



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0502]

RIN 1625-AA00

Safety Zone; Navy Underwater Detonation (UNDET) Exercise, Apra Outer Harbor, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within Apra Outer Harbor, Guam. The safety zone will encompass a U.S. Navy underwater detonation (UNDET) exercise. The Coast Guard believes this safety zone regulation is necessary to protect the public and exercise participants within the affected area from possible safety hazards associated with the exercise. This safety zone will impact a small designated area of navigable waters in Apra Harbor for 8 hours or less. With the exception of exercise participants, entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Guam.

DATES: This rule is effective from 8 a.m. through 4 p.m. on July 13th, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0502 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 Petty Officer Robin Branch, Sector Guam, U.S. Coast Guard; telephone (671) 355-4835, email wwmguam@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

After the Coast Guard analyzed the scope and potential impacts associated with a temporary safety zone being established, 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 doing so would be impracticable and contrary to public interest. To delay implementation of the safety zone past the exercise date of July 13th, 2017 to publish and seek public comment is impracticable as it would unavoidably prevent the Coast Guard from ensuring the safety of the public and exercise participants from potential hazards associated with the exercise. It is for the same reason good cause exists under the public interest exception to the required public comment period. It is in the

public's interest the safety zone be established prior to notice and comment to ensure the safety zone is in place for the UNDET exercise on July 13th, 2017.

For the same reasons as noted above, 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**. Due to the potential dangers associated with the UNDET exercise, delaying the effective period of this safety zone beyond July 13th, 2017 would be impracticable and contrary to public interest. The temporary final rule and resulting restricted navigation area established by this rulemaking relates to the establishment of the safety zone itself. It does not address or regulate the UNDET exercise. The U.S. Navy environmental impact statement and public involvement for the UNDET activity is available at <http://mitt-eis.com/>.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Guam concurs with the U.S. Navy that potential hazards associated with the UNDET exercise on July 13th, 2017 may be a safety concern for anyone within a 700-yard radius above and below the surface in the area of the operation. This rule is needed to protect the public, exercise participants and vessels in the navigable waters within the safety zone during the exercise. Mariners and divers approaching too close to such exercises could potentially be exposed to hazardous conditions or place the exercise participants at risk.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. through 4 p.m. on July 13th, 2017. The safety zone will cover all navigable waters within 700-yards above and below the surface of the water around the UNDET exercise. The duration of the zone is intended to protect the public, exercise participants and vessels in navigable waters during the exercise. No vessel or person,

with the exception of exercise participants, 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 (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

. 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 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 (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 and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of waters in the outer harbor for 8 hours or less. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone. Further, the rule allows vessels and persons 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 (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 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 the establishment of a safety zone 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 up to eight hours that will prohibit entry within 700-yards above and below the surface of the UNDET exercise. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is 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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0502 to read as follows:

165. T14-0502 Safety Zone; Navy UNDET Exercise, Apra Outer Harbor, GU.

(a) Location. The following areas, within the Captain of the Port (COTP) Guam Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, are safety zones:

Apra Outer Harbor, Guam July 13, 2017. All waters above and below the surface bounded by a circle with a 700-yard radius centered at 13 degrees 27 minutes 42 seconds North Latitude and 144 degrees 38 minutes 30 seconds East Longitude, (NAD 1983).

(b) Effective period. This section is effective from 8 a.m. through 4 p.m. on July 13th, 2017, unless canceled earlier by the COTP Guam.

(c) Regulations. The general regulations governing safety zones contained in 33 CFR 165.23 apply. No vessels, with the exception of exercise participants may enter or transit the safety zone and no persons in the water, with the exception of exercise participants may enter or transit the safety zone unless authorized by the COTP Guam or a designated representative thereof.

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

(e) Waiver. The COTP Guam may waive any of the requirements of this section 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 and security.

(f) 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: June 8, 2017

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

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