

does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34), of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 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. 0170.1.

■ 2. A new temporary § 165.T09–224 is added to read as follows:

#### § 165.T09–224 Safety Zone; Harley Davidson Motor Company 100th Anniversary Fireworks, Milwaukee, Wisconsin.

(a) *Location.* The following area is a safety zone: All waters and adjacent shoreline bounded by the arc of a circle with a 1680-foot radius with its center in approximate position 43°02.16'N, 087°53.18' W, located in Milwaukee Harbor. These coordinates are based upon North American Datum 1983.

(b) *Enforcement periods.* This rule is effective from 9:50 p.m. (CST) on August 30, 2003 until 10:15 p.m. (CST) on September 1, 2003. This section will be enforced from 9:50 (CST) until 10:15 (CST) on August 30; again on August 31; and, in the event of inclement weather, during these same times on September 1, 2003.

(c) *Regulations.* In accordance with the general regulations in § 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 shall 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 shall 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 21A. 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: July 30, 2003.

**H.M. Hamilton,**

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

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD09–03–246]

RIN 1625–AA97

#### Safety Zone; Sailing Vessels Red Witch, Pride of Baltimore II, Larinda, True North, Nina, HMS Bounty, Fair Jeanne—Kenosha, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone of 100 yards around the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE. This safety zone is

necessary to protect the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE from other vessels that may impede their safe navigation. This safety zone is intended to restrict vessel traffic within the vicinity of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE while they are underway on Lake Michigan.

**DATES:** This rule is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This rule will be enforced when the vessels are underway, on Lake Michigan, and are within 3 nautical miles of shore.

**ADDRESSES:** Comments on this rule may be addressed to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. (CST) and 3:30 p.m. (CST), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Michael Schmidtke, Marine Safety Office Milwaukee, (414) 747–7155.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making the rule effective less than 30 days after publication. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

#### Background and Purpose

This Safety Zone is established to safeguard the vessel and the public. The size of the zone was determined by the necessities of safe navigation in the Captain of the Port (COTP) zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This rule will be enforced when the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS

BOUNTY, and FAIR JEANNE are underway, on Lake Michigan in the COTP Milwaukee zone, and are within 3 nautical miles of shore. This zone will be a moving safety zone.

#### Discussion of Rule

The Coast Guard will implement a safety zone around the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE in vicinity of Kenosha, WI. Vessels are not to come within 100 yards of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE while they are underway for the purposes of safe navigation for the sailing vessels as well as other vessels. The Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on-scene representative. Entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

#### Regulatory Evaluation

This 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 on the minimal time that vessels will be restricted from the zone and that the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

#### 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.

This rule will affect the following entities: The owners or operators of vessels intending to transit or anchor in the vicinity of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while underway on Lake Michigan, from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only a few hours to safeguard the navigation of the boating public and the navigation of the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while the vessels are underway on Lake Michigan. In addition, commercial vessels transiting the area can transit around the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 Marine Safety Office Milwaukee (*See ADDRESSES.*)

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).

#### Collection of Information

This rule calls 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 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

### 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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, this rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 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. 0170.1.

■ 2. A new temporary § 165.T09-246 is added to read as follows:

**§ 165.T09-246 Safety Zone; Sailing Vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, Kenosha, WI.**

(a) *Location.* (a) The following area is designated a safety zone: the waters of

Lake Michigan in the Captain of the Port Milwaukee Zone, within a 100 yard radius of the sailing vessels RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE, while the vessels are underway and within 3 nautical miles of shore.

(b) *Effective period.* This section is effective from 12:01 a.m. (CST) on August 6, 2003 until 11:59 p.m. (CST) on August 10, 2003. This section will be enforced when the RED WITCH, PRIDE of BALTIMORE II, LARINDA, TRUE NORTH, NINA, HMS BOUNTY, and FAIR JEANNE are underway, on Lake Michigan, and are within 3 nautical miles of shore.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene representative. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF-FM.

Dated: July 29, 2003.

**H.M. Hamilton,**

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

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD09-03-501]

#### Safety Zone; Captain of the Port Milwaukee Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation.

**SUMMARY:** The Coast Guard is implementing safety zones for annual

fireworks displays in the Captain of the Port Milwaukee Zone during August 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

**DATES:** Effective from 12:01 a.m. (CST) on August 1, 2003 to 11:59 p.m. (CST) on August 31, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Marine Science Technician Michael Schmiktke, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747-7155.

**SUPPLEMENTARY INFORMATION:** The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (24) and (25) (67 FR 44560, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone during August 2003. The following safety zones are in effect for fireworks displays occurring in the month of August 2003:

(1) Sturgeon Bay Venetian Night Fireworks.

*Location:* All waters and adjacent shoreline off the Sturgeon Bay Yacht Club, Sturgeon Bay Canal encompassed by the arc of a circle with a 350-foot radius of the fireworks launch platform with its center in approximate position 44° 49.33' N, 087° 23.27' W (NAD 1983), on August 2, 2003, from 8:45 p.m. until 9:30 p.m. This safety zone will temporarily close down the Sturgeon Bay Canal.

(2) Menominee Waterfront Festival Fireworks.

*Location:* All waters and adjacent shoreline off the southeast side of the Menominee Municipal Marina, Lake Michigan, encompassed by the arc of a circle with an 840-foot radius of the fireworks barge with its center in approximate position 45°20.05' N, 087°36.49' W (NAD 1983), on August 9, 2003, from 9:30 p.m. until 10 p.m.

Dated: July 29, 2003.

**H.M. Hamilton,**

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

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