

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.

## Environment

We have analyzed this 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)(h). The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.532 to read as follows:

### § 100.532 Nanticoke River, Sharptown, MD.

(a) *Definitions:*

*Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Regulated Area* includes all waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32'46" N, longitude 075°43'14" W, to

latitude 38°32'42" N, longitude 75°43'09" W, thence northeasterly to latitude 38°33'04" N, longitude 075°42'39" W, thence northwesterly to latitude 38°33'09" N, longitude 75°42'44" W, thence southwesterly to latitude 38°32'46" N, longitude 75°43'14" W. All coordinates reference Datum NAD 1983.

(b) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(c) *Enforcement period.* This section will be enforced annually on the last Saturday and Sunday in June. Notice of the specific enforcement periods will be given via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: April 15, 2004.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 04–11233 Filed 5–18–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD05–98–043]

**RIN 1615–AA00 (Formerly 2115–AA97)**

### Safety Zone: Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** In 1999, the Coast Guard established a safety zone in the Atlantic Ocean near Cape Henlopen State Park, Delaware. The zone was created to protect spectators and vessels from the potential hazards associated with the Delaware Aerospace Education Foundation launch of a Super Loki Meteorological Rocket from Cape Henlopen State Park on the second Saturday of May each year. Vessels may not enter the safety zone without permission of the Captain of the Port, Philadelphia. Because of a clerical error, this final rule was only referenced in the **Federal Register** in 1999 and not published in full text.

**DATES:** This final rule became effective on May 7, 1999. The rule has been enforced using actual notice since May 7, 1999, and is enforceable using constructive notice as of May 19, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the office of the Commanding Officer, USCG MSO/Group Office, 1 Washington Avenue, Philadelphia, PA 19147–4395, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (215) 271–4888.

### FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Waterways Management Branch, USCG MSO/Group Office, 1 Washington Avenue, Philadelphia, PA 19147–4395, telephone (215) 271–4889.

### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On February 8, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE" in the **Federal Register** (64 FR 6006). The Coast Guard did not receive any comments on this proposed rulemaking. No public hearing was requested, and none was held.

Finding good cause under 5 U.S.C. 553(d)(3), the Coast Guard issued a final rule April 30, 1999, and made it effective less than 30 days after publication in the **Federal Register**. We noted that the next launch of the Super Loki Meteorological Rocket from Cape Henlopen State Park was scheduled for May 8, 1999, and that rather than publish a temporary final rule for 1999 and a final rule for all years thereafter, we made the final rule effective on May 7, 1999 because it was the most efficient solution. Delaying the effective date would have been contrary to the public interest as immediate action is necessary to restrict vessel traffic in the area, and protect mariners from the potential hazards associated with the launch.

The final rule was received at Coast Guard Headquarters on May 7, 1999, but was mistakenly designated for inclusion in a quarterly list of temporary final rules that expired before they could be published in full text in the **Federal Register**. Therefore, this final rule was referenced in a notice of temporary rules entitled "Safety Zones, Security Zones, and Special Local Regulations." (64 FR 72929, December 29, 1999). The final rule's docket number entry, however, was listed as "05–99–043" instead of "05–98–043" (64 FR 72931). The final rule was scanned as item 78 into our

docket, USCG–1999–5938, for notice of temporary rule published December 29, 1999 (to visit that docket on the Internet, go to <http://dms.dot.gov/search/searchFormSimple.cfm> and type in “5938”). This final rule was signed on April 30, 1999, by Roger T. Rufe, Jr., then Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

### Background and Purpose

The Delaware Aerospace Education Foundation will launch a Super Loki Meteorological Rocket from Cape Henlopen State Park each year on the second Saturday in May, for the purpose of collecting meteorological data. If the Saturday launch is cancelled because of inclement weather, it is rescheduled for the next day. This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

Although the exact launch time is subject to change because of weather, the entire process from launch to splashdown should occur between 2 p.m. and 4:30 p.m. on the launch date. The Coast Guard will announce by broadcast Notice to Mariners the anticipated day (either Saturday or Sunday) and the time of launch. The Coast Guard will grant general permission to enter the safety zone during those times in which the launch and spent rocket motor do not pose a hazard to mariners. Because the hazardous condition should last for only 2½ hours of one 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 should be minimal.

This safety zone covers an 8-square-nautical-mile section of the Atlantic Ocean adjacent to the launch site at Cape Henlopen State Park in Delaware. Specifically, the waters of the Atlantic Ocean within the area bounded by a line drawn north from the tip of Cape Henlopen, located at latitude 38°48.2' N, longitude 75°05.5' W, to a point located at latitude 38°49.4' N, longitude 75°05.5' W; then east to a point located at latitude 38°49.4' N, longitude 75°01.4' W; then south to a point located at latitude 38°43.0' N, longitude 75°01.4' W; then west to a point on the shoreline located at latitude 38°43.0' N, longitude 75°04.5' W, then north following the shoreline, to a point located at latitude 38°48.2' N, longitude 75°05.5' W.

