



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 175

46 CFR Parts 160 and 169

[Docket No. USCG-2013-0263]

RIN 1625-AC02

Personal Flotation Devices Labeling and Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove references to type codes in its regulations on the carriage and labeling of Coast Guard-approved personal flotation devices (PFDs). PFD type codes are unique to Coast Guard approval and are not well understood by the public. Removing these type codes from our regulations would facilitate future incorporation by reference of new industry consensus standards for PFD labeling that will more effectively convey safety information, and is a step toward harmonization of our regulations with PFD requirements in Canada and in other countries.

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: You may submit comments identified by docket number USCG-2013-0263 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 email Ms. Brandi Baldwin, Coast Guard; telephone 202 372-1394, email Brandi.A.Baldwin@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-2013-0263), 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 email 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-2013-0263" in the "Search" box. Press Enter and then click on the comment box in the row listing the NPRM. 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-2013-0263" in the "Search" box. Click "Search" and then click the "Open Docket Folder" icon. The following link will take you directly to the docket:

<http://www.regulations.gov/#!docketDetail;D=USCG-2013-0263>.

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

ASE	Applied Safety and Ergonomics
DHS	Department of Homeland Security
CFR	Code of Federal Regulations
FDA	Food and Drug Administration
FR	<u>Federal Register</u>
NPRM	Notice of proposed rulemaking
NBSAC	National Boating Safety Advisory Council
NPS	National Park Service
OMB	Office of Management and Budget
OSHA Administration	Occupational Safety and Health Administration
PFD	Personal flotation device
Pub. L.	Public Law
RA	Regulatory Analysis
RCC	Regulatory Cooperation Council
§	Section
STP	Standards Technical Panel
UL	Underwriters Laboratories
U.S.C.	United States Code
USFWS	United States Fish and Wildlife Service

III. Basis and Purpose

Under 46 U.S.C. 3306, 4102, and 4302, the Secretary of the Department in which the Coast Guard is operating is

charged with prescribing safety requirements for lifesaving equipment on inspected vessels, uninspected vessels, and recreational vessels. Type approval and carriage requirements for personal flotation devices (PFDs) fall under this authority. The Secretary has delegated this 46 U.S.C., Subtitle II authority to the Commandant. See Department of Homeland Security Delegation No. 0170.1(II)(92)(b). As required under 46 U.S.C. 4302(c)(4), the Coast Guard has consulted with the National Boating Safety Advisory Council (NBSAC) regarding the issue addressed by this notice of proposed rulemaking (NPRM). See NBSAC [Resolution 2012-90-05](#) (available in the docket).

The purpose of this proposed rule, which would remove references to type codes in our regulations on the carriage and labeling of Coast Guard-approved PFDs, is to facilitate future adoption of new industry consensus standards for PFD labeling that will more effectively convey safety information and to help harmonize our regulations with PFD requirements in Canada and in other countries.

IV. Background

Labeling of PFDs is an important safety matter, as it is the primary means by which the manufacturer communicates to the end user how to select the right PFD and use and maintain it properly. Based on the volume of queries to

the Coast Guard including questions from NBSAC members in recent years, we believe that the current labels on Coast Guard-approved PFDs are confusing to the boating public and do not effectively communicate important safety and regulatory information to users and law enforcement personnel.

As noted in the previous section, the Coast Guard is charged with establishing minimum safety standards, as well as procedures and tests required to measure compliance with those standards, for commercial and recreational vessels, and associated equipment. See 46 U.S.C. 3306, 4302, and Homeland Security Delegation No. 0170.1, section II, paragraph (92)(b). Under this authority, the Coast Guard has established requirements for the carriage of approved PFDs that meet certain minimum safety standards.

The minimum requirements for Coast Guard-approved PFDs are codified in 46 CFR part 160, and include requirements for labeling. Our current regulations require that a type code be marked on each Coast Guard-approved PFD. The Coast Guard historically has used type codes in its regulations to identify the level of performance of an approved PFD. Types I, II, and III refer to wearable PFDs (lifejackets) in decreasing order of performance; Type IV refers to throwable PFDs; and Type V refers to any PFD which is

conditionally approved as equivalent in performance to Type I, II, III, or IV.

