

*National Environmental Policy Act*

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

*Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the final rule would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

We have analyzed this final 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. Therefore, a Statement of Energy Effects is not required.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

**List of Subjects in 23 CFR Part 630**

Reimbursement, Grants programs—transportation, Highways and roads.

Issued on: August 15, 2008.

**James D. Ray,**

*Acting Federal Highway Administrator.*

■ In consideration of the foregoing, the FHWA amends Chapter I of title 23, Code of Federal Regulations, by revising Part 630, as set forth below.

**PART 630—PRECONSTRUCTION PROCEDURES**

■ 1. The authority citation for part 630 is revised to read as follows:

**Authority:** 23 U.S.C. 106, 109, 112, 115, 315, 320, and 402(a); Sec. 1501 and 1503 of Public Law 109–59, 119 Stat. 1144; Public

Law 105–178, 112 Stat. 193; Public Law 104–59, 109 Stat. 582; Public Law 97–424, 96 Stat. 2106; Public Law 90–495, 82 Stat. 828; Public Law 85–767, 72 Stat. 896; Public Law 84–627, 70 Stat. 380; 23 CFR 1.32 and 49 CFR 1.48(b).

■ 2. Revise § 630.703 to read as follows:

**§ 630.703 Eligibility.**

(a) The State Department of Transportation (DOT) may proceed with a project authorized in accordance with title 23, United States Code:

(1) Without the use of Federal funds; and

(2) In accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

(i) With the aid of Federal funds previously apportioned or allocated to the State; or

(ii) With obligation authority previously allocated to the State.

(b) The FHWA, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project authorized to proceed under this section from any category of funds for which the project is eligible.

**§ 630.709 [Amended]**

■ 3. Amend § 630.709 by removing the term “SHA” in each place it appears, and add in its place the term “State Department of Transportation.”

[FR Doc. E8–19636 Filed 8–25–08; 8:45 am]

**BILLING CODE 4910–22–P**

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

[Docket No. USCG–2008–0823]

RIN 1625–AA87

**Security Zone: Rocket Launch, NASA Wallops Flight Facility (WFF), Wallops Island, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The U. S. Coast Guard is establishing a security zone extending 12 nautical miles offshore from the Mid-Atlantic Regional Spaceport (MARS) Pad 0B launch complex for the launch of a large suborbital test rocket by the National Aeronautics and Space Administration (NASA). The NASA rocket launch is scheduled to occur between 2 a.m. and 4 p.m. on August

21, 2008, on Wallops Island, VA. If the launch is postponed because of inclement weather or technical difficulties, it will be attempted between 2 a.m. and 4 p.m. on each subsequent day after August 21, 2008, until the launch takes place or until 4 p.m. August 30, 2008. After August 30, 2008, the rule will no longer be in effect. This action is necessary to ensure the safety of persons and property, and to prevent terrorist acts or incidents on U.S. navigable waters during the rocket launch. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone.

**DATES:** This rule is effective from 2 a.m. on August 21, 2008, through 4 p.m. on August 30, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0823 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying in 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 Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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 any

delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to prevent traffic from transiting the waters in the vicinity of Wallops Island, Virginia, in order to provide for the security of the launch and protection of life and property on navigable waters.

This temporary security zone of short duration is necessary to coordinate security operations and establish a secure environment for NASA personnel and the public at large. If the launch occurs as planned on August 21, 2008, the duration of the effective period for this temporary security zone on all subsequent days will not be enforced. The zone should have minimal impact on vessel transit since vessels can safely transit around the zone and are not precluded from using any portion of the waterway except the security zone itself.

For the same reasons discussed above, the Coast Guard finds under 5 U.S.C. 553(d)(3) that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect NASA personnel and the public from waterborne security threats. Any delay in the effective date of this rule is contrary to public and national interests.

### Background and Purpose

On August 21, 2008, NASA will attempt to launch a large suborbital rocket from Wallops Island, VA. As the lead federal agency for maritime homeland security, the Coast Guard has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This temporary security zone is to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

Additionally, spectators will be observing from both land and sea. Due to the need to provide security for a satellite launch of a NASA rocket, and for the need to protect the launch vehicle and equipment, access in the vicinity of this event will be temporarily restricted.

