

Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMGCR (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws

and executive orders for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 2003.

#### **Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 147**

[CGD08-03-017]

RIN 1625-AA72

#### **Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico in Mississippi Canyon 243**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in Mississippi Canyon 243 of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around the construction site and facility would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prohibit all vessels from entering or remaining in the specified area around the construction site and facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

**DATES:** Comments and related material must reach the Coast Guard on or before September 5, 2003.

**ADDRESSES:** You may mail comments and related material to Commander,

Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-6271. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the location listed above during the noted time periods.

#### **FOR FURTHER INFORMATION CONTACT:**

Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

#### **SUPPLEMENTARY INFORMATION:**

##### **Requests for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08-03-017], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in the Gulf of Mexico: Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44'32"N, 88°39'32" W. The safety zone would be

in effect while the facility is being constructed and after the construction is completed.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico South Pass Fairway, and the South Pass to Mississippi River-Gulf Outlet Channel Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

TotalFinaElf E&P USA, Inc., hereafter referred to as TotalFinaElf has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Matterhorn TLP construction site and for the zone to remain in effect after construction is completed.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility and the safety concerns for construction personnel, the personnel on board the facility after it is completed, and the environment. TotalFinaElf indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility during and after construction would result in a catastrophic event. The Matterhorn TLP will be a high production petroleum and gas drilling facility, capable of producing approximately 30,000 barrels of oil per day and 50 million cubic feet of gas per day, and manned with a crew of approximately 60 people.

The Coast Guard has reviewed TotalFinaElf's concerns and agrees that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident during and following the construction of Matterhorn TLP warrants the establishment of this safety zone. The proposed regulation would significantly reduce the threat of allisions, oil spills and natural gas releases, and increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C.

1333 as set out in the authority citation for 33 CFR part 147.

#### Discussion of Proposed Rule

The specific risk factors which necessitate a safety zone for the Matterhorn TLP construction site and for the safety zone to remain in effect after the facility is completed are: (1) The construction site is located approximately 14 nautical miles southeast of the South Pass Fairway and on a direct course for vessels approaching the entrance to fairways to the Mississippi River; (2) the facility will have a high production capacity of 30,000 barrels of oil per day and 50 million cubic feet of gas per day; (3) the facility will be manned with a crew of 60 people; (4) the facility will be a tension leg platform; and (5) the platform, anchored by tendons, will slowly oscillate around a fixed position.

#### Regulatory Evaluation

This proposed 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. 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 impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. Since the construction site for the Matterhorn TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area and alternate routes are available for those vessels. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling.

Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

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 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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

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).

#### Collection of Information

This proposed rule would 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 proposed 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 proposed rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed 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 proposed 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 proposed 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 proposed 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 proposed 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.

#### 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 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 this rule is not expected to result in any significant environmental impact as described in NEPA. A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

#### PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

2. Add § 147.829 to read as follows:

##### § 147.829 Matterhorn Tension Leg Platform safety zone.

(a) *Description.* The Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44'32" N, 88°39'32" W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: April 29, 2003.

**Roy J. Casto,**

*Rear Admiral, Coast Guard, Commander Eighth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Mobile–03–013]

RIN 1625–AA00

#### Security Zone; Bayou Casotte, Pascagoula, MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30°19'09" N, 88°30'63" W to position 30°20'42" N, 88°30'51" W at the Chevron Pascagoula Refinery. This security zone is necessary to protect Chevron Pascagoula refinery, persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone will be prohibited unless authorized by the Captain of the Port Mobile, or a designated representative. **DATES:** Comments and related material must reach the Coast Guard on or before September 5, 2003.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390. Marine Safety Office Mobile maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441–5771.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and