Coast Guard regulations specify which Coast Guard-approved PFDs are acceptable for particular applications. Although most of the carriage requirements for inspected vessels identify the appropriate PFDs by the applicable approval series (*see, for example, 46 CFR 199.10 and 199.70(b)*), our carriage requirements for recreational boats (33 CFR part 175), uninspected commercial vessels (46 CFR part 25) and sailing school vessels (46 CFR part 169) specify particular type codes. Approval series refers to the first six digits of a number assigned by the Coast Guard to approved equipment.

In 2004, the consultant Applied Safety and Ergonomics (ASE) did a study of the current PFD classification and labeling system through the National Non-Profit Organization Recreational Boating Safety Grant Program. The ASE final report, entitled "Revision of Labeling and Classification for Personal Flotation Devices (PFDs)" (available in the docket), suggested that our current labels are inadequate and that users do not adequately understand our PFD type codes.

V. Discussion of Proposed Rule

The Coast Guard proposes to remove references to

longstanding PFD type codes from its requirements for the approval and carriage of Coast Guard-approved PFDs. Under these proposed amendments, the number and kind of PFDs required to be carried on a vessel would not change – just the terminology used to refer to approved PFDs. Our current assigning of a type code to the PFD does not affect its suitability for meeting the applicable vessel carriage requirements. This proposed rule would remove regulatory barriers to the development of a new industry consensus standard for PFD labels, which would potentially allow manufacturers to use a more user-friendly label format on Coast Guard-approved PFDs in the future.

Carriage Requirements

The carriage requirements for PFDs vary based on the kind of vessel.

As noted in Section IV, for commercial vessels, many of the carriage requirements in the CFR specify the applicable approval series, as defined in 46 CFR 199.30, rather than the type code. This proposed rule does not affect those regulations because they do not contain a specific reference to PFD type. The only exceptions are 46 CFR 169.539, pertaining to sailing school vessels, and 46 CFR 25.25-5, pertaining to uninspected vessels, which do refer to type codes. In this NPRM, the Coast Guard is

proposing to remove references to the type codes in 46 CFR 169.539. References in 46 CFR 25.25-5 to type codes for PFD requirements for uninspected commercial vessels are already being addressed in a separate rulemaking; see RIN 1625-AB83, Lifesaving Devices on Uninspected Vessels, in the 2013 Spring Unified Agenda on www.reginfo.gov.

The carriage requirements for recreational vessels do not specify type codes. However, PFDs currently labeled Type I, II, or III all meet the same regulatory carriage requirements, so our regulations for recreational vessels need not differentiate PFDs based on type codes. The Coast Guard proposes to revise 33 CFR part 175 subpart B - Personal Flotation Devices to remove the references to type codes in the carriage requirements. In § 175.15, the terms "Type I PFD," "Type II PFD," and "Type III PFD" would be replaced with the term "wearable PFD" and the term "Type IV PFD" would be replaced by the term "throwable PFD." In proposed § 175.13, we define the terms "wearable PFD" and "throwable PFD."

These changes would impose no burdens on users. Coast Guard-approved PFDs which are marked as "Type I," "Type II," "Type III," or "Type V with Type [I, II, or III] performance" would be considered wearable PFDs and would meet the same carriage requirements as Coast Guard-approved

wearable PFDs without a type code marking. Likewise, PFDs marked as "Type IV" would be considered throwable PFDs and would meet the same carriage requirements as throwable PFDs without a type code marking.

Additionally, the Coast Guard proposes to amend § 175.15 so that it would require that PFDs be used in accordance with any limitations specified on the approval label, and with the manufacturer's instructions. This language is taken from the existing text of § 175.17(a), which permits the carriage of conditionally approved (Type V) PFDs in lieu of Type I, II, III, or IV PFDs.

