



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR parts 2, 24, 25, 30, 70, 90, and 188

[Docket No. USCG-2012-0919]

RIN 1625-AB83

Lifesaving Devices – Uninspected Commercial Barges and Sailing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes aligning its regulations with the 2010 Coast Guard Authorization Act. Before 2010, uninspected commercial barges and uninspected commercial sailing vessels fell outside the scope of a statute requiring the regulation of lifesaving devices on uninspected vessels. Lifesaving devices were required on uninspected commercial barges and sailing vessels only if they carried passengers for hire. The 2010 Act brought uninspected commercial barges and sailing vessels within the scope of the statutory requirement to carry lifesaving devices even if they carry no passengers. The Coast Guard proposes requiring use of wearable personal flotation devices for individuals on board uninspected commercial barges and sailing vessels, and amending several regulatory tables to reflect that requirement. This rulemaking promotes the Coast Guard's marine safety mission.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before **[INSERT DATE 90 DAYS AFTER DATE**

**OF PUBLICATION IN THE FEDERAL REGISTER]** or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0919 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Martin Jackson, Office of Design and Engineering Standards Lifesaving and Fire Safety Division (CG-ENG-4), Coast Guard; telephone 202-372-1391, e-mail [Martin.L.Jackson@uscg.mil](mailto:Martin.L.Jackson@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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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-2012-0919), indicate the specific section of this document to which each comment applies, and provide a 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-2012-0919” in the “Search” box. Click on "Submit a Comment" in the “Actions” column. 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> and insert “USCG-2012-0919” in the “Search” box. Click "Search." Click the “Open Docket Folder” in the “Actions” column. 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

AWO	American Waterways Operators
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
E.O.	Executive Order
FR	<u>Federal Register</u>
NAICS	North American Industry Classification System
NIOSH	National Institute for Occupational Safety and Health
Non-PFH	Not carrying persons for hire
NPRM	Notice of proposed rulemaking
OSHA	Occupational Safety and Health Administration
PFD	Personal flotation device
Pub. L.	Public Law
RCP	American Waterways Operators' Responsible Carriers Program
§	Section symbol
SBA	U.S. Small Business Association
The Act	2010 Coast Guard Authorization Act
U.S.C.	United States Code

III. Background

Sections 2103 and 4102 of title 46, United States Code (U.S.C.), provide the legal basis for this proposed rule. Section 2103 gives the Secretary of the department in which

the Coast Guard is operating general regulatory authority to carry out the provisions of 46 U.S.C. Subtitle II (“Vessels and Seamen”). Section 4102(b), as amended by section 619 of the 2010 Coast Guard Authorization Act (the Act), Pub. L. 111-281, 124 Stat. 2905, requires the Secretary to “prescribe regulations requiring the installation, maintenance, and use of life preservers and other lifesaving devices for individuals on board uninspected vessels.” The Secretary of Homeland Security’s authority under 46 U.S.C. 2103 and 4102 is delegated to the Coast Guard. See DHS Delegation No. 0170.1(92)(a), (92)(b).

The uninspected vessels to which section 4102(b) applies are defined in 46 U.S.C. 2101(43) as vessels not subject to inspection under 46 U.S.C. 3301 and that are not recreational vessels as defined in 46 U.S.C. 2101(25). Until passage of the Act in 2010, section 4102(b) applied only to uninspected vessels “propelled by machinery,” and thus excluded most barges and sailing vessels unless they carried passengers for hire. (Vessels carrying passengers for hire are inspected vessels covered by 46 U.S.C. 3301.) Current Coast Guard regulations that implement section 4102(b) reflect the “propelled by machinery” requirement and therefore specifically exempt those excluded barges and sailing vessels. See 46 CFR 25.25-1(c) and (d).

The purpose of the proposed rule is to implement 46 U.S.C. 4102(b) as amended by the Act. The Act deleted the requirement in section 4102(b) that vessels be propelled by machinery. As amended, section 4102(b) now requires all non-recreational uninspected vessels, regardless of vessel type or mode of propulsion, to make some form of lifesaving devices available for the use of individuals on board the vessel. The types

and numbers of devices appropriate for each type of vessel are left to the Coast Guard's discretion, as are the requirements for installing, maintaining, and using those devices.

