



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0906]

RIN 1625-AA00

Safety Zone; Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone during the 2015 Fautasi Ocean Challenge in Pago Pago Harbor, American Samoa. 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 Fautasi Race. This regulation will functionally close the port to commercial vessel traffic during the start and finish of the race, but will not require the evacuation of any vessels from harbor. Entry into, transiting, or anchoring in the harbor is 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.

**DATES:** This rule is effective from 10:00 AM (SST) to 4:00 PM (SST) on November 11, 2015 and from 10:00 AM (SST) to 4:00 PM (SST) on November 27, 2015.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2015-0906 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](mailto:nicolas.a.jarboe@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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 specific details of the event were received less than 90 days prior to event and needed to be worked through between the event coordinator and the Coast Guard over an extended period of time. The Coast Guard’s discussions with the event sponsor to determine the requirements for this zone were finalized on 28 September 2015, which would not allow for a 30 day comment period. This safety zone is required to restrict vessel

traffic to ensure the safety of the participants, spectators, the marine patrol and race officials. It is impracticable to publish an NPRM because we must establish this safety zone by November 11, 2015.

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. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of the participants, spectators, the marine patrol and race officials.

### **III. Legal Authority and Need for Rule**

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act. A safety zone is a water area, shore area, or water and shore area, for safety or environmental purposes, of which access is limited to authorized persons, vehicles, or vessels.

The purpose of this rule is to minimize vessel traffic in Pago Pago Harbor during the start and finish of the Fautasi canoe race. This is a major marine event in American Samoa. It is anticipated that a large number of spectator pleasure crafts will be drawn to the event. These vessels will pose a significant hazard to those operating in or near the area. The COTP Honolulu is establishing a temporary safety zone for Pago Pago Harbor. This rule is needed to safeguard persons and vessels during the canoe boat races.

### **IV. Discussion of the Rule**

This rule will create a safety zone in Pago Pago Harbor. The Coast Guard is closing the harbor to all vessels not authorized by the Captain of the Port to enter, depart, or transit within the

port for the duration of the event. The Captain of the Port authorizes registered participants, support vessels, and enforcement vessels to enter and remain in the zone. 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. This rule does not require any vessel to evacuate the port if moored.

## **V. Regulatory Analyses**

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

### **A. Regulatory Planning and Review**

E.O.s 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. E.O. 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 E.O. 12866. Accordingly, it 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 zone. Due to the number of participants and the size of the harbor, vessels cannot safely transit the harbor during the race. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### **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 rule will 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 V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 above.

#### 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 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. An 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, Safety 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.T15-0906 to read as follows:

§ 165.T15-0906 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 (SST) to 4:00 PM (SST) on November 11, 2015 and from 10:00AM (SST) to 4:00 PM (SST) on November 27, 2015.

(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, or 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 through transit of participants or support/enforcement vessels in the safety zone during the effective date 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 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. The harbor will remain closed until the Coast Guard issues an “All Clear” for the harbor after the race has concluded the harbor is deemed safe for normal operations.

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

Dated: September 29, 2015

S. N. GILREATH,  
Captain, U.S. Coast Guard,  
Captain of the Port Honolulu

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