



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0749]

RIN 1625-AA00

Safety Zone; Pago Pago Harbor, America Samoa

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone during the 2016 Fautasi Ocean Challenge canoe race in Pago Pago Harbor, American Samoa, on November 11 and 25, 2016. This action is necessary to safeguard the participants and spectators, including all crews, vessels, and persons on the water in Pago Pago Harbor during the event. This regulation will functionally close the port to vessel traffic during the race, but will not require the evacuation of any vessels from the harbor. Entry into, transiting, or anchoring in the harbor would be prohibited to all vessels not registered with the sponsor as participants or not part of the race patrol, unless specifically authorized by the Captain of the Port (COTP) Honolulu or a designated representative. Vessels who are already moored or anchored in the harbor seeking permission to remain there shall request permission from COTP unless deemed a spectator vessel that is moored to a waterfront facility within the safety zone.

DATES: This rule is effective from 10:00 AM on November 11, 2016 to 4:00 PM on November 25, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0749 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541-4359, email nicolas.a.jarboe@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 1, 2016, the Coast Guard received formal notification from the American Samoa Government that the 2016 Fautasi Ocean Challenge is scheduled to occur in Pago Pago Harbor on November 11 and 25, 2016. This annual event has strengthened local tradition for over a century. The event will consist of a series of races entirely within Pago Pago Harbor between longboats with paddling crews of 32-48 persons each. It is anticipated that a large number of spectator pleasure crafts will be drawn to the event. Spectator vessels and commercial vessel traffic will pose a significant safety hazard to the longboats, longboat crew members, and other persons and vessels involved with the event.

In response, on August 29, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Pago Pago Harbor, American Samoa (81FR59163). There we stated why we issued the NPRM, and invited comments on our proposed regulatory

action related to this fireworks display. During the comment period that ended September 28, 2016, we received one comment.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive notification of this event in sufficient time to conduct a review and publish the final rule 30 days before the event is scheduled. Thus, delaying the effective date of this rule to wait for the 30 day post-publication period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners, and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Honolulu (COTP) has determined that potential hazards associated with anticipated large number of spectator pleasure crafts and commercial traffic on November 11 and 25, 2016 will pose a significant safety hazard to the longboats, longboat crew members, and other persons and vessels involved with the event. The purpose of this rule is to minimize vessel traffic in Pago Pago Harbor before, during, and after the scheduled event to safeguard persons and vessels during the longboat races.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published on August 29, 2016. To address the concern specified during the commenting period, the U.S. Coast Guard will conduct an outreach to the local community regarding the temporary safety zone. Additionally, the maritime community will be notified of the temporary safety zone through publication of both marine safety information broadcast and local notice to mariners, and a broadcast notice to

mariners via VHF-FM marine channel 16. Port meetings held by the Harbor Master prior to the event will inform and educate the maritime community and industry about the temporary safety zone and any concerns regarding possible affects to the local economy and travel. No other terminals or locations will be available within the temporary safety zone during the duration of the event.

This rule establishes a safety zone on November 11 and November 25, 2016. The safety zone will close Pago Pago Harbor to all vessels not authorized by the COTP for entry into, transiting, or anchoring within the port for the duration of the event. The COTP will authorize registered participants, support vessels, and enforcement vessels to enter and remain in the zone. No other vessels will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The harbor will remain closed until the Coast Guard issues an “All Clear” after races conclude and the harbor is deemed safe for normal operations. This rule will not require any vessel already moored to evacuate the port, provided that they are moored in such a way that they do not interfere with the progress of the event.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As discussed above, the Coast Guard will conduct an outreach to the local community regarding the temporary safety zone. The Coast Guard will issue a Broadcast Notice to Mariners with information pertaining to the safety zone via VHF-FM marine channel 16. Additionally, the maritime community will be notified of the temporary safety zone through publication of a marine safety information broadcast and local notice to mariners. Port meetings held by the Harbor Master prior to the event will inform and educate the maritime community and industry about the temporary safety zone. These measures are being employed to help the maritime community better plan and prepare for the event.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rulemaking. 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.

Some owners or operators of vessels intending to transit the safety zone may be small entities and may not be authorized to do so. This rule would not create significant economic impact on a substantial number of these entities. Moreover, the rule would allow vessels to seek permission from the Coast Guard to enter the safety zone. 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 rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT section.

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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. 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.

F. 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(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary and limited safety zone in Pago Pago Harbor. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or

information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0749 to read as follows:

§ 165.T14-0749 Safety Zone; Pago Pago Harbor, America Samoa.

(a) Location. The following area is a safety zone: Breakers Point (eastern edge of Pago Pago Harbor entrance) thence southeast to 14° 18'47"S, 170° 38'54.5"W thence southwest to 14° 19'03"S, 170° 39'14"W, thence northwest to Tulutulu Point and then following the coastline encompassing Pago Pago Harbor. This regulated area extends from the surface of the water to the ocean floor.

(b) Enforcement period. This rule will be enforced from 10:00 AM to 4:00 PM on November 11, 2016 and from 10:00 AM to 4:00 PM on November 25, 2016.

(c) Regulations. (1) All persons and vessels not registered with the sponsor as participants or support/enforcement vessels are considered spectators. The “support/enforcement vessels” consist of any territory, local law enforcement, and sponsor provided vessels assigned or approved by the Captain of the Port Honolulu to patrol the safety zone.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the safety zone during the enforcement dates and times, unless cleared for entry by or through a support/enforcement vessel.

(3) Spectator vessels may be moored to a waterfront facility within the safety zone in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the safety zone and remain moored through the duration of the event.

(d) Informational Broadcasts. The safety zones shall be effective between 10:00 AM and 4:00 PM (SST) on November 11 and 25, 2016. If circumstances render enforcement of the safety zone unnecessary for the entirety of these periods, the Captain of the Port or his designated representative will inform the public through broadcast notices to mariners that the safety zone is no longer being enforced. The harbor will remain closed until the Coast Guard issues an “All Clear” for the harbor after the race has concluded and the harbor is deemed safe for normal operations.

(e) Penalties. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1232.

Dated: October 12, 2016

M.C. LONG,

Captain, U.S. Coast Guard,

Captain of the Port Honolulu.

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