We are unaware of any commercial sailing vessel currently in service, except for those that carry passengers for hire and that, therefore, are inspected vessels subject to Coast Guard regulations in 46 CFR subchapters H, K, or T, and already required to carry lifesaving devices. However, should such an uninspected commercial sailing vessel ever enter service, it would be covered by this proposed rule. Many commercial barges are also subject to inspection and therefore are already required to carry lifesaving devices.<sup>1</sup>

#### IV. Discussion of Proposed Rule

The Coast Guard proposes amending 46 CFR subpart 25.25, which concerns life preservers and other lifesaving equipment on uninspected commercial vessels.

Section 25.25-1 exempts certain types of vessels from subpart 25.25. Paragraphs (a) and (b) of the section exempt non-commercial vessels and vessels leased, rented, or chartered to another for that person's non-commercial use. Paragraphs (c) and (d) exempted uninspected commercial sailing vessels and barges that do not carry passengers for hire. Paragraphs (c) and (d) reflected the pre-2010 inclusion of the "propelled by machinery" clause in 46 U.S.C. 4102(b). Because section 4102(b) now mandates the Coast Guard to require some form of lifesaving devices on uninspected commercial sailing vessels and barges that do not carry passengers for hire, we propose removing 46 CFR 25.25-1(c) and (d).

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<sup>1</sup> Barges subject to inspection include barges carrying combustible or flammable liquid cargo in bulk (inspected in accordance with 46 CFR subchapter D); barges carrying more than a few passengers (the number varies by barge type but is generally at least 7; 46 CFR subchapters H, K, or T); seagoing and Great Lakes barges (46 CFR subchapter I); and tank barges carrying specified bulk or dangerous cargoes (46 CFR subchapter O).

We propose amending the definitions in 46 CFR 25.25-3 by adding a definition for “approval series,” a term we propose using elsewhere in the subpart to describe equipment requirements.

We propose amending 46 CFR 25.25-5. We propose revising current paragraphs (b) through (f) to eliminate references to equipment specifications that have become obsolete or that have lost their Coast Guard-approved status since this section was last amended in 2002. Although the proposed regulatory text omits the language of current § 25.25-5(f)(3), requiring Type V commercial hybrid PFDs to be worn when a vessel is underway, the substance of that provision would be covered by the proposed requirement in §25.25-5(c)(2)(i) for approved commercial hybrid PFDs to be used in accordance with the conditions marked on the PFD and in the owner’s manual. All Coast Guard-approved Type V hybrid PFDs are labeled with, and their user manuals refer to, the conditions contained in current § 25.25-5(f)(3). Otherwise, the requirements currently found in §25.25-5(b) through (f) would not be substantively changed, but would be incorporated into revised §25.25-5(b) and (c).

We propose revising the introductory paragraph in §25.25-5(b) to provide for commercial barges of any length. Barge operators would have to provide some form of wearable PFD (or an immersion suit) for individuals on board. Although most barges are longer than 26 feet, unlike other uninspected vessels we would not require barges to be equipped with lifebuoys. Lifebuoys typically are mounted on stanchions. Given the configuration of some barges, installation of a lifebuoy stanchion could unreasonably interfere with operations, and because often only one individual is on board a barge at any given time, should that individual fall overboard there would be no one available to

throw the lifebuoy to the individual. We think the use of a wearable PFD not only involves less burden but also provides greater safety.

We would amend 46 CFR 25.25-9 to allow PFDs for barge personnel to be stowed remotely rather than on the barge itself, and to require barge operators to ensure that PFDs are worn by individuals while they are on board a barge. This is in line with current industry practice. Typically, barge operators stow PFDs on the barge's towboat, and require crew members to don PFDs before they go aboard a barge and to wear them while on board. Allowing this not only increases safety but also does so at a lower cost relative to the lifebuoy option.

Finally, we would amend tables in 46 CFR 2.01-7, 24.05-1, 30.01-5, 70.05-1, 90.05-1, and 188.05-1. These tables describe the applicable Coast Guard regulations for different vessel types. They currently refer to the 46 CFR 25.25-1(c) and (d) exemptions that we propose removing. We would reflect the removal of those exemptions in the tables.

## V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

### 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 available 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 E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory 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 (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. We consider all estimates and analysis in this Regulatory Analysis to be preliminary and subject to change in consideration of public comments.

