



**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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May 16 3 14 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7 (30), 20-7-13 And 20-7-22

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Boating Regulations

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____


TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

8.20

Use additional sheets if necessary


Signature

CIRCUMSTANCE STATEMENTS FOR RULES

- 58-25-1. General.
1.2. Authority. Added § 20-7-23.
- 58-25-4 Required Equipment.
4.1.4. Technical change - Title 47 to Title 58.
4.2.1. Deleted "or Type IV" because of federal mandate in 33 CFR Part 175 which became effective May 1, 1995.
4.2.2. Added the exemption for canoes and kayaks 16 feet in length and over from carriage requirements for the additional Type IV PFD. Conforms to exemption granted in 33 CFR Part 175.
4.2.5. Deleted Type IV PFD because it is not a wearable device and may cause drowning if worn. Added the word "personal" for consistency.
- 58-25-3. Fire Extinguishers.
Deleted the exemption for personal watercraft because fire extinguishers are required on all motorboats unless they meet certain requirements that are further explained in the rule.
- 58-25-6. Prohibited Operation.
6.4. Changed to read same as WV Code §20-7-18 which was passed by the 1994 Legislature.
6.8. Technical correction - Title 47 to Title 58
- 58-25-7. Restricted Areas.
7.4. Added. Restricted area buoying was left off previous regulations because of an oversight.
- 58-25-9. Water Skis and Surfboards.
9.3. Changed to read same as language in WV Code §20-7-18 which was passed by the 1994 Legislature.
9.5.1. Added an age requirement for the observer. Needs to be a person who is, or can be, responsible enough to observe and properly report the progress of the skier to the operator. 12 years of age is used in other sections of this rule.
- 58-25-10. Accident Reports.
10.3. Changed to include those elements mandated by previous federal rule and that was subsequently passed by the 1994 Legislature.
10.4. Technical correction on mailing address for the Division of Natural Resources.
- 58-25-11. Boating on Government-Owned Reservoirs.
11.1. Technical correction - Title 47 to Title 58.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Boating Regulations

Type of Rule: Legislative Interpretive Procedural

Agency Division Of Natural Resources

Address State Capitol Complex
Building 3, Room 839
1900 Kanawha Blvd., E.
Charleston, WV. 25305-0668

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

No increase or decrease in current expenditures.

3. Objectives of these rules:

To bring the State of West Virginia Boating Regulations into compliance with Federal Safety Requirements and to incorporate new legislation into regulations.

Rule Title: Boating Regulations

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: May 16, 1995

Signature of Agency Head or Authorized Representative



Charles B. Felton, Jr.
Director

DATE: May 16, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Charles B. Felton, Jr., Director, Division of Natural Resources

EMERGENCY RULE TITLE: Boating Regulations

1. Date of Filing May 16, 1995

2. Statutory authority for promulgating emergency rule:

33 CFR Part 175, 20-1-7 (30), 20-7-13, 20-7-22 and 20-7-23

3. Date of filing of proposed legislative rule: _____

May 16, 1995

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

Amends current legislative rule

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Promulgation of 33 CFR Part 175 with an effective date of May 1, 1995 necessitates the promulgation of this rule. More stringent safety requirements as it relates to the carrying of Personal Flotation Devices is required by the federal CFR. A copy of the CFR is attached.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

33 CFR Part 175 has an effective date of May 1, 1995.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Failure to promulgate this rule would cause boaters to be solely under the jurisdiction of the U. S. Coast Guard and could necessitate the operator of the motorboat or vessel to appear in U. S. Court for failure to comply with the new requirement.~~

SUMMARY OF PROPOSED RULE
CONCERNING
BOATING REGULATIONS

The purpose of this legislative rule is to implement new personal flotation device carriage requirements that are mandated by 33 CFR Part 175 that became effective on May 1, 1995 and to correct several omissions in the previous rule. DNR learned of the new federal requirements after several state newspapers published a U. S. Coast Guard news release during the latter part of April 1995.

PREAMBLE TO A PROPOSED RULE
CONCERNING
BOATING REGULATIONS

AGENCY: Bureau of Commerce, Division of Natural Resources

REGULATION: Title 58, Series 25, "Boating Regulations"

ACTION: Filing of a proposed legislative rule.

SUMMARY: Amends current rule to comply with new mandated requirements from the U. S. Coast Guard and published in 33 CFR Part 175. This mandate became effective May 1, 1995. Other changes are necessary because of several omissions and changes in state law.

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

EMERGENCY RULE

SERIES 25
BOATING REGULATIONS

§58-25-1. General.

1.1. Scope. -- This emergency rule establishes regulations to govern the operation of motorboats and other vessels on the waters of this State.