### Discussion of Rule

The U.S. Coast Guard is establishing a security zone on the navigable waters of the Atlantic Ocean east of Wallops and Assawoman Islands in Virginia, and

southeast of Assateague Island. This security zone, which extends out 12-nautical miles from shore, encompasses all navigable waters within a line beginning near the southeast tip of Assateague Island at 37°51'89" N/75°27'38" W; thence southeasterly to a point 37°51'64" N/75°17'56" W, thence southeasterly to a point 37°39'32" N/75°05'96" W, thence southwesterly to a point 37°30'94" N/75°16'72" W, thence northwesterly to a point 37°40'21" N/75°31'96" W, thence north to a point 37°46'62" N/75°30'71" W, thence back to the point of origin.

There is an existing Army Corps of Engineers danger zone in 33 CFR 334.130 that restricts access to waters closer to Wallops Islands. That regulation provides for a visual notice of intent to conduct rocket-launching operations involving the area. An intent to launch is indicated—

By a signal consisting of a large orange-colored, "blimp-shaped" balloon by day and a signal rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50'38", longitude 75°28'47" and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50'16", longitude 75°29'07". The appropriate one of these signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until danger no longer exists.

33 CFR 334.130(b)(3). In addition to watching for that intent to launch visual clue, for purposes of this security zone, mariners should listen for Coast Guard notifications of attempts to launch via maritime advisories.

This temporary security zone will be in effect from 2 a.m. on August 21, 2008, to 4 p.m. on August 30, 2008. The zone will be enforced from 2 a.m. until 4 p.m. on August 21, 2008, and if the launch is postponed, the zone will be enforced, between 2 a.m. and 4 p.m., on each subsequent day the launch is attempted or until 4 p.m. August 30, 2008.

After 4 p.m. on August 30, 2008, this rule will no longer be in effect. Except for participants and vessels authorized by the Captain of the Port Representative, no person or vessel may enter or remain in the security zone.

### 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. Although this regulation restricts access to the security zone, the effect of this rule will not be significant because: (i) The security zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

### 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 U.S. Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the described portion of the security zone during the enforcement periods from 2 a.m. to 4 p.m. from August 21, 2008, through August 30, 2008. The security zone will not have a significant impact on a substantial number of small entities. Maritime advisories will be issued, so the mariners can adjust their plans accordingly.

### 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 this 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 will 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 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 affect 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 U.S. 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. Under figure 2–1, paragraph (34)(g), of the Instruction, an

environmental analysis checklist and a 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, and 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(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 Temporary § 165.T05–0823, to read as follows:

#### § 165.T05–0823 Security Zone; Rocket Launch, NASA Wallops Flight Facility (WFF), Wallops Island, VA.

(a) *Location.* The following area is a security zone: All waters of the Atlantic Ocean east of Wallops and Assawoman Islands in Virginia, and southeast of Assateague Island encompassed by a line beginning near the southeast tip of Assateague Island at 37°51'89" N/75°27'38" W, thence southeasterly to a point 37°51'64" N/75°17'56" W, thence southeasterly to a point 37°39'32" N/75°05'96" W, thence southwesterly to a point 37°30'94" N/75°16'72" W, thence northwesterly to a point 37°40'21" N/75°31'96" W, thence north to a point 37°46'62" N/75°30'71" W, thence back to the point of origin.

(b) *Definition:* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia, to act on his behalf.

(c) *Regulation:* (1) In accordance with the general regulations in § 165.33 of this part, entry into the security zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or the *Captain of the Port Representative*.

(2) The operator of any vessel granted permission to enter this security zone must:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 668-5555.

(4) U.S. Coast Guard vessels enforcing the security zone can be contacted on VHF-FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Effective period:* This section is effective from 2 a.m. on August 21, 2008 to 4 p.m. on August 30, 2008.

(e) *Enforcement period:* This section will be enforced from 2 a.m. to 4 p.m. on August 21, 2008, and each subsequent day a rocket launch at the NASA Wallops Flight Facility, Wallops Island, VA, is attempted until 4 p.m. August 30, 2008.

Dated: August 18, 2008.

