

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14-02-002]

RIN 2115-AA97

Regulated Navigation Areas and Security Zones; Escorted Vessels—Philippine Sea, Guam, Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands

AGENCY: Coast Guard DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas (RNAs) and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP) Guam. The security zones for these escorted vessels will close all waters of Philippine Sea, Guam, Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands, within a 100-yard radius around an escorted vessel while in the RNA. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. The RNAs will require vessels within 500 yards of an escorted vessel to travel at minimum safe speed and the security zones will prohibit unauthorized entry within a 100-yard radius of an escorted vessel in these RNAs. This rule is not intended to replace or modify the existing RNAs and zones found in 33 CFR 165.1401, 33 CFR 165.1402, and 33 CFR 165.1404.

DATES: This rule is effective January 29, 2003.

ADDRESSES: Commanding Officer, Coast Guard Marine Safety Office Guam, PSC 455 Box 176, FPO AP 96540-1057. Marine Safety Office Guam maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of this docket and are available for inspection or copying at this location between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Fred Meadows, Coast Guard Marine Safety Office Guam at (671) 339-2001.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled “Regulated Navigation Areas and Security Zones; Escorted Vessels-Philippine Sea, Guam, Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands” in the **Federal Register** (67 FR 60630). We received two letters commenting on the proposed rule. No public hearing was requested and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this regulation would be contrary to the public interest since prompt action is needed to ensure the security of vessels, ports, facilities, and the maritime communities of this region. Prompt implementation would provide adequate security measures needed to protect vulnerable vessels and maritime infrastructure from potential threats.

Background and Purpose

Terrorist incidents within the United States on September 11, 2001 have called for the implementation of measures to protect U.S. seaports and transportation infrastructure. In addition, national security and intelligence officials warn that future terrorist attacks against civilian targets are anticipated and that U.S. seaports are particularly vulnerable. These rules are intended to provide for the safety and security of the public, maritime commerce, and transportation by protecting persons, vessels, and seaport facilities in the waters of Philippine Sea, Guam, Apra Harbor, Guam, and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands (CNMI). These rules are intended to enable the COTP Guam to provide effective port security, while minimizing the public's confusion and ease the administrative burden of implementing separate temporary security zones for each escorted vessel.

Discussion of Comments and Changes

The Coast Guard received two letters following the publication of the notice of proposed rulemaking (67 FR 60630). Both letters fully supported the proposed rules. However, one letter raised two issues concerning the impact of the rules on harbor traffic.

One issue is that shipyards may find it difficult for their vessels to transit and moor near Navy vessels needing repair. The other issue raised the concern that recreational water activities (banana

boats, jet skis, sea walker, and divers) near Hotel Wharf might be temporarily relocated to alternative sites during periods when the security zones are in effect. The Coast Guard considers these issues to be minimal given the small size and the short duration of the security zones in any given area. In addition, persons or vessels that must enter a security zone may request and receive permission from the COTP via telephone or VHF channel 16 on a case-by-case basis. The Coast Guard has considered these issues and has determined no change to the proposed rule is required.

Regulatory Evaluation

The rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The U.S. Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the limited duration of the zones. Vessels will also be able to transit the RNAs freely outside of any security zones. In addition, the COTP may allow vessels in the security zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

Assistance for Small Entities

Under section 231(a) of the Small Business Regulatory Enforcement Fairness Act of 1968 (Pub. L. 104-121),