



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1019]

RIN 1625-AA00

Safety Zone; Apra Harbor, Guam

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to revise the existing safety zones currently in effect at Naval Wharf Kilo in Apra Outer Harbor, Guam, by adding a 500-yard permanent safety zone, hereinafter referred to as Safety Zone D, to provide a buffer between the explosives regularly handled on Naval Wharf Kilo, and the general public and maritime operators. The addition of Safety Zone D would also reduce the frequency of enforcement of Safety Zones A and B. This action also eliminates from the regulation the requirement to post a sign when Safety Zones A or B are being enforced; during such enforcement periods, notification will occur via a slight modification of the displayed visual indicators already codified in the existing regulation as well as via a broadcast notice to mariners. This rulemaking will better meet the needs of the community and reduce the frequency that restrictions must be imposed through the addition of a less restrictive permanent safety zone, thereby enhancing the safe and efficient use of Apra Outer Harbor Channel in the vicinity of Naval Wharf Kilo. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-1019 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Kristina Gauthier, Sector Guam Waterways Management Division, U.S. Coast Guard; telephone 671-255-4866, email [WWMGuam@uscg.mil](mailto:WWMGuam@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

In 1990, Safety Zone B was established around the newly constructed Naval Wharf Kilo. On February 10, 2015, the Coast Guard amended Apra Harbor safety zone regulation in 33CFR 165.1401 to remove the 680-yard permanent safety zone around Naval Wharf Kilo and add two intermittent safety zones, Safety Zones A and B, with arcs of 1,000 and 1,400 yards radius,

respectively. Over the past 21 plus months, the Coast Guard has evaluated the effect of these changes and their impact on the waters in and around Naval Wharf Kilo. Based on this evaluation, the Coast Guard has determined that an additional amendment to 33 CFR 165.1401 providing a 500-yard permanent safety zone around Naval Wharf Kilo is necessary to enhance the safety of the waterway and reduce adverse impacts to the maritime community and general public. This amendment will also reduce the frequency of enforcement of Safety Zones A and B and eliminate from the regulation the requirement to post a sign during the enforcement periods of Safety Zones A or B; during such enforcement periods notification will occur via a slight modification of the displayed visual indicators already codified in the existing regulation as well as via a broadcast notice to mariners.

The purpose of this rulemaking is to ensure the safety of people and vessels in the navigable waters of Apra Outer Harbor within a 500-1,400 yard radius of Naval Wharf Kilo before, during, and after wharf operations. The Coast Guard proposes this rulemaking pursuant to its authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to amend 33 CFR 165.1401 to add Safety Zone D, a 500-yard permanent safety zone at Naval Wharf Kilo, to provide a buffer between the explosives regularly handled on Naval Wharf Kilo, and the general public and marine operators. Safety Zone D will greatly reduce the enforcement periods of Safety Zones A and B. Safety zones A and B will be enforced when the COTP determines that reasonable risks to the public exist that may be minimized through zone enforcement. Notification of enforcement of Safety Zones A will be provided via a red (BRAVO) flag by day or single red light by night. Notification of enforcement of Safety Zone B will be provided via 2 red (BRAVO) flags by day or 2 red lights

by night. When Safety Zone A or B is enforced, the COTP will also provide notification via a broadcast notice to mariners. Signs stating “Safety Zone A” and “Safety Zone B,” respectively, will not be posted. During enforcement of any safety zone, no vessel or person may enter the zone without the express permission from the COTP or his designated representative. The proposed regulatory amendments appear at the end of this document.

#### **IV. Regulatory Analyses**

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zones. The implementation of a 500-yard safety zone around Naval Wharf Kilo will drastically minimize the number of days that vessel traffic will be impacted under current parameters for activation of Safety Zone A. Vessel traffic will continue to be permitted to pass through Safety Zones A and B with the permission of the Captain of the Port. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about

the zones.

### 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 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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. 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would 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 proposed 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 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. If you believe this proposed 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 proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves the re-establishment of a permanent safety zone around Naval Wharf Kilo and the clarification of visual indicators utilized during the active implementation of Safety Zones A and B. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and 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 proposed 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this

rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We plan to hold a public meeting to receive oral comments on this NPRM and will announce the date, time, and location in a separate document published in the *Federal Register*. If you signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

#### **List of Subjects in 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 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; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In §165.1401, add paragraph (a)(3) and revise paragraph (b) to read as follows:

### § 165.1401 Apra Harbor, Guam – safety zones.

- (a) \*\*\*

(3) The following is designated Safety Zone D: The waters of Apra Outer Harbor encompassed within an arc of 500 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26'44.5" N and 144 degrees 37'50.7" E. (Based on World Geodetic System 1984 Datum).

(b) *Regulations.* (1) Safety Zone A, described in paragraph (a) of this section, will only be enforced when Coast Guard Sector Guam issues a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and Naval Wharf Kilo, and a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night.

(2) Safety Zone B described in paragraph (a) of this section will only be enforced when Coast Guard Sector Guam issues a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and Naval Wharf Kilo, and a vessel berthed at Naval Wharf Kilo, is displaying 2 red (BRAVO) flags by day or 2 red lights by night.

(3) Safety Zone D is permanent and will be enforced at all times.

(4) Under general regulations in § 165.23, during periods of enforcement, entry into the Safety Zones A and B as described in paragraph (a) of this section, is prohibited unless expressly authorized by the Captain of the Port, Guam or a designated representative. Entry into Safety Zone D is prohibited at all times unless expressly authorized by the Captain of the Port, Guam or a designated representative.

Dated: December 5, 2016.

JAMES B. PRUETT,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port, Guam.

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