The Coast Guard proposes conforming changes to 33 CFR 175.19 and 175.21 to replace language referring to PFD type codes I-IV and conditionally approved (Type V) PFDs.

Marking Requirements

The Coast Guard also proposes to revise the PFD marking requirements contained in 46 CFR part 160, Lifesaving Equipment, to remove the requirement that Coast Guard-approved PFDs be marked as Type I, II, III, IV, or V. As discussed, the marking of a type code on a PFD has no practical effect on its compliance with the carriage requirements applicable to a given vessel.

For many of the affected subparts (see for example proposed edits to 46 CFR 160.002-6, 160.005-6, and 160.047-

6), we accomplish this by deleting the line in the marking requirements which refers to the PFD approval type.

However, the regulations pertaining to marine buoyant devices and inflatable recreational PFDs, 46 CFR subparts 160.064 and 160.076 respectively, rely on industry consensus standards in addition to the regulatory text. In these two subparts, the Coast Guard proposes to remove references to PFD approval type and refer to the relevant industry standard for the marking requirements, with the provision that all labels contain the following information:

- Size information, as appropriate;
- The Coast Guard approval number;
- Manufacturer's contact information;
- Model name/number;
- Lot number, manufacturer date; and
- Any limitations or restrictions on approval or special instructions for use.

The Coast Guard is aware that the Underwriters Laboratories (UL) Standards Technical Panel (STP), the consensus body responsible for maintaining the industry consensus standards for PFDs, is considering a proposal to revise the industry standards for labeling PFDs which would

remove reference to type codes. Once the revised standard is available, the Coast Guard will consider incorporating it by reference into its regulations.

This rulemaking supports the efforts of the U.S.-Canada Regulatory Cooperation Council (RCC), a high-level bilateral effort coordinated by the Office of Management and Budget (OMB). The current RCC workplan calls for the development of a "North American Standard for lifejackets." This NPRM will enable the STP to complete development of the North American standard for wearable PFDs without including unnecessary references to type codes. Thus, this rulemaking to adopt the revised labeling standard would allow for the future harmonization of U.S. and Canadian PFD approvals, which supports one of the initiatives of the RCC's Joint Action Plan of December 2011 (available in the docket).

While we cannot anticipate the timing for the adoption and accreditation of the revised labeling standard, we recognize the benefits of harmonizing Coast Guard approval standards with the relevant industry consensus standards, and minimizing confusion and burden on the industry. Our proposed rule would not prohibit the use of the type code in the marking, so currently approved markings would be able to remain in use while the manufacturers design new

labels conforming to the new standard under development by the UL STP.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or 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 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 NPRM has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by OMB. A combined preliminary Regulatory Analysis (RA) and Threshold Regulatory Flexibility Analysis follows:

The RA provides an evaluation of the economic impacts associated with this proposed rule. The table which follows provides a summary of the proposed rule costs and benefits.

Table 1: Summary of the Proposal's Impacts

Category	Summary
Affected Population	66 PFD manufacturers 6 Federal agencies Up to 56 State/territorial jurisdictions
Costs (\$, 7% discount rate)	\$14,992 (annualized: \$710 private sector, \$14,283 government) \$105,301 (10-year: \$4,985 private sector, \$100,316 government)
Unquantified Benefits	* Improve effectiveness of PFD marking/labels without compromising safety. * Prevent misuse and misunderstandings of PFDs * Remove impediment to future harmonization with international standards.

The proposed rule would revise the existing regulations regarding labeling of PFDs, by removing requirements for type codes to be included on PFD labels.

