



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 64

[Docket No. USCG-2012-0054]

RIN 1625-AA97

Waiver for Marking Sunken Vessels with a Light at Night

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: This proposed rulemaking would revise Coast Guard regulations to implement section 301 of the Coast Guard and Maritime Transportation Act of 2004. This Act authorized the Commandant to waive the statutory requirement to mark sunken vessels with a light at night if the Commandant determines that placing a light would be impractical and waiving the requirement would not create an undue hazard to navigation. The Commandant has delegated to the Coast Guard District Commander in whose district the sunken vessel is located the authority to grant this waiver.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or

reach the Docket Management Facility by that date.

ADDRESSES: Comments must be identified by Coast Guard docket number USCG-2012-0054 and may be submitted using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0054), indicate the specific section of this document to which each comment applies, and provide the reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a

phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "USCG-2012-0054" in the "Search" box. Locate this notice in the results, click on "Submit a Comment," and follow the instructions to submit your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

#### B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert "USCG-2012-0054" in the "Search" box, and locate this notice in the search results. Use the filters on the left side of the page to view comments and other documents. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the

ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting 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.

II. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
MISLE	Marine Information for Safety and Law Enforcement

NAICS        North American Industry Classification System  
NPRM        Notice of proposed rulemaking  
Pub. L.     Public Law  
§            Section symbol  
U.S.C.      United States Code

### III. Background

The Coast Guard proposes to revise its regulations in 33 CFR part 64, which prescribe rules relating to the marking of structures, sunken vessels and other obstructions for the protection of maritime navigation. These regulations apply to all sunken vessels in the navigable waters or waters above the continental shelf of the United States. Current regulations in 33 CFR 64 require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and a light at night, and maintain the markings until the wreck is removed. (Current wording uses the phrase "buoy or daymark," which we are replacing with "buoy or beacon" in this subpart. This is a more precise phrase encompassing floating and fixed aids to navigation.) There are no provisions for exemptions to this regulation. However, if, due to conditions of the waterway, the Coast Guard determines that marking the wreck with a light is impracticable and that not marking the wreck does not pose an undue hazard to navigation, the Commandant is authorized

by statute to grant a waiver from the lighting requirement. Such a waiver could save owners the cost of marking sunken vessels with a light without jeopardizing navigational safety.

For that reason, the primary purpose of this proposed rulemaking is to add to the regulations a provision in section 301 of the Coast Guard and Maritime Transportation Act of 2004 ("the Act") (Pub. L. 108-293), codified at 33 U.S.C. 409, that authorizes the Commandant to waive the requirement to mark a sunken vessel, raft, or other craft with a light at night if the Commandant determines it would be "impracticable and granting such a waiver would not create an undue hazard to navigation." The Commandant has delegated to the District Commander the authority to grant this waiver. (See Aids to Navigation Manual-Administration (COMDTINST M16500.7A)).

In addition, the Coast Guard believes that this rulemaking is a good opportunity to make editorial and organizational changes to 33 CFR part 64 subpart B to make the regulations clearer to the regulated industry.

#### IV. Discussion of Proposed Rule

The Coast Guard is proposing two different areas of changes to 33 CFR part 64. The first change, discussed above, is the addition of a provision allowing owners of

sunken vessels, rafts, and other craft to request a waiver from the requirement to mark the sunken vessel with a light at night. Additionally, we are proposing some organizational and clarifying edits to 33 CFR 64.11 to improve readability.

A. Waiver of Lighted Buoy Provision

Under the current requirement in 33 CFR 64.11(a) (and 64.16), all owners and operators of vessels sunk in navigational channels must place and maintain either a lighted buoy or a fixed light over the wreck until the wreck is removed. However, this requirement has created some problems for owners and operators of sunken vessels in the past. In certain waterways, particularly in the Western rivers, the light may become disabled repeatedly due to environmental conditions or the conditions of the waterway, forcing the owner or operator of the sunken vessel to undertake multiple maintenance trips to repair the light before the wreck is removed, which can become costly. Furthermore, as a lighted buoy is generally heavier than an unlighted one, the presence of the light can actually increase the probability that the buoy becomes submerged, negating its effectiveness both by day and night. Similarly, fixed lights marking the wreck can be damaged by environmental conditions. Being able to grant

waivers for the lighting requirement, in cases where installing a lighted buoy or fixed light would be impracticable, would provide a relief of burden for owners and operators of sunken vessels without posing undue hazards to navigation.

Given that the Coast Guard now has the statutory authority to do so based on Section 301 of the Act, we are proposing to amend the regulations in 33 CFR 64.11 and 64.13 to include provisions for requesting and granting such a waiver for marking a sunken vessel, raft, or other craft.