1.2. Authority. -- W. Va. Code §§20-1-7(30), 20-7-13, and 20-7-22, and 20-7-23.

1.3. Filing Date. --

1.4. Effective Date. --

§58-25-2. Definitions.

2.1. "Coast Guard Approved" means equipment which has been approved by the Commandant of the United States Coast Guard after such equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance of equipment. Such equipment must bear the approval stamp of the United States Coast Guard.

2.2. "Division" means the West Virginia Division of Natural Resources.

2.3. "Fixed System" means a Coast Guard approved fixed fire extinguisher system in a vessel's engine compartment.

2.4. "Government-Owned Reservoir" means natural or artificial impoundment, lake, pond, or reservoir that is partially or wholly within the territorial limits of West Virginia and is owned or administered by the federal government or by the State or any political subdivision thereof.

2.5. "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not such motor is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the United States Bureau of Customs or any federal agency that is the successor thereto.

2.6. "Open Boat" means a vessel on which all engine compartments, fuel tank compartments, and other spaces to which explosive or flammable gases and vapors may flow are open to the

atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.

2.7. "Open to the Atmosphere" means a compartment which has at least fifteen (15) square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

2.8. "Operate" means to navigate or otherwise use a vessel.

2.9. "Person" includes the plural "persons" and means an individual, partnership, firm, corporation, association, or other legal entity.

2.10. "Personal Watercraft" or "PWC" means a small Class A vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a Person sitting, standing, or kneeling on, or being towed behind the vessel rather than the conventional manner of sitting or standing inside the vessel.

2.11. "Racing Shell" or "Rowing Scull" means a manually propelled vessel, recognized by a national or international racing association for use in competitive racing, in which all occupants except a coxswain row, scull, or paddle and which is designed and equipped solely for competitive racing.

2.12. "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

2.13. "Visible" means visible on a dark night with a clear atmosphere.

2.14. "Waters of this State" means any public waters within the territorial limits of this State.

§58-25-3. Classification of Vessels.

3.1. Motorboats and other vessels shall be divided into four (4) classes as follows:

3.1.1. Class A includes vessels of less than sixteen (16) feet in length and all personal watercraft as defined in Section 2 of these regulations.

3.1.2. Class 1 includes vessels of sixteen (16) feet or over and less than twenty-six (26) feet in length.

3.1.3. Class 2 includes vessels of twenty-six (26) feet or over and less than forty (40) feet in length.

3.1.4. Class 3 includes vessels of forty (40) feet or over in length.

§58-25-4. Required Equipment.

4.1. Lights.

4.1.1. From sunset to sunrise and during times of low visibility, a vessel must carry and exhibit the lights prescribed by Section 4.1 of these regulations when the vessel is under way. During such times, no other lights which can be mistaken for those prescribed may be exhibited.

4.1.2. Every white light prescribed by Section 4.1 of these regulations must be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by Section 4.1 of these regulations must be of such character as to be visible at a distance of at least one (1) mile.

4.1.3. Except for personal watercraft and as provided in Section 4.1.4 of these regulations, motorboats of Class A must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.4. Except for personal watercraft, motorboats of Class A must be equipped with the lights required for motorboats of Class 1 under Section 4.1.5 of these regulations whenever operated on one of the bodies of water designated in 4758 CSR 25B.

4.1.5. Motorboats of Class 1 must be equipped with the following lights:

4.1.5.a. A bright white light aft to show all around the horizon.

4.1.5.b. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port and so fixed as to throw the lights ten (10) points on each side of the vessel (i.e., from directly ahead to two (2) points abaft the beam on either side).

4.1.6. Motorboats of Class 2 or Class 3 must be equipped with the following lights:

4.1.6.a. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light 10 points on each side of the vessel (i.e., from directly ahead to 2 points abaft the beam on either side).

4.1.6.b. A bright white light aft to show all around the horizon and higher than the white light forward.

4.1.6.c. On the starboard side, a green light so constructed as to show an unbroken light over an arc of the horizon

of 10 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on the starboard side. On the port side, a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on the port side. These side lights must be fitted with inboard screens of sufficient height to prevent the lights from being seen across the bow.

4.1.7. A vessel propelled by sail and machinery must exhibit the lights required for a motorboat of the same class propelled by machinery alone.

4.1.8. A vessel propelled by sail alone must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.9. When propelled by sail alone, a vessel must exhibit the white light aft as prescribed in Section 4.1.5.a of these regulations and either the combined lantern as prescribed in Section 4.1.5.b of these regulations or the colored side lights as prescribed in Section 4.1.6 of these regulations.

