

September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

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ASO TN E5 Dayton, TN [REVISED]

Dayton, Mark Anton Airport, TN
(Lat. 35°29'10" N, long. 84°55'52" W)

Hardwick Field Airport

(Lat. 35°13'12" N, long. 84°49'57" W)

Harwick NDB

(Lat. 35°09'13" N, long. 84°54'21" W)

Bledsoe County Hospital, Pikeville, TN

Point in Space Coordinates

(Lat. 35°37'34" N, long. 85°10'38" W)

Bradley Memorial Hospital, Cleveland, TN

Point in Space Coordinates

(Lat. 35°10'52" N, long. 84°52'56" W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Mark Anton Airport, and that airspace within a 6.5-mile radius of Hardwick Field Airport and within 3.5 miles northwest and 5.3 miles southeast of the 227° bearing from the HDI NDB extending from the 6.5-mile radius to 10 miles southwest of the NDB, and that airspace within a 6-mile radius of the point in space (lat. 35°37'34" N, long. 85°10'38" W) serving Bledsoe County Hospital, Pikeville, TN, and that airspace within a 6-mile radius of the point in space (lat. 35°10'52" N, long. 84°52'56" W) serving Bradley Memorial Hospital, Cleveland, TN; excluding that airspace within the CHA Class C airspace area and that airspace within the Athens, TN, Class E airspace area.

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Issued in College Park, Georgia, on May 6, 2004.

Jeffrey U. Vincent,

*Acting Manager, Air Traffic Division,
Southern Region.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02-011]

RIN 1625-AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Second supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a 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: Comments and related material must reach the Coast Guard on or before July 30, 2004.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686. Marine Safety Office, Valdez, Port Operations Department 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 Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Catherine Huot, Port Operations Department, U.S. Coast Guard Marine Safety Office, Valdez, Alaska, (907) 835-7218.

SUPPLEMENTARY INFORMATION:

Regulatory History

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. On October 23, 2002, we published the 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 temporary final rule (68 FR 26490, May 16, 2003) that established security zones to extend the temporary security zones until June 30, 2003. This extension was to allow for a rulemaking for the permanent security zones to be completed. Then, on September 12, 2003, we issued a temporary final rule (68 FR 62009, October 31, 2003) that established security zones to extend the temporary security zones through March 12, 2004.

Elsewhere in today's **Federal Register** we have published a temporary final rule that creates temporary security zones through October 31, 2004, to allow for the rulemaking involving this SNPRM to be completed. This SNPRM proposes permanent security zones identical to the ones in that TFR. Additionally, this SNPRM makes changes to the security zones described in the original NPRM published on October 23, 2002 (67 FR 65074). These changes include more accurate position information for the boundaries of the security zone and removal of the requirement for written requests for entry into the zone.

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 address, identify the docket number for this rulemaking, COTP Prince William Sound 04-002, 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 now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Valdez at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one 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 is taking this action for the protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001, and the continuing threat that remains from those responsible for those acts. As a vibrant port with a high volume of oil tanker traffic, these security zones are necessary to provide protection for the tankers transiting through the Port of Valdez and Valdez Narrows. These security zones are a necessary part of the Coast Guard's efforts to provide for the safety of the people and environment in Valdez and the surrounding area.

Discussion of Proposed Rule

This supplemental notice of proposed rulemaking sets out three security zones. The Trans-Alaska Pipeline Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is active only when a TAPS Tanker is in the zone.

This action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones in order to mitigate the impact on commercial and recreational users.

Regulatory Evaluation

This proposed 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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tanker Moving Security Zone is in effect for a short duration.

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. The number of small entities impacted by this rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permission to enter the zone is available, and the Tanker Moving Security Zone is in effect for a short duration. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

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 how 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 Catherine Huot, Marine Safety Office Valdez, Alaska at (907)835–7218.

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

Taking of Private Property

This proposed rule would 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 would not create an environmental risk to health or risk to safety that might 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.

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 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. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply provides guidelines for vessels transiting in the Captain Of The Port, Prince William Sound Zone so that vessels may transit safely in the vicinity of the Port of Valdez and the TAPS terminal. 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

§ 165.T17–030 [Removed]

2. Remove 165.T17–030.
3. Add new § 165.1710 to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) *Location.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04'25" N, 146°26'18" W; thence northerly to yellow buoy at 61°06'25" N, 146°26'18" W; thence east to the yellow buoy at 61°06'25" N, 146°21'20" W; thence south to 61°04'25" N, 146°21'20" W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05'08" N, 146°21'15" W) and Sawmill Spit (61°05'08" N, 146°26'19" W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85–20 (b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters approximately 200 yards either side of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05'15" N, 146°37'18" W; thence south west to 61°04'00" N, 146°39'52" W; thence southerly to 61°02'32.5" N,

146°41'25" W; thence north west to 61°02'40.5" N, 146°41'47" W; thence north east to 61°04'07.5" N, 146°40'15" W; thence north east to 61°05'22" N, 146°37'38" W; thence south east back to the starting point at 61°05'15" N, 146°37'18" W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05'23" N, 146°37'22.5" W; thence south westerly to 61°04'03.2" N, 146°40'03.2" W; thence southerly to 61°03'00" N, 146°41'12" W.

(ii) This security zone encompasses all waters within approximately 200 yards on either side of the Valdez Narrows Optimum Track line.

(b) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service, as required under 33 CFR part 161 and § 165.1704, may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: April 9, 2004.

M.A. Swanson,

Commander, United States Coast Guard, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

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