Affected Population

Based on the Coast Guard Guard's Marine Information for Safety and Law Enforcement database, we estimate that this proposed rule would affect approximately 66 PFD manufacturers. There are six Federal governmental agencies – the Department of Labor's Occupational Safety and Health Administration (OSHA); the Department of the Interior's Bureau of Reclamation, National Park Service (NPS), and United States Fish and Wildlife Service (USFWS); the Department of Agriculture's Forest Service; and the

Department of Defense – which may have to adjust their regulations or policy documents because they incorporate Coast Guard standards which mention PFD type codes. Of these six, the only agency we have identified that specifically references Coast Guard type codes in their regulations is OSHA. We are coordinating with the OSHA Directorate of Standards and Guidance to ensure that the relevant regulations align with the revisions to the Coast Guard regulations. We have also reached out to NPS, Bureau of Reclamation, Forest Service, U.S. Army Corps of Engineers, and USFWS, via the Interagency Working Group for Visitor Safety, and they have not expressed any objections to our proposed action.

Costs

The Coast Guard expects that this rule, if promulgated, will result in one-time costs of approximately \$105,301 (7% discount).¹ The Coast Guard estimates that \$4,085 (7% discount) is attributable to the private sector. We estimate that this proposed rule would affect 66 manufacturers of PFDs. No additional equipment would be required by the rule. PFD manufacturers would need to

¹ As derived by the equation: [(1 hour * \$78.74/hour * 66 PFD manufacturer managers + 0.5 hour * \$73.76/hour * 56 State managers + 0.5 hour * \$78.82/hour * 6 Federal managers) + 10 hours * \$73.76/hour State managers * 36 States + 100 hours * \$73.76/hour State managers * 5 States + 10 hours * \$78.82/hour * 6 Federal managers] * 7% discount rate.

reprogram stitching machines or silk screen machines to conform with the new label requirements. This rule only would affect labeling on PFDs manufactured after the effective date of this rule. The Coast Guard seeks comment from PFD manufacturers regarding the costs associated with changing PFD labels in response to the proposed rule.

Federal agencies which incorporate these Coast Guard regulations by reference would need to review their regulations to assure consistency with the proposed change. Some States and Federal agencies may need to initiate rulemakings to update their regulations or statutes to remove unnecessary references to type codes.

Recreational boaters would experience no cost increase because of the rulemaking. Existing PFDs may continue to be used. No action would be required by recreational boaters.

The table which follows presents the estimated cost of compliance with the rulemaking.

Table 2: Total Estimated Cost of Compliance

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	\$105,301	\$109,390	\$112,672
Year 2	\$0	\$0	\$0
Year 3	\$0	\$0	\$0
Year 4	\$0	\$0	\$0
Year 5	\$0	\$0	\$0
Year 6	\$0	\$0	\$0
Year 7	\$0	\$0	\$0
Year 8	\$0	\$0	\$0
Year 9	\$0	\$0	\$0

Year 10	\$0	\$0	\$0
Total	\$105,301	\$109,390	\$112,672
Annualized	\$14,992	\$12,824	\$11,267

The Coast Guard estimates that reprogramming stitching machines or silk screen machines would take approximately 1 hour per manufacturer. This estimate comports with the Food and Drug Administration's (FDA's) estimated cost of compliance for relabeling of sunscreens to comply with new labeling requirements.² This is the most similar Federal rulemaking we found in our research that involves a regulatory requirement on labels. Both the FDA's and this rulemaking involve changes to labeling. The FDA estimated that it would take 0.5 hours to prepare, complete, and review the labeling for each product. The Coast Guard used a higher value than FDA: 1 hour per product to prepare, complete and review the new labeling. The higher value accounts for possible involvement of more than one type of machine (i.e., stitching or silk screen), more complex machinery for PFD labels and the need for management communication to multiple factories or stitching machine designers.

² See SPF Labeling and Testing Requirements and Drug Facts Labeling for Over-the-Counter Sunscreen Drug Products; Agency Information Collection Activities; Proposed Collection (76 FR 35678, June 17, 2011); and Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use Final rule (76 FR 35620, June 17, 2011).