4.1.10. A vessel propelled manually must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.10.a. Racing shells and rowing sculls are exempt from the provisions of Section 4.1.10 of these regulations.

4.1.11. Any vessel may carry and exhibit the lights required by 33 U.S.C. §§1051-1094 (Regulations for Preventing Collisions at Sea) in lieu of the lights required by Section 4.1 of these regulations.

4.2. Personal Floatation Devices.

4.2.1. Except for personal watercraft, Class A vessels must carry a Type I, Type II or, Type III, ~~or Type IV~~ personal floatation device for each person on board or being towed.

4.2.2. Motorboats and other vessels of Class 1, Class 2, or Class 3 must carry a Type I, Type II, or Type III personal floatation device for each person on board or being towed and at least one Type IV personal floatation device, except that canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV personal floatation device.

4.2.3. All personal floatation devices prescribed by Section 4.2. of these regulations must be Coast Guard Approved and must be maintained in a good and serviceable condition. Type I, II, and III personal floatation devices must be kept readily available for use at all times; Type IV personal floatation devices must be kept

immediately available for use at all times.

4.2.4. Racing shells and rowing sculls are exempt from the provisions of Section 4.2.1 and 4.2.2 of these regulations.

4.2.5. Any person operating, riding as a passenger, or being towed behind a personal watercraft must wear a Type I, II, or III, ~~or-IV~~ personal floatation device approved by the United States Coast Guard.

4.3. Fire Extinguishers.

4.3.1. Motorboats with no fixed system.

4.3.1.a. Motorboats of Class A or Class 1 must carry at least one (1) Type B-I or Type B-II fire extinguishers unless exempted from this requirements under Section 4.3.1.d of these regulations.

4.3.1.b. Motorboats of Class 2 must carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.1.c. Motorboats of Class 3 must carry either three (3) Type B-I fire extinguishers or one (1) Type B-I and one (1) Type B-II fire extinguishers.

4.3.1.d. Motorboats of Class A or Class 1 need not carry a fire extinguisher if ~~they are a personal watercraft or~~ the following conditions are met:

4.3.1.d.A. The construction of the motorboat is such that flammable or explosive vapors cannot be trapped within;

4.3.1.d.B. The motorboat has no enclosed engine compartments; and

4.3.1.d.C. The motorboat has no permanently-installed fuel tanks.

4.3.2. Motorboats with a fixed system.

4.3.2.a. Motorboats of Class 2 must carry at least one (1) Type B-I fire extinguisher.

4.3.2.b. Motorboats of Class 3 must carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.3. All fire extinguishers prescribed by Section 4.3 of these regulations must be Coast Guard approved, must be fully charged, must be maintained in a good and serviceable condition, and must be readily available for use at all times.

4.4. Signalling Devices.

4.4.1. Except for personal watercraft, all vessels of Class A or Class 1 must carry a mouth whistle or a power-operated horn or whistle capable of producing a blast at least two (2) seconds in duration which is audible for a distance of at least one-half (1/2) mile.

4.4.2. All vessels of Class 2 must carry a hand-operated or power-operated horn capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.3. All vessels of Class 3 must carry a power-operated horn or whistle capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.4. All vessels of Class 2 or Class 3 must carry a bell which, when struck, produces a clear tone.

4.5. Ventilation Systems.

4.5.1. All motorboats, except open boats, which use gasoline or any other fuel which has a flash point of 110° Fahrenheit or less must have at least two (2) ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment.

4.5.1.a. At least one (1) exhaust duct must be installed that extends from the lower portion of the bilge to the open atmosphere.

4.5.1.b. At least one (1) intake duct must be installed that extends from the open atmosphere to a point that is either at least midway to the bilge or at least below the level of the carburetor air intake.

4.5.1.c. Cowls must be located and trimmed for maximum effectiveness in preventing displaced fumes from being recirculated.

4.5.2. The ventilation requirements of Section 4.5.1 of these regulations do not apply to a fuel tank compartment which:

4.5.2.a. Contains only permanently-installed fuel tanks;

4.5.2.b. Vents to the open atmosphere; and

4.5.2.c. Contains only electrical components which are ignition-protection in accordance with 33 C.F.R. §183.410(a).

4.5.3. All vessels built after July 1, 1980, except open boats, which have a gasoline engine for electrical generation, mechanical power, or propulsion must have a ventilation system that

meets the requirements of Subpart K of 33 C.F.R. Part 183.

4.6. Flame Arrestors.

4.6.1. The carburetors of motorboats of Class A, Class 1, Class 2, or Class 3 which have a gasoline engine, except outboard motors, must be fitted with a Coast Guard approved device for arresting backfire flames.

