

that has wholesale or retail customers served under cost-based regulation.

(3) *Value* when applied to:

(i) Transmission facilities, generation facilities, transmitting utilities, electric utility companies, and holding companies, means the market value of the facilities or companies. For transmission facilities, in the absence of a readily ascertainable market value, value means original cost undepreciated;

(ii) Wholesale contracts, means the total expected contract revenues over the remaining life of the contract; and

(iii) Securities, means the market price at the time the security is acquired. For transactions between non-affiliated companies, the Commission will rebuttably presume that the market value is the agreed-upon transaction price.

(4) The terms *associate company*, *electric utility company*, *holding company*, and *holding company system* have the meaning given those terms in the Public Utility Holding Company Act of 2005.

6. Section 33.2 is amended to add paragraph (j) to read as follows:

**§ 33.2. Contents of application—general information requirements.**

\* \* \* \* \*

(j) An explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, with appropriate evidentiary support for such explanation; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

7. Section 33.11 is added to read as follows:

**§ 33.11 Commission procedures for the consideration of applications under section 203 of the FPA.**

(a) The Commission will act on a completed application for approval of a transaction (*i.e.*, one that is consistent with the requirements of this part) not later than 180 days after the completed application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of section 203(a)(4) of the FPA and issues, by the 180th day, an order

tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(b) The Commission will provide for the expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent. The transactions that would generally warrant expedited review include:

(1) A disposition of only transmission facilities, particularly those that both before and after the transaction remain under the functional control of a Commission-approved regional transmission organization or independent system operator;

(2) Transfers involving generation facilities of a size that do not require an Appendix A analysis;

(3) Internal corporate reorganizations that do not present cross-subsidization issues; and

(4) The acquisition of a foreign utility company by a holding company with no captive customers in the United States.

[FR Doc. 05–20311 Filed 10–6–05; 8:45 am]

BILLING CODE 6717–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[COTP Prince William Sound 02–011]

RIN 1625–AA87 (Formerly 1625–AA00)

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Third supplemental notice of proposed rulemaking; request for comments.

**SUMMARY:** The Coast Guard proposes to establish permanent 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 TAPS Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones would be 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 November 7, 2005.

**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:** LTJG Duane Lemmon, 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—

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

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

§ 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. This extension was to allow for the completion of a notice-and-comment rulemaking to create permanent security zones to replace the temporary zones.

On October 23, 2002, we published a notice of proposed rulemaking (NPRM) 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 a collection of information issue regarding the proposed rule (68 FR 14935, March 27, 2003). Then on May 19, 2004, we published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM) (69 FR 28871) incorporating changes to Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels security zone coordinates described in the NPRM (67 FR 65074). The comment period for that SNPRM ended on July 30, 2004.

Although no comments were received that would result in changes to the SSNPRM, we have learned over the last 3 years that the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone is actually larger than originally intended due to a conversion oversight in that particular zone's respective longitude and latitude values. Accordingly, to correct the conversion oversight and to allow for more effective enforcement, proposed changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone coordinates results in the need to issue a Third Supplemental Notice of Proposed Rulemaking (TSNPRM). We have also removed unnecessary text from the description of the Valdez Narrows, Port Valdez, Valdez, Alaska security zone in proposed 33 CFR 165.1710(a)(3).

This TSNPRM proposes to reduce the size of the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone we initially proposed in the NPRM published October 23, 2002 (67 FR 65074).

#### 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 02-011, 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.

We are incorporating changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone coordinates because we have been able to determine over the years that the changes are necessary in order to properly mark and monitor the zone, reduce the number of zone incursions and provide proper tactical enforcement while still keeping boaters a safe distance from the TAPS terminal.

#### 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 .85 nautical miles offshore from the TAPS Terminal). The Tank Vessel 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 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 Tank Vessel 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 Tank Vessel 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 (Public Law 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 LTJG Duane Lemmon, 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.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 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 record keeping 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.T17–020 [Removed]

2. Remove § 165.T17–020.  
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°25'42" W; thence northerly to yellow buoy at 61°06'00" N, 146°25'42" W; thence east to the yellow buoy at 61°06'00" N, 146°21'30" W; thence south to 61°04'25" N, 146°21'30" W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point.

(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 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.

(b) *Regulations.* (1) The general regulations in 33 CFR 165.33 apply to the security zones described in paragraph (a) of this section.

(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: September 23, 2005.

**M.S. Gardiner,**

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

[FR Doc.05-20276 Filed 10-6-05; 8:45 am]

BILLING CODE 4910-15-P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 421

[CMS-6022-P]

RIN 0938-AN31

#### Medicare Program; Termination of Non-Random Prepayment Review

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement the statutory requirements

regarding the termination of non-random prepayment review under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This proposed rule provides the criteria for terminating a provider or supplier from non-random prepayment review.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 6, 2005.

**ADDRESSES:** In commenting, please refer to file code CMS-6022-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/regulations/ecomments>. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-6022-P, PO Box 8012, Baltimore, MD 21244-8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Marie Casey, (410) 786-7861 or Daniel Schwartz, (410) 786-4197.

**SUPPLEMENTARY INFORMATION:**

*Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-6022-P.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public website as soon as possible after they have been received. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### I. General and Legislative History

Medicare contracting authority has been in place since the inception of the Medicare program in 1965. Section 1874 of the Social Security Act (the Act) authorizes the Secretary to perform Medicare program functions directly or by contract.

On August 21, 1995, the Congress enacted the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) (HIPAA). Section 202 of HIPAA added section 1893 to the Act that establishes the Medicare Integrity Program and allows us to contract with eligible entities to perform program integrity activities. Specifically, we contract with intermediaries as specified in section 1816(a) of the Act; and carriers as specified in section 1842(a) of the Act; and program safeguard contractors (PSCs) to perform medical, fraud, and utilization reviews, and cost report audits of Medicare claims. (Hereinafter, intermediaries, carriers, and PSCs that perform medical review functions are referred to as contractors). This program is funded by the Medicare Hospital Insurance Trust Fund for activities related to Medicare Part A and Part B.