



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 28

[Docket No. USCG-2012-0025]

RIN 1625-AB85

Commercial Fishing Vessels – Implementation of 2010 and 2012 Legislation

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to align its commercial fishing industry vessel regulations with the mandatory provisions of 2010 and 2012 legislation passed by Congress that took effect upon enactment. The alignments would change the applicability of current regulations, and add new requirements for safety equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rule only proposes to implement these legislative mandates, would exercise no Coast Guard regulatory discretion, and would promote the Coast Guard's maritime safety mission. It does not reflect any provision of the Coast Guard Authorization Act of 2015, but the preamble to this document discusses its likely impact where appropriate. That Act will be the subject of future Coast Guard regulatory action.

DATES: Comments and related material must be submitted to the online docket via <http://www.regulations.gov>, or reach the Docket Management Facility, on or before

[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments sent to the Office of Management and Budget (OMB) on the proposed collection of information must reach OMB on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0025 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

Collection of information. You must submit comments on the collection of information discussed in section VII.D of this preamble both to the Coast Guard’s docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. OIRA submissions can use one of the listed methods.

- *E-mail* (preferred) – oira_submission@omb.eop.gov (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the e-mail).
- *Fax* – 202-395-6566.
- *Mail* – Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing material proposed for incorporation by reference. Make arrangements to view this material by calling the person identified in the FOR FURTHER INFORMATION CONTACT section of this document.

FOR FURTHER INFORMATION CONTACT: For information about this document call or e-mail Jack Kemerer, Chief, Fishing Vessels Division (CG-CVC-3), Office of Commercial Vessel Compliance (CG-CVC), Coast Guard; telephone 202-372-1249, e-mail Jack.A.Kemerer@uscg.mil.

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I. Public Participation and Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate *Federal Register* notice to announce the date, time, and location of such a meeting.

II. Abbreviations

APA	Administrative Procedure Act
CFV	Commercial Fishing Industry Vessels
CGAA	Coast Guard Authorization Act of 2010
CGMTA	Coast Guard and Maritime Transportation Act of 2012
DHS	Department of Homeland Security
EPIRBs	Emergency Position Indicating Radio Beacons
FR	<u>Federal Register</u>
GPS	Global Positioning System

MISLE	Marine Information for Safety and Law Enforcement
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Association
OCMI	Officer in Charge, Marine Inspection
PFD	Personal Flotation Device
Pub. L.	Public Law
U.S.C.	United States Code

III. Executive Summary

This rule proposes to implement statutory requirements enacted by the Coast Guard Authorization Act of 2010 (CGAA)¹ and the Coast Guard and Maritime Transportation Act of 2012 (CGMTA).² Both Acts contain provisions affecting those commercial fishing industry vessels (CFVs) that do not require Coast Guard inspection and certification. With respect to the CGAA, Congress intended the new requirements to help improve the safety of an industry that experiences vessel losses and crew deaths.³

This proposed rule is authorized by the CGAA and the CGMTA, and by rulemaking authority delegated to the Coast Guard by the Secretary of Homeland Security.⁴ The need for this rule exists because current Coast Guard CFV regulations are based on statutes that the CGAA and CGMTA changed significantly. If the regulations do not align with the CGAA and CGMTA, there is no way for commercial fishermen or the general public to clearly understand what they must do to comply with the CGAA and

¹ Pub. L. 111-281, 124 Stat. 2905, Title VI.

² Pub. L. 112-213, 126 Stat.1540.

³ *See* H.R. Rep. No. 111-303, pt. 1, at 93 (accompanying H.R. 3619, the Coast Guard Authorization Act of 2010): “The [marine safety title] of H.R. 3619 contains a variety of provisions intended to strengthen the Coast Guard’s implementation of its marine safety functions. These provisions will ensure that the Coast Guard maintains a marine safety program that prevents casualties from occurring, minimizes the effect of the casualty, and maximizes lives saved, if a vessel must be abandoned. Commercial fishing is the most hazardous occupation in the United States according to the Department of Labor’s Bureau of Labor Statistics...”.

⁴ Department of Homeland Security Delegation No. 0170.1, para. II, (92.b).

CGMTA requirements. Without these proposed changes, Coast Guard regulations would be inconsistent with the CGAA and CGMTA, leading to confusion and uncertainty, particularly with regard to the Coast Guard's enforcement authority.

The CGAA and CGMTA mandated action with respect to the following topics:

- Vessel parity;
- Substitution of baseline for Boundary Line criteria;
- Survival craft;
- Records;
- Vessel examinations;
- Training;
- Construction standards for smaller vessels;
- Load lines;
- Classing of vessels;
- Termination of unsafe operations; and
- Miscellaneous.

This rule only proposes to take regulatory action on those topics listed above where the statutory mandate took effect upon enactment of the CGAA in October 2010 and the CGMTA in December 2012, and can be incorporated in Coast Guard CFV regulations without the exercise of any Coast Guard discretion. Other CGAA and CGMTA provisions relating to CFVs with later effective dates and those that require exercise of Coast Guard discretion may be the subject of future Coast Guard rulemakings. The proposed rule does not reflect any provision of the Coast Guard Authorization Act of 2015. That Act will be the subject of future Coast Guard regulatory action.

Vessel parity. Some statutory provisions with respect to special equipment requirements apply only to the subset of CFVs that operate beyond U.S. Boundary Lines (which, as subsequently discussed, the CGAA changed to beyond 3 nautical miles from the U.S. territorial sea baseline), or with more than 16 persons onboard, or that are Aleutian Trade fish tender vessels. These CFVs are subject to special Coast Guard regulatory requirements set forth in 46 CFR part 28, subpart C, and are referred to throughout this preamble as “subpart C CFVs”. Until enactment of the CGAA, only Federally documented CFVs were required to comply with the special equipment requirements;⁵ the (typically) smaller CFVs that require only State registration were excluded. The CGAA required uniform safety standards and equipment requirements for all CFVs (whether documented or undocumented) that operate beyond 3 nautical miles of the baseline of the territorial sea or the coastline of the Great Lakes. This rule proposes to implement the CGAA by revising subpart C to reflect that change in applicability.

Some existing subpart C regulatory requirements are the result of prior Coast Guard discretionary determinations that the requirement is necessary for the safety of the *documented* CFVs to which subpart C formerly was restricted. The Coast Guard declines to extend those same requirements to undocumented CFVs because the proposed rule focuses exclusively on CGAA and CGMTA mandates, and the Coast Guard is not using any discretionary authority which would be required in order to make such a determination. The proposed rule would amend subpart C to clarify that, at least for now, the proposed changes would apply only to documented subpart C CFVs.

⁵ See 46 CFR 67.7 for what constitutes a documented vessel: “Any vessel of at least five net tons which engages in the fisheries on the navigable waters of the United States or in the Exclusive Economic Zone, or coastwise trade, unless exempt under § 67.9(c), must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.”

Substitution of baseline for Boundary Line criteria. Special statutory provisions involving safety standards apply to the subset of CFVs that operate relatively far from shore, or with more than 16 persons onboard, or that are Aleutian Trade fish tender vessels. Formerly, the relevant distance from shore was defined as “beyond the Boundary Line.” The location of the Boundary Line is set by Coast Guard regulation and varies by distance from the coastline around the country. The CGAA redefined the relevant distance as “beyond 3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes,” and this rule proposes to align regulatory language accordingly.

Survival craft. Until the CGAA was enacted, certain CFVs were allowed by statute and regulation to use life floats or rigid buoyant apparatus as survival craft. The CGAA requires survival craft on all CFVs to fully protect the occupants from exposing any part of the body to immersion in water.⁶ This rule proposes to include that requirement in the CFV regulations and requests public comment on whether or not, and to what extent, if any, we should exercise the limited grandfathering authorized by the CGAA and the CGMTA for certain non-conforming survival craft.

Records. This rule proposes to amend the CFV regulations so that they include the CGAA requirement that individuals in charge of certain CFVs keep records of equipment maintenance, and crew instruction and drills.

Vessel examinations. Until the CGAA was enacted, the only CFVs required by the Coast Guard to undergo dockside safety examinations were fish processors, or fish

⁶ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

tenders in the Aleutian trade. This rule proposes to incorporate the CGAA and CGMTA provisions that extend dockside examination requirements to any subpart C CFV.

Dockside examinations must take place at least once every 5 years, with the first examinations to have been completed by October 15, 2015.

Construction standards for smaller vessels. This rule proposes to amend CFV regulations to include the CGAA requirement for CFVs under 50 feet in length and built in 2010 or later to comply with Coast Guard construction standards for recreational vessels.

Load lines. Until the CGAA was enacted, CFVs were exempt from all statutory or regulatory load line requirements. This rule proposes to amend Coast Guard regulations to reflect the CGAA and CGMTA provisions that remove the load line exemption for CFVs built after July 1, 2013.

Classing of vessels. Until the CGAA was enacted, a fish processor had to meet all survey and classification requirements prescribed by the American Bureau of Shipping or another organization approved by the Coast Guard, if it was built or converted after July 27, 1990. The CGAA and the CGMTA extended this requirement to any subpart C CFV of 50 feet or more overall in length and built after July 1, 2013.⁷ This

⁷ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built after July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization... .” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

rule proposes to amend Coast Guard regulations to incorporate the 2010 and 2012 vessel classing requirements.

Termination of unsafe operations. This rule proposes to amend Coast Guard regulations so they reflect the broader CGAA authority to terminate a CFV's operations if the Coast Guard observes it operating under unsafe conditions, or if the CFV lacks required documentation like a certificate of having passed a dockside examination.

Miscellaneous equipment. This rule proposes to amend Coast Guard regulations for subpart C vessels to include CGAA requirements for marine radios, navigation equipment, medical supplies, and ground tackle.

Regulatory costs and benefits. Based on Marine Information for Safety and Law Enforcement (MISLE) data, there are approximately 75,083 existing commercial fishing vessels that would be potentially affected by this proposed rulemaking. This rule proposes new requirements for vessels that are expected to operate beyond three nautical miles from the baseline from which the territorial sea is measured and the coastline of the Great Lakes. Coast Guard subject matter experts estimate that 36,115 of those 75,083 existing commercial fishing vessels operate beyond the three nautical miles threshold, and are affected by this rulemaking. Of the 36,115 vessels that operate beyond the three nautical mile threshold, 17,237 are documented fishing vessels and 18,878 are undocumented fishing vessels.

The 10-year discounted present value cost to industry of this proposed rule is an estimated \$240.3 million based on a 7 percent discount rate and \$285.7 million based on a 3 percent discount rate. The annualized cost to industry is estimated at \$34.2 million at

the 7 percent and \$33.5 million at the 3 percent discount rate. The cost of third-party classing of vessels makes up the majority of the total industry costs.

We anticipate that the government will incur labor and travel costs to conduct dockside CFV safety exams. We estimate the total present value cost to government over the 10-year period of analysis to be \$38.2 million discounted at 7 percent, and \$46.4 million discounted at 3 percent. Annualized government costs are about \$5.4 million under both 7 percent and 3 percent discount rates.

We estimate the combined total 10-year present value cost of the rulemaking to industry and government at \$278.5 million, discounted at 7 percent, and \$332.1 million, discounted at 3 percent. The combined annualized costs to industry and government are \$39.7 million at 7 percent and \$38.9 million at 3 percent. The expected annual effect on the economy of the proposed rule would not exceed \$100 million in the first or any subsequent year of implementation.

The proposed rule is intended to reduce the risk of future fishing vessel casualties, and if a casualty occurs, to minimize the adverse impacts to crew and enable them to have the maximum opportunity to survive and to be rescued. The primary benefits resulting from increased safety include reductions in the risk of fatalities, property loss, and environmental damage that can be caused by lost and damaged commercial fishing vessels. The estimate of annualized quantified benefits ranges between \$7.1 and \$9.4 million, with a primary estimate of monetized annualized benefits of \$7.1 million at a 7 percent discount rate. We did not estimate monetized benefits for several requirements, including recordkeeping for equipment maintenance and classing certain newly built vessels.

IV. Background, Basis, and Purpose

This is one of two Coast Guard publications that appear in today's Federal Register and involve uninspected CFVs:

- A separate document announcing our withdrawal of a rulemaking (RIN 1625-AA77) that we began prior to 2010, and for which we issued an advance notice of proposed rulemaking (ANPRM) in 2008.⁸
- This proposal to implement 2010 and 2012 statutory mandates. The proposed rule is the first Federal Register publication issued in connection with the RIN 1625-AB85 rulemaking.

The basis of this proposed rule is the CGAA, as amended by the CGMTA. Both acts amended several provisions pertaining to CFVs that were first enacted as part of the Commercial Fishing Industry Vessel Safety Act of 1988 and codified in 46 U.S.C., chapter 45.⁹ We discuss specific CGAA and CGMTA mandates and how they are implemented in the proposed rule in Part VI of this preamble.

The purpose of this proposed rule is to implement those CGAA and CGMTA mandates that pertain to CFVs, that became effective upon enactment of the CGAA in 2010 and the CGMTA in 2012, and that can be incorporated in Coast Guard CFV regulations without the exercise of any Coast Guard discretion. In many cases, the new mandates significantly change previous statutory requirements for CFVs. Current Coast Guard CFV regulations in 46 CFR part 28 align with the previous statutory requirements but not with the new mandates. This results in confusion for the regulated public. This proposed rule would align our regulations with the CGAA and CGMTA mandates. It

⁸ 73 FR 16815 (Mar. 31, 2008).

⁹ Pub. L. 100-424, 102 Stat. 1585 (Sept. 9, 1988).

does not reflect any provision of the Coast Guard Authorization Act of 2015. That Act will be the subject of future Coast Guard regulatory action.

V. Discussion of Comments on 2008 ANPRM

In response to our 2008 ANPRM, we heard from 43 public commenters, 9 of whom spoke at the public meetings held in Seattle, WA in November 2008. Several commenters made multiple submissions to the docket. Twelve of the commenters identified their primary affiliation as the commercial fishing industry; ten were naval architects, engineers, or consultants; seven were affiliated with safety activity (generally trainers or examiners); four were affiliated with Federal or State government; four were equipment manufacturers or service companies; three were individual fishermen; one commented on behalf of the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC; renamed “Commercial Fishing Safety Advisory Committee” by the CGAA); one commented on behalf of the Coast Guard-sponsored Task Force for Implementation of the Global Mariner Distress and Safety System; and one did not identify any affiliation.

The ANPRM posed 30 questions for public comment, as shown in Table 1. Only a few commenters responded specifically to individual questions, but most commenters discussed themes related to those questions. Our discussion groups all comments by theme.

Table 1. ANPRM Questions and Related Themes.

Question	Theme
1. Given the statistics on vessel losses in Tables 2 and 3 (of the ANPRM), what issues related to stability and watertight integrity should the Coast Guard consider addressing in regulations?	Stability and watertight integrity (SWI)
2. Table 2 (of the ANPRM) shows that vessel flooding results in the most vessel losses, and Table 3 (of the ANPRM) shows that	Stability and watertight integrity

flooding and sinking account for a significant portion of fatalities. What areas should be addressed to reduce vessel flooding losses and fatalities?	
3. What routine measures are used to prevent unintentional flooding?	Stability and watertight integrity
4. How often is your vessel examined by a marine surveyor and under what circumstances? Is documentation of the survey provided?	Risk awareness and minimization
5. Table 3 (of the ANPRM) shows that fire is a significant cause of vessel losses. What areas should the Coast Guard consider addressing to reduce the number of fire-related vessel losses (including, but not limited to: construction standards, detection and extinguishing equipment, fire-fighting equipment, and firefighting training)?	Causes of loss other than SWI
6. What means are used to limit the danger of fires and the consequence of fires?	Causes of loss other than SWI
7. Table 2 (of the ANPRM) shows that a significant number of vessel losses are related to allisions, collisions, and groundings; how should the Coast Guard address these causes of vessel losses?	Causes of loss other than SWI
8. What impact has safety training had in improving safety within the commercial fishing industry? Do you have recommendations concerning safety training?	Instruction and drill requirements
9. What impact have crew drills had in improving safety within the commercial fishing industry? Do you have recommendations concerning crew drills?	Instruction and drill requirements
10. If training were required, would it be accomplished during off-season times?	Instruction and drill requirements
11. How would additional training impact one's ability to fish?	Instruction and drill requirements
12. If stability standards for vessels between 50 feet and 79 feet in length are considered, what standards should apply, and to which vessels should the standards apply?	Stability and watertight integrity
13. How does a crew become experienced in safety procedures?	Instruction and drill requirements
14. Should entry level crewmembers be expected to have a minimum level of familiarity with safety procedures?	Instruction and drill requirements
15. How and when is stability guidance used? If stability guidance is available but not used, please explain why.	Instruction and drill requirements
16. How are operating personnel made aware of stability and watertight integrity guidance?	Instruction and drill requirements
17. How often should stability guidance be reviewed, updated, or validated?	Instruction and drill requirements
18. How are modifications to a vessel or its gear accounted for relative to the vessel's maximum load, watertight integrity, and other stability considerations?	Stability and watertight integrity

19. How adequate are current requirements for personal protection and survival equipment?	Safety and survival equipment
20. How do crew members become familiar with vessel safety?	Safety and survival equipment
21. How are safety risks aboard your vessel(s) identified and minimized?	Risk awareness and minimization
22. If you are a small business, what economic impact on you, your business, or your organization would the rules we are considering have? In your comments please explain why, how, and to what degree such rules would have an economic impact.	Regulatory costs and benefits
23. Have you experienced--or are you aware of--any situations where any of the measures under consideration saved lives, or prevented/reduced harm/damage to vessels?	Regulatory costs and benefits
24. Are there areas not addressed that would benefit safety within the commercial fishing industry?	Miscellaneous
25. What are the costs of each requirement we are considering? Are there comparable alternative solutions to each requirement under consideration that may be more cost effective?	Regulatory costs and benefits
26. What are the direct and indirect costs of each requirement we are considering? For example, labor costs, training costs, and hourly wages of fishermen (or alternative measures of valuing their time if they are not salaried)? The costs of vessel losses, including equipment, lost catches, and any other opportunity costs?	Regulatory costs and benefits
27. Can any of the requirements we are considering be completed off-season? If so, which ones? For those that cannot, how much time would be taken away from productive fishing time to complete the requirement? How would this affect revenue, i.e., fish catches?	Regulatory costs and benefits
28. What would be the impact on the domestic fishing industry, if any, of each requirement we are considering? Would there be a differential impact by size of vessel or region?	Regulatory costs and benefits
29. What would be the economic impact of each requirement we are considering on States, local, and tribal governments?	Regulatory costs and benefits
30. What other requirements, if any, should the Coast Guard be considering?	Miscellaneous

A. Stability and watertight integrity questions

Table 2 shows the ANPRM’s five questions relating to a vessel’s stability and watertight integrity (SWI).