§58-25-5. Right-of-Way.

5.1. When two vessels are approaching each other head on or nearly so as to involve a risk of collision with each other, each vessel must bear to starboard and pass the other vessel on its port side.

5.2. When vessels approach each other obliquely or at right angles, the vessel approaching from the starboard has the right-of-way.

5.3. One vessel may overtake another on either side but must grant the right-of-way to the overtaken vessel.

5.3.1. Before passing another vessel to starboard, one (1) blast of one (1) second in duration must be sounded by whistle or horn.

5.3.2. Before passing another vessel to port, two (2) blasts of one (1) second in duration must be sounded by whistle or horn.

5.4. When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat must yield the right-of-way to the sailboat in all cases.

5.5. All vessels must be operated in conformance with the inland navigation rules of the United States Coast Guard (Commandant Instruction M16672.2A).

§58-25-6. Prohibited Operations.

6.1. No person under the age of fifteen (15) shall operated or be permitted to operate a motorboat or personal watercraft upon the waters of the State, except persons twelve (12) to fifteen (15) years of age may operate a motorboat or personal watercraft if a person over eighteen (18) years of age is aboard the motorboat or personal watercraft, however, persons twelve (12) to fifteen (15) years of age may operate a motorboat up to a maximum of ten (10) horsepower without having an adult on board.

6.1.1. No person who owns a motorboat or personal watercraft or who has charge over or control of a motorboat or personal watercraft shall authorize or knowingly permit a motorboat or personal watercraft to be operated in violation of these regulations.

6.2. No person may operate or give permission for the operation of a vessel which is not equipped as required under the provisions of Section 4 of these regulations.

6.3. No person may operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

~~6.4. No person may operate a vessel while intoxicated or while under the influence of any narcotic drug, barbiturate, or marijuana.~~ No person shall operate any motorboat or vessel while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight.

6.5. No person may operate or knowingly permit another person to operate a vessel if such person, by reason of physical or mental disability, is incapable of operating such vessel in a safe manner under all the prevailing circumstances.

6.6. No person may operate or knowingly permit another person to operate a vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. This provision does not apply to the operator of a vessel competing in a regatta which is sanctioned under the provisions of W. Va. Code §20-7-20 who is attempting to attain high speeds on a marked race course.

6.7. No person may take a reckless approach to or passage by a dock or ramp, a moored or anchored vessel, or a marked swimming area.

6.8. No person may operate a motorboat at a speed greater than the speed limits established on the waters of a government-owned reservoir under 4758 CSR 25B.

6.9. No person shall operate a personal watercraft at any time between the hours of one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.

6.10. No person shall operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.

6.11. All persons shall operate a personal watercraft in a reasonable and prudent manner at all times. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property shall constitute reckless operation of the vessel.

6.12. The provisions of this Section do not apply to participants in an approved and permitted regatta, race, marine

parade, tournament, or exhibition.

§58-25-7. Restricted Areas.

7.1. No person may anchor a vessel in a position that obstructs a passageway ordinarily used by other vessels.

7.2. No person may anchor or tie a vessel to any type of navigation aid or buoy.

7.3. No person may operate a vessel within twenty (20) feet of a person engaged in fishing without first obtaining permission from that fisherman.

7.4. No person may operate a vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys as a swimming area or other restricted area.

7.4.1. Swimming areas must be marked with yellow and red colored buoys by the owners of such areas.

7.5. No person may operate a motorboat at a speed greater than idling speed on established and marked no-wake zones on a government-owned reservoir.

§58-25-8. Overloading and Overpowering.

8.1. No vessel may be loaded with passengers or cargo beyond its safe cargo carrying capacity.

8.1.1. The maximum persons capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.1.2. The maximum weight capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.1.3. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner must demonstrate that his vessel conforms to the safe loading requirements of Subpart C of 33 C.F.R. Part 183.

8.2. No vessel may be operated beyond its safe powering capacity.

8.2.1. The maximum horsepower capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.2.2. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner must demonstrate that his vessel conforms to the safe powering requirement of Subpart D of 33 C.F.R. Part 183.

§58-25-9. Water Skis and Surfboards.

9.1. No person may operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause other water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person.

9.2. No person may manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of another person.

9.3. ~~No person may manipulate any water skis, surfboard, or similar device while intoxicated or while under the influence of any narcotic drug, barbiturate, or marijuana.~~ No person shall manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight.

9.4. No person may operate a vessel towing a person on water skis, surfboard, or similar device, nor may any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one (1) hour after sunset to one (1) hour before sunrise.

