



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0300]

RIN 1625-AA00

Safety Zone; Agat Marina, Agat, Guam

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard will establish a safety zone in the waters of Agat Marina, Guam, to be enforced daily during the repairs to the Agat marina channel markers from 7:30 A.M. through 6:00 P.M. from May 25, 2015 through June 8, 2015 while the construction barge is in the channel. The safety zone will encompass all waters within 25 yards of the construction barge in the Agat Marina Channel. This safety zone is necessary to protect the crew working the channel markers, and the mariners from the hazards of the repairs taking place at the Agat Marina.

DATES: This rule is effective from 7:30 A.M. May 25, 2015 through 6:00 P.M., (local Kilo time) on August 8, 2015.

This rule is enforced daily Monday through Saturday from 7:30 A.M. to 6:00 P.M. May 25, 2015 through June 8, 2015 (local Kilo time).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2015-0300 and are available online by going to <http://www.regulations.gov>, inserting USCG-2015-0300 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Kristina Gauthier, U.S. Coast Guard Sector Guam at (671) 355-4866.

If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations; telephone 202-366-9826, or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

COTP                      Captain of the Port  
PAG                         Port Authority Guam

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 the official notification of Agat Marina Channel repairs, and the need for this safety zone, was not finalized 60 days prior to the start of the repairs. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete, thereby jeopardizing the safety of the people and property unknowingly transiting or remaining in the area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM prior to

making this rule effective 30 days after publication in the Federal Register. The COTP finds this good cause to be the immediate need for a safety zone to allay the aforementioned safety concerns surrounding the construction work to be undertaken at Agat Marina.

#### Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-6, 160.5; Pub L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1.

A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety or environmental purposes. The purpose of this rulemaking is to protect mariners from the potential hazards associated with the construction barge operating in a narrow channel.

#### Discussion of Rule

In order to protect the public from the hazards of the construction associated with the channel marker replacement, the Coast Guard is establishing a temporary safety zone, enforced daily Monday through Saturday, from 7:30 A.M. to 6:00 P.M. May 25, 2015 through June 8, 2015

(Kilo, Local Time). Enforcement dates may need to be changed or adjusted in the event that sea or weather conditions are not conducive to safe operations. In the event of a change in dates the new dates and times will be broadcast in a Broadcast Notice to Mariners and transmitted via email to all port partners. The safety zone is located within the Guam COTP Zone (See 33 CFR 3.70-15), and will cover all waters of the Agat Marina Channel located at 13 degrees 28 minutes 54 seconds North and 144 degrees 47 minutes 30 seconds East (NAD 1983), from the surface of the water to the ocean floor within 25 yards of the construction barge KIWI 1. There will be a no wake zone while transiting the entire channel. The general regulations governing safety zones contained in 33 CFR 165.23 apply. Any Coast Guard commissioned, warrant or petty officer, and any COTP representative permitted by law, may enforce the zone. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime safety. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

#### 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.

#### Regulatory Planning and Review

This 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.

#### 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 would affect the following entities, some which might be small entities: the owners or operators of vessels intending to

transit the Agat Marina Channel daily from 07:30 A.M. May 25, 2015 through 6 P.M. June 8, 2015. Due to the nature of the work to be undertaken to ensure the proper demarkation of the Agat Marina Channel, the channel will be adversely affected during the anticipated 14 days of construction. The narrowing of the channel in the area around the construction barge will require additional safety precautions be taken by local mariners. The safety zone will not have significant economic impact on a substantial number small entities for the following reasons. The nature of the work and location of the barge may cause some delays in the entering and exiting of the channel by small boat operators berthed in the Agat Marina, however traffic will still be allowed to transit around the construction barge with no wake. Before the activation of the zone, maritime advisories will be widely available to users of the channel.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 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 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.

#### Taking of Private Property

This rule will not affect 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.

#### Technical Standards

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 is categorically excluded from further environmental documentation because it is a regulation establishing a safety zone. 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 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping 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; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-300 to read as follows:

§ 165.T14-300 Safety Zone; Agat Marina, Agat, Guam.

(a) Location. The following area, within the Guam COTP Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, is a safety zone: 25 yards around the construction barge KIWI 1 in the waters of Agat Marina, Guam located at 13 degrees 28 minutes 54 seconds North and 144 degrees 47 minutes 30 seconds East (NAD 1983). There is a no wake zone established for the entire length of the Agat Channel.

(b) Effective Dates. This rule is effective from 7:30 A.M. May 25, 2015 through 6:00 P.M. on August 8, 2015 (Kilo, Local Time) while the construction barge KIWI 1 is in the channel.

(c) Regulations. The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the COTP or a designated representative thereof. Authorization can be requested from PAG Harbor Master via phone at (671) 477-5931 ext 533.

(d) Enforcement. This rule is enforced daily Monday through Saturday from 7:30 A.M. to 6:00 P.M. May 25, 2015 through June 8, 2015 (Kilo, Local Time) while the construction barge KIWI 1 is in the channel. Any Coast

Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(e) Waiver. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

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

Dated: April 30, 2015.

James B. Pruett,  
Captain, U. S. Coast Guard,  
Captain of the Port Guam

[FR Doc. 2015-12121 Filed: 5/18/2015 08:45 am; Publication Date: 5/19/2015]