



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1084]

RIN 1625-AA00

Safety Zone; Cocos Lagoon, Merizo, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within Cocos Lagoon. This safety zone will encompass the designated swim course for the Cocos Crossing swim event in the waters of Cocos Lagoon, Merizo, Guam. This action is necessary to protect all persons and vessels participating in this marine event from potential safety hazards associated with vessel traffic in the area. Race participants, chase boats, and organizers of the event will be exempt from the safety zone. Entry of persons or vessels into the safety zone is prohibited unless authorized by the Captain of the Port Guam (COTP).

DATES: This rule is effective from 7 a.m. through 1 p.m. on May 26, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1084 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 Petty Officer Todd Wheeler, Sector Guam, U.S. Coast Guard, by telephone at (671) 355-4866, or email at 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 purpose of this rule is to ensure the safety of the participants and the navigable waters in the safety zone before, during, and after the scheduled swim event. In response, on March 8, 2019, the Coast Guard published an NPRM titled “Safety Zone; Cocos Lagoon, Merizo, GU” (84 FR 8489). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended April 8, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the event will be a safety concern. The purpose of this rule is to protect all persons and vessels participating in this event from potential safety hazards associated with vessel traffic in the area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 8, 2019. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. Paragraph (b), regarding enforcement dates, has been updated to an enforcement date from 7 a.m. to 1 p.m. on May 26, 2019 whereas the enforcement date in the NPRM was from 6 a.m. to 1 p.m. on a specified day during either the last two weeks of May or the first two weeks of June. This change was made after we received notification of the exact date and time of the event. The date and time are within the time frame listed in the NPRM.

This rule establishes a safety zone from 7 a.m. until 1 p.m. on May 26, 2019. The safety zone will cover all navigable waters within 100-yards radius of race participants in Cocos Lagoon, Guam. This rulemaking would prohibit persons and vessels not involved in the event from being in the safety zone unless authorized by 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-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Cocos Lagoon for 6 hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the 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 6 hours that would prohibit entry within 100 yards of swim participants. 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. 70034, 70051; 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.T14-1084 to read as follows:

§ 165.T14-1084 Safety Zone; Cocos Lagoon, Merizo, GU.

(a) Location. The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), all navigable waters within a 100-yard radius of race participants in Cocos Lagoon, Merizo, Guam. Race participants, chase boats and organizers of the event will be exempt from the safety zone.

(b) Enforcement dates. This section will be enforced from 7 a.m. to 1 p.m. on May 26, 2019.

(c) Enforcement. All persons are required to comply with the general regulations

governing safety zones found in § 165.23. Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Guam. Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Guam or his designated representative. To seek permission to transit the area, the Captain of the Port Guam (COTP) and his designated representatives can be contacted at telephone number (671) 355-4821 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this safety zone.

(d) Waiver. The COTP 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 security.

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

Dated: April 19, 2019.

Christopher M. Chase,
Captain, U.S. Coast Guard,
Captain of the Port, Guam.

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