9.5. No person may operate a vessel towing a person on water skis, surfboard, or similar device unless:

9.5.1. A person at least 12 years of age or older other than the operator is on board such vessel in a position to observe the progress of the person being towed; or

9.5.2. Such vessel is equipped with a wide-angle rear view mirror mounted in a manner that permits the operator to observe the progress of the person being towed.

9.6. The provisions of Sections 9.4 and 9.5 of these regulations do not apply to a performer in a professional exhibition or to a person engaged in an activity authorized under the provisions of W. Va. code §20-7-20.

9.7. No person may operate a vessel on a government-owned reservoir while towing a person on water skis, surfboard, or similar device nor may any person engage in water skiing surfboarding, or similar activity on such reservoir except in the unlimited speed zone.

9.8. Except as provided in Section 9.8.1 of these regulations, a person towed by a vessel must wear a Coast Guard approved Type I, Type II, or Type III personal floatation device.

9.8.1. A person engaged in barefoot waterskiing may elect, at his own risk, to wear a non-Coast Guard approved barefoot

wetsuit designed specifically for such activity.

§58-25-10. Accident Reports.

10.1. It is the duty of the operator of a vessel involved in a collision, accident, or other casualty -- so far as he can do so without serious damage to his own vessel, crew, and passengers -- to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and necessary in order to save them from or minimize any danger caused by the incident.

10.2. It is the duty of the operator of a vessel involved in a collision, accident, or other casualty to give his name, address, and identification of his vessel in writing to any person who was injured during the incident and to the owner of any property damaged by the incident.

10.3. The operator of any vessel involved in a collision, accident, or other casualty which results in death or personal injury to a person that requires medical treatment beyond first aid, or damage to property in excess of one five hundred dollars (\$1500) must file a full description of the incident with the Division ~~by completion, in triplicate, the~~ Division of Natural Resources on West Virginia Boating Accident Report Form MB-3.

10.3.1. An accident report in a case involving a loss of life must be submitted to the Division within forty-eight (48) hours of the incident.

10.3.2. An accident report in a case involving an reportable injury or property damage must be submitted to the Division within five (5) days of the incident.

10.4. An accident report must be submitted in person or by mail to the Division of Natural Resources, Motorboat Safety Section, ~~1800-Washington-Street~~ 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0668.

§58-25-11. Boating on Government-Owned Reservoirs.

11.1. Special regulations to be observed in the operation of motorboats and other vessels upon, over, or through the waters of a particular government-owned reservoir are found in 4758 CSR 25B.

11.2. No motorboat or other vessel may be placed upon or operated upon a government-owned reservoir for a fee or profit, either as a direct charge to a second party or as an incident to other services provided by the second party, except as specifically authorized by lease, license, or concession contract with the government agency which manages the reservoir.

11.3. No motorboat or other vessel containing a sink, toilet, or sanitary system may be launched and operated upon a government

owned reservoir unless such sink, toilet, or sanitary system has been removed, sealed, or made to drain into a tank which can be carried or pumped ashore into a receptacle for disposal away from the lands and waters of the reservoir.

11.4. A motor boat or other vessel, when not in actual use at a government-owned reservoir, must be:

11.4.1. Removed from the reservoir;

11.4.2. Securely moored at an authorized dock or boathouse where supervision by the owner or his representative is provided on a twenty-four (24) hour basis; or

11.4.3. Placed in the care of a marina concessionaire, state or local managing agency, or other party authorized to care for floating equipment on a twenty-four (24) hour basis.

11.5. No motorboat or other vessel may be placed upon a government-owned reservoir for use as a dwelling of either permanent or temporary nature.

11.6. A barge, floating facility, motorboat, or other vessel may be moored only in locations designated by the government agency which manages the reservoir. All floating or stationary mooring facilities must be constructed in accordance with plans approved by the managing government agency.

11.7. Abandonment of personal property on the land or waters of a government-owned reservoir is prohibited.

11.8. Gasoline, oil, and other flammable or combustible liquids may not be stored upon or about a government-owned reservoir or the shores thereof without written permission from the managing government agency.

11.9. Private notices and advertisements may not be posted, distributed, or displayed at a government-owned reservoir except as the managing government agency may deem necessary for the convenience and guidance of the public using the area for recreational purposes.

11.10. No person may engage in or solicit any business at a government-owned reservoir unless such activities are permitted under the terms of a lease, license, or concession contract with the government agency which manages that reservoir.

§58-25-12. Special Requirements for Motorboats Which Carry Passengers for Hire.