Table 2. ANPRM Questions on Stability and Watertight Integrity.

1. Given the statistics on vessel losses in Tables 2 and 3 (of the ANPRM), what issues
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related to SWI should the Coast Guard consider addressing in regulations?
2. Table 2 (of the ANPRM) shows that vessel flooding results in the most vessel losses, and Table 3 (of the ANPRM) shows that flooding and sinking account for a significant portion of fatalities. What areas should be addressed to reduce vessel flooding losses and fatalities?
3. What routine measures are used to prevent unintentional flooding?
12. If stability standards for vessels between 50 feet and 79 feet in length are considered, what standards should apply, and to which vessels should the standards apply?
18. How are modifications to a vessel or its gear accounted for relative to the vessel's maximum load, watertight integrity, and other stability considerations?

Twenty-three commenters responded to these questions.

New SWI measures. Eight commenters said additional high water alarm requirements are needed, while two others said they were not. Six commenters addressed the adequacy of existing SWI regulatory measures, with three calling them inadequate, two saying better training and enforcement is needed, and one saying SWI documentation requirements need strengthening. Five commenters said we should require stability training. Four commenters asked us to issue additional SWI regulations and extend SWI regulations to smaller vessels. Three commenters asked us to require periodic stability reassessment. One commenter said watertight enclosures need additional labeling.

We agree that additional high water alarm protection, better SWI training and documentation, and stability assessment and periodic reassessment would all contribute to reducing the risk of SWI-related CFV casualties. It is unclear to us whether the labeling of watertight enclosures requires additional regulatory attention and we ask for public comment on that topic. With respect to SWI and as we discuss in the next section of this preamble, our proposed rule would implement the statutory mandate for new subpart C CFVs less than 50 feet overall in length to meet recreational vessel construction standards, which include safe loading requirements (33 CFR part 183,

subpart C) that help ensure small vessel stability. The other additional SWI measures cited by commenters on the ANPRM are not included in CGAA or CGMTA mandates, and therefore are beyond the scope of this proposed rule. The Coast Guard is reviewing additional measures and may take action in a separate future rulemaking.

SWI information. Five commenters provided or offered to provide information on routine measures to prevent unintentional flooding. Five commenters provided or offered to provide detailed information for developing new regulations. Three commenters said it is difficult to account for the impact of vessel modifications on vessel stability. Two commenters cited the importance of regular vessel maintenance and inspection for SWI. Two commenters said fatigue and fishing season limitations contribute to flooding losses and deaths. One commenter said stability is not an issue for smaller vessels.

We appreciate the information commenters provided and may use it in developing future regulatory proposals. We agree on the difficulty of assessing changes in a vessel's stability, and on the importance of regular SWI inspection and maintenance. We acknowledge the SWI risks posed by fatigue and fishing season factors, but point out that we lack regulatory authority over either issue. We agree that smaller CFVs may not be prone to the same stability issues that are relevant for larger vessels, but this does not mean small vessels are immune to SWI problems. Our data show that SWI may be a factor in some small vessel casualties.

SWI cost and logistics issues. Seven commenters expressed concern over the cost of new SWI regulations; three commenters wondered if there are enough naval architects to conduct additional stability assessments; and another commenter was concerned about

the difficulty of obtaining stability assessments or training in small, remote fishing villages. Three commenters said we should take the needs and conditions of specific fisheries into account.

As previously noted, the scope of this rule is limited to proposing to implement the CGAA and CGMTA-mandated recreational vessel construction requirements for certain CFVs. Therefore at this time we are taking no action on SWI, but should we do so in the future, we would invite public comment on the validity of the cost and logistical concerns raised by commenters on the ANPRM, and on how best to address those concerns.

Miscellaneous. In addition, some of the 29 commenters who responded to Questions 24 and 30, which invited comment on miscellaneous issues, raised SWI points in those responses. Three commenters discussed ways of reducing flooding risk, including bilge and open-door alarms and regular hull examinations. One commenter said we should revise freeing port requirements to align with international standards. We agree that all these ideas could be worthy of consideration for future regulatory action, but since none is the subject of CGAA or CGMTA mandates, they are beyond the scope of this proposed rule. Should we take future regulatory action on SWI, hull examinations, and freeing port requirements, we would seek public comment on how best to address those issues.

B. Causes of loss other than SWI

Table 3 shows the three questions we asked in the ANPRM relating to causes of loss other than stability and watertight integrity.

Table 3. ANPRM Questions on Causes of Loss Other Than SWI.

5. Table 3 (of the ANPRM) shows that fire is a significant cause of vessel losses. What

areas should the Coast Guard consider addressing to reduce the number of fire-related vessel losses (including, but not limited to, construction standards, detection and extinguishing equipment, firefighting equipment, and firefighting training)?

6. What means are used to limit the danger of fires and the consequence of fires?

7. Table 2 (of the ANPRM) shows that a significant number of vessel losses are related to allisions, collisions, and groundings; how should the Coast Guard address these causes of vessel losses?

Eight commenters responded to these questions.

Risk in general. Among factors cited as raising risk for CFVs are weather (4 commenters) and fatigue (3 commenters). Among factors cited as lowering risk for CFVs are training (2 commenters), and safety and security watchstanders (1 commenter). Two commenters provided technical information that we may use in developing future regulatory action. We agree with each of the factors cited as raising or lowering CFV risk, and we may address them in a future rulemaking. The legislation mandated additional training for persons in charge of certain CFVs.¹⁰ Because that mandate cannot be implemented without the exercise of the Coast Guard's discretion, it is not reflected in this proposed rule but may be the subject of future regulatory action.

Reducing fire risk. Three commenters provided or offered to provide information about measures used to limit fire danger or to control the consequences of fire. We may use that information in developing future regulatory action. Three commenters specified additional factors, for example vessel examinations, that can reduce the risk of fire; a fourth commenter said several factors beyond the control of any regulator could lead to fire on smaller vessels. We agree with all four commenters. Additional fire risk control

¹⁰ 46 U.S.C. 4502(g).

measures are not included in CGAA or CGMTA mandates and therefore are beyond the scope of this proposed rule.

Miscellaneous. In addition, some of the 29 commenters who responded to Questions 24 and 30, which invited comment on miscellaneous issues, raised “other causes of loss” points in those responses. Two commenters said we should pay more attention to preventing or dealing with man-overboard incidents, and one commenter each cited the quality of weather reports, crew fatigue, structural fire protection, and pre-employment drug testing as factors deserving our regulatory attention. We agree that these are all factors that can affect CFV safety, and we may consider them in the future. None of the factors cited by the commenters is addressed in CGAA or CGMTA mandates and, therefore, they are all beyond the limited scope of this proposed rule.

C. Risk awareness and minimization

Table 4 shows the two questions we asked in the ANPRM about risk awareness and minimization.

Table 4. ANPRM Questions on Risk Awareness and Minimization.

4. How often is your vessel examined by a marine surveyor and under what circumstances? Is documentation of the survey provided?
21. How are safety risks aboard your vessel(s) identified and minimized?

Twenty commenters responded to these questions.

Vessel examination. Nine commenters said we should require mandatory periodic vessel self-examinations tailored to the needs and conditions of specific fisheries, but two other commenters said that over-zealous Coast Guard enforcement and unnecessary vessel boardings discourage voluntary vessel self-examination. Four commenters said periodic examinations are already required, usually by insurers. Three

commenters said we should require mandatory Coast Guard dockside vessel examinations, but two other commenters said the Coast Guard has too few inspectors to conduct such examinations efficiently, and a third commenter said required vessel self-examinations would have little value. Two commenters pointed out that documentation of vessel self-examinations could be fraudulent.

Vessel self-examination is not included in CGAA or CGMTA mandates and therefore is beyond the scope of this proposed rule. However, the proposed rule does implement the statutory mandate for dockside examination of CFVs subject to 46 CFR part 28, subpart C: those that operate beyond 3 nautical miles from the U.S. territorial sea baseline, or with more than 16 persons onboard, or that are Aleutian Trade fish tender vessels (collectively referred to as “subpart C vessels”). We believe we are fully prepared to enforce the dockside examination requirement and appropriately staffed to do so. We encourage all CFV owners and operators to conduct their own frequent examinations of vessel and equipment condition, and we acknowledge that many already do so, for insurance reasons or as a best practice. We acknowledge that vessel self-examination and compliance documentation could be subject to fraud or error, but point out that fraudulent or erroneous documentation exposes perpetrators to the civil and criminal penalty provisions of 33 CFR subpart 1.07.

We are concerned by any reports of impropriety in Coast Guard enforcement activity, though that is beyond the scope of this rulemaking. We are committed to effective, but fair, regulatory enforcement. If you believe you have been subject to improper Coast Guard enforcement activity, we encourage you to bring it to the attention of your local Coast Guard office. You should also be aware that under 46 CFR 1.03-20

you can appeal an inspector's action to the cognizant Coast Guard District Commander. Finally, if you are a small business you may send comments on Coast Guard regulatory enforcement actions 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 businesses. If you wish to comment on actions by employees of the Coast Guard, call the Ombudsman's office at 1-888-REG-FAIR (1-888-734-3247).

Other risk minimization measures. Two commenters said that vessel owners and operators pass risk information to their crews. One commenter each remarked that risks are minimized through regular maintenance, drills, and training; that we should require mandatory crew training; that we should improve documentation of casualties occurring while a vessel is traveling to or from fishing grounds; and that we should not require vessel safety officers.

We agree that keeping crews informed and trained to minimize risk is essential for CFV safety. We think some vessels may benefit from designating a vessel safety officer. At this time, we take no position on whether additional regulatory action is needed to improve in-transit casualty documentation. Aside from requiring documentation of crew instruction and drills, the risk minimization measures discussed by the commenters are not included in CGAA or CGMTA mandates and, therefore, are beyond the scope of this proposed rule.

Miscellaneous. In addition, some of the 29 commenters who responded to Questions 24 and 30, which invited comment on miscellaneous issues and raised risk awareness and minimization points in those responses. Two commenters asked us to

provide more regulatory guidance, like compliance checklists, and a third commenter provided sample checklists and maintenance guidelines. Two commenters said we should conduct random dockside safety audits. One commenter said we should require mandatory Coast Guard dockside vessel examination.

We try to make valuable information and regulatory guidance available to commercial fishermen. Our “Homeport” website, <http://homeport.uscg.mil>, features a page dedicated to commercial fishing vessels. That page provides numerous links to safety information and related websites. Random audits are not included in CGAA or CGMTA requirements and therefore are beyond the scope of this proposed rule, but the proposed rule does implement statutory requirements for the mandatory dockside examination of certain CFVs.

D. Instruction and drill requirements

Table 5 shows the nine questions our ANPRM asked about instruction and drill requirements.

Table 5. ANPRM Questions on Instruction and Drill Requirements.

8. What impact has safety training had in improving safety within the commercial fishing industry? Do you have recommendations concerning safety training?
9. What impact have crew drills had in improving safety within the commercial fishing industry? Do you have recommendations concerning crew drills?
10. If training were required, would it be accomplished during off-season times?
11. How would additional training impact one’s ability to fish?
13. How does a crew become experienced in safety procedures?
14. Should entry-level crewmembers be expected to have a minimum level of familiarity with safety procedures?
15. How and when is stability guidance used? If stability guidance is available but not used, please explain why.
16. How are operating personnel made aware of stability and watertight integrity guidance?
17. How often should stability guidance be reviewed, updated, or validated?

Twenty-seven commenters responded.

Training on stability and watertight integrity (SWI). Eight commenters said that at least some members of a vessel's crew should receive training in SWI. Three commenters said we should adopt the Commercial Fishing Industry Vessel Safety Advisory Committee's recommendation for all crew members to receive at least some level of stability training. Three commenters said they already provide their crews with stability training. Two commenters said stability training helps the master understand vessel capabilities and develop operational guidance for the crew. One commenter said stability training for crew members should focus on areas where crew members can assist the master in preserving vessel stability.

This proposed rule does not address SWI training. We encourage CFV owners and operators to provide SWI training for all crew members. Should we take future regulatory action on SWI training, we would first submit our proposed action to the public for comment.

Vessel-specific stability assessment or guidance. Five commenters said we should require assessments and reassessments at least every five years, or under other conditions they specified; a sixth commenter said requiring assessment results to be reported would impose an unnecessary cost. Four commenters said that vessel-specific stability guidance is logistically difficult and expensive to provide; a fifth commenter specifically cited the difficulty of reassessing an older vessel's stability if no vessel blueprints are available. Two commenters said stability guidance must be adapted for the use of smaller vessels. Two commenters said lightweight surveys are sufficient to ensure stability, implying opposition to any requirement for incline testing; two other commenters said incline testing can be important especially for vessels that are

particularly susceptible to weight changes; a fifth commenter said inspectors might push for unnecessary incline tests. Two commenters said vessels should be required to document weight changes continuously. One commenter said stability guidance is useful only if it is easy to understand. Another commenter said concisely worded stability guidance is easier to understand than pictorial displays. One commenter said stability should be reassessed only as part of the vessel survey needed to purchase insurance; another said reassessment is only necessary if the vessel is significantly altered. One commenter said stability guidance should be updated whenever a vessel spends significant time in a shipyard or dockside. One commenter said the master should be required to review stability guidance at least yearly, or prior to every voyage, while another commenter said the master could review stability guidance by using a simple stability checklist.

Vessel stability assessment and guidance are not addressed in the CGAA or CGMTA mandates, and thus are beyond the scope of this proposed rule, but we encourage CFV owners and operators to obtain, make sure they understand, and frequently review stability assessments and guidance. We think the difficulty and expense of taking these measures need to be weighed against the considerable safety risk that comes with vessel instability. We also think it is best safety practice to reassess a vessel's stability not only after a significant modification, but also periodically (for example, every five years), because a vessel's stability characteristics can change over long periods of time. Should we take future regulatory action to mandate this practice, we would first submit the proposed action to the public for comment.

This rule proposes to implement the statutory mandate for new subpart C CFVs of less than 50 feet overall in length to meet recreational vessel construction standards, which include safe loading requirements (33 CFR part 183, subpart B) that help ensure a small vessel's stability. Lightweight surveys are often sufficient for stability assessment purposes, but we agree with the commenters who said incline testing is important for a vessel that is particularly susceptible to weight changes. Continual awareness of how changes to a vessel or its equipment can affect stability is important, and we encourage CFV owners and operators to document vessel weight changes.

General crew training and drill requirements. Eleven commenters said we should increase crew training and periodic retraining requirements; seven commenters said we should require periodic retraining; three other commenters opposed increased requirements due to costs in time and money; another commenter said we should exempt experienced fishermen from additional training requirements; another said additional training only makes work for the Coast Guard; and another said crew members should be included in the safety training we conduct for Coast Guard personnel. Five commenters said entry-level crew members should have vessel-specific safety orientation and training; a sixth commenter said this should not be necessary for a crew member with significant recent experience on another vessel; and a seventh said that orientation – with good leadership from the master – helps prepare crews. Five commenters said crew training should be documented. Three commenters said safety planning and drills help prepare crews to deal with emergencies. Three commenters said compliance with current training requirements is often inadequate; while two other commenters said the Coast Guard does not adequately enforce those requirements. Two commenters said we should

address fatigue awareness in crew training, and a third said crews should be trained to deal with man-overboard emergencies.