A preliminary regulatory assessment follows:

As described in section III (Background) of this NPRM, as amended by section 619 of the Act, 46 U.S.C. 4102(b) now makes all uninspected commercial barges and sailing vessels subject to Coast Guard regulation for the installation, maintenance, and use of life preservers and other lifesaving devices for individuals on board. The 2010 amendment removed language that formerly limited the applicability of section 4102(b) to vessels “propelled by machinery,” which effectively kept most commercial barges, which are not self-propelled by machinery, as well as commercial sailing vessels, outside the scope of section 4102(b). At this time, we are unaware of any uninspected commercial sailing vessel not carrying passengers for hire currently in service, and thus the data on which the rest of this discussion are based relate exclusively to uninspected commercial barges not carrying passengers for hire.

Proposed 46 CFR 25.25-5(b) requires owners of affected vessels to store and maintain at least one PFD for each person on board a barge.<sup>2</sup> In lieu of storing a PFD for each individual onboard a barge, PFDs can be stored and maintained on another vessel so long as crewmembers wear the PFDs while onboard the barge. For instance, uninspected commercial barges not carrying passengers for hire carry low-cost cargos in bulk and generally do not carry individuals on board. However, towing vessel personnel may be on board the barge to perform specific tasks such as securing the barge to other barges or the towing vessel, or providing lookout for the towing vessel.

While some firms that operate barges may also own them, for the purposes of this analysis, we treat barge owners and operators as different companies. We assume that the barge operators would be responsible for the PFDs because they are responsible for the safety of their crews and therefore they would store a sufficient number of PFDs for each crewmember on board the towing vessel. Under proposed 46 CFR 25.25-9(c), a barge operator may comply with proposed § 25.25-5(b) by storing PFDs elsewhere and ensuring that each individual dons the equipment before boarding the barge and keeps it on for as long as the individual remains on board, in lieu of maintaining PFDs on each barge. This would reduce costs by eliminating the need to install storage facilities on each barge, and would enable the typical industry practice of PFDs being worn to be substituted.<sup>3</sup> We also assume that the barge owners would then negotiate the PFD wear conditions with the barge operators.

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<sup>2</sup> While barges may in practice be tied together, there is no exception as to storing a set of lifesaving devices for each barge rather than one per set of barges or around the perimeter of a set of barges. Towing vessels may transport barges from various barge owners and drop them off on a schedule, so having lifebuoys and sets of PFDs on a perimeter of a set of barges may not be feasible.

<sup>3</sup> Based on information from the American Waterways Operators (AWO), we believe that crewmembers wear PFDs while onboard a barge.

Table 1 summarizes the affected population, costs, and benefits of this proposed rule.

Table 1: Summary of Affected Population, Costs and Benefits

Category	Description
Applicability	Uninspected commercial vessels Not propelled by machinery Not carrying passengers for hire  35,568 barges (including new and currently inactive barges) 0 sailing vessels
Costs	No additional cost to purchase or install PFDs since already required on towing vessels that would transport affected barges
Benefits (Qualitative)	Improves regulatory efficiency by providing technical updates to the Code of Federal Regulations. Reinforces existing company policy and current industry practice of PFD use.

### Cost

No cost was attributed to the purchase, installation, or maintenance of PFDs due to current regulatory requirements for the carriage of PFDs on towing vessels<sup>4</sup> and standard industry practice of wearing a PFD while on board commercial barges.

Uninspected commercial barges not carrying passengers for hire are typically unmanned and anyone boarding such vessel would be coming from either a dock, shore facility, or another vessel. Under OSHA regulations in 29 CFR 1926 Subpart E, personnel boarding from a dock or shore are already required to wear a PFD and we find no evidence of non-compliance. Under 46 CFR 25.25-5, uninspected vessels (including towing vessels) are required to maintain at least one PFD per person on board the vessel. In proposed 46

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<sup>4</sup> 46 CFR 25.25-5

CFR 25.25-5, if a barge operator stores PFDs elsewhere and ensures that each individual dons the equipment before boarding the barge and keeps it on for as long as the individual remains on board, they can use the PFDs stored on the towing vessel in lieu of maintaining a set on each barge. Presumably, a crewmember coming from a towing vessel would wear the PFD that was originally stored on the towing vessel, which discussions with industry show to be standard practice. Therefore, we estimate that there is no additional cost to purchase or install new PFDs in response to the proposed rule. We note that the cost for a type 1 PFD may range from \$55 to \$79 per PFD depending on the type that a company uses and the expected lifespan of a PFD is 5 years.<sup>5</sup>

