

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please call Mr. Randall Eberly, P. E., Project Manager, at 202-267-1861.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions.

Federalism

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as 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 the field foreclosed from regulation by the States. (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).) Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

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. 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 interim rule will not result in such an expenditure, we 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.

Reform of Civil Justice

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 create 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361 (July 11, 2001)) requesting comments on how to best carry out the Order. We invite your comments on how this rule might affect tribal governments, even if any particular effect may not constitute a "tribal implication" under the 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. It has not been designated, by the Administrator of the Office of Information and Regulatory Affairs, a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and

concluded that, under figure 2-1, paragraphs (34) (c) and (d), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 164 and 46 CFR parts 25 and 27 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

■ 1. Revise the citation of authority for part 164 to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 2. In § 164.78, revise paragraphs (a) (6) and (7), and add paragraph (a)(8) to read as follows:

§ 164.78 Navigation under way: Towing vessels.

(a) * * *

(6) Knows the speed and direction of the current, set, drift, and tidal state for the area to be transited;

(7) Proceeds at a safe speed taking into account the weather, visibility, density of traffic, draft of tow, possibility of wake damage, speed and direction of the current, and local speed-limits; and

(8) Monitors the voyage plan required by § 164.80.

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■ 3. In § 164.80, revise the heading of the section and add paragraph (c) to read as follows:

§ 164.80 Tests, inspections, and voyage planning.

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(c) Towing vessels described in paragraphs (b) (1) through (4) of § 164.01 are exempt from the voyage-planning