Labor costs are estimated at \$78.74 per hour (fully loaded) for a manager based on a mean wage rate of \$46.87; this estimate is based on Bureau of Labor Statistics data Occupational Employment Statistics, Occupational Employment and Wages, for Industrial Production Managers (11-3051, May 2012).³ From there, we applied a load factor (or benefits multiplier) of 1.68, to determine the actual cost of employment to employers and industry.⁴

For other costs, States would need to review their laws and regulations to assure comportment with the proposed change. In turn, some States may need to initiate rulemakings or make statutory changes to remove references to type codes; we discuss this further in this section. The Coast Guard estimates that these agencies would take approximately 0.5 hour to review their laws and regulations. Their review task is estimated by the loaded wage rate of \$73.76 (Occupational Employment and Wages, May 2012 11-1021 General and Operations Managers [Local](#)

³ The reader may review the source data at http://www.bls.gov/oes/current/oes_nat.htm#11-0000.

⁴ This was calculated using data found on the Bureau of Labor Statistics' website. The load factor is calculated specifically for Production, transportation and material moving occupations, Full-time, Private Industry (Series ID: CMU2010000520610D, 2012, 2nd Quarter). This category was used as it was the closest available corresponding to the industry being analyzed in this regulatory analysis. Total cost of compensation per hour worked: \$26.61, of which \$15.84 is wages, resulting in a load factor of 1.6799 ($\$26.61/\15.84). We rounded this factor to 1.68. (Source: <http://data.bls.gov/cgi-bin/dsrv>) Using similar applicable industry groups and time periods results in the same estimate of load factor.

Government). The average cost for a State to perform this task would be approximately \$37.

In addition, the proposal would impact some Federal agencies and they would need to review their regulations or policy documents to determine if any change were needed. The Coast Guard estimates that it would take 0.5 hour to do this task. The Coast Guard estimates the labor cost to be \$78.82 per hour for a Federal manager (Bureau of Labor Statistics, "Occupational Employment and Wages, First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators, Federal Executive Branch and a load factor of 1.65)⁵ and there are an estimated six Federal agencies potentially impacted. Based on these data, this task would cost Federal agencies less than \$50 to review regulations or policy documents. To update a policy document, we estimate that 10 hours would be expended by a Federal agency to do so.

Additional costs may occur as a result of this proposed rule; these costs would arise from labor expended for rulemaking. More specifically, some State and Federal

⁵ This load factor is calculated specifically for Public Administration, State and Local Government occupations, Full-time, Private Industry (Series ID: CMU301920000000D, CMU301920000000P, 2012, 2nd Quarter. Total cost of compensation per hour worked: \$39.642, of which \$23.97 is wages, resulting in a load factor of 1.653734 (\$39.64/\$23.97). We rounded this factor to 1.65 (rounded to the nearest hundredth). (Source: <http://www.bls.gov/ncs/ect/data.htm>)

agencies may require a rulemaking to update their regulations to incorporate this proposed change into their regulations, policy documents or statutes.

To assess these costs, we first note the rulemaking process varies greatly across State and territorial governmental units. The reader should note that not all impacted governmental units are expected to incur a cost associated with this task because some States incorporate by reference Coast Guard standards and would not need to take action. Some agencies may be able to update their regulations for this proposed change by incorporating this change into an existing or planned rulemaking. As well, some also may choose not to pursue a rulemaking immediately.

To estimate a cost for this step, we reviewed publicly available data on the Internet for States and territories. Based on that review, we estimated the number of States and territories which would fall into the various categories of rulemaking. In the first category, we estimate that there would be six States and territories which incorporate by reference Coast Guard regulations and, therefore, would incur no costs. Next, another 36 States and territories are estimated to engage in rulemaking activities by State commissions. In the next category, an estimated 10 States

and territories update their regulations by more lengthy processes either by statute change, by a legislative vote, or by a rulemaking process involving the legislative branch of government or the State-level executive branch of government. The change may be a stand-alone proposed rule or legislation, or the change may be part of an omnibus set of changes. In the last category, we estimate that four States and territories would take no rulemaking action; for these, their regulations or statutes may not need revision because of how they are written. The table which follows presents a summary of this data.