As stated in the introductory paragraphs of this section, we believe that companies already require the wearing of PFDs or work vests based on current OSHA regulatory requirements and industry practice.<sup>6</sup> Furthermore, the American Waterways Operators association has encouraged training with development of “Fall Overboard Prevention” and “Slip, Trip and Fall Prevention” lesson plans since 2002, to raise awareness on preventing falls overboard and encouraging PFD use.<sup>7</sup> The American Waterways Operators’ Responsible Carriers Program (RCP) requires that participants ensure that a sufficient number of PFDs are available and in working order.<sup>8</sup> OSHA also encourages wearing of PFDs to improve deck safety on barges.<sup>9</sup>

## **Benefits**

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<sup>5</sup> <http://www.westmarine.com/webapp/wcs/stores/servlet/SiteSearch?storeId=11151&langId=-1&catalogId=10001&pageSize=10&beginIndex=0&sType=SimpleSearch&searchTermScope=3&Ns=Most+Popular%7C0&keyword=work+vest&searchBtn>

<sup>6</sup> See for example <http://www.parkertowing.com/downloads/Person.PDF>;  
<http://www.southerntowing.net/December2005.pdf>

<sup>7</sup> [http://www.americanwaterways.com/commitment\\_safety/lessons/Fall\\_Overboard/slpsplan.doc](http://www.americanwaterways.com/commitment_safety/lessons/Fall_Overboard/slpsplan.doc)  
[http://www.americanwaterways.com/commitment\\_safety/lessons/ppe/PPE\\_PFDs.DOC](http://www.americanwaterways.com/commitment_safety/lessons/ppe/PPE_PFDs.DOC)  
[http://www.americanwaterways.com/commitment\\_safety/QAT/falloverboardqatreportapril2012.pdf](http://www.americanwaterways.com/commitment_safety/QAT/falloverboardqatreportapril2012.pdf)

<sup>8</sup> [http://www.americanwaterways.com/commitment\\_safety/RCP.pdf](http://www.americanwaterways.com/commitment_safety/RCP.pdf)

<sup>9</sup> <http://www.osha.gov/Publications/3358deck-berge-safety.pdf>

A benefit of this rule is the improvement in regulatory efficiency by providing technical updates to the Code of Federal Regulations, aligning them to the U.S. Code and thereby reducing the potential for uncertainty and confusion.

We reviewed casualty cases from the years 2000 to 2010 that may have been impacted by this proposed rule. During this time, there were 49 falls overboard from barges, an average of approximately four casualties a year. We reviewed these cases to see if the individual overboard wore a PFD (or had ready access to one) and whether the availability of such devices could have reduced the risk of death in a fall overboard. Of the casualties that we reviewed, we found only one instance where the individual did not wear a PFD (despite company policy requiring the use of a PFD).<sup>10</sup> The casualty report noted that the failure to wear a PFD was a contributing factor to the fatality. In this case, the proposed regulation may have reinforced existing company policy of PFD use.

### **Alternatives**

We examine four alternatives for this regulation.

*Proposed Alternative – Store and maintain enough PFDs for all persons on board. The PFD can be worn in lieu of storage:* This alternative was chosen because it meets the statutory requirement at no additional cost. Furthermore, this requirement would be more in line with existing PFD requirements for other vessels and provides regulatory flexibility in the option of storage or wearing of PFDs. Uninspected vessels (such as towing vessels) must store and maintain a sufficient number of PFDs for every individual on board the vessel in accordance with 46 CFR 25.25-5. In lieu of storing PFDs, companies can require individuals to wear a PFD or work vest. Companies have the option of either instituting a policy of wearing PFDs while on board (which

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<sup>10</sup> Marine Information for Safety and Law Enforcement Activity Number 90148, year 2011.

discussions with industry and reviews of their casualty data show to be the case on the majority of vessels) or otherwise making PFDs readily accessible. Therefore, we estimate that there is no cost to obtain or install PFDs. Compared to other listed alternatives, this proposed alternative provides the greatest flexibility and safety, at no cost.