12.1. Motorboats which carry passengers for hire must be provisioned with a Type I personal floatation device for each person carried. Such motorboats must also be provisioned with an additional number of Type I personal floatation devices suitable

for children equal to at least ten percent (10%) of the maximum number of persons carried, unless the service is such that children are never carried.

12.1.1. All personal floatation devices prescribed by Section 12.1 of these regulations must be Coast Guard approved, must be maintained in a good and serviceable condition, and must be readily available for use at all times.

12.2. Motorboats while carrying passengers for hire must be operated and navigated by a person duly licensed by the United States Coast Guard. This provision does not apply to outfitters and guides licensed under W. Va. Code §§20-2-23(a) or 20-2-26.

12.3. Motorboats carrying more than six (6) passengers must be inspected and certified by the United States Coast Guard.

Recreational Boating Safety Equipment

Wednesday
August 4, 1993

Part III

Department of
Transportation

Coast Guard

33 CFR Parts 175 and 181

46 CFR Part 160

Recreational Boating Safety Equipment;
Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175 and 181

46 CFR Part 160

[CGD 92-045]

RIN 2115-AE26

Recreational Boating Safety Equipment Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing a number of Federal requirements and exemptions for carriage of personal flotation devices (PFDs) on recreational vessels. The designs and uses of recreational vessels and safety equipment have changed since the rules were first issued or last revised, and some of the requirements and exemptions are no longer appropriate. This rule provides the recreational boating public with clearer and more appropriate requirements for carrying personal flotation devices and promotes a safer recreational boating environment. This rule also provides for necessary temporary exemptions from certain PFD carriage, labeling and information pamphlet requirements affected by this rulemaking.

EFFECTIVE DATE: This rule is effective on September 3, 1993, except for § 175.15(a) which will be effective on May 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267-0979. A copy of this final rule may be obtained by calling the Coast Guard's toll-free Boating Safety Hotline, 1-800-368-5647. In Washington, DC, call 267-0780.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Carlton Perry, Project Manager, and LT Ralph Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1992, the Coast Guard published a notice of proposed rulemaking entitled "Recreational Boating Safety Equipment Requirements" in the Federal Register (57 FR 53410). The 60-day comment period ended on January 8, 1993. By that time, the Coast Guard received 400 individual letters commenting on the proposal and an additional two petition-type letters bearing 110 signatures. Another 85 individual letters were received after the close of the comment period. The individual comments received by the close of the comment period came from the following categories in the numbers noted.

- 260 Recreational boating interests or owners.
 - 93 Recreational boat outfitters, liveries, or guides.
 - 15 Recreational boat/equipment manufacturers/dealers.
 - 3 Commercial boating interests.
 - 8 National recreational boating interests.
 - 3 Federal government agencies.
 - 18 State or local government agencies.
- 400

Eight comments requested that a public hearing be held to better inform the affected public, especially concerning impact on canoes, kayaks and boats under 16 feet in length. Two additional comments requested hearings be held for all boaters, particularly for rowers and paddlers, at ten cities around the country. Two other comments requested the comment period be extended to make the proposal more available to the boating public, to allow obtaining additional statistical information from the Coast Guard, and to have more time to comment. Another comment suggested postponing the rulemaking project until further study could be conducted. Most of the written comments received came from the affected public, especially canoe and kayak enthusiasts, and the rowing/paddling racing vessel community. The Coast Guard considered the requests for public hearings but determined that, although receiving oral presentations at public hearings would increase the number of comments, it would probably not raise new issues or otherwise materially assist in drafting the final rule. For the same reasons, the Coast Guard decided that additional time for comment on its proposal would not aid the rulemaking process.

Background and Purpose

The designs and uses of vessels and safety equipment have changed since

the Federal regulations for carriage of personal flotation devices (PFDs) on recreational vessels were first issued or last revised. Some of the requirements and exemptions are no longer appropriate. After a comprehensive review of recreational boating safety regulations conducted at its May 1992 meeting, the National Boating Safety Advisory Council (NBSAC) recommended a number of changes to the safety equipment carriage requirements for recreational vessels (33 CFR part 175). Prior to that meeting, the Coast Guard received additional related suggestions from the National Association of State Boating Law Administrators (NASBLA) and from the general public.

This rulemaking changes the existing regulations on PFD carriage requirements. These changes will provide the boating public with clearer and more appropriate requirements for carrying personal flotation devices, and will promote a safer recreational boating environment.

Discussion of Comments and Changes

Four comments opposed any requirement to carry extra Type IV PFDs (cushions or throwables) on commercial white water rafts. Another comment suggested requiring the same PFDs on recreational vessels, uninspected passenger vessels, and small passenger vessels.

PFD carriage requirements for commercial uninspected passenger vessels and small passenger vessels are contained in 46 CFR subchapter C, and are not the subject of this rulemaking project.

