the vicinity of the safety zones during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into these zones 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.

**DATES:** This temporary final rule is effective from 1 p.m. on December 8, 2004 through 6:30 p.m. on January 31, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271-6700.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

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. Because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the

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

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 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. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zones will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

**Background and Purpose**

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska between 5 p.m. and 1 a.m. each day between December 8, 2004 and January 31, 2005 until rocket launch operations are complete. The safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

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 zones during those times in which a launch schedule does not pose a hazard to mariners. 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 is expected to be minimal.

**Discussion of Rule**

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 8 hours each day between December 8, 2004 and January 31, 2004. The sizes of the safety zones have been set based upon the

trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The Pacific Range Support Team has identified a launch area exclusion zone at Narrow Cape and southwest along the launch trajectory. The COTP will enforce two safety zones in support of this exclusion zone. The first established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 57°27.50' N, 152°25.00' W, then southeast to a point located at 57°22.75' N, 152°15.00' W, then southwest to a point located at 57°11.00' N, 152°36.00' W, and then northwest to a point located at 57°15.75' N, 152°46.5' W, and then northeast to the point located at 57°27.50' N, 152°25.00' W. The second established safety zone includes the waters adjacent to Narrow Cape within the boundaries defined by a circle centered at 57°26.1' N, 152°20.49' W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

These safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the rocket launch. 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 zones 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). 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 condition is expected to last for approximately 8 hours each day, and because general permission to enter the safety zones 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 off Narrow Cape from 1 p.m. to 1 a.m. each day from December 8, 2004 until January 31, 2005 until rocket launch operations are complete. Because the hazardous situation, during the planned rocket launch hours, is expected to last for approximately 8 hours each day, and because general permission to enter the safety zones 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 affect 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 proposed rule under Commandant Instruction M16475.1D, 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)(g), of the Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

### 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:

■ 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. From December 8, 2004 to January 31, 2005, add temporary § 165.T17–008 to read as follows:

#### § 165.T17–008 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* The following are safety zones:

(i) An area in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska, including the waters of the Gulf of Alaska that are within the area defined by a line drawn from a point located at 57°27.50′ N, 152°25.00′ W, then southeast to a point located at 57°22.75′ N, 152°15.00′ W, then

southwest to a point located at 57°11.00' N, 152°36.00' W, and then northwest to a point located at 57°15.75' N, 152°46.5' W, and then northeast to the point located at 57°27.50' N, 152°25.00' W.

(ii) The area defined by a circle centered at 57°26.1' N, 152°20.49' W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zones in this section will be enforced from 1 p.m. to 1 a.m. each day from December 8, 2004 to January 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271-6700.

(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 zones.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in these safety zones, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: December 2, 2004.

**T.D. Harrison,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Western Alaska-04-002]

RIN 1625-AA00

#### Safety Zone; Gulf of Alaska, Sitkinak Island, 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, east of Sitkinak Island, Kodiak Island, Alaska. 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.

**DATES:** This temporary final rule is effective from 1 p.m. on December 8, 2004 through 6:30 p.m. on January 31, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271-6700.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory History

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. Because the hazardous condition is expected to last for approximately 8 hours each day, 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 is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each 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.

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 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. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is

needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each 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.

#### Background and Purpose

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 5 p.m. and 1 a.m. each day between December 8, 2004 and January 31, 2005 until rocket launch operations are complete. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

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 a launch schedule does not pose a hazard to mariners. Because the hazardous situation is expected to last for approximately 8 hours each day, 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 is expected to be minimal.

#### Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 8 hours each day between December 8, 2004 and January 31, 2004. The size of the safety zone has been set to protect the public from the reentry and impact of a rocket motor. The Pacific Range Support Team has identified a first stage exclusion zone at Sitkinak Island along the launch trajectory. The COTP will enforce a single safety zone in support of this exclusion zone. The established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 56°40.50' N, 153°42.50' W, then southeast to a point located at 56°34.00' N, 153°29.50' W, then southwest to a point located at 56°12.50' N, 154°2.50' W, and then northwest to a point located at 56°19.00' N, 154°16.50' W, and then northeast to the point located at 56°40.50' N, 153°42.50' W. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect transiting vessels from the