

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD09-05-126]

RIN 1625-AA00

**Safety Zone; Transfer of M/V WILLIAM G. MATHER, Cleveland, OH****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for the transfer of the M/V MATHER from the Municipal Pier to Cleveland City Docks. This safety zone is intended to manage vessel traffic in order to provide for the safety of life and property on navigable waters during the event.

**DATES:** This rule is in effect from 10 a.m. (local) through 11 a.m. (local) on September 24, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket CGD09-05-126 are part of this docket are available for inspection or copying at MSU Cleveland, 1055 East 9th Street, Cleveland, OH 44114 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, at (216) 937-0128.

**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), the Coast Guard finds that good cause exists for not publishing an NPRM. The exact date of the event was not known with sufficient time to allow for the publication of an NPRM followed by an effective date before the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. 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.

**Background and Purpose**

This safety zone is necessary to protect the participants and spectator vessels during the transfer of the M/V

WILLIAM G. MATHER from hazards associated with towing a museum ship that will not be under her own power during the transfer. The Captain of the Port has determined that this event poses a minor threat to the participants as well as spectator vessels due to the hazards associated with these events.

The combination of inexperienced recreational boaters and large number of commercial vessels that transit this area could easily result in serious injuries or fatalities.

**Discussion of Rule**

The Coast Guard is proposing a safety zone in Cleveland Harbor, Cleveland, Ohio. This safety zone will encompass all waters in Cleveland Harbor, to include the North Coast Harbor, originating at a line drawn from Pier 32, at position 41°30'36" N, 081°42'56" W, extending to position 41°30'43" N, 081°42'03" W, thence to Buoy 11 (LLNR 4135) at position 41°30'49" N, 081°41'53" W in Cleveland Harbor, thence to the Northeast corner of Municipal Pier at position 41°30'43" N, 081°41'47" W. These coordinates are based upon North American Datum 1983 (NAD 83). 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 Unit Cleveland, by facsimile.

**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 this rule 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 rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the size and location of the safety zone within the water. Commercial vessels will not be hindered by the safety zone, as all commercial traffic will be diverted through the Lake Approach Channel. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered

whether this rule would have a significant 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 would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for a few hours on the day of the event. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth District Coast Guard Local Notice to Mariners, Marine Information Broadcasts and when requested by facsimile.

If you think that 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 (Public Law 104-121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects 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 Lieutenant Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, 1055 East 9th Street, Cleveland, OH 44114.

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 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 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 would not affect 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

The Coast Guard has 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 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 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 procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have 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. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

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 the rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, 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. 0170.1.

- 2. A new temporary § 165.T09–126 is added read as follows:

#### § 165.T09–126 Safety Zone; 2005 transfer of Museum ship M/V WILLIAM G. MATHER, Cleveland Harbor, Cleveland, Ohio

(a) *Location.* All waters in Cleveland Harbor, to include the North Coast Harbor, originating at a line drawn from Pier 32, at position 41°30'36" N, 081°42'56" W, extending to position 41°30'43" N, 081°42'03" W, thence to Buoy 11 (LLNR 4135) at position 41°30'49" N, 081°41'53" W in Cleveland Harbor, thence to the Northeast corner of Municipal Pier at position 41°30'43" N, 081°41'47" W. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective Period.* This section is effective from 10 a.m. (local) through 11 a.m. (local) on September 24, 2005.

(c) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

#### S.J. Ferguson,

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

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