A number of comments recommended increased Coast Guard efforts in the areas of boater education and enforcement of regulations related to operation of a vessel while intoxicated.

The Coast Guard agrees and will continue to emphasize the benefits of boating safety education and enforcement of U.S. laws and regulations, including those related to operating a vessel while intoxicated.

A number of comments suggested various requirements or exemptions related to USCG approval or design restrictions of PFDs for carriage or wearing requirements.

The procedures and requirements for USCG approval of PFDs are contained in 46 CFR part 160, and are not the subject of this rulemaking. A copy of these comments has been submitted to the Coast Guard's Survival Systems Branch, which is responsible for those requirements, for consideration as a potential regulatory project.

A number of comments questioned the statistics used to support the proposed rulemaking generally, or a specific provision of the rulemaking that affected a particular boating segment, such as racing shells, whitewater canoes, or sailboards. Some comments supported the statistics used along with additional statistics, or confirmed the statistics by providing information, such as U.S. Army Corps of Engineers (COE) statistics on boating fatalities at COE projects during 1986-1990. Others requested additional statistics related to recent research to substantiate the need for a requirement to wear PFDs. Still others were interested in statistics regarding powered vs. nonpowered vessel fatalities or fatalities for boaters who had been consuming alcohol. Additional information was requested on the 19 States requiring children to wear PFDs on boats.

The Coast Guard has reviewed its recreational boating statistical data on fatalities for the years 1988 through 1991 in view of the above concerns. There were 3,631 fatalities during that 4-year time period for all recreational boat types. Almost 23% (830) of the 4-year total number of reported fatalities involved canoes, kayaks, rowboats, inflatables, and other manually-propelled boats. The statistics indicate that about 70% (585) of the 4-year total (830) reported fatality victims on manually-propelled boats were not using a PFD, compared to about 59% for the total (3,631) for all recreational boat fatalities reported over the same 4-year time period. The statistics also indicate that of the 4-year total reported fatalities (830) involving manually-propelled boats, only 9% (78) occurred on boats known to be rented. In addition, the statistics indicate that of the 4-year total (830) reported fatalities involving manually-propelled boats, about 62% (512) of the boats known to be rented were under 16 feet in length.

Regarding alcohol involvement in boating accidents, the statistics indicate that less than 17% (603) of the total fatalities reported during the 4-year period 1988 through 1991 involved use of alcohol.

Additional information on the 19 States referred to in the NPRM regarding requirements for children under a specified age to wear PFDs may be obtained from Balistreria Consulting, Inc., 5713 Twenty-Third Street, Zephyrhills, FL 33540-4726; the telephone number is (813) 783-3996.

Specific Comments on Changes Proposed in the NPRM

Subpart A—General

Section 175.1 Applicability

Nine comments supported excepting saaplanes from applicability of Coast Guard PFD carriage requirements. No comments opposed the proposal and the Coast Guard has adopted the exception as proposed.

Section 175.3 Definitions

The Coast Guard does not consider surfboards, swim boards or "boogie" boards to be vessels and has not adopted suggestions to include them in this rulemaking. The Coast Guard agrees with the suggestion to add a definition of the term "recreational submersible", but intends to publish it in a future rulemaking project to allow time to develop a suitable definition.

Boat. No comments objected to this term and the Coast Guard has adopted the definition as proposed.

Passenger. One comment suggested redefining the term "passenger" to agree with a proposed Congressional resolution. The Coast Guard is aware of this pending legislation to change the statutory definition of the term "passenger" and has decided to delay any revision of the current published definition until such legislation is enacted.

Personal watercraft. One comment suggested revising the definition length, limiting the number of persons on board, limiting the definition to vessels "propelled by jet pump", and separating non-jet pump propelled craft. Another comment suggested deferring the final definition until after a Coast Guard sponsored NBSAC Subcommittee on Personal Watercraft Definition and Requirements formally submits its findings to the Coast Guard through the full Council.

The Coast Guard will delay making a decision on this definition until after considering the NBSAC Subcommittee on Personal Watercraft Definition and Requirements Report. The Coast Guard intends to publish this definition in a future rulemaking project.

Racing shell, rowing scull, and racing kayak. There was a suggestion to revise the definition to be more specific about racing kayaks, to include racing canoes, and to include poles as a means of propulsion. Also, carefully defining racing canoes and racing kayaks and developing a method of clearly marking racing craft was recommended.

The Coast Guard agrees that this definition should include racing canoes recognized by national or international

racing associations and should include poles as a means of propulsion, and has revised the definition accordingly. The Coast Guard has decided not to redefine the term "racing kayaks" to be more specific.

