

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]

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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

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.

This temporary final rule creates temporary security zones through October 31, 2004, to allow for the rulemaking involving the SNPRM to be completed. Elsewhere in today's **Federal Register** we have published a second SNPRM proposing permanent security zones identical to the ones in this TFR.

Discussion of This Temporary Rule

This temporary final rule establishes 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.

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. This temporary final rule establishes a uniform transition from the temporary operating zones while the rulemaking for permanent security zones is completed.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 04-001, 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 8.5 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 temporary final rule in view of them.

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 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 Coast Guard expects the economic impact of this proposal 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 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 rule will 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, permits to enter the zone are 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could 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).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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.ID, 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 "Categorical Exclusion Determination" is available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

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

■ For the reasons set forth 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. From April 9, 2004, through October 31, 2004, add new temporary § 165.T17-030 to read as follows:

§ 165.T17-030 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) 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.

[FR Doc. 04-11231 Filed 5-18-04; 8:45 am]

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