



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0864]

RIN 1625-AA00

Safety Zone; Tumon Bay, Tumon, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 190 yard radius of a fireworks barge located in Tumon Bay for the New Year's Eve Fireworks display. The Coast Guard believes this safety zone is necessary to protect the public from potential hazards created by the fireworks display fallout. This safety zone will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Guam (COTP).

DATES: This rule is effective from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0864 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 Chief Todd Wheeler, Waterways Management, U.S. Coast Guard; telephone 671-355-4566, email wwmguam@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

The fireworks display is anticipated to be from midnight on December 31, 2018 through 00:30 a.m. on January 1, 2019, to celebrate New Year's Eve. The fireworks are to be launched from a barge in Tumon Bay approximately 350 yards north of Joseph F. Flores Beach Park. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 190 yard radius of the barge.

In response, on October 5, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Tumon Bay, Tumon, GU (83 FR 50310-50312). 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 November 5, 2018, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under its authority in 33 U.S.C. 1231. The

COTP has determined that potential hazards associated with the fireworks to be used in this January 1, 2019 display will be a safety concern for anyone within a 190 yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published October 5, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019. The safety zone will cover all navigable waters within 190 yard radius of a fireworks barge located in Tumon Bay for the New Year's Eve Fireworks display. The Coast Guard believes this safety zone is necessary to protect the public from potential hazards created by the fireworks display fallout. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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 13771 directs agencies to

control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Tumon Bay for 4 hours. This is a low traffic area that consists mainly of outrigger canoes and sail boards during daylight hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, and the rule allows 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 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.

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 (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 Directive 023-01 and Commandant Instruction M16475.1D, 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 safety zone lasting 4 hours that will prohibit entry within 190 yards of a fireworks barge in Tumon Bay approximately 350 yards north of Joseph F. Flores Beach Park. It is categorically excluded from further review under paragraph L60(a) of

Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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, 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.T14-0864 to read as follows:

§ 165. T14-0864 Safety Zone; Tumon Bay, Tumon, GU.

(a) Location. The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge participating in the New Year's Eve Fireworks

display. The following position, 13 degrees 30 minutes 24.99 seconds N Latitude, 144 degrees 47 minutes 21.93 seconds E Longitude, are to be used as a guide to the location of the barge.

(b) Effective dates. This rule is effective from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

(c) Enforcement. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(d) 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.

(e) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: November 28, 2018.

CHRISTOPHER M. CHASE
Captain, U.S. Coast Guard,
Captain of the Port, Guam.

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