*Alternative 1 – Require that all vessels have a lifebuoy, and store a sufficient number of PFDs on board. In lieu of storing PFDs, persons can wear PFDs. This alternative is similar to the proposed alternative in that it requires the wearing or storing of PFDs (which we estimate to be no additional cost), but owners would also need to install a lifebuoy on board barges at an estimated cost of \$262 per vessel (barge) every 5 years.<sup>11</sup> Annual costs may range from \$342,958 to \$3.6 million depending on the annual affected population and lifebuoy replacement.<sup>12</sup> At a total estimated 35,568 barges (including new constructions and currently inactive barges) we anticipate that the 10-year undiscounted cost would be \$16.9 million for this alternative. This alternative was not chosen because this would cost more and not provide additional benefit as the lifebuoy would provide protection redundant to the PFD, and in most cases, there would be no one available to deploy it. We did not find any associated benefits that would outweigh the*

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<sup>11</sup> Welder: 4 hours (Coast Guard subject matter expert)\*\$27 per hour (<http://www.bls.gov/oes/current/oes514121.htm>) \* load factor of 1.482. Therefore, \$18.67 \* 1.482 = \$27.70  
Lifebuoy: \$72. <http://www.amazon.com/RING-BUOY-WHITE-COAST-APPROVED/dp/B001DSKEAO>,  
[http://www.westmarine.com/webapp/wcs/stores/servlet/Product\\_11151\\_10001\\_39507\\_-1?cid=chanintel\\_google&ci\\_src=14110944&ci\\_sku=39507](http://www.westmarine.com/webapp/wcs/stores/servlet/Product_11151_10001_39507_-1?cid=chanintel_google&ci_src=14110944&ci_sku=39507)  
Brackets \$40.00. <http://www.starmarinedepot.com/Seachoice+Ring+Buoy+Bracket.html>,  
<http://www.starmarinedepot.com/Seachoice+Ring+Buoy+Bracket.html>  
Stanchion \$42.00.  
[http://www.discountsteel.com/items/A36\\_Hot\\_Rolled\\_Steel\\_Equal\\_Leg\\_Angle.cfm?item\\_id=183&size\\_no=19&sku\\_no=74&pieceLength=cut&len\\_ft=8&frmGS=true](http://www.discountsteel.com/items/A36_Hot_Rolled_Steel_Equal_Leg_Angle.cfm?item_id=183&size_no=19&sku_no=74&pieceLength=cut&len_ft=8&frmGS=true)  
Therefore, \$262 = (4 \* \$27/hour welder wage, loaded) + \$72 per lifebuoy + \$40 brackets (for 3) + \$42 per stanchion.

<sup>12</sup> Similar to PFDs, we assume the expected lifespan, and therefore replacement time, of a lifebuoy to be 5 years.

costs for this alternative. Table 2 provides the breakdown in population and undiscounted costs by year.

Table 2. Undiscounted Cost to Install Ring Buoys.

Year	Population	Replacement	per vessel cost	Undiscounted Cost
Year 1	12548	0	\$262	\$3,287,576
Year 2	12548	0	\$262	\$3,287,576
Year 3	1309	0	\$262	\$342,958
Year 4	1309	0	\$262	\$342,958
Year 5	1309	0	\$262	\$342,958
Year 6	1309	12548	\$262	\$3,630,534
Year 7	1309	12548	\$262	\$3,630,534
Year 8	1309	1309	\$262	\$685,916
Year 9	1309	1309	\$262	\$685,916
Year 10	1309	1309	\$262	\$685,916
Total				\$16,922,842

*Alternative 2 – Require that all vessels have a lifebuoy only.* This change would have the effect of requiring one lifebuoy on board each vessel (barge). The lifebuoy would need to be installed (and replaced as needed) at an estimated cost to barge owners of \$262 per vessel (barge) every 5 years. At an estimated 35,568 barges, we anticipate that this alternative would cost \$16.9 million overall, undiscounted. As mentioned above, the lifebuoy would provide protection redundant to the PFD, and in most cases, there would be no one available to deploy it. Also mentioned in Alternative 1, above, is the derivation of the cost. This alternative was not chosen because it would not provide the lowest cost with the maximum benefits.

*Alternative 3 – No action.* Section 619 of the Act directs the Department of Homeland Security (DHS) Secretary to carry out specific regulatory actions; therefore if no action is taken, the Coast Guard, having been delegated this rulemaking authority by

the DHS Secretary, will not fulfill its Congressional mandate. This will further cause a conflict between U.S. Code and the Code of Federal Regulations, resulting in regulatory uncertainty and confusion.

