

(3) The food standard should reflect the essential characteristics of the food. The essential characteristics of a food are those that define or distinguish a food or describe the distinctive properties of a food. The essential characteristics of a food may contribute to achieving the food's basic nature or may reflect relevant consumer expectations of a food product. For example, foods may be defined or distinguished by their ingredients, compositional characteristics, physical characteristics, nutrient levels, or the manner in which they are produced.

(4) The food standard should ensure that the food does not appear to be better or of a greater value than it is. The food standard may be used as a vehicle to improve the overall nutritional quality of the food supply.

(5) The food standard should contain clear and easily understood requirements to facilitate compliance by food manufacturers.

(6) The food standard should permit maximum flexibility in the technology used to prepare the standardized food so long as that technology does not alter the basic nature or essential characteristics, or adversely affect the nutritional quality or safety, of the food. The food standard should provide for any suitable, alternative manufacturing process that accomplishes the desired effect, and should describe ingredients as broadly and generically as feasible.

(7) Consistent with § 130.6 of this chapter, the food standard should be harmonized with international food standards to the extent feasible. If the food standard is different from the requirements in a Codex standard for the same food, the petition should specify the reasons for these differences.

(8) The food standard provisions should be simple, easy to use, and consistent among all food standards. Food standards should include only those elements that are necessary to define the basic nature and essential characteristics of a particular food, and any unnecessary details should be eliminated.

(9) The food standard should allow for variations in the physical attributes of the food. Where necessary to provide for specific variations in the physical attributes of a food within the food standard, the variations should be consolidated into a single food standard.

(10) Whenever possible, general requirements that pertain to multiple food standards of a commodity group should be incorporated into general regulatory provisions that address the commodity group.

(11) The food standard should take into account any other relevant

regulations in this chapter. For example, a proposed new or revised food standard should be consistent with common or usual name regulations for related commodities or products. Further, any specific requirements for foods intended for further manufacturing should be incorporated within the reference food standard rather than being provided as a separate food standard.

(12) The food standard should provide the terms that can be used to name a food and should allow such terms to be used in any order that is not misleading to consumers.

(13) Names of ingredients and functional use categories in a food standard should be consistent with other food standards and relevant regulations in this chapter, and, when appropriate, incorporate current scientific nomenclature.

(c) As part of the Statement of Grounds required by section § 10.30 of this chapter, a petition to establish a new food standard should include a comprehensive statement that explains how the proposed new standard conforms to the general principles that apply to the new standard. A petition to revise an existing food standard should include a comprehensive statement that explains how the proposed revision to the existing standard conforms to the general principles that apply to the proposed revision. A petition to eliminate a food standard should include a comprehensive statement that explains how the standard proposed to be eliminated does not conform to any one of the general principles in paragraphs (b)(1) through (b)(4) of this section.

(d) A petition that proposes the establishment or revision of a food standard that is not consistent with the applicable general principles listed under paragraph (b) of this section will be denied, and the petitioner will be notified as to the reason for the denial. A petition that proposes the elimination of a food standard that does not demonstrate that the food standard is inconsistent with any one of the general principles listed under paragraphs (b)(1) through (b)(4) of this section will be denied, and the petitioner will be notified as to the reason for the denial.

\* \* \* \* \*

Dated: April 14, 2005.

**Barbara J. Masters,**  
*Acting Administrator, FSIS.*

Dated: April 8, 2005.

**Lester M. Crawford,**  
*Acting Commissioner of Food and Drugs.*  
[FR Doc. 05-9958 Filed 5-17-05; 11:25 am]  
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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-05-010]

RIN 1625-AA00

#### Safety Zone; Waters of Milwaukee Harbor, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to implement a temporary safety zone for the TCF Bank Milwaukee Air Expo. This safety zone is necessary to safeguard the public from the hazards associated with air shows. This proposed rule would restrict vessel traffic from a portion of Lake Michigan near Milwaukee Harbor unless authorized by the Captain of the Port Milwaukee or designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before June 20, 2005.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee (CGD09-05-010), 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office (MSO) Milwaukee 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, will become part of this docket and will be available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m.(local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Chief Millsap, U.S. Coast Guard MSO Milwaukee, at (414) 747-7155.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you

do so, please include your name and address, identify the docket number for this rulemaking (CGD09-05-010), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

This safety zone is necessary to protect the public from the hazards associated with air shows. Due to the high profile nature and extensive publicity associated with this event, the Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to and on Lake Michigan. As such, the COTP is proposing to establish a safety zone in Milwaukee Harbor from July 14 through July 17, 2005. The safety zone would be enforced from 1 p.m. until 4:30 p.m. each day and would ensure the safety of both participants and spectators in these areas.

The combination of large numbers of inexperienced recreational boaters, congested waterways, boaters crossing commercially transited waterways, and low flying aircraft could easily result in serious injuries or fatalities.

This notice of proposed rulemaking comment period allows the public an opportunity to comment on the proposed safety zone, allowing the Coast Guard to evaluate the proposed zone's affects and consider modifications.

#### Discussion of Proposed Rule

The Coast Guard is proposing a safety zone in Milwaukee Harbor, Milwaukee, Wisconsin from July 14 through July 17, 2005. The safety zone would be enforced from 1 p.m. until 4:30 p.m. each day and would ensure the safety of both participants and spectators in these areas.

The Coast Guard will notify the public in advance by way of the Ninth Coast Guard District Local Notice to Mariners, the Broadcast Notice to Mariners, and, for those who request it, from MSO Milwaukee, by facsimile (fax).

#### Regulatory Evaluation

This proposed 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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety zone within the waterway. Recreational vessels may transit through the safety zone with permission from the COTP Milwaukee or his designated on-scene patrol commander.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone would be enforced for only a few hours per day on each day of the event and vessel traffic can safely pass outside of the proposed safety zone during the event. Before the effective period, we would issue maritime advisories widely available to users of the lake.

If you think 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.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 MSO Milwaukee (*see* **ADDRESSES**). 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.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 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 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

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. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a "tribal implication" under that Order.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management

systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### 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 proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

2. From 1 p.m. on July 14, 2005, through 4:30 p.m. on July 17, 2005, add temporary § 165.T09–010 to read as follows:

#### § 165.T09–010 Safety Zone; Waters of Milwaukee Harbor, Milwaukee, Wisconsin.

(a) *Location.* The safety zone includes all waters encompassed by the following coordinates: starting at 43°01.606' N, 087°53.041' W; then northeast to 43°03.335' N, 087°51.679' W; then northwest to 43°03.583' N, 087°52.265' W; then going southwest to 43°01.856' N, 087°53.632' W; then returning back to point of origin, located in Milwaukee Harbor. These coordinates are based upon North American Datum 1983.

(b) *Enforcement period.* This safety zone will be enforced from 1 p.m. to 4:30 p.m. each day from July 14, 2005, through July 17, 2005. The Captain of the Port Milwaukee or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The "duly appointed representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone must contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone must comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF-FM channels 16 or 23A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the Safety Zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the Safety Zone and restriction imposed.

Dated: May 12, 2005.

**H.M. Hamilton,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

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