

*Qualified nonelective contributions (QNECs).* *Qualified nonelective contributions or QNECs* means qualified nonelective contributions or QNECs as defined in § 1.401(k)-6.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2016-1041]

RIN 1625-AA08

#### Special Local Regulation; Pago Pago Harbor, American Samoa

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent special local regulation for the Annual Fautasi Ocean Challenge canoe race in Pago Pago Harbor, American Samoa. This annual event historically occurs during the weeks of Veteran's Day and Thanksgiving Day. 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 the COTP unless deemed a spectator vessel that is moored to a waterfront facility within the regulated area. The area forming the subject of this permanent special local regulation is described below. We invite your comments on this notice of proposed rulemaking (NPRM).

**DATES:** Comments and related material must be received by the Coast Guard on or before February 17, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-1041 using the Federal eRulemaking Portal at [http://](http://www.regulations.gov)

[www.regulations.gov](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 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

COTP Captain of the Port, Honolulu  
CFR Code of Federal Regulations  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

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

This annual event will consist of a series of races entirely within Pago Pago Harbor between longboats with paddling crews of 30-50 persons each. It is anticipated that a large number of spectator pleasure craft will be drawn to the event. Spectator vessels and commercial vessel traffic would pose a significant safety hazard to the longboats, longboat crew members, and other persons and vessels involved with the event due to the longboats limited maneuverability within the port.

The Captain of the Port, Honolulu (COTP), proposes to establish a permanent special local regulation for Pago Pago Harbor to minimize vessel traffic in Pago Pago Harbor before, during, and after the scheduled event to safeguard persons and vessels during the longboat races. A regulated area 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 statutory basis for this rulemaking is 33 U.S.C. 1233, which gives the Coast Guard, under a delegation from the Secretary of the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

##### III. Discussion of Proposed Rule

This rule will create a permanent special local regulation in Pago Pago Harbor. The regulated area will close the 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 area.

No other vessels will be permitted to enter the regulated area 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 have concluded and the harbor is deemed safe for normal operations. This rule will not require any vessel already moored to evacuate the port, provided they are moored in such a way that they do not interfere with the event. The proposed regulatory text appears at the end of this document.

##### IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a "significant regulatory action," under Executive Order 12866. This determination is based on the size, location, duration, and time-of-day of the safety zone. Accordingly, this NPRM has not been reviewed by the Office of Management and Budget.

Under this NPRM, the Coast Guard would issue a Broadcast Notice to Mariners with information pertaining to the regulated area via VHF-FM marine channel 16.

###### 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.

Some owners or operators of vessels intending to transit the regulated area may be small entities and may not be authorized to do so. However, given the

short duration of this proposed temporary rule, this would not create a significant economic impact on a substantial number of these entities. Moreover, the rule would allow all vessels to seek permission from the Coast Guard to enter the regulated area.

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 would have substantial direct effects on federalism or tribal governments, 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 expenditure, we 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 a temporary and limited safety zone in Pago Pago Harbor. 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 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 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 Web site'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.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### PART 100—SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES.

- 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

- 2. Add § 100.1401 to read as follows:

#### § 100.1401 Special Local Regulation; Annual Fautasi Ocean Challenge Canoe Race, Pago Pago Harbor, America Samoa.

(a) *Location.* The following regulated area is established as a special local regulation: 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 annual event historically occurs in November

during the weeks of Veterans Day and Thanksgiving Day. The Captain of the Port Honolulu, will establish enforcement dates that will be announced by Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, on-scene designated representatives, and outreach.

(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 regulated area.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the regulated area 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 regulated area 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 regulated area and remain moored through the duration of the event.

(d) *Informational Broadcasts.* The Captain of the Port Honolulu, will establish enforcement dates and times with a Notice of Enforcement. If circumstances render enforcement of the regulated area 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 regulated area 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. 1233.

Dated: January 10, 2017.

**M.C. Long,**

*Captain, U.S. Coast Guard, Captain of the Port Honolulu.*

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**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2016-0836]

RIN 1625-AA00

#### Safety Zones; San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend, add, and delete several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. These amendments will update listed events to accurately reflect the firework display locations. This proposed rulemaking would limit the movement of vessels within the established firework display areas unless authorized by the Captain of the Port (COTP) San Francisco or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before February 17, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0836 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 Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone 415-399-3585, email [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PATCOM Patrol Commander  
§ Section  
U.S.C. United States Code

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

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1231. Fireworks displays are held annually on a recurring basis on the

navigable waters within the COTP San Francisco zone. One of the published annual fireworks events that require safety zones does not currently reflect the accurate location of the respective display sites. Three annual fireworks events that require safety zones are not published in 33 CFR 165.1191 and one published fireworks event has not occurred since 2009. These safety zones are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for the persons or vessels authorized by the COTP San Francisco or a designated representative, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks displays to ensure the safety of participants, spectators, and transiting vessels.

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

The Coast Guard has reviewed 33 CFR 165.1191 for accuracy. The Coast Guard is proposing to amend Table 1 in § 1191 to modify one event to reflect the current event locations, add three events, and delete one outdated event.

The event proposed to be modified is listed numerically in Table 1 of this section as item 9, “Fourth of July Fireworks, City of Richmond.” The display location currently listed, Richmond Harbor, has been deemed undesirable or hazardous by the event sponsors, and so it is being changed to a barge located in the harbor, and the area of the safety zone would be the area around the barge.

We are also proposing to add three events to Table 1 of 33 CFR 165.1191, as items 28, 29, and 30. These events are titled Execpro Services Fourth of July Fireworks, Monte Foundation Fireworks, Lake Tahoe, and Sausalito Lighted Boat Parade Fireworks, respectively. The events proposed to be added have taken place in 2011, 2013, and 2014, and we believe that they will likely be regularly scheduled in the future. For those reasons, we believe it is beneficial to include them in the permanent regulation.

Finally, we propose to remove item 2, “KFOG KaBoom,” as this event is outdated. It is unlikely to reoccur and its continued inclusion in the regulation offers the possibility of confusion.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C.