

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

[Docket No. USCG–2011–0212]

RIN 1625–AA00

**Safety Zone; Pensacola Bay; Pensacola, FL**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a portion of Pensacola Bay including all waters represented by positions 30°20'40.73" N 087°17'19.73" W, 30°20'11.12" N 087°17'20.31" W, 30°20'41.51" N 087°15'01.15" W, and 30°20'11.76" N 087°15'01.18" W creating a box, referred to as the "Show Box". This action is necessary for the protection of persons and vessels on navigable waters during the Blue Angels' air show. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

**DATES:** This rule is effective and enforceable with actual notice from May 3, 2011, through May 4, 2011. Exact enforcement times will be published in the Local Notice to Mariners and broadcasted via a Safety Broadcast Notice to Mariners.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0212 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0212 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at 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 U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LT Lisa G. Hartley, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–6512 or e-mail [Lisa.G.Hartley@uscg.mil](mailto:Lisa.G.Hartley@uscg.mil). 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 there is insufficient time to publish a NPRM. The Coast Guard received an application for a Marine Event Permit on March 23, 2011, from Naval Air Station Pensacola, in Pensacola, FL of their intentions to hold an aerobatic display over Pensacola Bay, Pensacola, FL. Publishing a NPRM is impracticable because it would delay the required safety zone's effective date and immediate action is needed to protect persons and vessels from safety hazards associated with the aerobatic display. The safety zone will be enforced for short durations during a two-day period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received an application for a Marine Event Permit on March 23, 2011, from Naval Air Station Pensacola, in Pensacola, FL of their intentions to hold an aerobatic display over Pensacola Bay, Pensacola, FL. Additionally, this rule is temporary and will only be enforced for short durations during a two-day period while the aerobatic displays are taking place. Providing a 30 day notice period would delay the effective date and is impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the aerobatic displays.

**Background and Purpose**

Naval Air Station Pensacola's Blue Angel Air Show will take place over a portion of Pensacola Bay, Pensacola, FL and poses significant safety hazards to both vessels and mariners operating in or near the air show area referred to as the "Show Box". Due to FAA directive 8900.1, this waterway must be closed to transiting watercraft to sterilize the "Show box" during the performances by

the U.S. Navy Blue Angels. The COTP Mobile is establishing a temporary safety zone for a portion of Pensacola Bay, Pensacola, FL, to protect persons and vessels during the air performances.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

**Discussion of Rule**

The Coast Guard is establishing a temporary safety zone for a portion of Pensacola Bay including all waters represented by positions 30°20'40.73" N 087°17'19.73" W, 30°20'11.12' N 087°17'20.31" W, 30°20'41.51" N 087°15'01.15" W, and 30°20'11.76" N 087°15'01.18" W creating a box, referred to as the "Show Box". This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative.

The COTP may be contacted by telephone at 251–441–5976. The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period and enforcement times for the safety zone. This rule is effective from May 3, 2011, through May 4, 2011.

**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.

**Executive Order 12866 and Executive Order 13563**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

The safety zone listed in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of Pensacola Bay only during certain times over a two-day period. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the

impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

#### **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. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of Pensacola Bay during the Naval Air Station Pensacola’s Blue Angels Air Show. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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). 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 calls 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule will not cause 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 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves safety for the public and environment and is not expected to result in any significant adverse environmental impact as described in NEPA. An environmental analysis checklist and a categorical exclusion

determination will be made available as directed under the **ADDRESSES** section.

### List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0212 to read as follows:

#### § 165.T08–0212 Safety Zone; Pensacola Bay; Pensacola, FL.

(a) *Location.* The following area is a safety zone: a portion of Pensacola Bay including all waters represented by positions 30°20'40.73" N 087°17'19.73" W, 30°20'11.12" N 087°17'20.31" W, 30°20'41.51" N 087°15'01.15" W, and 30°20'11.76" N 087°15'01.18" W creating a box, referred to as the "Show Box".

(b) *Enforcement dates.* This rule will be enforced from May 3, 2011, through May 4, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative.

They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational broadcasts:* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: April 5, 2011.

**D.J. Rose,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. 2011–9990 Filed 4–25–11; 8:45 am]

**BILLING CODE 9110–04–P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 167

[Docket No. USCG–2002–12702]

RIN 1625–AA48

#### Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing without change its November 19, 2010, interim rule codifying traffic separation schemes in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. The Coast Guard established these traffic separation schemes under authority of the Ports and Waterways Safety Act.

**DATES:** This final rule is effective May 26, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–12702 and are available for inspection or copying at 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2002–12702 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, contact Mr. George Detweiler, U.S. Coast Guard Office of Navigation Systems, telephone 202–372–1566, or e-mail [George.H.Detweiler@uscg.mil](mailto:George.H.Detweiler@uscg.mil). If you have questions about viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

### SUPPLEMENTARY INFORMATION:

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#### I. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004  
 ATBA Area to be Avoided  
 CFR Code of Federal Regulations  
 CTVS Cooperative Vessel Traffic Service  
 DHS Department of Homeland Security  
 FR **Federal Register**  
 IMO International Maritime Organization  
 NPRM Notice of Proposed Rulemaking  
 NOAA National Oceanic and Atmospheric Administration  
 PARS Port Access Route Study  
 PWSA Ports and Waterways Safety Act  
 SNPRM Supplemental Notice of Proposed Rulemaking  
 TSS Traffic Separation Scheme  
 U.S.C. United States Code  
 VTS vessel traffic service

#### II. Regulatory History

On August 27, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes: In the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia" in the **Federal Register** (67 FR 54981). We received nine letters commenting on the NPRM. The commenters did not request a public meeting, and none was held.

On November 19, 2010, the Coast Guard published an interim rule (75 FR 70818) that codified existing Traffic Separation Schemes (TSSs) in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. The Coast Guard did not publish a Supplemental Notice of Proposed Rulemaking (SNPRM) for this rule, citing the Administrative Procedure Act "good cause" exception at 5 U.S.C. 553(b)(B) in the interim rule. The interim rule sought comments on the enumerated Traffic Separation Schemes. The comment period closed January 3, 2011, and we received no