Table 3: Estimated Rulemaking Activities for States and Territories

Level of Activity	Number of States or Territories	Level of Effort Required (hours)	Total Cost
Incorporate by Reference	6	0	\$0
Rulemaking by State Commission	36	10	\$26,552
Rulemaking by Statute or Legislative Process	10	100	\$73,755
No change necessary	4	0	\$0
Total			\$100,307

We estimate that costs to a given State or territory for this step would range from no cost to \$7,412. Some costs may be offset because some States may have already started this process in anticipation of the new industry standard for PFD labeling. The Coast Guard seeks comment from States and Federal agencies regarding the costs associated with making the requisite changes to their laws or regulations.

In addition to the costs noted in the previous paragraphs, the Coast Guard may experience some costs in subsequent years to augment existing boater education efforts to include information associated with this proposed rule. However, the Coast Guard may be able to use existing partnerships, Internet resources, and other technologies which offer more cost effective solutions.

Benefits

The proposed rule would amend existing regulations regarding labeling of PFDs. The Coast Guard is pursuing this amendment to existing standards to prevent misuse, misunderstandings, and inappropriate selection of PFDs without compromising the existing level of safety. The proposed rule would promote maritime safety by eliminating confusion associated with type codes, and by improving understanding of PFD performance and use.

The rulemaking would improve the relevance of markings on PFDs. The Coast Guard believes that removing irrelevant information would increase the likelihood that the user will read and understand the label, and thus select the proper PFD and be able to use it correctly. This would also provide benefits by reducing confusion among enforcement officers and the boating public over whether a

particular PFD is approved and meets the relevant carriage requirements.

The rulemaking also would harmonize our regulations with industry standards for label requirements. For recreational PFDs, which comprise about 97 percent of the U.S. PFD market, the approvals are based on industry consensus standards that contain marking requirements. By referring to those standards directly, the Coast Guard reduces regulatory redundancy and minimizes the risk of conflict between regulatory requirements and industry standards.

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 fewer than 50,000 people.

The Coast Guard expects that this rule will not have a significant economic impact on small entities. As described in the "Regulatory Planning and Review" section, the Coast Guard expects this rule to result in low costs to

industry (approximately \$78 per PFD manufacturer). An estimated 92.4 percent of all PFD manufacturers are considered small by the Small Business Administration size standards. The compliance costs for this rulemaking amount to less than 1 percent of revenue for all small entities. Costs would be incurred in the first year of the final rule's enactment for PFD manufacturers. No additional costs for labor or equipment would be incurred in future years. No small governmental jurisdictions are impacted by the rulemaking.

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 Ms. Brandi Baldwin at the address listed at the beginning of this preamble. 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. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other

similar actions. The proposal would not require a change to existing OMB-approved collection of information (1625-0035 Title 46 CFR Subchapter Q: Lifesaving, Electrical, Engineering and Navigation Equipment, Construction and Materials & Marine Sanitation Devices (33 CFR 159)). The proposed rule would not require relabeling of PFDs, but instead would remove minor data elements from existing labeling requirements. Labeling of PFDs is an automated process, and the change in content would not result in any appreciable change in burden hours.

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 is consistent with the fundamental federalism principles and preemption requirements described in the Executive Order. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered for

inspected vessels 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).) In this rule, the Coast Guard proposes to replace unnecessary references to type codes in labeling and carriage requirements for Coast Guard-approved PFDs on inspected vessels and recreational vessels. With regard to these regulations promulgated under the authority of 46 U.S.C. 3306 concerning inspected vessels, they fall within fields foreclosed from regulation by State or local governments. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

With regard to regulations promulgated under 46 U.S.C. 4302 concerning recreational vessels, under 46 U.S.C. 4306, those Federal regulations that establish minimum safety standards for recreational vessels and their associated

equipment, as well as regulations that establish procedures and tests required to measure conformance with those standards, preempt State law, unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. As an exemption has not been granted, and because the States may not issue regulations that differ from Coast Guard regulations within these categories for recreational vessels, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Nevertheless, the Coast Guard recognizes the key role State and local governments may have in making regulatory or statutory determinations. Sections 4 and 6 of Executive Order 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 on this NPRM. In accordance with Executive Order 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 notice of proposed rulemaking, (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. We will also report to OMB any written communications with the states.