The legislation mandates additional training for the persons in charge of certain CFVs and to document crew instruction and drills, which will be the subject of future regulatory action because implementation will require further consideration of the appropriate exercise of Coast Guard discretionary authority. Otherwise, CGAA and CGMTA mandates do not impose other new training requirements, and therefore the commenter's recommended changes are beyond the scope of the proposed rule.

Nevertheless we encourage CFV owners and operators to make sure crews are well-trained. The expense and difficulty of crew training, retraining, and drills should be weighed against the safety risks to which CFV crews are exposed and the safety benefits that frequently refreshed training and drills can provide. We do not agree that CFV crews need the same training Coast Guard personnel receive – our training is designed to meet the needs of our service – but we think even experienced fishermen can benefit from additional training, especially when that training is specific to a vessel's unique structural, equipment, and operational characteristics, and that new crew members should receive a vessel-specific safety orientation as soon as they come aboard. We encourage CFV owners and operators to include fatigue awareness and response to man-overboard emergencies in their crew training. We are concerned by comments that charge us with inadequate enforcement of existing regulations, and we have devoted particular attention to planning for effective enforcement of this proposed rule.

Logistics of training. Three commenters said certain training can be conducted in the off season, but that other topics need to be addressed just prior to and during vessel

operations; a fourth commenter said that the off season is the only effective time for training. Two commenters said providing training in remote coastal areas is logistically difficult. Two commenters said we should require formal training and periodic retraining for drill instructors. One commenter said we should phase in new training requirements to ensure a sufficient number of trainers. One commenter said fishing vessel operators need to make time for training and that additional training would not be unduly burdensome. One commenter said training requirements are complicated by late changes in crew membership, but another said this complication can be overcome through onboard training.

The legislation mandates additional training for the persons in charge of certain CFVs and to document crew instruction and drills, which will be the subject of future regulatory action because implementation will require further consideration of the appropriate exercise of Coast Guard discretionary authority. Otherwise, CGAA and CGMTA mandates do not impose other new training requirements, and therefore the commenter's recommended changes are beyond the scope of the proposed rule. We acknowledge the logistical difficulties involved in providing good training, but we agree that the value of training makes it worth overcoming those difficulties, and that this often can be done by balancing off-season training with onboard training and drills.

Vessel safety and drill officers. Three commenters said we should require onboard drill conductors. Three commenters discussed whether a "vessel safety officer" should be mandatory, with two opposing the position because it could interfere with the master's authority, and the third disputing that idea and supporting the position. We think some CFVs can benefit from having designated onboard drill conductors and vessel

safety officers, but neither is required by CGAA or CGMTA mandates nor required by this proposed rule.

Miscellaneous. In addition to the nine ANPRM questions specifically relating to instruction and drill requirements, Questions 24 and 30 invited comments on miscellaneous issues. Some of the 29 commenters who responded to Questions 24 and 30 used the opportunity to discuss instruction and drill requirements in general terms. Four commenters suggested additional training topics: one each suggesting the use of personal flotation devices (PFDs) to mitigate the risk of falling overboard, additional training for rescue swimmers, fatigue awareness and endurance, and damage control. Two commenters said we should provide more information about operational improvements and new products that could enhance safety. One commenter said we should improve regulatory awareness by mailing the regulations to every vessel owner. One commenter said we can improve safety on older vessels that cannot upgrade safety features, by focusing on training, instruction, and regular inspections.

None of the additional training topics these commenters suggested is required by CGAA or CGMTA mandates, and therefore they are not included in this proposed rule. However, we acknowledge that each topic can be a useful part of CFV crew safety training. We try to make valuable CFV safety information available to commercial fishermen. We have briefed attendees on the CGAA/CGMTA mandates at national and regional meetings of associations that represent CFV owners and operators, and our “Homeport”¹¹ and “FishSafe”¹² websites provide a summary of the CGAA/CGMTA

¹¹ See <https://homeport.uscg.mil/mycg/portal/ep/home.do>.

¹² See <http://www.fishsafe.info/>.

mandates¹³ as well as numerous links to CFV safety information and related websites.¹⁴

We will continue to provide easily accessible CFV safety information, and ample guidance and publicity to accompany any new regulations. Our proposed rule and any final rule, along with any supplementary materials, will also be available in several locations on the Internet, including the Federal Register website and Regulations.gov. We believe that improved training, instruction, and vessel self-examination are of value to all vessels, and that this may be particularly true for older vessels.

E. Safety and survival equipment

Table 6 shows the two questions the ANPRM asked about safety and survival equipment.

Table 6. ANPRM Questions on Safety and Survival Equipment.

19. How adequate are current requirements for personal protection and survival equipment?
20. How do crew members become familiar with vessel safety and survival equipment?

Twenty-four commenters responded to these questions.

Equipment in general. Five commenters said old equipment needs to be replaced and equipment lifespan guidelines should be set for specific items. Four commenters said crew members become familiar with safety and survival equipment through proper training and frequent drills. Four commenters said we should exempt fisheries and types of vessels of interest to those commenters. Three commenters said we should allow

¹³ See <http://www.fishsafe.info/Update%20on%20CFVS%20Requirements%20-%201Mar2013.pdf>.

¹⁴ For example, information on updated dockside safety examination requirements appears at <http://www.fishsafe.info/Update%20on%20CFVS%20Requirements%20-%201Mar2013.pdf>. An alert on overloaded CFV lifting gear appears at <http://www.fishsafe.info/MSA02-12.pdf>, and a dockside safety examination request form appears at <http://www.fishsafe.info/docksideexamrequest.htm>.

properly labeled outdated equipment to be used for training. Two commenters said better protection is needed to prevent man-overboard incidents. One commenter each said equipment requirements for larger CFVs should apply to all CFVs; that we should develop an equipment recall program; and that emergency equipment is often improperly installed and maintained.

The legislation mandates additional training for the persons in charge of certain CFVs, and to document crew instruction and drills, which will be the subject of future regulatory action because implementation will require further consideration of the appropriate exercise of Coast Guard discretionary authority. Otherwise, CGAA and CGMTA mandates do not impose other new training requirements, and therefore the commenter's recommended changes are beyond the scope of the proposed rule. However, CFV safety could benefit from examining these issues and we may do so in future regulatory action.

Survival craft.¹⁵ Five commenters said survival craft often cannot be launched by one person. Five other commenters said the location of survival craft can be problematic, especially for smaller vessels, and can interfere with normal operations. One commenter said current survival craft may not be properly designed or equipped. One commenter said we should update survival craft requirements, and this proposed rule implements the statutory mandate for survival craft to protect occupants from immersion in water. We agree with the comments made by these commenters and may address the issues they raise in future regulatory action.

¹⁵ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The new legislation will be addressed in a future rulemaking.

Emergency communications and lighting. Five commenters said we should require emergency position indicating radio beacon (EPIRB) registration. Two commenters said current emergency lighting regulations are inadequate. One commenter asked us to update all emergency communication requirements. One commenter noted that EPIRBs and other distress signals are often inaccessible in emergencies. We agree that EPIRBs should be registered, as is required by Federal Communications Commission regulations in 47 CFR 80.1061(e) and (f). CFV safety could benefit from examining the issues raised by all these commenters and we may do so in future regulatory action, but because none of those issues is addressed by CGAA or CGMTA mandates, they are beyond the scope of the proposed rule.

Immersion suits and personal flotation devices. Four commenters said we should require immersion suits to be carried in seasonally cold waters, and three other commenters noted that hypothermia is possible even in warm waters. Four commenters said we should require revised immersion suit labeling because “universal” suits do not fit many crew members. One commenter asked us to require PFDs or other protective gear to be worn in rough weather. We agree with the points made by these commenters and may address them in future regulatory action, but because they are not addressed by CGAA or CGMTA mandates, they are not included in this proposed rule.

Embarkation stations. Three commenters asked us to modify embarkation station requirements based on vessel size. One other commenter said we should develop new requirements for embarkation stations, but another commenter noted that such requirements could be counterproductive for smaller vessels. We agree that, in addition to the existing 46 CFR 28.395 embarkation station requirements for certain CFVs, new

vessel-appropriate embarkation station requirements may improve CFV safety, and we may consider such requirements for future regulatory action, but because they are not addressed by CGAA or CGMTA mandates, they are not included in this proposed rule.

Miscellaneous. In addition, some of the 29 commenters who responded to Questions 24 and 30, which invited comment on miscellaneous issues, raised safety and survival equipment points in those responses. Three commenters said we should require PFDs to be worn in rough weather. Two commenters said the Coast Guard should work with cell phone companies to provide better coverage on fishing grounds; another commenter cited the value of the Coast Guard's Rescue 21 project in improving radio coverage. One commenter generally opposed current emergency power source requirements; another commenter generally favored adoption of a recognized industry standard for such requirements. One commenter each said we should require the use of protective equipment under hazardous conditions, require vessels to carry damage control kits, require immersion suits to be fitted with strobe lights, regulate boarding ladder locations, and regulate the safety of vessel front windows.

CFV safety could benefit from examining the issues raised by all these commenters and we may do so in future regulatory action, but because none of those issues is addressed by CGAA or CGMTA mandates, they are not included in this proposed rule.

F. Regulatory costs and benefits

Table 7 shows the seven questions our ANPRM asked about regulatory costs and benefits.

Table 7. ANPRM Questions on Regulatory Costs and Benefits.

22. If you are a small business, what economic impact on you, your business, or your
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organization would the rules we are considering have? In your comments please explain why, how, and to what degree such rules would have an economic impact.
23. Have you experienced – or are you aware of – any situations where any of the measures under consideration saved lives, or prevented/reduced harm/damage to vessels?
25. What are the costs of each requirement we are considering? Are there comparable alternative solutions to each requirement under consideration that may be more cost effective?
26. What are the direct and indirect costs of each requirement we are considering? For example, labor costs, training costs, and hourly wages of fishermen (or alternative measures of valuing their time if they are not salaried)? The costs of vessel losses, including equipment, lost catches, and any other opportunity costs?
27. Can any of the requirements we are considering be completed off-season? If so, which ones? For those that cannot, how much time would be taken away from productive fishing time to complete the requirement? How would this affect revenue, i.e., fish catches?
28. What would be the impact on the domestic fishing industry, if any, of each requirement we are considering? Would there be a differential impact by size of vessel or region?
29. What would be the economic impact of each requirement we are considering on States, local, and tribal governments?

Twenty commenters responded.

General impact. Seven commenters commented on the likely expense of taking regulatory action to implement ideas discussed in the ANPRM, with five commenters saying the cost impact would be significant and adverse, and two others saying the impact would vary depending on fishery and vessel size. Seven commenters cited ways in which we might mitigate regulatory costs for the CFV industry: two saying we should focus on fishery-specific regulations; one each saying we should avoid imposing new regulations and instead improve CFV safety through online instruction, improved weather forecasting, and better Coast Guard cooperation with industry; that we should let insurance companies take the lead in requiring new safety measures; that we should provide grants to help CFV operators finance new safety measures; that we should phase in the implementation of costly measures; and that we should increase reliance on

alternative compliance programs. Two commenters provided general cost information, one saying it costs almost \$1,000 per year to provide safety equipment for vessels operating outside the Boundary Line, and the other saying that the annual per person direct cost of safety training is no more than \$225 per day, sometimes \$100 per day or less.

The Coast Guard has no statutory role in the accurate development or distribution of the weather forecasts available to the CFV community. Otherwise, we will be mindful of the cost information and concerns voiced by these commenters and will consider their suggestions for mitigating cost impacts in taking any future regulatory action. This proposed rule is limited to implementing CGAA and CGMTA mandates, as we are required by law to do, and because of the limited scope of those mandates, the cost impact of this proposed rule is less than it would be if we were to proceed with all the regulatory actions we discussed in the ANPRM.

Small business impact. Two commenters said new regulations would likely have a significant adverse economic impact on small businesses. One commenter said new regulations would be an incentive for small business operators to spend less time fishing and more time working in safety related work. One commenter provided or can provide detailed small business economic information. We agree that new congressionally mandated regulations may have an adverse economic impact on small businesses. We will be mindful of the impacts on small businesses in any future regulatory action. As we have previously explained, this proposed rule is limited to implementing CGAA and CGMTA mandates without the exercise of Coast Guard discretion. Because of the more limited scope of those mandates, the cost impact on small businesses of this proposed

rule would be less than it would be if we were to proceed with all the regulatory actions we discussed in the ANPRM.

Specific regulatory measures. Seven commenters cited the likely high cost of specific regulatory measures discussed in the ANPRM: stability (3 commenters), documentation (2 commenters), training (1 commenter), and boarding ladders and embarkation stations (1 commenter). Five commenters cited specific regulatory measures that would benefit CFV safety: improved instruction and drill (2 commenters); new regulations in general (1 commenter); new instruction and drill, vessel maintenance, immersion suit, and EPIRB regulations (1 commenter); regular high water alarm tests, crew debriefings after emergency drills, and crew discussions of incidents involving other vessels (1 commenter). Four commenters provided cost information for stability analysis and documentation.

We agree that all the measures cited by these commenters could benefit CFV safety and we may consider them for future regulatory action, in which case we may use the cost information some commenters provided. The CGAA and CGMTA mandates require persons in charge of certain CFVs to receive training (including stability training) and require documentation of crew instruction and drills, but otherwise they do not address the regulatory measures cited by these commenters, and therefore they are not included in this proposed rule.

G. Miscellaneous issues

Table 8 shows the two questions our ANPRM asked about miscellaneous issues.

Table 8. ANPRM Questions on Miscellaneous Issues.

24. Are there areas not addressed (in the ANPRM) that would benefit safety within the commercial fishing industry?
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30. What other requirements, if any, should the Coast Guard be considering?

Twenty-nine commenters responded to these questions.

Regulations for subsets of the CFV industry. Fourteen commenters said that our CFV regulations should be modified to reflect the special conditions and risks found in certain regions (8 commenters), fisheries, or types of vessel (6 commenters). In considering any future regulatory action, we would try to accommodate subset-specific concerns. This proposed rule is limited to implementing CGAA and CGMTA mandates that sometimes require different behavior depending on vessel size or operating conditions, but which otherwise apply to CFVs regardless of region or fishery.

Coast Guard resources and enforcement. Several commenters recommended changes in the way we allocate resources to CFV safety and enforce CFV regulations. They suggest we add enforcement resources (6 commenters); improve enforcement efficiency and fairness (6 commenters); better enforce existing regulations (2 commenters); focus on approving vessel plans and licensing operators (2 commenters); develop a competitive grant program to research CFV safety (1 commenter); have an advisory board of naval architects (1 commenter); update Coast Guard safety guidance (1 commenter); and focus on providing safety checklists (1 commenter). We may consider these recommendations for future action, but none is addressed by CGAA or CGMTA mandates and, therefore, all are beyond the scope of this proposed rule.

Though it is beyond the scope of this proposed rule, we are concerned by any report of unfairness in Coast Guard enforcement activity. We are committed to effective and fair regulatory enforcement. If you believe you have been subject to improper Coast Guard enforcement activity, we encourage you to bring it to the attention of your local

Coast Guard office. You should also be aware of the “rights of appeal” provisions contained in our regulations, in 46 CFR subpart 1.03. Finally, if you are a small business, you may send comments on Coast Guard regulatory enforcement actions 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).

Rulemaking protocols. Several commenters made recommendations about guiding principles and procedures that we should keep in mind when engaged in CFV rulemakings. They said we should view supporting data with caution (3 commenters), provide a long public comment period and several public meetings in connection with any NPRM (2 commenters), base regulations on International Maritime Organization standards wherever possible (2 commenters), use international weight and measurement standards (1 commenter), expand voluntary compliance programs (1 commenter), and stop grandfathering older vessels (1 commenter). This rule proposes to implement CGAA and CGMTA mandates that have been in place for several years. However, we will bear the concerns and recommendations voiced by these commenters in mind in taking any further CFV regulatory action. Since the passage of the 2010 and 2012 legislation, we have made numerous presentations and received input from the public at national and regional commercial fishing industry meetings, and at the annual meetings of the Commercial Fishing Safety Advisory Committee.

Specific regulatory measures. Several commenters recommended specific regulatory measures we should take (or avoid). They said those measures should focus

on compliance documentation (3 commenters), improving fishery management (2 commenters), permitting the use of larger, foreign built vessels (2 commenters), avoiding trip report requirements (2 commenters), posting compliance documentation for crew scrutiny (1 commenter), redefining Boundary Lines to facilitate compliance (1 commenter), minimum safety construction standards for all new CFVs, reserving safety examination duties for Coast Guard personnel rather than marine surveyors (1 commenter), extending documented CFV safety equipment requirements to undocumented CFVs (1 commenter), avoiding licensing commercial fishermen (1 commenter), and confined space entry regulations (1 commenter).