We propose to add in paragraph (a) of 33 CFR 64.13 a provision that an owner and/or operator of a sunken vessel seeking a waiver of the requirement to mark a wreck with a light at night may make a request to the District Commander in whose district the sunken vessel is located. Similarly, paragraph (b) would be added to allow the District Commander to waive the marking of a wreck with a light at night. As per the requirements of Section 301 of the Act, the District Commander would have to determine that marking the sunken vessel with a lighted buoy or a fixed light would be impractical, and that granting a waiver from that requirement would not cause an undue hazard to navigation. A reference to the waiver provision would also be added to

33 CFR 64.11(a). We are also including information about how to contact the District Commander.

B. Organizational and Clarifying Edits

In order to improve readability, the Coast Guard proposes some additional minor wording and organizational edits to 33 CFR 64.11 and 64.13.

- As stated above, we propose to place the waiver provisions in § 64.13. To accommodate that, we propose to redesignate existing paragraphs (a) and (b) in § 64.13 as (g) and (h), respectively, in § 64.11. This will locate all of the marking requirements in § 64.11.
- We are breaking the existing § 64.11(a) into two paragraphs to reflect its two components. The first sentence, relating to vessels sunk in navigable channels, remains as § 64.11(a), and now includes a reference to the waiver provision.
- The second sentence of the current § 64.11(a) would be designated as § 64.11(b), which relates to the marking of sunken vessels outside of navigable channels that still pose a hazard to navigation.
- We are moving the reportable information requirements from § 64.11(b) to §§ 64.11(c) and (d), which relate to any information about sunken vessels or

obstructions reported to the Coast Guard, and clarifying them. The Coast Guard proposes to slightly amend the four reporting requirements relating to sunken hazards to be more specific about the information they require. For example, in proposed § 64.11(c)(1) instead of merely requiring a "name and description," we are proposing to require "name and description,... including type and size." The existing and proposed citation for each of the requirements is listed in Table 1 below.

Table 1: Existing and Proposed Requirements and Citations

Current Reporting Requirement	Existing Citation	Proposed Reporting Requirement	Proposed Citation
Name and description of the sunken vessel	64.11(b)(1)	Name and description of the sunken vessel, raft, or other craft, including type and size	64.11(c)(1)
Accurate description of the location of the vessel	64.11(b)(2)	Accurate description of the location of the sunken vessel, raft, or other craft, including how the position was determined	64.11(c)(2)
Depth of water over the vessel	64.11(b)(3)	Water depth	64.11(c)(3)
Location and type of marking established, including color and shape of buoy or other daymark and characteristic of the light	64.11(b)(4)	Location and type of marking established, including color and shape of buoy or other beacon and characteristic of the light	64.11(c)(4)

- Paragraphs (c) and (d) in § 64.11 have been redesignated to (e) and (f), respectively.

- We are substituting the term "owners and/or operators" for the term "owners" in the proposed regulations with regard to sunken vessels. We believe that this would help to ensure full and prompt compliance with the regulations in the event that a non-owner is operating the vessel at the time of sinking.
- We are substituting the term "vessel, raft, or other craft" for the term "vessel" to ensure that all sunken craft are accounted for.
- We are replacing instances of the word "shall" with "must" to improve readability.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on statutes and executive orders.

### A. Regulatory Planning and Review.

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, 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.

A draft regulatory assessment follows: Current regulations in 33 CFR 64.11(a) require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and a light at night, and maintain the markings until the wreck is removed. There are no provisions for exemptions to this regulation. However, if the Coast Guard determines that marking the wreck with a light at night is impracticable and does not pose an undue hazard to navigation, the Commandant is authorized to grant a waiver from the lighting requirement. Such a waiver would benefit owners of sunken vessels without jeopardizing navigational safety. Table 2 summarizes the cost and benefits of the proposed rule.

Table 2: Summary of costs and benefits

Category	Proposed rule
Applicability	Owner/operator of a vessel sunk in navigable channels that request a waiver from the requirement to provide a lighted marker if providing an unlighted marker does not create a hazard to navigation,
Affected population	6 sunken vessels per year
Industry Annualized costs (7% discount rate)	\$217 per year
Government Annualized Costs (7% discount rate)	\$1,140 per year
Total Annualized Cost of the Proposed Rule (7% discount)	\$1,357 per year
Benefits	Cost savings due to waiver of requirement that the marker have a light. Improved clarity and readability for existing information requirements.