#### 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 populations of less than 50,000.

There are approximately 2,622 owners of 22,478 barges. We researched 355 randomly selected small entities to determine if they fell below or exceeded the threshold for a small entity, as determined by the U.S. Small Business Association (SBA). To establish whether an entity was below the threshold or above the threshold, we used the North American Industry Classification System (NAICS) code for each industry and the small entity qualifying definitions for each NAICS code established by the SBA for businesses. The following provides a breakdown of the size determination for the entities:

- 3 Government or non-profit exceeding the threshold
- 1 Government or non-profit below the threshold
- 45 businesses exceeding the threshold
- 43 businesses below the threshold
- 263 unknown and therefore considered small

Based on this analysis, 86 percent of the sample is small entities.

Table 3 provides a description of the most-prevalent NAICS for the small entities.

Table 3. Nine Most-Prevalent NAICS Codes and Small Entities Size Standards

<b>NAICS</b>	<b>Industry</b>	<b>% of Small Entities</b>	<b>SBA Size Threshold (less than threshold small)</b>	<b>SBA Size Standard Type</b>	<b>No. of Entities</b>
336611	Ship Building and Repairing	16%	1000	Employee	7
237110	Water and Sewer Line and Related Structures Construction	7%	\$33,500,000	Revenue	3
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	7%	\$7,000,000	Revenue	3
236220	Commercial and Institutional Building Construction	5%	\$33,500,000	Revenue	2
237990	Other Heavy and Civil Engineering Construction	5%	\$33,500,000	Employee	2
238910	Site Preparation Contractors	5%	\$14,000,000	Employee	2
327320	Ready-Mix Concrete Manufacturing	5%	500	Employee	2
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	5%	100	Employee	2
483211	Inland Water Freight Transportation	5%	500	Employee	2
-	All others	43%			19
Total		100%			44

Company revenue for businesses below the threshold, as established by the SBA, ranges from \$59,000 to \$7.5 million. However, we do not anticipate additional costs to this proposed rule, so we do not anticipate significant economic impacts on affected small entities as a result of this proposed rule.

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 it qualifies and how and to what degree this rule would 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 this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult Mr. Martin Jackson, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG-ENG-4) via phone at (202) 372-1391 or via e-mail at [Martin.L.Jackson@uscg.mil](mailto:Martin.L.Jackson@uscg.mil). 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

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

E. Federalism

A rule has implications for federalism under E.O. 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 rule under that Order and have determined that it has implications for federalism. A summary of our analysis follows.

Before the enactment of section 619 of the Act, the lifesaving device requirements found in 46 U.S.C. § 4102(b) did not apply to uninspected commercial sailing vessels and uninspected commercial barges not carrying passengers for hire. By enacting section 619 of the Act, Congress expressly intended existing Coast Guard regulations to apply these vessels that were previously exempted. Therefore, existing State or local laws or regulations that regulate the “installation, maintenance, and use of life preservers and other lifesaving devices for individuals on board uninspected vessels” are preempted, but only in so far as a State or local law or regulation conflicts with the federal regulation.

Given our analysis, the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of E.O. 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected State and local governments and

their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with E.O. 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met.

#### 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this proposed rule under E.O. 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.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under E.O. 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 E.O. 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 E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 does 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.ID, which guide 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 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 involves regulations concerning equipping of vessels, equipment approval and carriage requirements and vessel operation safety standards. Thus, this rule is likely to be categorically excluded under section 2.B.2, figure 2-1, paragraphs (34)(d) and (e) of the Instruction, and 6(a) of the Federal Register, Vol. 6, No. 14, Tuesday, July 23, 2002, page 48243. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 24

Marine safety

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety

46 CFR Part 188

Marine safety, Oceanographic research vessels

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 2, 24, 25, 30, 70, 90, and 188 as follows:

**PART 2—VESSEL INSPECTIONS**

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 622, Pub. L. 111-281; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 2.01-7 [Amended]

2. Amend § 2.01-7 to remove the phrase “carrying passengers or passengers for hire” from Table 2.01-7(a), column 5, rows 3 and 4, and remove the phrase “none.” from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

#### PART 24—GENERAL PROVISIONS

3. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206; 107 Stat.2439; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

#### § 24.05-1 [Amended]

4. Amend § 24.05-01 to remove the phrase “carrying passengers or passengers for hire” from Table 24.05-1(a), column 5, rows 3 and 4, and remove the phrase “none.” from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

#### PART 25—REQUIREMENTS

5. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1.