This rule proposes to implement CGAA and CGMTA mandates relating to compliance documentation, recreational vessel construction standards for CFVs of less than 50 feet overall in length, mandatory dockside examinations for certain CFVs, and regulatory parity for both documented and undocumented CFVs; and it proposes to implement the statutory substitution of territorial sea baseline references for Boundary Line references. Our rule does not propose to require trip reports. The Coast Guard has no regulatory responsibility for fishery management, and lacks the authority to license commercial fishermen or to permit the use of foreign-built vessels where that use is prohibited by U.S. law. Neither posting compliance documentation for crew scrutiny, excluding non-Coast Guard personnel from vessel examination duties, nor confined space entry is addressed by CGAA or CGMTA mandates, and therefore all are beyond the scope of the proposed rule, though we may consider them for future regulatory action.

VI. Discussion of CGAA and CGMTA Mandates and the Proposed Rule

The CGAA and CGMTA contain a variety of marine safety provisions. Many of those provisions amend 1988 CFV safety legislation that is codified in 46 U.S.C. Chapter 45, Uninspected Commercial Fishing Industry Vessels. Coast Guard regulations implementing the 1988 legislation were first issued in 1991 and appear in 46 CFR part 28.¹⁶ Statutory civil and criminal penalties are provided for violations of Chapter 45 “or a regulation prescribed under this chapter.” See 46 U.S.C. 4507(a). Coast Guard enforcement procedures are described in 33 CFR subpart 1.07. In addition, vessels that violate part 28 regulations or that are operating under unsafe conditions may have their operations restricted or terminated, 46 CFR 28.65, and be subject to other operational controls ordered by a District Commander or Captain of the Port under 33 CFR 160.111.

In many cases the CGAA and CGMTA changes either require or permit the Coast Guard to amend its CFV regulations. This rule proposes to implement those statutory mandates that pertain to CFVs, that took effect upon enactment of the CGAA in October 2010 and the CGMTA in December 2012, and that can be incorporated in Coast Guard CFV regulations without the exercise of any Coast Guard discretion. This rule does not propose to apply any new or existing Coast Guard discretionary authority. We are considering additional regulatory action that would implement the Coast Guard’s discretionary authority in the CGAA and CGMTA and improve the safety of commercial fishing vessel operation. Should we take that action, we will first solicit public comment.

Vessel parity. CGAA section 604(a)(2)(A) amends 46 U.S.C. 4502(b)(1), which contains special provisions for subpart C CFVs – those that operate beyond the Boundary Lines and with more than 16 individuals on board, or are fish tender vessels engaged in

¹⁶ A general summary of statutes and regulations applicable to CFVs, written for the benefit of the CFV public, appears at <http://www.fishsafe.info/FederalRequirementsCFV2009.pdf>.

the Aleutian trade.¹⁷ Until enactment of the CGAA, section 4502(b)(1) applied only to Federally documented CFVs,¹⁸ and not to any of the (typically) smaller CFVs that require only State registration. The CGAA removed that restriction so that subpart C CFVs now can be either documented or undocumented.

This rule proposes to implement the CGAA by revising the subpart C heading and §§ 28.200, 28.205, 28.210, 28.215, 28.225, 28.230, 28.235, 28.240, 28.245, 28.250, 28.255, 28.260, 28.265, and 28.270. Generally, the proposed revisions eliminate language that reflects the previous exclusion of undocumented CFVs from the “subpart C CFV” category.

Some existing subpart C regulatory requirements are the result of prior Coast Guard discretionary determinations that are necessary for the safety of the documented CFVs to which subpart C formerly was restricted. It may make sense now to extend those same requirements to undocumented CFVs, but because this proposed rule relies exclusively on CGAA and CGMTA mandates and not use of Coast Guard discretionary authority, we cannot make that determination at this time. Where this is the case, the rule proposes to amend the regulation to clarify that, at least for now, it would continue to apply only to documented subpart C CFVs.

Before the CGAA was enacted, 46 U.S.C. 4502(a) mandated only basic safety equipment for all CFVs. The Coast Guard had discretionary authority to require

¹⁷ 46 CFR 28.200.

¹⁸ See 46 CFR 67.7 for what constitutes a documented vessel: “Any vessel of at least five net tons which engages in the fisheries on the navigable waters of the United States or in the Exclusive Economic Zone, or coastwise trade, unless exempt under § 67.9(c), must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.”

additional safety equipment, but only if a CFV met special conditions defined elsewhere in section 4502. CGAA section 604(a)(1)(A) amends section 4502(a) so that it, too, now gives the Coast Guard discretionary authority to require additional equipment on any CFV, if we determine that “a risk of serious injury exists that can be eliminated or mitigated by that equipment.” Because such a determination would exercise our discretionary authority, it is beyond the scope of this proposed rule, which is limited to implementing CGAA and CGMTA mandates. We may exercise that discretion in future rulemakings. To that end, we request public comment identifying the types or operational characteristics of CFVs that are at risk of serious injury, and identifying equipment that can eliminate or mitigate that risk and that the Coast Guard should require by regulation.

Substitution of baseline for Boundary Line criteria. Special provisions in 46 U.S.C. 4502(b) pertain to the subset of CFVs that operate relatively far from shore, or with more than 16 persons onboard, or that are Aleutian Trade fish tender vessels. This subset is subject to special regulatory requirements contained in 46 CFR part 28, subpart C. Prior to enactment of the CGAA, section 4502(b) defined the relevant distance from shore as “beyond the Boundary Line.” The location of the Boundary Line varies by distance from the coastline around the country.¹⁹ CGAA section 604(a)(2)(B) amends 46 U.S.C. 4502(b)(1)(A) by replacing the statutory Boundary Line with “3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes.” As defined in 33 CFR 2.20, the territorial sea baseline is “the line defining the shoreward extent of the territorial

¹⁹ See Coast Guard regulations prescribing those variations at 46 CFR part 7.

sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone... and the 1982 United Nations Convention on the Law of the Sea (UNCLOS)... . Normally, the territorial sea baseline is the mean low water line along the coast of the United States.” Generally, navigation charts mark the three-nautical mile distance (the “3-mile line”) from the baseline.

This rule proposes to update references, in the table to 46 CFR 28.110, to the lifesaving devices required by subpart C. It proposes to replace “Boundary Line” with “3-mile line” references.

Survival craft. In two separate provisions, the CGAA provided that a survival craft must ensure “that no part of a person is immersed in water” (“non-immersibility”). The first provision, CGAA section 604(a)(2)(C), amended 46 U.S.C. 4502(b)(2)(B) to require non-immersible craft on subpart C CFVs. Second, section 609 had added 46 U.S.C. 3104 to require non-immersible craft on any vessel subject to Coast Guard inspection or regulation, including all CFVs.²⁰ As a result of later legislation, however, section 309 no longer applies to any CFV.²¹ In this rule, we propose to amend 46 CFR 28.120 and 28.130 to give effect to section 604’s non-immersibility provision.

²⁰ As subsequently amended by sec. 303 of the CGMTA, sec. 609 of the CGAA gave us discretionary authority to authorize the continued use, until February 26, 2016, of survival craft that cannot ensure non-immersibility (“older survival craft”), if we approved them under the applicable subpart of 46 CFR part 160 before 2010, and if the person in charge of the CFV determined under 46 CFR 28.140 that they remain in serviceable condition. Between 2010 and February 2016 we granted that authorization to any CFV to which the non-immersibility requirements applied.

²¹ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by limiting its applicability to passenger vessels only, thereby removing any CFV from its coverage and leaving only the non-immersibility language of 46 U.S.C. 4502(b)(2)(B) in place for subpart C CFVs. Despite the removal of non-immersion requirements for non-subpart C vessels, should we find that non-immersible survival craft could provide substantial safety benefits for those vessels, using our discretionary regulatory authority we could require them in a separate future regulatory action.

Records. CGAA section 604(a)(3) amends 46 U.S.C. 4502(f) to require that an individual in charge of any subpart C vessel keep a record of equipment maintenance and required instruction and drills. The rule proposes to amend 46 CFR 28.200 by requiring these records to be kept for three years, the maximum retention period ordinarily required by the Paperwork Reduction Act of 1995.²² We request comments on further specifications for this record retention requirement.

Vessel examinations. CGAA section 604(a)(3), as amended by CGMTA section 305(a), amends the dockside safety examination provisions of 46 U.S.C. 4502(f). The 1988 legislation added section 4502(f), requiring the Coast Guard to examine at least once every two years, at dockside, all fish processing vessels and Aleutian Trade fish tenders, and to issue a certificate to each successfully examined vessel to show that it complies with all 46 U.S.C. Chapter 45 requirements and 46 CFR part 28 implementing regulations.

Our current dockside examination program was developed after we issued our 1991 regulations to implement the 1988 legislation.²³ Our FishSafe website provides CFV owners, operators, and personnel with information about dockside examinations.²⁴ In general, examinations check for a vessel's lifesaving equipment, documentation, bridge and engine room equipment, and other miscellaneous required items. In addition to providing examinations for the fish processors and Aleutian Trade fish tenders that the 1988 legislation required them to, we encouraged other CFV owners and operators to obtain dockside examinations voluntarily. Whether mandatory or voluntary, we issue a

²² 44 U.S.C. 3501-3520.

²³ See Commandant Instruction 16711.13B, "Implementation of Commercial Fishing Industry Vessel Regulations," Aug. 17, 1995.

²⁴ See <http://www.fishsafe.info/>. Several pages on that website are referenced in footnotes to this discussion.

dated Commercial Fishing Vessel Safety Decal to any CFV that successfully completes its dockside examination. The decal indicates that the dockside examiner has found the CFV to be in compliance with all applicable Federal laws, not just 46 U.S.C. Chapter 45 and 46 CFR part 28. Many CFVs benefit from having this decal; if they operate in fisheries frequented by endangered or threatened marine species, they may be required under National Marine Fisheries Service (NMFS) regulations²⁵ to have a NMFS-approved observer onboard. NMFS regulations²⁶ prohibit observers from going or staying onboard any CFV that does not display a valid decal. Thus, by 2010, dockside examinations were a well-developed and familiar feature of our CFV safety program.²⁷

Against this backdrop, CGAA section 604(a)(3) left the dockside examination requirement of 46 U.S.C. 4502(f) unchanged, except to extend the requirement to any CFV (including fish processors and Aleutian Trade fish tenders) subject to section 4502(b) and regulated under 46 CFR part 28, subpart C. We interpret section 604(a)(3) as expressing Congress's intent for us to take the same well-developed and familiar dockside examination program that originally applied to fish processors and Aleutian Trade fish tenders, and apply it to a broader CFV population. The first examination under the new provisions were required to take place no later than October 15, 2015. Under 46 U.S.C. 2117, the Coast Guard can order the termination of a CFV's operation, if it fails to carry a valid certificate of compliance to demonstrate successful completion of the dockside examination.

²⁵ 50 CFR part 222, subpart D.

²⁶ 50 CFR 600.746 (c), (d).

²⁷ Regulations providing for dockside examinations appear at 46 CFR 28.710 (fish processing vessels) and 28.890 (Aleutian Trade Act vessels), and are supplemented by the guidance in COMDTINST 16711.13B (1995), available at http://www.uscg.mil/directives/ci/16000-16999/CI_16711_13B.pdf.

This proposed rule would add 46 CFR 28.201(a) to incorporate the new subpart C CFV dockside examination requirement. Because this proposed rule's regulatory text would be limited to the mandatory language of the CGAA and the CGMTA, section 28.201(a) provides few details to guide vessel owners and operators on how to request examinations. We are considering future regulatory action to specify a procedure, and would first submit any proposed action to the public for comment. For now, CFV owners and operators who are subject to the vessel examination requirement can demonstrate compliance with the examination requirement by displaying a current, valid safety decal, by having a Form CG-5587 signed by a Coast Guard examiner, or by having a signed letter of compliance from an accepted third-party organization, such as a marine surveyor, as proof that the vessel has passed an examination and is compliant with current regulations. Owners and operators can contact their local Coast Guard Sector, Marine Safety Unit, or Field Office to arrange for an examination or to obtain more information,²⁸ or they can request the examination online.²⁹

Even though CGMTA section 305(a) lengthened the interval for mandatory dockside examinations from two years to five years, we continue to encourage all CFV owners and operators to obtain dockside examinations at least once every two years, voluntarily, whether or not their vessels are subject to the legislative mandate.

²⁸ A copy of the dockside examination booklet is given to operators and owners at the time of the examination and can be retained to demonstrate regulatory compliance should the vessel subsequently be boarded by Coast Guard personnel. The booklet includes a list of the specific items to be examined. *See* http://www.uscg.mil/hq/cgcvc/cvc3/references/CFVS_Exam_Booklet_CG-5587_Revised_06_08.pdf. At the Coast Guard's FishSafe site (<http://www.fishsafe.info/>), a prominently displayed link to <http://www.uscg.mil/d13/cfvs/DocksideExams/vFinal.swf> directs CFV personnel to the Commercial Fishing Vessel Checklist Generator, which helps personnel prepare for a dockside exam. In response to answers that personnel supply about their vessel and its operations, the Checklist Generator provides information about the specific items examiners will check. The Checklist Generator also provides links to regulations and other official references related to each item.

²⁹ *See* <http://www.fishsafe.info/docksideexamrequest.htm>.

Training. CGAA section 604(a)(4) adds 46 U.S.C. 4502(g), which requires an individual in charge of a subpart C CFV to pass a training program. The training program must recognize and give credit for recent CFV experience, and must cover seamanship, stability, collision prevention, navigation, fire-fighting and prevention, damage control, personal survival, emergency medical care, emergency drills and communication, and weather. Section 4502(g) mandates that a certificate be issued upon successful completion of the training, and requires refresher training every 5 years. Finally, section 4502(g) requires the Coast Guard to establish an electronic database listing individuals who have completed the training.

The proposed rule proposes no action with respect to section 4502(g), because before we can enforce its training requirement, we must first use our discretionary authority to determine how to recognize and give credit for CFV experience, and develop the specific items that training covers, within the broad subject areas listed in the statute. We intend to do so in a future regulatory action that, likely, will propose an amendment to 46 CFR 28.270. In the meantime, and for better clarity, we are making a nonsubstantive change to § 28.270, by moving the substance of the “Note” currently appearing at the end of the section, so that it now serves as introductory language at the beginning of the section.

Construction standards for smaller vessels. CGAA section 604(a)(4) adds 46 U.S.C. 4502(h), which mandates that each subpart C CFV less than 50 feet overall in length and built after January 1, 2010 must be constructed so as to provide a level of safety equivalent to the level provided by recreational vessel standards established under 46 U.S.C. 4302. Those standards are contained in Coast Guard regulations in 33 CFR

part 183, and the Coast Guard regularly uses its delegated authority under 46 U.S.C. 4305 to exempt manufacturers from particular part 183 standards that are not essential for safety given a vessel's specific characteristics. The part 183 standards require most recreational vessels (including any vessel that would be suitable for CFV use) to—

- Observe safe loading requirements;
- Observe horsepower capacity limits;
- Provide adequate flotation;
- Meet safe electrical and fuel system standards (except with respect to outboard motors or other portable equipment);
- Provide adequate ventilation for gasoline engines;
- Be equipped with a device to prevent the motor being started when the engine is already in gear; and
- Be equipped with all required navigation lights.

Affected CFVs need not comply with each specific requirement of part 183. For example, as commercial vessels, we do not expect them necessarily to carry the weight and horsepower capacity labels that part 183 requires for vessels in solely recreational use. However, we do expect that all affected CFVs will be able to demonstrate that they provide a level of safety that is equivalent to the level that would be

provided if they complied with every part 183 requirement. This rule proposes restating the statutory mandate in 46 CFR 28.202.

Load lines. CGAA section 604(d)(1), as amended by CGMTA section 305(d), limits the existing 46 U.S.C. 5102(b)(3) exemption of all commercial fishing vessels from load line requirements by exempting only vessels built prior to July 1, 2013. Thus, section 604(d)(1) would apply not only to the uninspected CFVs with which this proposed rule is concerned, but also to any inspected fishing vessels – of which there are none at this time. The section 5102(b)(3) exemption now is unavailable to any vessel built after July 1, 2013. Like other commercial vessels, CFVs built after July 1, 2013 need to comply with the existing load line regulations in 46 CFR subchapter E if they are 79 feet or more in length and venture outside the statutory Boundary Line.

The proposed rule would add 46 CFR 28.170 to require each fishing vessel built after July 1, 2013, to be assigned a load line in accordance with 46 CFR subchapter E if it is 79 feet in length or greater and operates outside the Boundary Line. The rule also proposes to amend 46 CFR 28.500 to make it clear that CFV stability regulations continue to apply to certain CFVs, even though those CFVs will be subject to load line requirements as well.

Load lines are also the subject of CGAA section 604(d)(2), which, as amended by CGMTA section 305(d), adds 46 U.S.C. 5103(c). This requires vessels built on or before July 1, 2013 to comply with an alternate load line compliance program developed in cooperation with the industry, if they complete a major conversion after that date. Section 604(d)(2) requires the Coast Guard to issue regulations establishing the alternate load line compliance program, but does not provide a deadline for doing so.