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. 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 Tribal governments, on the relationship between the Federal Government and Tribal governments, or on the distribution of power and responsibilities between the Federal Government and Tribal governments.

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 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OMB's 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, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, 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 M16475.1D, 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 is likely to be categorically excluded under section 2.B.2,

figure 2-1, paragraph (34)(a) and (e) of the Instruction and 6(a) of Coast Guard Procedures for Categorical Exclusions published July 23, 2002 (67 FR 48243). This rule involves regulations which are editorial and concern carriage requirements and vessel operation safety standards. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 175

Marine safety.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 175 and 46 CFR parts 160 and 169 as follows:

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

PART 175 - EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 175.13 to read as follows:

§ 175.13 Definitions.

As used in this subpart:

Personal flotation device or PFD means a device that is approved by the Commandant under 46 CFR part 160.

Throwable PFD means a PFD that is intended to be thrown to a person in the water. A PFD marked as "Type IV" or "Type V with Type IV performance" is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

Wearable PFD means a PFD that is intended to be worn or otherwise attached to the body. A PFD marked as "Type I", "Type II", "Type III", "Type V with Type I performance", "Type V with Type II performance", or "Type V with Type III performance", is considered a wearable PFD.

3. Amend § 175.15 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 175.15 Personal flotation devices required.

Except as provided in §§ 175.17 and 175.25 of this subpart:

(a) No person may use a recreational vessel unless-

(1) At least one wearable PFD is on board for each person;

(2) Each PFD is used in accordance with any requirements on the approval label; and

(3) Each PFD is used in accordance with any requirements in its owner's manual, if the approval label makes reference to such a manual.

(b) No person may use a recreational vessel 16 feet or more in length unless one throwable PFD is on board in addition to the total number of wearable PFDs required in paragraph (a) of this section.

* * * * *

4. Revise § 175.17 to read as follows:

§ 175.17 Exemptions.

(a) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional throwable PFD required under § 175.15(b) of this subpart.

(b) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any PFD required under § 175.15 of this subpart.

(c) Sailboards are exempted from the requirements for

carriage of any PFD required under § 175.15 of this subpart.

(d) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from the carriage of any PFD required under § 175.15 of this subpart, provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board.

5. Revise § 175.19 to read as follows:

§ 175.19 Stowage.

(a) No person may use a recreational boat unless each wearable PFD required by § 175.15 of this subpart is readily accessible.

(b) No person may use a recreational boat unless each throwable PFD required by § 175.15 of this subpart is immediately available.

6. Amend § 175.21 by revising the introductory text and paragraph (a) to read as follows:

§ 175.21 Condition; size and fit; approval marking.

No person may use a recreational boat unless each PFD required by § 175.15 of this subpart is-

(a) In serviceable condition as provided in § 175.23 of this subpart;

* * * * *

TITLE 46 - SHIPPING

PART 160 - LIFESAVING EQUIPMENT

7. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

§ 160.001-1 [Amended]

8. Amend § 160.001-1(a)(1) by removing the words "(Type I personal flotation devices (PFDs))".

§ 160.001-3 [Amended]

9. Amend § 160.001-3(d) as follows:

a. Remove paragraph(d)(4); and

b. Redesignate paragraphs (d)(5), (d)(6), (d)(7), and (d)(8) as (d)(4), (d)(5), (d)(6), and (d)(7), respectively.