Discussion of Baseline Industry Behavior:

The Coast Guard proposes to revise its regulations requiring the owner of a wrecked vessel to mark the vessel with a light at night. Existing regulations require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and with a light at night, and maintain the markings until the wreck is removed.

The proposed revision would implement a provision in the Coast Guard and Maritime Transportation Act of 2004 that authorizes the Commandant of the Coast Guard, under certain circumstances, to waive the requirement to mark wrecked vessels with a light at night. The proposed change

would permit a waiver to be granted if the District Commander determines the placement of a light would be impractical and granting a waiver will not create an undue hazard to navigation. The proposed rule also makes certain edits in order to improve readability and clarify existing information requirements.

During the period from 2004 to 2011, the Coast Guard has received an annual average of 13 reports of sunken vessels that would be subject to the marking requirements in this rule.<sup>1</sup> Under the proposed rule, the owners or operators of these sunken vessels would be able to apply for a waiver of the requirement to mark the wreck with a light at night. If this proposed rule is finalized and the Coast Guard grants waivers to owners or operators who have already marked a wreck in accordance with the existing requirements, those owners or operators will have the option<sup>2</sup> to remove the lights from the buoy or beacon marking the sunken vessels.

#### Discussion of Costs:

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<sup>1</sup> The Coast Guard Office of Navigation Systems has provided information regarding these reports and has estimated an annual average of 13 vessels per year during this time.

<sup>2</sup> The term “option” is used, because vessel owners or operators that have not been granted a waiver approval at the time of the incident would have to deploy their buoy with a light. If the waiver is granted after the buoy has been deployed, the owner or operator of the buoy may elect not to maintain the lighting system, thereby causing it to become inoperable, which is equivalent to removing the light under this proposed rule.

Owners or operators of sunken vessels that voluntarily request a waiver would make the request to the District Commander of the District in which the vessel sunk. We anticipate that owners or operators requesting waivers would first initiate contact with the District Commander via voice communication (i.e., radio or cell phone) to report the location of the sinking along with the proposed information requirements in 33 CFR 64.11(c)(1) through (4) and request a waiver from the lighting requirements under 33 CFR 64.13. After this initial communication, vessel owners or operators formally submit to the District Commander, in writing, the information requirements under proposed § 64.11(c).<sup>3</sup> We note that while there are some changes to the wording of the information requirements in proposed § 64.11(c) (modifications from the existing text in § 64.11(b)), these changes are clarifying in nature and there is no change in the reporting requirements.

Records compiled by the Coast Guard Office of Navigation Systems, which are composed from data collected by the various Coast Guard Districts, show an annual average of 13 vessels that are sunk in navigable channels and marked under the current regulatory scheme. During the

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<sup>3</sup> Specific procedures for submission of waiver requests are not prescribed in this proposed rule but would be left to be decided by the individual District Commanders. However, we anticipate that any submission to the USCG would have cost associated with processing/reviewing a report. Therefore, this process would carry a cost which is estimated in the body of this regulatory assessment.

period of 2004 until 2011, a total of five requests for waivers were made to the Coast Guard and all had been approved. Although this would indicate less than one waiver request per year, the Coast Guard believes that an established process in the CFR would cause additional requests for waivers. Many within the industry may not be aware that waivers can be requested. Therefore, by establishing a waiver regime in the CFR, we anticipate a wider audience would have knowledge about petitioning the USCG for a waiver. Based on responses from Coast Guard districts, the Coast Guard estimates that slightly less than 50 percent, or six vessel owners and operators, would request a waiver from the lighted buoy requirement per year.

As such, we estimate that six vessel owners and/or operators per year would request waivers from a District Commander. It is estimated that it would take an owner or operator approximately 15 minutes to report the incident to the Coast Guard, via voice communication, and informally request a waiver for their marker. The loaded hourly wage rate of a Captain, Mate and Pilot of a Water Vessel (NAICS 53-5021) is \$48.30.<sup>4</sup> Therefore, the estimated cost of the

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<sup>4</sup> [http://www.bls.gov/oes/2011/may/oes\\_nat.htm](http://www.bls.gov/oes/2011/may/oes_nat.htm) , then scroll down and click 53-0000 “Transportation And Material Moving Occupations”, then click 53-5021. Mean hourly wage for Captains, Mates and Pilots

initial reporting, per incident, is  $\$12.07 = (\$48.30 * .25)$ . We also estimate that it would take approximately 30 minutes, per waiver, to write up and submit a formal request to the District Commander. Therefore, the cost of submitting a request is  $\$24.15 = (\$48.30 * .5)$ , and the total cost for each occurrence is  $\$36.22 = (\$12.07 + \$24.15)$ . Table 3 shows the total, 10-year cost of six affected vessels to be  $\$1,526$  discounted at 7 percent and annualized cost of  $\$217.32$  discounted at 7 percent.