This proposed rule would take no action with respect to new section 5103(c), because before we can enforce its requirement for an alternate load line compliance program, we must first use our discretionary authority to develop the details of that program, in cooperation with industry. We are considering providing those details in a future regulatory action, and would first seek input from appropriate sources and submit any proposed action to the public for comment.

Classing of vessels.³⁰ CGAA section 604(e)(1), as amended by CGMTA section 305(c), amends 46 U.S.C. 4503, which formerly applied only to fish processing vessels built or converted after July 27, 1990. As amended, section 4503 now applies to those fish processing vessels and also to each subpart C vessel that operates beyond 3 nautical miles from the baseline, is at least 50 feet overall in length, and is built after July 1, 2013. These vessels must meet all survey and classification requirements prescribed by the American Bureau of Shipping (ABS) or another approved organization. The ABS and other organizations have existing requirements that apply to CFVs, and each organization can add or modify those requirements in the future, as they choose.

ABS rules³¹ issued in 2001 for steel fishing vessels under 295 feet in length illustrate the requirements an approved organization may provide for CFVs. Under the ABS rules, a vessel must satisfy stability requirements that include—

³⁰ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization...” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

³¹ Rules for Building and Classing Steel Vessels Under 90 Meters (295 Feet) in Length (2012), ch. 12: Fishing Vessels.

- An intact stability analysis based on the applicable part of the International Maritime Organization's (IMO's) Resolution A.749(18) Code on Intact Stability for All Types Ships Covered by IMO Instrument, as amended by Maritime Safety Committee Resolution MSC.75(69);
- An inclining experiment or deadweight survey;
- Criteria in IMO Resolution A.168 (ES.IV), with an additional requirement that the vessel have a minimum range of stability of 60 degrees;
- Severe wind and rolling criteria indicated in IMO Resolution A.562(14); and
- Addressing specified design and operating factors that affect stability.

In addition, the ABS rules require a vessel to meet specifications for—

- Fish hold bulkhead design;
- Local strengthening of shell and deck plating;
- Bulwarks, rails, ports, portlights, and ventilators;
- Freeboard and draft marks;
- Cargo handling equipment; and
- Miscellaneous specifications for wire rope, equipment operability under inclined conditions, liquid petroleum gas, electrical installation, and refrigeration.

The proposed rule would add 46 CFR 28.201(b) and (c) to incorporate the new vessel classing requirements.

Subpart C vessels of at least 50 feet overall in length and built on or before July 1, 2013 will eventually be required by CGAA section 604(e)(1), as amended by CGMTA section 305(c), to comply with an alternate safety compliance program. CGAA section 604(f) requires us to complete the program's development by January 1, 2017.

The proposed rule would take no action with respect to the new alternative safety compliance program, because we must use our discretionary authority to undertake the required cooperation with industry to develop the alternate safety compliance program. This will be the subject of future regulatory action.

Termination of unsafe operations. CGAA section 608 adds new 46 U.S.C. 2117, which expands the Coast Guard's authority to terminate a CFV's operation when we determine that unsafe conditions exist. Section 2117 authorizes a boarding officer to remove any certificate that the boarded vessel is required to possess, if the boarding officer finds that the vessel is not in compliance with the terms of the certificate. Loss of the certificate then becomes, in itself, reason to terminate the vessel's voyage. This proposed rule would amend 46 CFR 28.65(a) to incorporate the new termination provisions and leaves section 28.65(b) unchanged, but it would remove section 28.65(c) because its presence is redundant and could be confusing, in light of the revision of section 28.65(a).

Miscellaneous. CGAA section 604(a)(2)(D) through (G) amend 46 U.S.C. 4502(b)(2)(D) through (G) with respect to each subpart C vessel. Subpart C vessels now must have marine radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities; navigation equipment, including compasses, nautical charts, and publications; first aid equipment and medical supplies sufficient for the size and area of operation of the vessel; and ground tackle sufficient for the vessel. This type equipment must be adequate for the size of the vessel and where the vessel operates. The proposed rule would reflect these changes in 46 CFR 28.245, 28.225,

28.210, and 28.235 respectively. We request comments on further specifications for this equipment requirement.

We also propose revising the authority line for 46 CFR part 28, to more fully state the sources of our authority to issue the regulations appearing in that part.

Table. Table 9 sequentially lists the regulations we would add or amend in this proposed rule, and summarizes how the CGAA and CGMTA affected the regulation.

Table 9: 46 CFR Sections Affected by Proposed Rule.

46 CFR section	Heading	Related statutory section(s)	Related statutory topic(s)
28.65	Termination of unsafe operations	CGAA 608	Termination of unsafe operations
28.110	Life preservers or other personal flotation devices.	CGAA 604(a)(2)(B)	Substitution of baseline for Boundary Line criteria
28.120	Survival craft ³²	CGAA 604(a)(2)(C); CGMTA 303	Survival craft
28.130	Survival craft equipment	CGAA 604(a)(2)(C); CGMTA 303	Survival craft
28.170	Load lines	CGAA 604(d); CGMTA 305	Load lines
Subpart C heading	Old: Requirements for vessels that operate beyond the Boundary Lines or with more than 16 individuals on board, or for fish tender vessels engaged in the Aleutian Trade	CGAA 604(a)(2)(A)	Vessel parity
28.200	Old: Applicability	CGAA 604(a)(2)(A), 604(a)(3)	Vessel parity, Records
28.201	Examination and certification	CGAA 604(a)(3),	Vessel examinations, Classing of vessels

³² The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

		604(e)(1); CGMTA 305	
28.202	Construction requirement for smaller vessels	CGAA 604(a)(4)	Construction standards for smaller vessels
28.205	Fireman's outfits and self-contained breathing apparatus	CGAA 604(a)(2)(A)	Vessel parity
28.210	First aid equipment and training	CGAA 604(a)(2)(A), 604(a)(2)(F)	Vessel parity, Miscellaneous
28.215	Guards for exposed hazards	CGAA 604(a)(2)(A)	Vessel parity
28.225	Navigational information	CGAA 604(a)(2)(A), 604(a)(2)(E)	Vessel parity, Miscellaneous
28.230	Compasses	CGAA 604(a)(2)(A)	Vessel parity
28.235	Anchors and radar reflectors	CGAA 604(a)(2)(A), 604(a)(2)(G)	Vessel parity, Miscellaneous
28.240	General alarm system	CGAA 604(a)(2)(A)	Vessel parity
28.245	Communications equipment	CGAA 604(a)(2)(A), 604(a)(2)(D)	Vessel parity, Miscellaneous
28.250	High water alarms	CGAA 604(a)(2)(A)	Vessel parity
28.255	Bilge pumps, bilge piping, and dewatering systems	CGAA 604(a)(2)(A)	Vessel parity
28.260	Electronic position fixing devices	CGAA 604(a)(2)(A)	Vessel parity
28.265	Emergency instructions	CGAA 604(a)(2)(A)	Vessel parity
28.270	Old: Instruction, drills, and safety orientation	CGAA 604(a)(2)(A), 604(a)(4); CGMTA 305	Vessel parity, Training
28.500	Applicability [of stability regulations]	CGAA 604(d)	Load lines

VII. Regulatory Analyses

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

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. The estimated costs of this rulemaking do not exceed the threshold of economic significance (i.e., the rulemaking has an annual effect on the economy of \$100 million or more. However, the proposed rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore it has been reviewed by the Office of Management and Budget. A preliminary Regulatory Analysis (RA) is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

See part VI of this preamble for a discussion of the proposed rule and see the preliminary RA in our docket for a more detailed discussion of costs, benefits, and alternatives considered. Table 10 summarizes the impacts of this rulemaking.

Table 10: Summary of Affected Population, Costs, and Benefits of Congressional Mandates.

Category	Proposed rule
Applicability	U.S. flagged, uninspected commercial fishing vessels (CFVs)
Affected population	36,115 CFVs

Industry costs* (\$ millions, 7% discount rate)	\$34.2 million (annualized) \$240.3 million (10-year) Not quantified: Potential lost revenues Potential lost wages
Government costs* (\$ millions, 7% discount rate)	\$5.4 million (annualized) \$38.2 million (10-year)
Total costs* (\$ millions, 7% discount rate)	\$39.7 million (annualized) \$278.5 million (10-year)
Benefits (\$ millions, 7% discount rate)	\$7.1 - \$9.4 million (annualized) \$44.4 - \$65.5 million (10-year) Not quantified: Benefits from reducing injuries, property losses and environmental damage from oil spills
* Please refer to the preliminary RA in the docket for details.	

A summary of the RA follows:

The 2010 CGAA and the 2012 CGMTA make numerous, significant changes to Chapter 45 of 46 U.S.C., “Uninspected Commercial Fishing Industry Vessels.” These new requirements build on the requirements set forth in the Commercial Fishing Industry Vessel Safety Act of 1988. Once implemented through new or amended regulations, the commercial fishing industry should experience enhanced worker and vessel safety from the CGAA and CGMTA changes. The proposed rule would implement only those CGAA and CGMTA provisions that mandate the promulgation of regulations. The proposed rule would revise safety standards by adding or amending regulations in the categories indicated in Table 11.

In addition, uniform safety standards are established for all fishing vessels for some requirements, particularly those vessels operating beyond 3 nautical miles of the baseline of the territorial sea or coastline of the Great Lakes. The Boundary Line is used as the demarcation line for operating area and equipment standards, but it is not uniform

around the U.S. coastline. The CGAA amended sections 4502(b)(1)(A) of 46 U.S.C. by deleting the words “Boundary Line” and replacing them with “3 nautical miles from the baseline from which the territorial sea of the United States is measured or 3 nautical miles from the coastline of the Great Lakes.”

Table 11: Proposed Rule Requirement with Cost Impacts³³

Rule Requirement	Category	Description of Changes
(1)	Survival Craft ³⁴	Establishes requirements for all fishing industry vessels operating beyond 3 nautical miles to carry survival craft that will meet a new performance standard for primary lifesaving equipment. The use of “lifeboats or liferafts” is replaced with “a survival craft that ensures that no part of an individual is immersed in water.” This means that lifefloats and buoyant apparatus will no longer be accepted as survival craft on any commercial fishing vessel operating beyond 3 nautical miles. As the CGMTA permitted us to do, we refrained from enforcing this provision between the CGMTA’s enactment and February 2016.
(2)	Records	Requires the individual in charge of a vessel operating beyond 3 nautical miles to maintain a record of lifesaving and fire equipment maintenance. It will be incumbent upon the master/individual in charge of the vessel to maintain these records onboard.
(3)	Examinations and Certificates of Compliance ³⁵	Requires a dockside safety examination at least once every 5 years for vessels operating beyond 3 nautical miles with the first exam statutorily required by October 15, 2015. A “certificate of compliance” will be issued to a vessel successfully completing the exam. Voluntary exams will continue to be promoted for vessel operating inside 3 nautical miles.
(4)	Classing of Vessels, Third Party ³⁶	Requires the survey and classification of a fishing vessel that is at least 50 feet overall in length, built after July 1, 2013, and operates beyond 3 nautical miles.

Affected Population

Based on Marine Information for Safety and Law Enforcement (MISLE) data, there are approximately 75,083 U.S. commercial fishing vessels in the United States.

³³ Please refer to the Regulatory Analysis Section 1.7 *Regulatory Impacts* for discussion on no cost requirements.

³⁴ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

³⁵ The proposed rule enhances the enforcement of dockside examinations by allowing the termination of vessels that do not obtain the required certification. The costs to acquire and maintain certification is captured under Examinations and Certification of Compliance. There is a potential, non-quantifiable cost if a voyage is terminated due to unsafe operations.

³⁶ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization...” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

This proposed rule would take regulatory action on vessels operating beyond three nautical miles of the baseline of the territorial sea and the coastline of the Great Lakes. Coast Guard subject matter experts estimate that 36,115 (17,237 documented and 18,878 undocumented) operate beyond the three nautical miles threshold, and are affected by this rulemaking³⁷. Each rule requirement applies to a distinct set of vessels based on area of operation and vessel size. (Table 12).

Table 12: Summary of Affected Population by Regulatory Requirement.

CGAA/CGMTA Requirements	Affected Population	Estimated Number
(1) Requirement that survival craft ensure that no part of individual is immersed in water ³⁸	All vessels that operate beyond 3 NM that currently do not carry survival craft that ensure that no part of individual is immersed in water	24,771
(2) Requirement to keep records of equipment maintenance and drills/instructions in safety logbook	All vessels that operate beyond 3 NM	36,115
(3) Requirement for vessels to have dockside exam every 5 years and carry certificate	All vessels that operate beyond 3 NM	36,115
(4) Vessel 50 feet in length or greater built after 2013 must be classed by third party organization ³⁹	New vessels \geq 50 ft in length (26 annually) that operate beyond 3 NM	260

³⁷ The remaining 38,968 vessels are not affected by this rule.

³⁸ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

³⁹ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built after July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization... .” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

Costs

One-hundred percent of the costs of this rule are Congressionally mandated. We estimated the total average costs of this rulemaking on industry for a 10-year period as summarized in Table 13⁴⁰.

Table 13: Proposed Rule Industry Costs (Values in \$ Millions).

Year	Undiscounted Costs	Discounted Costs	
		7%	3%
Year 1	\$67.97	\$63.52	\$65.99
Year 2	\$27.28	\$23.83	\$25.72
Year 3	\$27.37	\$22.34	\$25.05
Year 4	\$27.46	\$20.95	\$24.40
Year 5	\$27.46	\$19.58	\$23.69
Year 6	\$41.48	\$27.64	\$34.74
Year 7	\$27.55	\$17.16	\$22.40
Year 8	\$27.64	\$16.09	\$21.82
Year 9	\$27.72	\$15.08	\$21.25
Year 10	\$27.72	\$14.09	\$20.63
Total	\$329.66	\$240.28	\$285.67
	Annualized	\$34.21	\$33.49

The first-year (initial) undiscounted cost of this rulemaking is \$68 million. The 10-year discounted present value cost to industry of the proposed rule is \$240.3 million based on a 7-percent discount rate and \$285.7 million based on a 3-percent discount rate assuming immediate implementation. The annualized cost to industry is \$34.2 million at a 7-percent discount rate. Table 14 presents the costs to industry by requirement, of which “classing of vessels by third party” makes up the majority of the total costs.

⁴⁰ We discounted the costs at 7 and 3 percent as set forth by guidance in the Office of Management and Budget’s Circular A-4.

Table 14: Annualized Proposed Rule Industry Costs by Requirement Category (Values in \$ Millions).

Proposed Rule Requirement	10-Year Cost			Annualized	
	Undiscounted	7%	3%	7%	3%
(1) Survival Craft ⁴¹	\$82.49	\$64.15	\$73.52	\$9.13	\$8.62
(2) Records	\$6.52	\$4.58	\$5.56	\$0.65	\$0.65
(3) Examination and Certificates of Compliance	\$27.87	\$22.31	\$25.20	\$3.18	\$2.95
(4) Classing of Vessel, Third Party	\$212.77	\$149.24	\$181.39	\$21.25	\$21.26
Total for Authorization Act Requirements	\$329.66	\$240.28	\$285.67	\$34.21	\$33.49

We anticipate that the government will incur labor and travel costs to conduct dockside CFV safety exams. We estimate the total present value cost to government over the 10-year period of analysis to be \$38.2 million discounted at 7 percent and \$46.4 million discounted at 3 percent (Table 15). Annualized government costs are about \$5.4 million under both 7-percent and 3-percent discount rates.

Table 15: Proposed Rule--Total Government Costs (Values in \$ Millions).

Year	Undiscounted Costs	Discounted Costs	
		7%	3%
Year 1	\$5.44	\$5.09	\$5.28
Year 2	\$5.44	\$4.75	\$5.13
Year 3	\$5.44	\$4.44	\$4.98
Year 4	\$5.44	\$4.15	\$4.83
Year 5	\$5.44	\$3.88	\$4.69
Year 6	\$5.44	\$3.63	\$4.56
Year 7	\$5.44	\$3.39	\$4.42
Year 8	\$5.44	\$3.17	\$4.30

⁴¹ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

Year 9	\$5.44	\$2.96	\$4.17
Year 10	\$5.44	\$2.77	\$4.05
Total	\$54.41	\$38.22	\$46.42
	Annualized	\$5.44	\$5.44

We estimate the combined total 10-year present value cost of the rulemaking to industry and government at \$278.5 million, discounted at 7 percent, and \$332.1 million, discounted at 3 percent (Table 16). The combined annualized costs to industry and government are \$39.7 million at 7 percent and \$38.9 million at 3 percent. The expected annual effect on the economy of the proposed rule would not exceed \$100 million in the first or any subsequent year of implementation.

Table 16: Summary of Cost by Regulatory Requirement (Values in \$ Millions).