#### § 25.25-1 [Amended]

6. Amend § 25.25-1 as follows:

- a. In paragraph (a) following the text “noncommercial use;”, add the word “and”;
- b. In paragraph (b) following the text “noncommercial use”, remove the punctuation “;”, and add, in its place, the punctuation “.”; and
- c. Remove paragraphs (c) and (d).

7. Revise § 25.25-3 to read as follows:

§ 25.25-3 Definitions.

As used in this subpart:

(a) *Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of current and formerly approved equipment and materials may be found on the Internet at: <http://cgmix.uscg.mil/equipment>. Each OCMI may be contacted for information concerning approved equipment.

(b) *Approved* means approved under subchapter Q of this chapter.

(c) *Use* means operate, navigate, or employ.

8. Revise § 25.25-5 to read as follows:

§ 25.25-5 Life preservers and other lifesaving equipment required.

(a) No person may operate a vessel to which this subpart applies unless it meets the requirements of this subpart.

(b) The following applies to all vessels, except commercial barges not carrying passengers for hire which must comply with paragraph (b)(1) of this section or make substitutions authorized by paragraph (c) of this section.

(1) Each vessel not carrying passengers for hire and less than 40 feet in length must have on board at least one wearable personal flotation device (PFD) approved under 46 CFR subchapter Q, and of a suitable size for each person on board.

(2) Each vessel carrying passengers for hire, and each vessel not carrying passengers for hire and 40 feet in length or longer, must have at least one PFD approved under approval series 160.055, 160.155, or 160.176, and of a suitable size for each person on board.

(3) In addition to the equipment required by paragraphs (b)(1) and (b)(2), each vessel 26 feet in length or longer must have at least one approved lifebuoy, and each uninspected passenger vessel of at least 100 gross tons must have at least three approved lifebuoys. Lifebuoys must be approved under approval series 160.050 or 160.150, except that a lifebuoy approved under former 46 CFR 160.009 prior to May 9, 1979, may be used as long as it is in good and serviceable condition.

(c)(1) Each vessel not carrying passengers for hire may substitute an immersion suit approved under 46 CFR 160.171 for a wearable PFD required under paragraphs (b)(1) or (b)(2) of this section.

(2) On each vessel, regardless of length and regardless of whether carrying passengers for hire, an approved commercial hybrid PFD may be substituted for a PFD approved under approval series 160.055, 160.155, or 160.176, if it is—

(i) Used in accordance with the conditions marked on the PFD and in the owner's manual; and

(ii) Labeled for use on commercial vessels.

9. In § 25.25-9, add a paragraph (c) to read as follows:

§ 25.25-9 Storage.

\* \* \* \* \*

(c) For a barge to which this subpart applies, the wearable lifesaving equipment specified in 46 CFR 25.25-5 need not be stored on board the barge if the barge's operator stores it elsewhere, and ensures that each individual dons the equipment before boarding the barge and keeps it on for as long as the individual remains on board. Donned lifesaving equipment approved under 46 CFR 160.053 is acceptable for the purposes of this paragraph (c).

#### PART 30—GENERAL PROVISIONS

10. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

#### § 30.01-5 [Amended]

11. Amend § 30.01-5 to remove the phrase “carrying passengers or passengers for hire” from Table 30.01–5(d), column 5, rows 3 and 4, and remove the word “none.” from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

#### PART 70—GENERAL PROVISIONS

12. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

#### § 70.05-1 [Amended]

13. Amend § 70.05-1 to remove the phrase “carrying passengers or passengers for hire” from Table 70.05–1(a), column 5, rows 3 and 4, and remove the word “none.”

from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

#### PART 90—GENERAL PROVISIONS

14. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 90.05-1 [Amended]

15. Amend § 90.05-1 to remove the phrase “carrying passengers or passengers for hire” from Table 90.05–1(a), column 5, rows 3 and 4, and remove the word “none.” from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

#### PART 188—GENERAL PROVISIONS

16. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 188.05-1 [Amended]

17. Amend § 188.05-1 to remove the phrase “carrying passengers or passengers for hire” from Table 188.05–1(a), column 5, rows 3 and 4, and remove the word “none.” from column 5, row 6, adding in its place the phrase “All vessels not covered by columns 2, 3, 4, and 6.”

Dated: July 9, 2013

J. G. Lantz  
Director of Commercial Regulations and Standards  
U. S. Coast Guard

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