The organizational and clarifying edits in the proposal would not result in additional costs to industry.

Table 3: Total 10 Year cost to industry

Year	Undiscounted	7%	3%
1	217.32	\$203	\$211
2	217.32	\$190	\$205
3	217.32	\$177	\$199
4	217.32	\$166	\$193
5	217.32	\$155	\$187
6	217.32	\$145	\$182
7	217.32	\$135	\$177
8	217.32	\$126	\$172
9	217.32	\$118	\$167
10	217.32	\$110	\$162
Total	2,173.20	\$1,526.36	\$1,854
Annualized		\$217.32	\$217.32

Government Cost:

The District Commander could grant a waiver if the waiver would not create an undue hazard to navigation. We

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of Water Vessels. In addition, the cost reported in the analysis is based on the loaded wage rate, which is the reported BLS wage rate multiplied by the load rate of 1.4.

estimate that all waiver requests would be submitted in writing, including instances where oral waivers were requested at the time of the vessel sinking. For the purpose of this analysis, we assume that all waiver approvals (or disapprovals) would be determined once written notice has been received by the District Commander.<sup>5</sup> We anticipate a Coast Guard Commander (O-5) will review the waiver requests and make the determination of whether to grant the waiver. As previously stated, it is projected that six waiver requests per year would be submitted for review. We estimate that each waiver review would take approximately two hours.<sup>6</sup> Therefore, the government economic burden of reviewing a written waiver request is \$190 (\$95.00 at an O-5 wage rate<sup>7</sup> \* 2 hours) per waiver, and estimated annual burden of \$1,140 per year (\$190 per waiver \* 6 waivers). Table 4 shows total government 10-year cost at \$8,007, and annualized cost at \$1,140, both discounted at 7 percent.

Table 4: Total Government Cost

Year	Undiscounted	7%	3%
1	\$1,140	\$1,065.42	\$1,106.80
2	\$1,140	\$ 995.72	\$ 1,074.56

<sup>5</sup> We believe that it would take less time to approve the paper work for a waiver that was granted over the phone during the time of the vessel sinking than for those vessels that were not granted a waiver at the time of sinking.

<sup>6</sup> We estimate that it would take Coast Guard personnel approximately 2 hours to review and grant a waiver.

<sup>7</sup> Wage rate for an O-5 comes from COMDTINST 7310.1M. Feb 2011.

3	\$1,140	\$ 930.58	\$ 1,043.26
4	\$1,140	\$ 869.70	\$ 1,012.88
5	\$1,140	\$ 812.80	\$ 983.37
6	\$1,140	\$ 759.63	\$ 954.73
7	\$1,140	\$ 709.93	\$ 926.92
8	\$1,140	\$ 663.49	\$ 899.93
9	\$1,140	\$ 620.08	\$ 873.72
10	\$1,140	\$ 579.52	\$ 848.27
Total	\$11,400	\$8,006.88	\$9,724.43
Annualized		\$1,140.00	\$1,140.00

Total 10-year (industry and government) cost of the proposed rule are estimated at \$13,573.20 (undiscounted) and \$9,533.25 discounted at 7 percent. The annualized cost of the rule is \$1,357.32 discounted at 7 percent. These figures assume that slightly less than half of the owners and operators of sunken vessels, wrecked and sunk in navigable channels, request a waiver. The total cost could be lower if more vessel owners choose not to request them.

Discussion of Benefits:

The primary benefit of the proposed rule is that it provides a regulatory efficiency benefit. Currently, ship operators may not be aware that waivers from the lighting requirement may be requested. By establishing a waiver provision in the CFR, we anticipate a wider audience would have knowledge about petitioning the Coast Guard for a waiver. This would allow vessel owners or operators whose sunken vessels would not cause an undue navigational hazard

if not marked with a light at night to be granted a waiver for the lighting requirement if the District Commander determines placing the light would be impractical. Under the current Coast Guard regulations, a lighting system must be installed on a sunken vessel's marker(s), whether the wreck is determined to pose a hazard to navigation or not. The granting of a waiver would remove the burden associated with the probable maintenance of a lighted marker such as a buoy,<sup>8</sup> without imposing additional safety risk.

Additionally, we believe that the clarifications to the regulations could improve the efficiency of data collection regarding vessel sinking by clarifying the information required (such as specifying that vessel type and size should be included in the description of a sunken vessel).