Proposed Rule Requirement	10-Year Cost			Annualized	
	Undiscounted	7%	3%	7%	3%
(1) Survival Craft ⁴²	\$82.49	\$64.15	\$73.52	\$9.13	\$8.62
(2) Records	\$6.52	\$4.58	\$5.56	\$0.65	\$0.65
(3) Examination and Certificates of Compliance	\$27.87	\$22.31	\$25.20	\$3.18	\$2.95
(4) Classing of Vessel, Third Party ⁴³	\$212.77	\$149.24	\$181.39	\$21.25	\$21.26
Government Costs					
Examinations and Certificates of Compliance	\$54.41	\$38.22	\$46.42	\$5.44	\$5.44
Total for Authorization Act Requirements	\$384.07	\$278.50	\$332.09	\$39.65	\$38.93

⁴² The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

⁴³ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built after July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization...” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

Benefits

In this rulemaking, the Coast Guard is proposing to implement CFV safety standards mandated by Congress in the 2010 CGAA and 2012 CGMTA. These mandates are collectively intended to reduce the risk of future casualties, and if a casualty occurs, to minimize the adverse impacts to crew and increase the likelihood of survival and rescue. To reduce the risk of casualties and to mitigate the adverse consequences, the Coast Guard adopts comprehensive safety requirements that are intended to increase compliance with current regulations and increase the operational awareness and preparedness of CFV owners and masters. The primary benefits resulting from increased safety include reductions in the risk of fatalities, property loss, and environmental damage that can be caused by lost and damaged CFVs. Table 17 presents the benefits resulting from improved CFV safety.

Table 17: Proposed Rule Benefits of Safety Standards by Category.

Rule Requirement	Category	Benefit(s)
(1)	Survival Craft ⁴⁴	Ensures personnel who evacuate in the event of the loss of a vessel are removed from the water, thereby reducing the risk of hypothermia.
(2)	Records	Requires the individual in charge of a vessel operating beyond 3 nautical miles of the base line to maintain onboard a record of equipment maintenance and required instruction and drills. Maintaining records increases accountability and provides a means of determining compliance for many provisions, particularly during Coast Guard vessel boardings and investigations. Maintaining records also assists the vessel operator by reminding him or her that actions are needed to remain in compliance with the rules.
(3)	Examinations and Certificates of Compliance	Makes current voluntary system of examinations mandatory, thereby ensuring vessel is maintained properly and able to operate in a safe and environmentally sound manner.
(4)	Classing of Vessels, Third Party ⁴⁵	Requires survey and classification of a fishing vessel that is at least 50 feet overall in length, built after July 1, 2013, and operating beyond 3 nautical miles of the base line. Vessel classification helps to ensure that a vessel is designed and maintained in a safe manner, reducing the likelihood of all types of mishaps. The classification process includes: the development of standards; technical plan review and design analysis; surveys during construction; source inspection of materials, equipment and machinery; subsequent periodic surveys for maintenance of class; survey of damage, repairs and modifications.

Table 18: Additional Proposed Rule Benefits.

Authorization Act Requirement	Benefits
Dockside examination and vessel certification: a vessel that was classed before July 1, 2012, must remain subject to the requirements of a classification society.	Clarifies current industry practice and harmonizes regulatory and statutory language.

⁴⁴ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

⁴⁵ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization...” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

Authorization Act Requirement	Benefits
Requires that vessels built after January 1, 2010, and less than 50 feet overall in length be constructed in a manner that provides a level of safety equivalent to the standards for recreational vessels established under Title 46 U.S.C. §4302.	Clarifies current industry practice and harmonizes regulatory and statutory language.
First aid equipment and training: substitutes the words “medical supplies sufficient for the size and area of operation of the vessel, which on documented vessels must be in a readily accessible location” for “medicine chest of a size suitable for the number of individuals on board in a readily accessible location.”	Clarifies current industry practice and harmonizes regulatory and statutory language.
First aid equipment and training: Limits applicability to documented vessels. No change from current requirements.	Clarifies current applicability and harmonizes regulatory and statutory language.
Changes to applicability language for: Navigational equipment; Anchors and radar reflectors; General alarm system; High water alarms; Electronic position fixing devices; Emergency Instructions; Instructions, drills, and safety orientation.	Limits applicability to documented vessels. Clarifies current applicability and harmonizes regulatory and statutory language.

In this regulatory assessment, the benefits associated with (1) survival craft and (3) examinations are further evaluated, with monetized estimates developed. Other components are left non-monetized given limitations on casualty data (e.g., limited specificity in casualty investigations).

For the period of 2002-2012, a total of 426 fishermen lost their lives on commercial fishing vessels (Exhibit A). Of those, a total of 205 lives were lost due to vessel loss and 221 lives were lost due to other causes. On an annual basis, an average of 39 fishermen lost their lives per year, with an average of 19 of these fatalities associated with vessel loss. As there is no discernible, consistent trend of fatalities over the time period, we use the average fatalities over the period to represent the projected fatalities without the proposed rule in the future 10-year period covered in this analysis.

During the 2002-2012 period, 851 vessels were lost (Exhibit B), resulting in an estimated property damage of \$17.3 million and 13,270 gallons of pollutant spilled.

Table 18 summarizes the negative impacts of commercial fishing vessel casualties with

fatalities monetized at \$9.1 million per fatality and Exhibit C displays average annual monetary damages, of which fatalities make up the overwhelming majority of damages associated with the commercial fishing industry.

To monetize the value of fatalities and those prevented, we use the concept of “value of statistical life” (VSL), which is commonly used in safety analyses. The VSL does not represent the dollar value of a person’s life, but the amount society would be willing to pay to reduce the probability of premature death. We currently use a value of \$9.1 million as an estimate of VSL.⁴⁶ A \$9.1 million VSL does not mean a specific human life is worth \$9.1 million, but instead, a \$9.1 million VSL means an individual is willing to pay \$9.10 to reduce the annual risk of premature death by one in 1,000,000.

⁴⁶ See guidance on the Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses, US DOT, 2013, available at <http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf> .

Exhibit A: Total Commercial Fishing Fatalities, All U.S. Fishing Vessels (2002-2012).

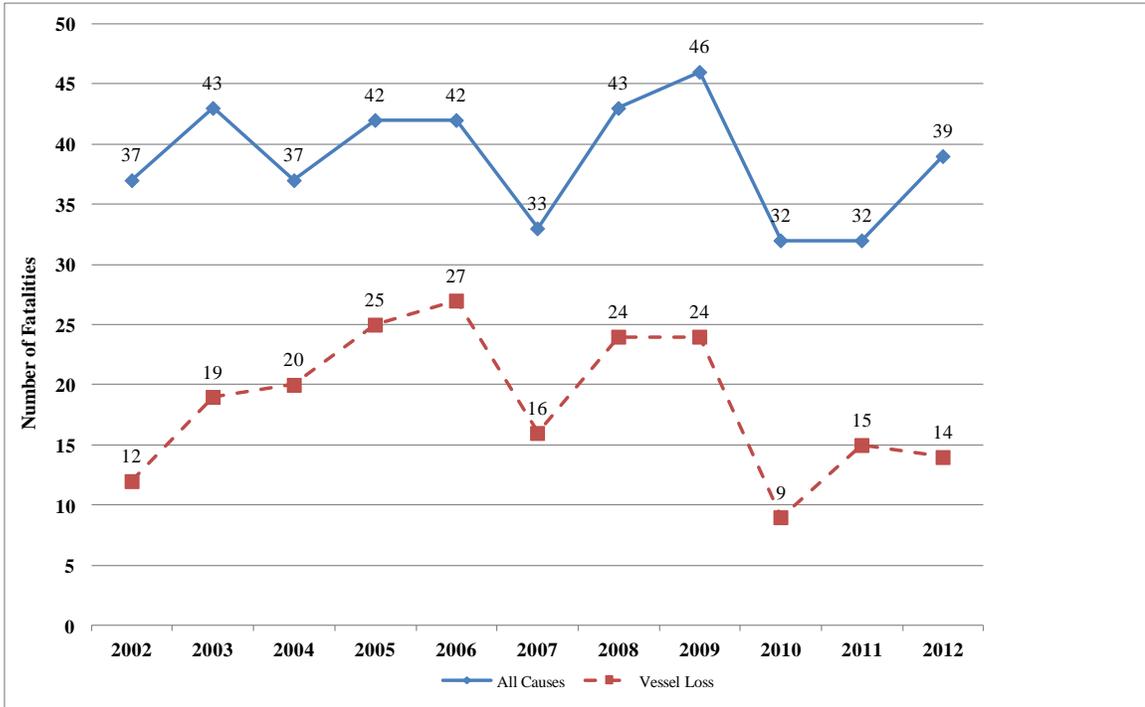


Exhibit B: Total Commercial Fishing Vessels Lost, All U.S. Fishing Vessels (2002-2012).

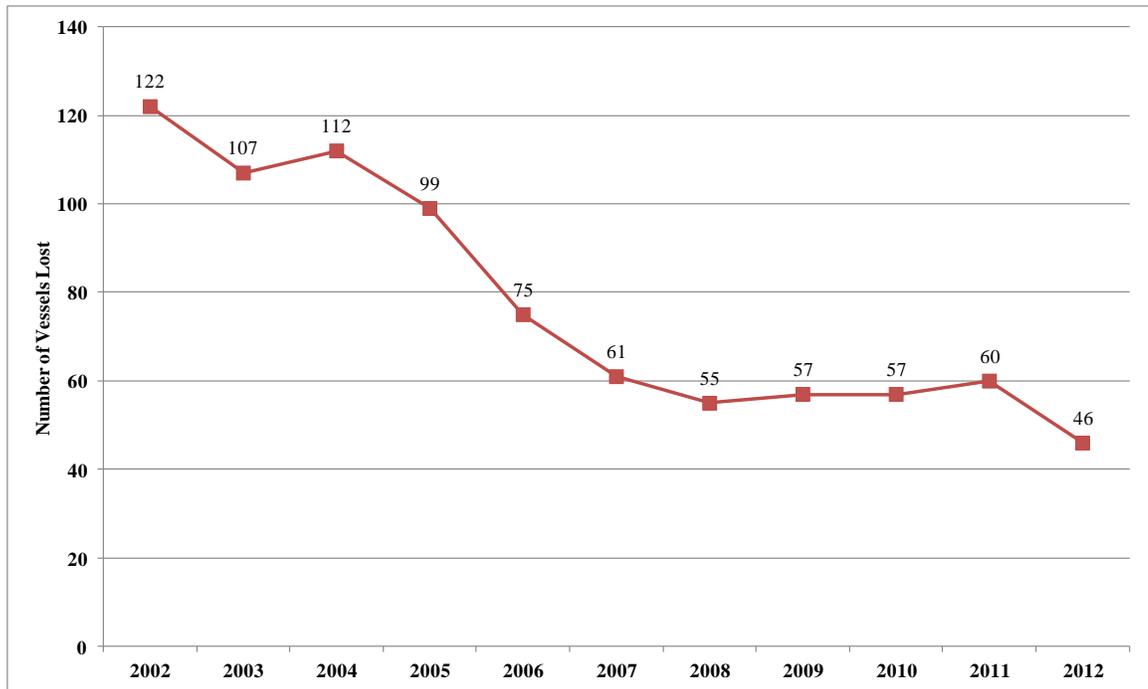


Table 19: Negative Impacts from CFV Incidents (2002-2012).

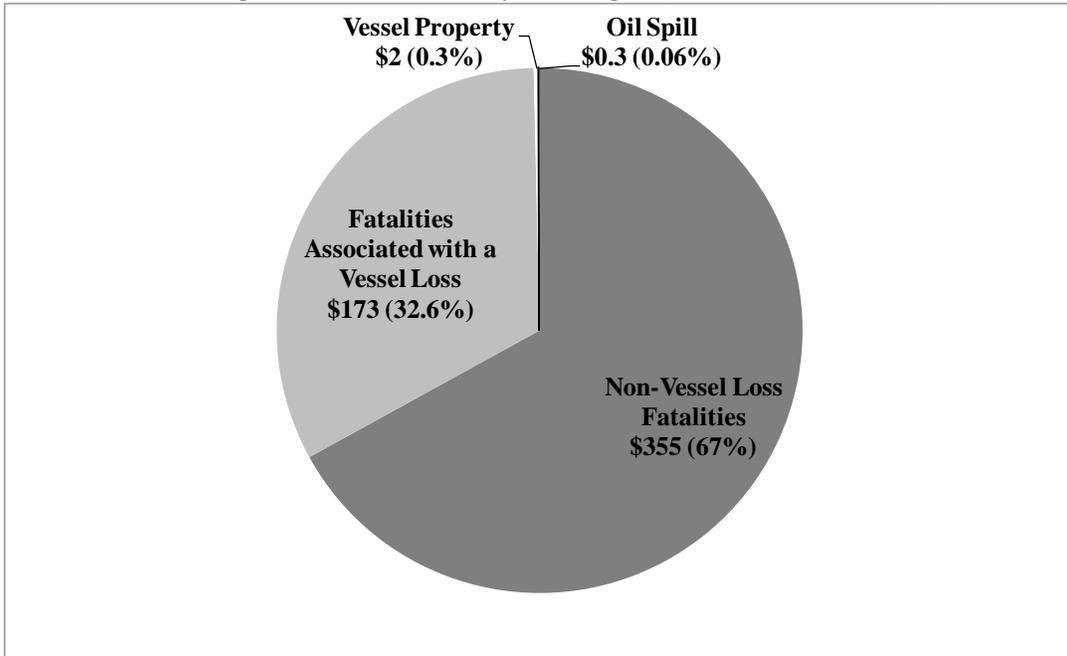
Impact	Monetary Evaluation	Total Effects	Total Monetary Damages (in Millions)	Average Per Year	Average Monetary Damage Per Year (in Millions)
Fatalities from all vessel incidents	\$9.1 million per fatality	426	\$3,876.6	39	\$354.9
Fatalities, from non-vessel loss		221	\$2,011.1	20	\$182
Fatalities, resulting from vessel loss		205	\$1,865.5	19	\$172.9
Lost Vessels (Property Damage)	Varies	851	\$17.3	77	\$1.6
Gallons of Oil Spilled	\$254 per gallon	13,270	\$3.4	1,210	\$0.3

Notes: (1) Fatality values are based on a \$9.1 million value of a statistical life referenced in *Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses*, US DOT, 2013, available at <http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf>.

(2) Vessel lost include property and cargo damages as reported in MISLE.

(3) Oil spilled damages are based on a \$254 damage per gallon of oil spilled as indicated by *Inspection of Towing Vessels, Notice of Proposed Rulemaking, Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis*, USCG-2006-24412, July 2011, available at <http://www.regulations.gov/#!documentDetail;D=USCG-2006-24412-0002>.

Exhibit C: Average Annual Monetary Damages (Values in \$ Millions).



As noted above, we develop monetized benefits for two of the requirements (Survival Craft and Dockside Examinations). In addition to the aforementioned, the following categories of benefits have not been captured due to analysis limitations and scope:⁴⁷

Property and environmental damage. The examination requirements have the potential to prevent the loss of vessels. For example, the dockside examination may identify deficiencies, like a non-functioning high water alarm, that, if activated, could allow the crew to respond in a timely manner to avoid vessel loss. Based on MISLE⁴⁸

⁴⁷ The benefit analysis is achieved on a per vessel basis. That is, the benefits estimated reflect the historical casualty incidents that might have been prevented if the proposed rule were in place. In order to estimate the reduction in property and environmental damage, we would need an algorithm that detailed when the requirements of the proposed rule would reduce the likelihood of vessel loss, requiring a significant amount of analytical effort. Given that property and environmental damages makes up a small fraction (0.58%) of the total annual damages (Exhibit ES-3), the CG sought to focus on the benefits associated with fatalities.

⁴⁸ The Marine Information for Safety and Law Enforcement (MISLE) is a database system managed and used by the U.S. Coast Guard. MISLE is used to store data on marine accidents, pollution incidents, search and rescue cases, law enforcement activities, and vessel inspections/examinations. The public may access portions of the data contained on the MISLE system through the Coast Guard Maritime Information Exchange at: <https://cgmix.uscg.mil/>

data, the baseline value of property damage due to vessel loss is estimated at \$1.6 million per year and the value of oil spill damages is \$0.3 million per year. To the extent a vessel loss is prevented, property damage and oil spills may also be reduced. Also, search and rescue costs and other response costs (such as emergency transportation to hospitals) could be reduced if a vessel loss is prevented.

Injuries. Survival craft and dockside examination provisions could also reduce injuries. According to the National Institute for Occupational Safety and Health, in Alaska during the period of 1991-2002, 798 fishermen were hospitalized for treatment of severe injuries received during fishing activities, an average of 66.5 injuries per year in Alaska alone. These severe injuries can lead to lifetime consequences and include injuries that result in amputation and paralysis. During a vessel loss event, it is not uncommon for survivors to suffer from exposure and hypothermia due to immersion in water or trauma injuries suffered during the sinking. The dockside examinations could prevent vessel losses while the survival craft could reduce the risk of exposure and hypothermia injuries after the vessel is lost.

The quantitative analysis of benefits entailed: a review of historical commercial fishing vessel casualties to determine if they were within the affected population as set by the proposed rule, an assessment of the applicability of each proposed rule feature as it relates to the risk reduction when compared to historical casualties, and an estimation of the effectiveness of each proposed rule feature as decided by subject matter experts.