The safety zone will be enforced on the second Saturday in May or the following day. Vessels will be prohibited from transiting through the safety zone without first obtaining permission from the Captain of the Port,

Philadelphia. The Captain of the Port will announce by Broadcast Notice to Mariners the anticipated day and time of the launch and grant general permission to enter the safety zone during all non-hazardous times.

The rocket payload, assisted by parachute, should splash down in the Atlantic Ocean about 22 nautical miles southeast of the launch point, which is an area outside of the proposed safety zone. The Coast Guard advises all marine traffic to exercise caution when transiting that area during launch times.

### Discussion of Comments and Changes

The Coast Guard received no comments on the 1999 proposed rule (64 FR 6006, February 8, 1999). The May 1999 final rule expanded the description of the safety zone to include the final leg along the shoreline adjacent to Cape Henlopen State Park. Otherwise, the May 1999 final rule implemented the NPRM without change.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The area of the safety zone is limited to 8 square nautical miles. The hazardous condition should last for only 2½ hours of one day. General permission to enter the safety zone will be given during non-hazardous times. Therefore, Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule would have a significant economic impact on a substantial number of small entities. “Small entities” include 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 area of the safety zone is limited to 8-square nautical miles. The hazardous conditions should last for only 2½ hours of one day. General permission to enter the safety zone will be given during non-hazardous times. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act

(5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This final rule contains no Collection-of-Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1 C, this rule is categorically excluded from further environmental documentation. Regulations establishing safety zones are excluded under that authority. Nevertheless, a Categorical Exclusion Determination statement was prepared and placed in the rulemaking docket. It is available for inspection or copying at the location indicated under **ADDRESSES**.

In the course of developing the Categorical Exclusion Determination, the U.S. Fish and Wildlife Service provided comments to the Coast Guard in accordance with Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). One Federally listed threatened species, the piping plover (*Charadrius melodus*), nests at Cape Henlopen State Park. In Delaware, their breeding season is March 15 through September 1; thus, the rocket launch is in the midst of their breeding season.

The comments recommended that the rocket not launch within ¼ mile of the plover's breeding grounds. We forwarded the comments to the Delaware Aerospace Education Foundation and the Delaware Division of Parks and Recreation. The latter organization authorizes the rocket launch by issuance of a special-use permit. Our final rule does not determine the site of the rocket; it merely establishes a safety zone to protect spectators and transiting vessels from the hazards associated with the launch. If the launch site is repositioned as a result of this environmental concern, the Coast Guard will revise the location of the safety zone accordingly and publish the new location in the **Federal Register**.

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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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. Add § 165.535 to read as follows:

**§ 165.535 Safety Zone: Atlantic Ocean, Vicinity of Cape Henlopen State Park, Delaware.**

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within the area bounded by a line drawn north from the tip of Cape Henlopen located at latitude 38°48.2' N, longitude 75°05.5' W, to a point located at latitude 38°49.4' N, longitude 75°05.5' W; thence east to a point located at latitude 38°49.4' N, longitude 75°01.4' W; thence south to a point located at latitude 38°43.0' N, longitude 75°01.4' W; thence west to a point on the shoreline located at latitude 38°43.0' N, longitude 75°04.5' W; thence north following the shoreline, to a point located at latitude 38°48.2' N, longitude 75°05.5' W. All coordinate refer to Datum: NAD 1983.

(b) *Regulation.* The general regulations governing safety zones contained in § 165.23 apply. Vessels may not enter the safety zone without first obtaining permission from the Captain of the Port (COTP) Philadelphia.

(c) *Dates.* This section is enforced annually on the second Saturday in May and the following day.

(d) *General information.* (1) Those times during which hazardous conditions exist inside the safety zone will be announced by Broadcast Notice to Mariners. General permission to enter the safety zone will be broadcast during non-hazardous times. (2) You can gain access to the safety by calling Group Atlantic City command center at telephone number (609) 677–2222 and on VHF channel 13 or 16.

(3) The COTP Philadelphia may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing this safety zone.

Dated: May 6, 2004.

**Ben R. Thomason, III,**

*Captain, U.S. Coast Guard, Commander, Fifth Coast Guard, Acting.*

[FR Doc. 04–11234 Filed 5–18–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

**[COTP Prince William Sound 04–001]**

**RIN 1625–AA00**

#### **Security Zones; Port Valdez and Valdez Narrows, Valdez, AK**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a temporary security zone in the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the Alyeska Marine Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska. **DATES:** This rule is effective from April 9, 2004, until October 31, 2004. Comments and related material must reach the Coast Guard on or before June 30, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Prince William Sound 04–001 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Catherine Huot, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7262.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of

the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those who committed those acts. Also, in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

*Section 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,*

*Section 165.T17–004—Security zone; Port Valdez, and*

*Section 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.*

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule issued in April 2002, which expired July 30, 2002, created temporary § 165.T17–009, entitled “Port Valdez and Valdez Narrows, Valdez, Alaska—security zone”.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired July 30, 2002. This extension was to allow for the completion of a notice-and-comment rulemaking to be completed to create permanent security zones to replace the temporary zones. Then on October 23, 2002, we published a notice of proposed rulemaking that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002.

Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address the “Collection of Information” section of the proposed rule (68 FR 14935, March 27, 2003). Then, on December 30, 2002, we issued a