#### B. 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

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<sup>8</sup> Probable cost saving is difficult to determine. The amount of time a vessel remains sunken varies. Therefore, determining the amount of maintenance required on lighting hardware is unknown.

populations of fewer than 50,000 people.

The Coast Guard expects that this proposed rule could impact a maximum of six small entities per year at a cost of \$36 per waiver per entity, which we assume would have a cost impact of less than one percent of annual revenue per affected entity.

In addition, the proposed waiver provision is voluntary. There are no mandatory costs associated with this proposed rule. As previously discussed, some affected entities may incur cost savings for waivers from lighting requirements.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think your business or organization qualifies, as well as how and to what degree this rule will economically affect it.

#### C. Assistance for Small Entities

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 the rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

#### D. Collection of Information

As noted previously, we estimate that there would be fewer than 10 respondents affected in any given year. Therefore, this proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), since the estimated number of respondents is less than the threshold of 10 respondents per 12-month period for collection of information reporting purposes under the Paperwork Reduction Act.

#### E. Federalism

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 proposed rule under that Order and have determined that it does not have implications for federalism. This proposed rule would merely permit owners and operators of vessels sunk in navigable channels to request a waiver from the existing Coast Guard requirement to mark the wreck with a light at night.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled that the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within fields foreclosed from regulation by the States or local governments. (See the decision of the Supreme Court in the consolidated cases of United States v. Locke and Intertanko v. Locke, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). The Coast Guard believes the Federalism principles articulated in Locke apply to this proposed rule since it

would only affect an area regulated exclusively by the Coast Guard.

#### F. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

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

#### H. 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.

#### I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

#### J. 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.

#### K. 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, as supplemented by Executive Order 13563, 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.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (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 would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule falls under section 2.B.2, figure 2-1, paragraph (34)(a), (b) and (i). This proposed rule involves regulations which are editorial, regulations delegating authority, and regulations in aid of navigation such as vessel traffic services and marking of navigation systems. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast

Guard proposes to amend 33 CFR part 64 as follows:

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER  
OBSTRUCTIONS

1. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 64.11 to read as follows:

§ 64.11 Marking, notification, and approval requirements.

(a) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in a navigable channel must mark it immediately with a buoy or beacon during the day and with a light at night. The requirement to mark the vessel, raft, or other craft with a light at night may be waived by the District Commander pursuant to § 64.13 of this subpart.

(b) The owner and/or operator of a sunken vessel, raft, or other craft that constitutes a hazard to navigation must mark it in accordance with this subchapter.

(c) The owner and/or operator of a sunken vessel, raft, or other craft must promptly report to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, the action they are taking to mark it.

In addition to the information required by 46 CFR 4.05, the reported information must contain --

(1) Name and description of the sunken vessel, raft, or other craft, including type and size;

(2) Accurate description of the location of the sunken vessel, raft, or other craft, including how the position was determined;

(3) Water depth; and

(4) Location and type of marking established, including color and shape of buoy or other beacon and characteristic of the light, if fitted.

(d) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in waters subject to the jurisdiction of the United States or sunk on the high seas, if the owner is subject to the jurisdiction of the United States, must promptly report to the District Commander, in whose jurisdiction the obstruction is located, the action they are taking to mark it in accordance with this subchapter. The reported information must contain the information listed in paragraph (c) of this section, including the information required by 46 CFR 4.05.

(e) Owners and/or operators of other obstructions may report the existence of such obstructions and mark them in the same manner as prescribed for sunken vessels.

(f) Owners and/or operators of marine pipelines that are determined to be hazards to navigation must report and mark the hazardous portion of those pipelines in accordance with 49 CFR parts 192 or 195, as applicable.

(g) All markings of sunken vessels, rafts, or crafts and other obstructions established in accordance with this section must be reported to and approved by the appropriate District Commander.

(h) Should the District Commander determine that these markings are inconsistent with part 62 of this subchapter, the markings must be replaced as soon as practicable with approved markings.

3. Revise § 64.13 to read as follows:

§ 64.13 Approval for waiver of markings.

(a) Owners and/or operators of sunken vessels, rafts or other craft sunk in navigable waters may apply to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, for a waiver of the requirement to mark them with a light at night as required under § 64.11(a) of this subpart. Information on how to contact

the District Commander is available at  
<http://www.uscg.mil/top/units>.

(b) The District Commander may grant a waiver if it  
is determined that—

(1) marking the wrecked vessel, raft or other craft  
with a light at night would be impractical, and

(2) the granting of such a waiver would not create an  
undue hazard to navigation.

Dated: May 21, 2013

Dana A. Goward  
Director, Maritime Transportation Systems  
U. S. Coast Guard.

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