The primary and high estimate of benefits for each category is summarized in Table 19. The estimate of monetized annualized benefits is \$7.1 million at a 7 percent discount rate. The high estimate of benefits is \$9.4 million at 7 percent discount rate.

The high estimates are based on an extrapolation from casualty reports that contain detailed information on the cause of the casualty to casualties that contain limited information on the cause of the casualty. With commercial fishing vessels casualties, it is not unusual for a vessel to be lost at sea with no survivors. In these cases, the casualty report may contain limited information as to the causal factors for the loss to be able to make a confident determination of the potential for risk reduction. Based on our review of the casualty reports, we found approximately 20 percent of the cases contained too limited information to attempt an estimation of potential benefits for use in the primary estimate. To the extent these limited information casualties are similar to those that contain more detailed information, we are likely to underestimate benefits. We have included these limited information casualties only in a high estimate and not in our primary benefits estimate to show the a possible range of quantified benefits.

Table 20: Summary of Annualized Benefits (7 Percent, \$ Millions).

Category	Estimation of Benefits	
	Primary Baseline Incidents	Primary + Limited Information Incidents
Survival Craft ⁴⁹	\$4.8	6.3
Examinations and Certificates of Compliance	\$2.3	\$3.1
Total	\$7.1	\$9.4

Comparison of Costs and Benefits

⁴⁹ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

The annualized costs to government and industry for the proposed rule over the 10-year period are estimated at \$39.7 million at a 7 percent discount rate. The estimate of annualized quantified benefits ranges between \$7.1 and \$9.4 million, with a primary estimate of monetized annualized benefits of \$7.1 million at a 7 percent discount rate. We did not estimate monetized benefits for several requirements, including recordkeeping for equipment maintenance and classing certain newly built vessels. As stated previously, one-hundred percent of the costs of this rule are Congressionally mandated. The Coast Guard does not have the authority to alter the provisions of this rule to lessen the economic impacts of this rule on the fishing industry.

Table 21: Proposed Rule, Summary of Quantified Annualized Costs and Annualized Benefits (7 Percent, Values in \$ Millions).

Category	Annualized Costs to Industry and Government	Primary		High		Benefits not Captured
		Total Annualized Benefits	Net Annualized Benefits	Total Annualized Benefits	Net Annualized Benefits	
(1) Survival Craft ⁵⁰	\$9.1	\$4.8	(\$4.3)	\$6.3	(\$2.8)	Injuries (such as non-fatal hypothermia)
(3) Examination and Certificates of Compliance	\$8.6	\$2.3	(\$6.3)	\$3.1	(\$5.5)	Reduced property and environmental damages, and injuries
Total	\$17.70	\$7.1	(\$10.6)	\$9.4	(\$8.3)	

Table 22: Proposed Rule, Summary of Provisions – Benefits Not Quantified (7 Percent, Values in \$ Millions).

Category	Annualized Costs to Industry and Government	Beneficial Impacts
(2) Records	\$0.65	Enhances ability to determine and track compliance
(4) Classing of Vessel, Third Party ⁵¹	\$21.2	Ensures vessel has safe design and is maintained as designed
Total	\$21.85	

⁵⁰ The Coast Guard Authorization Act of 2015, Pub. L. 114-120, amended 46 U.S.C. 3104 by removing language mandating that we require survival craft on all CFVs to protect occupants against immersion in water. The survival craft provisions of 46 U.S.C. 4502 were unaffected and therefore those provisions continue to apply to subpart C survival craft. The 2015 legislation will be addressed in a future rulemaking.

⁵¹ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization...” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

Breakeven Analysis

We also examined the risk reduction from the total casualty baseline required for the benefits of the proposed rule to exceed the costs (Table 23). Overall, the proposed rule would need to prevent 4.4 fatalities per year for the benefits to equal the costs, a reduction of 23 percent from the baseline of 19 annual casualties resulting from the loss of fishing vessels.

Table 23: Proposed Rule, Breakeven Analysis (7 Percent, \$ Millions).

Proposed Rule Requirement	Annualized Costs to Industry and Government	Fatalities Prevented to Breakeven	Percent Reduction in Total Fishing Vessel Loss Casualties to Breakeven
(1) Survival Craft	\$9.10	1.0	5.3%
(2) Records	\$.70	0.1	0.4%
(3) Examination and Certificates of Compliance	\$8.6	0.9	5%
(4) Classing of Vessel, Third Party ⁵²	\$21.30	2.3	12.3%
Total for Authorization Act Requirements	\$39.7	4.4	23%

Alternatives

Consistent with Executive Order 12866, an agency shall identify and assess available alternatives to direct regulation. The agency should consider a range of potentially effective and reasonably feasible regulatory alternatives. We analyzed and assessed the effectiveness of the following alternatives:

⁵² Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization... .” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

- Alternative 1: No Action;
- Alternative 2: Implementation through Guidance;
- Alternative 3: Regulation to Align Non-Discretionary Requirements with Statute;
- Alternative 4: Discretionary Stringency in Dockside Examination Frequency; and
- Alternative 5: Discretionary Implementation of Person-in-Charge Training.

We conducted a screening of alternatives based on an assessment of the negative and positive impacts. Table 24 presents the results, which indicate that Alternative 3 is the preferred alternative. In this proposed rule, the Coast Guard is implementing Alternative 3. Alternative 3 harmonizes Coast Guard regulations with statutes to eliminate uncertainty and enhance clarity. Under Alternatives 1 and 2, Coast Guard regulations and applicable statutes would continue to be inconsistent, leading to confusion and uncertainty, particularly regarding enforcement authority. Alternatives 4 and 5 have the potential to increase safety and costs, but both require the exercise of discretionary authority and should be subject to notice and public comment before implementing.

Table 24: Screening of Alternatives.

Alternatives	Description	Negative Impacts	Relative Impacts
Alternative 1	No Action	CG regulations would be inconsistent with Federal mandate, generating uncertainty about compliance and enforcement	Safety improvements would be diminished due to confusion and uncertainty about compliance and enforcement.
		Costs to industry would be incurred to comply with Statute	
Alternative 2	Implementation through Guidance	CG regulations would be inconsistent with Federal mandate, generating uncertainty about compliance and enforcement	Guidance could reduce some confusion, but uncertainty about compliance and enforcement would remain.
		Costs to industry would be incurred to comply with Statute	
Alternative 3	Regulation to Align Non-Discretionary Requirements with Statute	Costs to industry would be incurred to comply with regulations	Increased safety due to survival craft, dockside examinations, and the classing of new vessels
			Harmonizes CG regulations with Statute to eliminate uncertainty about compliance and enforcement.
Alternative 4	Discretionary Stringency in Dockside Examination Frequency	Added costs due to more frequent examinations	Increased safety resulting from the more timely identification of condition and compliance deficiencies.
		Requires exercise of discretionary authority	Decrease in the incidence of deficiencies.
Alternative 5	Discretionary Implementation of Person-in-Charge Training	Added costs due to person in charge training	Increased safety resulting from training on seamanship, stability, collision prevention, navigation, fire fighting and prevention, damage control and emergency communication, personal survival, emergency medical care, emergency drills, and weather.
		Requires exercise of discretionary authority	

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by

the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

The Coast Guard prepared an analysis on the potential economic impacts of this proposed rule on small entities. A combined Regulatory Analysis and Initial Regulatory Flexibility Analysis discussing the impact the proposed rule would have on small entities is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble.

Based on the current data provided by the Coast Guard’s MISLE database, we estimate that there are potentially 16,730 owners of 17,237 documented commercial fishing vessels. As we do not have data that distinguishes those vessels that operate beyond and within 3 nautical miles of the baseline, we use documented fishing vessels as a proxy for the 36,115 vessels that operate beyond 3 nautical miles for the purposes of determining the ownership characteristics and revenues of small entities under the proposed rule. Operations and fisheries for undocumented vessels operating beyond 3 nautical miles are similar to small documented vessels that operate beyond 3 nautical miles. Although by definition undocumented vessels are smaller than documented vessels, for operational purposes a 4.9 net ton vessel is very similar in equipment, manning, operations and fisheries to a 5 net ton vessel, but one is classified as undocumented (≤ 4.9 net tons) and the other is documented (≥ 5 net tons). Given that the operational area, defined by operating beyond 3 nautical miles of the baseline, indicates similar operations and fisheries, and because smaller vessel size is inversely related to

operating beyond three nautical miles, using documented vessels to represent impacts to small entities is a reasonable proxy and is the best data available. As such, undocumented vessels that operate beyond three nautical miles are assumed to be represented within the revenue distribution of documented vessels and other vessel characteristics (age, structural integrity, etc.).

In our review of the MISLE ownership data for documented fishing vessels, we found 1,612 vessel owners of 1,615 vessels that had a non-business organization type. Of these, 1,562 vessels are owned by an organization that had an “unknown” organization type, 4 are owned by the Federal government, 45 are owned by trusts, and 4 are owned by non-profits.

Of the remaining documented commercial fishing vessels, almost all (over 99 percent) are owned by small businesses, as determined by SBA small business size standards.⁵³ Many of the small businesses are classified as NAICS 141111 (Finfish) and 141112 (Shellfish), although many have a non-fishing primary NAICS classification. Of this target population, we examined publicly available revenue information on 360 vessel owners that owned 762 vessels. We assume that the remaining 3,273 owners of 3,375 vessels (for which revenue information was unavailable) are small businesses for the purpose of this analysis. Of those 360 owners for which revenue and employment information was available, we found 17 entities owning 204 vessels that exceeded the small business thresholds for their relevant NAICS code. The remaining 343 entities owning the remaining 558 vessels are small businesses as defined by the NAICS

⁵³ SBA small business standards are based on either company revenue or number of employees. Many companies in our sample have employee numbers determining them small, but we were unable to find annual revenue data to pair with the employee data.

thresholds.

Table 25 summarizes the proposed rule cost on a per vessel basis. If a vessel incurs all of the cost items, the maximum total initial and recurring costs are \$812,358 and \$11,118 respectively. We estimate that the 260 vessels that undergo classing would incur the maximum cost, representing less than 1 percent of the affected population. To reflect a more likely cost impact on the typical commercial fishing vessel, we calculate a weighted cost using a Monte Carlo simulation described in Appendix H of the Regulatory Impact Analysis. Assigning the full burden of the cost to the remaining population of 35,855 would distort the estimated regulatory burden⁵⁴. The weighted implementation and recurring cost, on a per vessel basis, for requirements (1), (2), (3), and (4) are \$7,643 and \$897, respectively. For the most part, commercial fishing vessel owners own 1 vessel. In our sample, when an entity owns more than 1 vessel, we calculate the cost per entity by multiplying the cost per vessel by the number of vessels owned.

⁵⁴ In an effort to capture the impact of requirement “(4) Classing of Vessels, Third Party,” we simulated the costs based on probability. Specifically, we used a Monte Carlo simulation to better understand the uncertainty in our costs estimate. For a more detailed discussion, refer to Appendix H.

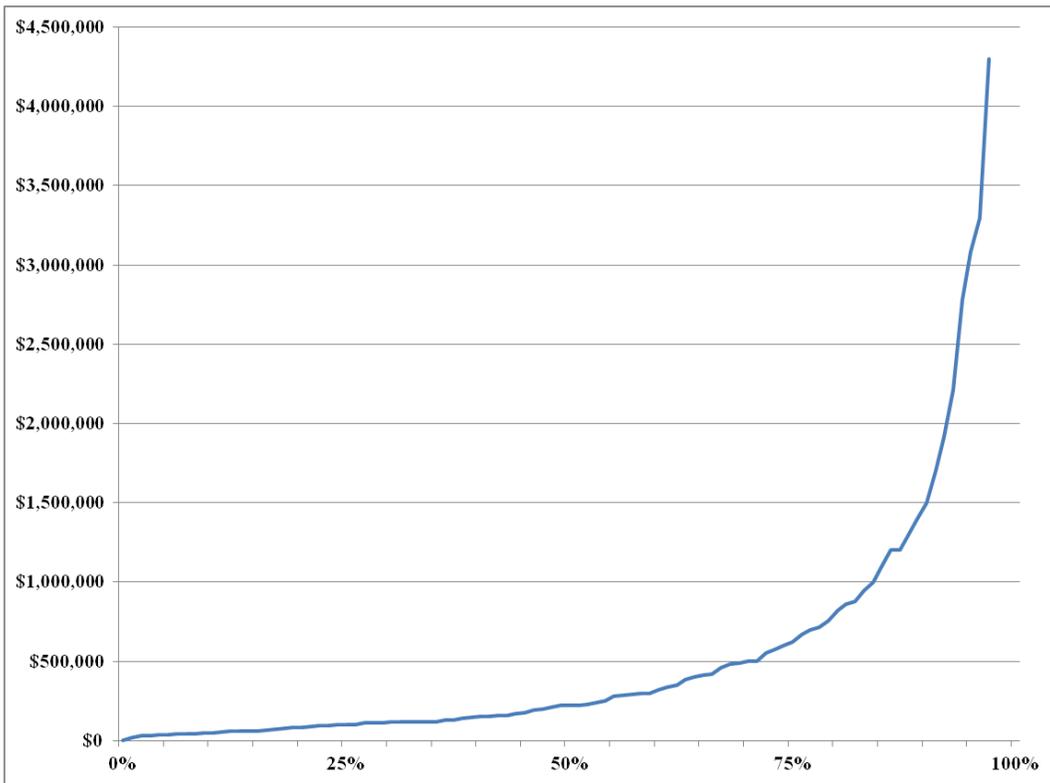
Table 25: Proposed Rule Weighted Average Cost Per Vessel.

Requirement	Affected Population	Weight	Maximum Costs		Weighted Costs ⁵⁵	
			Initial	Recurring	Initial	Recurring
(1) Survival Craft	24,771	68.6%	\$1,740	\$300	\$1,193	\$206
(2) Records	36,115	100.0%	\$18	\$18	\$18	\$18
(3) Examinations and Certificates of Completion	36,115	100.0%	\$600	\$600	\$600	\$600
(4) Classing of Vessels, Third Party ⁵⁶	260	0.7%	\$810,000	\$10,200	\$5,831	\$73
Total Cost Per Vessel			\$812,358	\$11,118	\$7,643	\$897

⁵⁵ The weighted costs is a calculation of a vessel’s cost in which each regulatory requirement is proportionately weighted by the affected population. That is, each regulatory requirement is assigned a weight based on the relative size of the affected population.

⁵⁶ Sec. 318(a) of the Coast Guard Authorization Act of 2015, Pub. L. 114-120, changed the applicability of classing requirements for CFVs. The 2010 and 2012 legislation extended the classing requirement to CFVs of 50 feet or more overall in length and built before July 1, 2013. The 2015 Act exempts from that requirement CFVs of at least 50 and not more than 79 feet overall in length, and built after Feb. 8, 2016, provided their construction is overseen by a State-licensed naval architect or marine engineer, and their design “incorporates standards equivalent to those prescribed by a classification society... or another qualified organization... .” This NPRM does not incorporate any of the 2015 provisions, which must be reflected in our regulations through future regulatory action.

Exhibit D: Distribution* of Revenues for Commercial Fishing Vessels



*For presentation purposes the top two percentiles were excluded.

For the initial implementation period, based on MANTA revenue estimates, 18 percent of affected owners will incur a cost of 1 percent or less of revenues, while 17 percent will incur a cost impact of between 10 and 30 percent of revenues.

Approximately 6 percent will incur costs greater than 30 percent of revenues. (Table 25). For the recurring costs, 74 percent of fishing vessel owners will incur 1 percent or less of revenues. The Coast Guard expects this rule will have a significant economic impact on

a substantial number of small entities. As discussed previously, this rulemaking would implement only the mandatory provisions required by Congress and for which the Coast Guard cannot exercise discretion. Therefore, the Coast Guard does not have the authority to grant relief to small businesses from the cost of this rule.

Table 26: Revenue Impacts on Affected Small Businesses.

Impact Range	Initial Implementation Impact	Recurring Impact
0% < Impact ≤ 1%	18%	74%
1% < Impact ≤ 3%	21%	19%
3% < Impact ≤ 5%	13%	3%
5% < Impact ≤ 10%	24%	2%
10% < Impact ≤ 30%	17%	1.5%
≥ 30%	6%	0.3%

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard (see FOR FURTHER INFORMATION CONTACT). 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 calls for a revision to an existing 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 title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

TITLE: Commercial Fishing Industry Vessel Regulations

OMB CONTROL NUMBER: 1625-0061.

SUMMARY OF THE COLLECTION OF INFORMATION:

Sections 28.140, 28.155, 28.201, and 28.270 of this proposed rule would amend the collection-of-information requirements for vessel owners and operators of certain U.S. commercial fishing vessels. These changes would require vessel owners and

operators that operate beyond 3 nautical miles of the baseline to document lifesaving equipment maintenance and inspection and instructions and drills.