**Jeffrey P. Novotny,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Hampton Roads.*

[FR Doc. E8-19739 Filed 8-25-08; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 2740

[WO-350-08 1430 PN-24 1A]

RIN 1004-AE03

#### Recreation and Public Purposes Act; Solid Waste Disposal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) amends a procedural regulation pertaining to the issuance of patents for public lands leased on or before November 9, 1988, for solid waste disposal or related purposes. The existing regulation requires the express approval of the Director of the Bureau of Land Management (BLM) before the lessee may receive a patent to such lands. In 1992, when the regulation was promulgated, most of the BLM's employees with the necessary expertise were centralized in the BLM's headquarters in Washington, DC, and express approval by the Director was deemed necessary. This is no longer the case, since employees with the necessary expertise are now located in State Offices of the BLM. Consistent with Department of the Interior policy to delegate responsibility to the lowest

appropriate organizational levels, this rule removes the requirement for express approval by the Director. As this administrative final rule amends an internal agency procedure, it is exempt from the usual requirement for notice and an opportunity for public comment, under the Administrative Procedure Act.

**DATES:** This rule is effective October 27, 2008.

**ADDRESSES:** Information or questions regarding this final rule should be addressed in writing to the Director, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** For information on the substance of the proposed rule, please contact Jeff Holdren at 202-452-7779. For information on procedural matters, please contact Jean Sonneman at 202-785-6577. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Final Rule
- III. Procedural Matters

#### I. Background

The Secretary of the Interior is authorized to transfer or lease certain public lands to State and local governmental agencies and to nonprofit corporations and associations for recreation and public purposes under the Act of June 14, 1926 (43 U.S.C. 869 *et seq.*), commonly known as the Recreation and Public Purposes (R&PP) Act. Regulations implementing the Secretary of the Interior's authority to sell or lease lands under the R&PP Act are located in 43 CFR part 2740. These regulations explain the following:

- Policies pertaining to the BLM's implementation of the R&PP Act (43 CFR 2740.0-6);
- Definitions of applicable terms (43 CFR 2740.0-5);
- Lands subject to disposition (43 CFR 2741.1);
- The criteria for qualified applicants (43 CFR 2741.2);
- The guidelines for conveyance and lease under the act (43 CFR 2741.5); and
- Certain other procedural matters and requirements relating to public lands conveyed by patent for the

purpose of solid waste disposal. (43 CFR subpart 2743).

The BLM promulgated the regulations at 43 CFR subpart 2743 in order to reduce or avoid Federal liabilities that might arise from the conveyance of landfills contaminated by hazardous substances. Some of the regulations directly implement amendments to the R&PP Act that became effective on November 10, 1988. One such regulation is 43 CFR 2743.2(a)(5), which requires an investigation to determine whether or not any hazardous substance is present on public lands before conveying them by patent for new solid waste disposal sites. 43 U.S.C. 869-2(b)(2).

With respect to lands leased before November 9, 1988, the BLM exercised its rulemaking discretion to promulgate a similar investigative requirement, and to require the express approval of the Director of the BLM before the lessee may receive a patent to such lands. 43 CFR 2743.3. Neither of these requirements appears in the R&PP Act. However, at the time, the BLM deemed both provisions necessary because the Bureau's environmental expertise was concentrated at its headquarters in Washington, DC. In contrast, each BLM State Office now employs one or more environmental professionals with the expertise to review locally conducted investigations. It is for this reason that this rule removes the requirement for express approval by the Director.

In general, the Administrative Procedure Act (APA) requires that Federal agencies give notice and provide an opportunity for the public to comment before promulgating a final rule. However, the APA provides that prior notice and comment are not required for "interpretive rules, general statements of policy or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). This exception applies in this instance because this final rule simply amends the BLM's internal administrative procedures for patenting land. As discussed below, this final rule is also an action that is categorically excluded from certain requirements of the National Environmental Policy Act (NEPA). See 42 U.S.C. 4332(2)(C); 40 CFR 1508.4; 516 Departmental Manual (DM), Chapter 2, Appendix 1, CX 1.10.

#### II. Discussion of the Final Rule

The existing regulation states that when a lessee requests or concurs in the issuance of a patent to lands included in a lease, or portion of a lease, issued on or before November 9, 1988, that have been used, as specified in the plan of development, for solid waste disposal or for any other purposes that may have