§ 160.002-6 [Amended]

10. Amend § 160.002-6(b) by removing the words "Type I Personal Flotation Device."

§ 160.005-6 [Amended]

11. Amend § 160.005-6(b) by removing the words "Type I-Personal Flotation Device."

§ 160.047-6 [Amended]

12. Amend § 160.047-6(a) by removing the words "Type II Personal Flotation Device."

§ 160.052-8 [Amended]

13. Amend § 160.052-8(a) by removing the words "Type II-Personal flotation device."

§ 160.055-8 [Amended]

14. Amend § 160.055-8(b) by removing the words "Type I or Type V Personal Flotation Device."

§ 160.060-8 [Amended]

15. Amend § 160.060-8(a) by removing the words "Type II Personal Flotation Device."

16. Revise § 160.064-4 to read as follows:

§ 160.064-4 Marking.

(a) Each water safety buoyant device must be marked in accordance with the recognized laboratory's listing and labeling requirements in accordance with § 160.064-3(a) of this subpart. At a minimum, all labels must include:

- (1) Size information, as appropriate;
- (2) The Coast Guard approval number;
- (3) Manufacturer's contact info;
- (4) Model name/number;
- (5) Lot number, manufacturer date; and
- (6) Any limitations or restrictions on approval or

special instructions for use.

(b) *Durability of marking.* Marking must be of a type which will be durable and legible for the expected life of

the device.

17. Amend § 160.076-5 by revising the definitions of "Conditional approval" and "Performance type" to read as follows, and by removing the definition of "PFD Approval Type":

§ 160.076-5 Definitions.

* * * * *

Conditional approval means a PFD approval which has condition(s) with which the user must comply in order for the PFD to be counted toward meeting the carriage requirements for the vessel on which it is being used.

* * * * *

Performance type means the in-water performance classification of the PFD.

* * * * *

§ 160.076-7 [Removed and Reserved]

18. Remove and reserve § 160.076-7.

19. Amend § 160.076-9 as follows:

a. In paragraph (a), remove the words "is categorized as a Type V PFD and"; and

b. Revise paragraph (b) to read as follows:

§ 160.076-9 Conditional approval.

* * * * *

(b) PFDs not meeting the performance specifications

in UL 1180 (incorporated by reference, see § 160.076-11) may be conditionally approved when the Commandant determines that the performance or design characteristics of the PFD make such classification appropriate.

§ 160.076-13 [Amended]

20. Amend § 160.076-13 as follows:

- a. Remove paragraph (c)(3); and
- b. Redesignate paragraphs (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), and (c)(9) as paragraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8), respectively.

§ 160.076-23 [Amended]

21. Amend § 160.076-23(a)(1) by removing the words "applicable to the PFD performance type for which approval is sought".

§ 160.076-25 [Amended]

22. Amend § 160.076-25(b) by removing the words "that are applicable to the PFD performance type for which approval is sought".

23. Revise § 160.076-39 to read as follows:

§ 160.076-39 Marking.

Each inflatable PFD must be marked as specified in UL 1180 (incorporated by reference, see § 160.076-11). At a minimum, all labels must include-

- (a) Size information, as appropriate;

- (b) The Coast Guard approval number;
- (c) Manufacturer's contact information;
- (d) Model name/number;
- (e) Lot number, manufacturer date; and
- (f) Any limitations or restrictions on approval or special instructions for use.

§ 160.176-23 [Amended]

24. Amend § 160.176-23 as follows:

- a. In paragraph (c), remove the words "Type V PFD-" and remove the words "in lieu of (*see paragraph (f) of this section for exact text to be used here*)"; and
- b. Remove paragraph (f).

PART 169 – SAILING SCHOOL VESSELS

25. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103-206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

26. Amend § 169.539 as follows:

- a. In the introductory text, remove the word "either";
- b. In paragraph (a), remove the words "A Type I approved" and add, in their place, the word "Approved", and remove the second use of the word "or";

c. In paragraph (b), remove the words "a Type V approved" and add, in their place, the word "Approved"; and

d. Revise paragraph (c) to read as follows:

§ 169.539 Type required.

* * * * *

(c) Approved under subparts 160.047, 160.052, or 160.060 or approved under subpart 160.064 if the vessel carries exposure suits or exposure PFDs, in accordance with § 169.551 of this subpart.

Dated: August 2, 2013

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

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