Vessel owners and operators of subpart C CFVs (those operating beyond 3 nautical miles, or with more than 16 individuals on board, or that are Aleutian fish tenders) must also document the completion of a dockside examination at least once every 5 years. These new requirements would require a change in previously approved OMB Collection 1625-0061.

NEED FOR INFORMATION: The Coast Guard needs this information to determine whether a vessel meets the new regulatory requirements for dockside examinations, and documentation of certain activities.

PROPOSED USE OF INFORMATION: The Coast Guard would use this information to determine whether a vessel meets the new regulatory requirements for dockside examinations, and documentation of certain activities.

DESCRIPTION OF RESPONDENTS: The respondents are vessel owners and operators of certain U.S. commercial fishing vessels.

NUMBER OF RESPONDENTS: This proposed rule would increase the number of respondents in this OMB-approved collection by 36,115 as operators of certain commercial fishing vessels would need to document dockside examinations, and certain maintenance activities.

FREQUENCY OF RESPONSE: This proposed rule would vary the number of responses each year by requirement. Details are shown in Table 27.

BURDEN OF RESPONSE: The burden of response for each regulatory requirement varies. Details are shown in Table 27.

ESTIMATE OF TOTAL ANNUAL BURDEN: The annual increase in burden from this rule would be approximately 20,251 hours. That includes 14,446 hours from the private sector (36,115 responses) and an additional government burden estimated at 5,805 hours for 23,221 responses.

Table 27: Collection of Information by NPRM Requirement

NPRM Requirement	Frequency	Duration (hours)	Annual Duration (hours)	Number of Vessels	Wage Rate	Number of Responses per Year	Total Number of Responses	Annual Burden	Annual Cost
<i>Records, Documentation of Equipment Maintenance, and Inspection</i>	Varies	0.4	0.4	36,115	\$45	1	36,115	14,446	\$652,324
<i>Examination and Certificates of Compliance, Documentation</i>	Once over the first three years	0.25	0.25	23,221	\$45	1	23,221	5,805	\$262,142
Additional Burden for NPRM							59,336	20,251	\$914,465
<i>Government Costs, Examination and Certificates of Compliance</i>	Once over the first three years	0.25	0.25	23,221	\$66	1	23,221	5,805	\$377,341

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3,507(d), we have submitted a copy of this rule and an information request to OMB for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132⁵⁷ 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 is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

As noted above, this proposed rule would implement the statutory requirements enacted by the CGAA and CGMTA. In certain instances, Congress amended the scope and applicability of existing laws for uninspected commercial fishing vessels. For instance, the CGAA amended the applicability of 46 U.S.C. 4502(b)(1) so that previously promulgated equipment regulations are now required for undocumented commercial fishing vessels. Additionally, Congress changed the applicability of the statute to commercial fishing vessels that operate beyond "3 nautical miles from the baseline from

⁵⁷ "Federalism," 64 FR 43255 (Aug. 4, 1999).

which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes." Therefore, regulations promulgated under 46 U.S.C. 4502(b)(1), including those promulgated under its amended applicability, are within fields foreclosed from state or local regulation.

Congress also amended existing 46 U.S.C. 4502(b)(2), which directed the Coast Guard, via delegation by the Secretary, to promulgate regulations in the field of marine radios, survival craft, navigation equipment, medical supplies, and ground tackle for both documented and undocumented uninspected fishing vessels, fish processing vessels, or fish tender vessels, that operate beyond three nautical miles from the baseline, operate with more than 16 individuals on board, or that is a fish tender vessel that engages in the Aleutian trade. The Coast Guard has been granted the exclusive authority to promulgate regulations within these fields for these specific vessels and, consequently, these regulations are within fields foreclosed from state or local regulation.

Congress also directed the Coast Guard, via delegation by the Secretary, to promulgate additional regulations under for documented and undocumented uninspected commercial fishing vessels, fish processing vessels, or fish tender vessels, that operate beyond three nautical miles from the baseline, operate with more than 16 individuals on board, or that is a fish tender vessel that engages in the Aleutian trade. Specifically, Congress directed the Coast Guard to promulgate regulations for the training and certification of individuals in charge of these vessels, regulations requiring the individuals in charge of these vessels to maintain a record of equipment maintenance, required instruction and drills, and regulations that require dockside examinations and the issuance of certificates of compliance for these vessels. The Coast Guard has been

granted the exclusive authority to promulgate regulations within the fields of training⁵⁸ and certification of individuals in charge, record-keeping, dockside examinations, and the issuance of certificates of compliance for subpart C CFVs, and consequently these regulations are also within fields foreclosed from state or local regulation.

Congress also established a new subsection in 46 U.S.C. 4502 that requires documented and undocumented uninspected fishing vessels, fish processing vessels, or fish tender vessels, that operate beyond 3 nautical miles from the baseline, operate with more than 16 individuals on board, or that is a fish tender vessel that engages in the Aleutian trade, to meet a level of safety equivalent to the minimum safety standards established by the Coast Guard for recreational vessels, promulgated under 46 U.S.C. 4302, so long as these commercial fishing vessels are less than 50 feet overall in length and are built after January 1, 2010. Regulations promulgated under 46 U.S.C. 4302 are within fields that Congress gave the Coast Guard the exclusive authority to regulate, and therefore, these regulations are within fields foreclosed from state or local regulation.

Additionally, Congress expanded the applicability of 46 U.S.C. 4503 for survey and classification requirements to documented or undocumented uninspected fishing vessels, fish processing vessels, or fish tender vessels, that operate beyond 3 nautical miles from the baseline, operate with more than 16 individuals on board, or that is a fish tender vessel that engages in the Aleutian trade, and that are also at least 50 feet overall in length and are built after July 1, 2013. The Coast Guard has been granted the exclusive authority to promulgate regulations for survey and classification requirements for these

⁵⁸ Because regulations on training require the exercise of the Coast Guard's discretion, and this proposed rule would be confined to implementing those statutory mandates that do not require the exercise of discretion, training will be the subject of future Coast Guard regulatory action and is not covered by the proposed rule.

specific vessels and, consequently, these regulations are within fields foreclosed from state or local regulation.

Furthermore, Congress amended 46 U.S.C. 5102, so that fishing vessels built after July 1, 2013, must now be assigned a load line. The Coast Guard has been granted the exclusive authority to promulgate load line requirements for fishing vessels built after July 1, 2013. The regulations promulgated under 46 U.S.C. 5104 with respect to load lines for these vessels are within a field foreclosed from state or local regulation.

Lastly, Congress enacted 46 U.S.C. 2117, which grants the Coast Guard the authority to terminate a commercial fishing vessel's operations if an authorized individual determines that unsafe conditions exist. For these specific vessels, Congress granted to the Coast Guard the exclusive authority to enforce this section and to issue regulations pertaining to the termination of unsafe operations. These regulations, therefore, would be within a field foreclosed from state or local regulation.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

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

This rule is neither economically significant under Executive Order 12866 nor does it create an environmental risk to health or a risk to safety within the meaning of Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order. Though it is a “significant regulatory action” under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through 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.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(c), (d), and (e) of the Instruction, and under sections 6(a) and 6(b) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, July 23, 2002). This proposed rule involves training of personnel, inspection and equipping of vessels, equipment approval and carriage requirements, vessel operation safety equipment and standards, and congressionally mandated regulations that protect the environment. An environmental analysis checklist is available in the docket where indicated under ADDRESSES.

List of Subjects

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 28 as follows:

TITLE 46--SHIPPING

PART 28 - REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1, para. II (92.a), (92.b), (92.d), (92.g).

2. Amend § 28.65 by revising paragraph (a) to read as follows and by removing paragraph (c).

§ 28.65 Termination of unsafe operations.

(a) A Coast Guard Boarding Officer is an individual authorized to enforce Title 46 of the United States Code for the purposes of 46 U.S.C. 2117 and may--

(1) Remove a certificate required by Title 46 from a vessel that is operating in a condition that does not comply with the provisions of the certificate;

(2) Order the master of a vessel that is operating that does not have onboard the certificate required by Title 46 to return the vessel to a mooring and to remain there until the vessel is in compliance with that title; and

(3) Direct the master of a vessel to which Title 46 applies to immediately take reasonable steps necessary for the safety of individuals onboard the vessel if the Boarding Officer observes the vessel being operated in an unsafe condition that the official believes creates an especially hazardous condition, including ordering the master to return the vessel to a mooring and remain there until the situation creating the hazard is corrected or ended.

* * * * *

3. Amend § 28.110 by revising Table 28.110 to read as follows:

§ 28.110 Life preservers or other personal flotation devices.

* * * * *

Table 28.110—Personal Flotation Devices and Immersion Suits

Applicable waters	Vessel type	Devices required	Other regulations
Beyond 3 nautical miles from the baseline from which the territorial sea of the U.S. is measured and north of 32°N or south of 32°S; and Lake Superior.	Documented.	Immersion suit or exposure suit.	28.135; 25.25–9(a); 25.25–13; 25.25–15.
Coastal waters on the west coast of the U.S. north of Point Reyes, CA; beyond coastal waters, cold water; and Lake Superior.	All.	Immersion suit or exposure suit.	28.135; 25.25–9(a); 25.25–13; 25.25–15.
All other waters (includes all Great Lakes except Lake Superior).	40 feet (12.2 meters) or more in length	Type I, Type V commercial hybrid, immersion suit, or exposure suit. ¹	28.135; 25.25–5(e); 25.25–5(f); 25.25–9(a); 25.25–13; 25.25–15.
	Less than 40 feet (12.2 meters) in length	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, or exposure suit. ¹	28.135; 25.25–5(e); 25.25–5(f); 25.25–9(a); 25.25–13; 25.25–15.

¹Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval table.

4. In § 28.120, add paragraph (i) to read as follows:

§ 28.120 Survival craft.

* * * * *

(i) On any vessel to which subpart C of this part applies, a survival craft described in this section must ensure that no part of an individual is immersed in water.

5. Amend § 28.130 by adding paragraph (e) to read as follows:

§ 28.130 Survival craft equipment.

* * * * *

(e) On any vessel to which subpart C of this part applies, a survival craft described in this section must ensure that no part of an individual is immersed in water.

6. Add § 28.170 to read as follows:

§ 28.170 Load lines.

Each fishing vessel built after July 1, 2013, must be assigned a load line in accordance with Subchapter E (Load Lines) of this chapter if it is 79 feet in length or greater, and operates outside the Boundary Line (per part 7 of this chapter).

7. Revise the heading for 46 CFR part 28, subpart C, to read as follows:

Subpart C – Requirements for Vessels Operating Beyond 3 Nautical miles, or With More Than 16 Individuals Onboard, or As Fish Tender Vessels Engaged in the Aleutian Trade

8. Amend § 28.200 as follows:

a. Revise the section heading;

b. Designate the introductory text as new paragraph (a) and remove the word “documented,” and redesignate existing paragraphs (a), (b), and (c) as paragraphs (a)(1), (2), and (3), respectively;

c. In newly redesignated paragraph (a)(1), remove the words “the Boundary Lines” and add, in their place, the words “3 nautical miles from the baseline by which the territorial sea of the U.S. is measured”; and

d. Add new paragraph (b).

The revision and addition to read as follows:

§ 28.200 Applicability; documentation of maintenance, training, and drills.

(b) The individual in charge of a vessel described in paragraph (a) of this section must keep a record of equipment maintenance, and required instruction and drills for three years.

9. Add § 28.201 to read as follows:

§ 28.201 Examination and certification.

(a) Each vessel to which this subpart applies must be examined at dockside at least once every 5 years. Topics and equipment covered by the examination are listed on the Coast Guard website, www.fishsafe.info/, and generally cover lifesaving equipment, required documentation, bridge and engine room equipment, and miscellaneous required items. Each vessel meeting the applicable requirements of 46 U.S.C. chapter 45, “Uninspected Commercial Fishing Vessels,” is issued a Coast Guard certificate of compliance following examination.

(b) Each vessel to which this subpart applies that is at least 50 feet overall in length and built after July 1, 2013, must--

(1) Meet all survey and classification requirements prescribed by the American Bureau of Shipping, available at <http://homeport.uscg.mil>, or another similarly qualified organization approved by the Coast Guard; and

(2) Have onboard a certificate issued by the American Bureau of Shipping or that other organization evidencing compliance with paragraph (b) of this section.

(c) A vessel to which this subpart applies that is at least 50 feet overall in length and was classed before July 1, 2012, must remain subject to the requirements of a

classification society approved by the Coast Guard and have onboard a certificate from that society.

10. Add § 28.202 to read as follows:

§ 28.202 Construction requirement for smaller vessels.

Each vessel to which this subpart applies that is less than 50 feet overall in length and built after January 1, 2010, must be constructed in a manner that provides a level of safety equivalent to the recreational vessel regulations in 33 CFR part 183.

11. Amend § 28.205 by adding introductory text to read as follows:

§ 28.205 Fireman's outfits and self-contained breathing apparatus.

For any documented vessel to which this subpart applies:

* * * * *

§ 28.210 [Amended]

12. Amend § 28.210 as follows:

a. In paragraph (a), remove the words “medicine chest of a size suitable for the number of individuals on board”, and add, in their place, the words “medical supplies sufficient for the size and area of operation of the vessel, which on documented vessels must be in a readily accessible location”;

b. In paragraph (b) introductory text, before the words “certification in first aid and CPR”, add the words “On any documented vessel,”;

c. In paragraph (b), remove the word “Certification” and add in its place the word “certification”; and

d. In paragraphs (c), (d), and (e), after the word “Each” and before the word “vessel”, add the word “documented”.

13. Amend § 28.215 by adding introductory text to read as follows:

§ 28.215 Guards for exposed hazards.

For any documented vessel to which this subpart applies:

* * * * *

14. Amend § 28.225 as follows:

a. Redesignate paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and add new paragraph (a); and

b. In newly redesignated paragraph (b) introductory text and in newly redesignated paragraph (c) after the word “Each” and before the word “vessel”, add the word “documented”.

The addition to read as follows:

§ 28.225 Navigational information.

(a) Each vessel must have navigation equipment, including compasses, nautical charts, and publications.

* * * * *

§ 28.230 [Amended]

15. In § 28.230, after the word “Each” and before the word “vessel”, add the word “documented”.

16. Amend § 28.235 as follows:

a. Redesignate paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

b. Add new paragraph (a);

c. In newly redesignated paragraph (b), remove the words “Each vessel” and add, in their place, the words “Each documented vessel”; and

d. In newly redesignated paragraph (c), before the word “nonmetallic”, add the word “documented”.

The addition to read as follows:

§ 28.235 Anchors and radar reflectors.

(a) Each vessel must have ground tackle sufficient for the vessel.

* * * * *

§ 28.240 [Amended]

17. In § 28.240, in paragraph (a), after the word “each” and before the word “vessel”, add the word “documented”.

18. Amend § 28.245 as follows:

a. Revise paragraph (a) introductory text;

b. In paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) after the word “Each” and before the word “vessel”, add the word “documented”; and

c. Revise paragraphs (f), (g), (h), and (i).

The revisions to read as follows:

§ 28.245 Communication equipment.

(a) Each vessel must have marine radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities; and except as provided in paragraphs (b) through (e) of this section, each documented vessel must be equipped as follows:

* * * * *

(f) On each documented vessel, the principle operating position of the communication equipment must be at the operating station.

(g) On each documented vessel, communication equipment must be installed to ensure safe operation of the equipment and to facilitate repair. It must be protected against vibration, moisture, temperature, and excessive currents and voltages. It must be located so as to minimize the possibility of water intrusion from windows broken by heavy seas.

(h) On each documented vessel, communication equipment must comply with the technical standards and operating requirements issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

(i) On each documented vessel, all communication equipment must be provided with an emergency source of power that complies with § 28.375 of this part.

§ 28.250 [Amended]

19. In § 28.250, in the introductory text, before the word “vessel”, add the word “documented”.

20. Amend § 28.255 by adding introductory text to read as follows:

§ 28.255 Bilge pumps, bilge piping, and dewatering systems.

For any documented vessel to which this subpart applies:

* * * * *

§ 28.260 [Amended]

21. In § 28.260, after the word “Each” and before the word “vessel”, add the word “documented”.

22. Amend § 28.265 by adding introductory text to read as follows:

§ 28.265 Emergency instructions.

For any documented vessel to which this subpart applies:

* * * * *

23. Amend § 28.270 as follows:

- a. Add a new introductory paragraph; and
- b. Revise the first sentence of paragraph (a).

The additions and revisions to read as follows::

§ 28.270 Instruction, drills, safety orientation, and training.

The master or individual in charge of any documented vessel to which this subpart applies must ensure compliance with this section, but may delegate the actual conduct of instruction and drills required by paragraphs (a) through (d) of this section to a person who may or may not be a member of the crew.

(a) Drills and instruction. Drills must be conducted and instruction must be given to each individual onboard at least once each month. * * *

* * * * *

§ 28.500 [Amended]

24. Amend § 28.500 introductory text by removing the words “that is not required to be issued a load line under subchapter E of this chapter and”.

Dated: June 10, 2016

Paul F. Zukunft,
Admiral, U. S. Coast Guard
Commandant.

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