

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

public comments on the interim rule. No public meeting was requested and none was held. The interim rule became effective on January 18, 2011. There are no changes from the interim rule to this final rule.

### III. Basis and Purpose

With this rule the Coast Guard finalizes the codification of the traffic separation schemes (TSSs) identified above. The Coast Guard created each of these TSSs after conducting a Port Access Route Study (PARS) in accordance with the Ports and Waterways Safety Act (PAWSA) 33 U.S.C. 1221–1232. Each TSS that is part of this rulemaking is shown on nautical charts, is described in the United States Coast Pilot, was implemented by the International Maritime Organization, and is described in “Ships Routeing,” Tenth Edition, 2010. Each TSS has also been codified in the CFR since January 18, 2011, when the interim rule became effective. For a full discussion of the basis and purpose of this rulemaking see the interim rule (75 FR 70818, 70819).

### IV. Discussion of Comments and Changes

We received no public comments in response to our interim rule. Accordingly, the Coast Guard has made no changes in this final rule. A full discussion of the provisions of this rule may be found in the “Discussion of Interim Rule” section of the interim rule. (75 FR 70818, at 70820).

### V. Regulatory Analyses

We developed this final 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.

#### A. 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.

As previously discussed, the TSSs finalized by this final rule were codified by the interim rule, implemented by IMO, and are reflected on current nautical charts and in nautical publications. We anticipate no increased costs for vessels traveling within the aforementioned areas. These internationally recognized traffic

separation schemes provide better routing order and predictability, increase maritime safety, and reduce the potential for collisions, groundings, and hazardous cargo spills.

By finalizing the interim rule, we complete the process of recording the latitudes and longitudes of the TSSs’ coordinates in the CFR tables and make it easier for the public to reference our regulations when recommending modifications or other operational considerations. This rule finalizes incorporation of the TSSs in the CFRs and does not impact mariner actions or expectations.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule has 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.

As this rule serves to finalize in the CFR TSSs that have already been implemented, we estimate that there will be no increased costs due to this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule does not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If you believe that this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Office of Navigation Systems, telephone 202–372–1566. 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.

#### D. 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).

#### E. 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 has implications of federalism. Conflict preemption principles apply to PWSA Title I, and the TSSs in this rule are issued under the authority of PWSA Title I. These TSSs are specifically intended to have preemptive impact over State law covering the same subject matter in the same geographic area.

Title I of PWSA (33 U.S.C. 1221 *et seq.*) authorizes the Secretary to issue regulations to designate TSSs to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs that are the subject of this rule, we consulted with the affected State and Federal pilots’ associations, vessel operators, users, United States and Canadian Vessel Traffic Services, Canadian Coast Guard and Transport Canada representatives, environmental advocacy groups, Native American tribal groups, and all affected stakeholders.

Presently, there are no Washington State laws or regulations concerning the same subjects as those contained in this rule. We understand that the State does not contemplate issuing any such regulations. It should be noted that, by virtue of the PWSA authority, the TSSs in this rule preempt any State rule on the same subject.

Foreign vessel owners and operators usually become aware of TSSs when the TSSs are added to the United States Coast Pilot and the nautical charts that are required by 33 CFR 164.33 to be on each ship operating in U.S. waters. Foreign vessel owners and operators also become aware of TSSs through their national IMO delegation and IMO publications.

The individual States of the United States are not represented at the IMO as that is the role of the Federal Government. The U.S. Coast Guard is the principal agency responsible for advancing the interests of the United States at the IMO. In this role, we solicit comments from the stakeholders through public meetings and develop a unified U.S. position prior to attending sessions of the IMO Subcommittee on Safety of Navigation and the Maritime Safety Committee where TSSs are discussed.

#### *F. 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *G. 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.

#### *H. 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.

#### *I. 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.

#### *J. Indian Tribal Governments*

We have reviewed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have “tribal implications” under that Order (*i.e.*, those that 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) require the preparation of a tribal

summary impact statement. This rule will not have implications of the kind envisioned under the Order because it will not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Whether or not the Executive Order applies in this case, it is the policy of the Department of Homeland Security and the U.S. Coast Guard to engage in meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications under the Presidential Memorandum of November 5, 2009, (74 FR 57881, November 9, 2009), and to seek out and consult with Native Americans on all of its rulemakings that may affect them. We regularly consulted and collaborated with the Tribes throughout the PARS and this rulemaking. For a complete discussion of these consultations see the interim rule (75 FR 70818, 70825).

In the IR, the Coast Guard invited comments on how the codification of the existing TSSs might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order. We received no comments to our request.

#### *K. 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.

#### *L. Technical Standards*

The National Technology Transfer and Advancement Act (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, nor is the Coast Guard aware of the existence of any standards that address these TSSs. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 that 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 section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction. This rule involves navigational aids, which include TSSs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### **List of Subjects in 33 CFR Part 167**

Harbors, Marine safety, Navigation (water), Waterways.

Accordingly, the interim rule amending 33 CFR part 167, subpart B, which was published at 75 FR 70818 on November 19, 2010, is adopted as a final rule.

Dated: April 11, 2011.

**Dana A. Goward,**

*U.S. Coast Guard, Director of Marine Transportation Systems Management.*

[FR Doc. 2011–9895 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–2010–0718]**

**RIN 1625–AB55**

**Traffic Separation Schemes: In the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.