Recreational vessel. One comment requested clarification of what the phrase "six or fewer passengers" means, while another suggested removing the phrase from the definition.

The key to the meaning of this phrase is in the definition of the term "passenger" which the Coast Guard uses to separate recreational from commercial operation and to determine application of operator licensing and PFD carriage requirements. Commercial PFD requirements are contained in 46 CFR 25.25. They specifically exempt vessels used or leased, rented or chartered to another for the latter's noncommercial use. Thus, the sentence, "It does not include a vessel engaged in the carrying of six or fewer passengers." clarifies the applicability of commercial or recreational PFD carriage requirements and has been retained.

Sailboard. Ten comments supported the proposed definition of a sailboard as a vessel. No comments objected to the proposed definition of sailboard as a vessel. The Coast Guard has decided to adopt this definition as proposed.

Use. No comments objected to this definition and the Coast Guard has adopted it as proposed.

Vessel. No comments objected to this definition and the Coast Guard has decided to adopt the definition of the term "vessel" as proposed.

Section 175.5 Exemption From Preemption

Exemption from preemption. Over 36 comments supported the proposed exemption to allow States discretion to set PFD requirements on specified types of boats based on local conditions. Another comment suggested expanding the proposed preemption exemption to allow States to set PFD requirements for additional types of boats on designated whitewater streams or other waterways that a State finds to be inherently dangerous. An additional 3 comments supported the proposal, if States were only allowed to set stricter requirements than Federal requirements. Another comment supported the proposal, if States adopted uniform State requirements. Yet another comment suggested that States separate canoes and kayaks from boats with mechanical propulsion when setting local PFD requirements. Over 14 comments opposed the proposal, emphasizing that only the Federal Government or Coast Guard should set these requirements

because the States are too diverse. Another 4 comments opposed any changes. Over 175 comments opposed any requirement to wear PFDs on canoes and kayaks or on racing canoes, racing and rowing sculls for recreational use or competition practice.

The Coast Guard did not propose Federal requirements to wear PFDs at all times on recreational vessels. Although the exemption from preemption for States would allow a State to determine whether certain persons on certain vessels should wear PFDs under certain circumstances, including carriage requirements in the absence of a Federal requirement to carry a wearable PFD, it was not intended to encourage States to establish across-the-board wearing requirements on all watercraft at all times. The Coast Guard believes that most objections to PFD wearing requirements were based on this misunderstanding of the proposal. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

The Coast Guard has decided that a reasonable balance should be struck between uniform national PFD carriage requirements and State discretion to set local PFD requirements different from the national requirements. Consideration should be given to the difference in each State's (1) difficulty of navigation on its boating waterways; (2) severity of its climate and weather conditions during its boating season; and (3) public support within a State for an increased level of safety for its boating public, including children. In setting local PFD requirements, States likely will base such requirements on perceived need, obtain public comment, allow an appropriate level of reciprocity to out-of-State transient vessels, and not attempt to reduce the applicability of Federal PFD carriage requirements.

Children. Many comments supported allowing States to set PFD wearing requirements for children as was proposed in the NPRM. Additional comments supported the proposal only for children under 6 years old. Some comments opposed allowing States to set PFD wearing requirements for children, while others suggested setting a national requirement to wear a PFD for all children, or for a specific age group.

The Coast Guard agrees that a State should be able to set PFD wearing requirements and to determine the age of applicability for children on vessels within its boundaries. It is the Coast Guard's position that it is appropriate to establish national requirements to carry

PFDs on certain recreational vessels, without imposing an additional Federal requirement to wear them on those vessels. It is appropriate for an individual State to establish PFD wearing requirements, and associated carriage requirements in the absence of Federal carriage requirements, for its boaters because of the previously mentioned factors applicable to each State. However, each State is encouraged to provide appropriate reciprocity for children on out-of-State transient vessels that are in compliance with the PFD requirements of the State which issued their vessel number.

Racing shells, rowing sculls, and racing kayaks. The comments were about evenly split between support of and opposition to the proposal allowing States to set PFD wearing requirements for recreational operation of racing vessels. Some objections emphasized the difficulty that law enforcement officers would have in discerning any difference between recreational use and competition practice. Another emphasized the need for a single national requirement instead of the potential for 50 State interpretations. One additional comment suggested using a better definition of "competitive racing" and "competition practice" in the rule.

Also suggested was deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard agrees with the comments pointing out the difficulty in discerning recreational from competition practice and the lack of a Coast Guard approved PFD suitable for wearing on this class of racing vessels without risk of overheating and chafing. Further, the Coast Guard cannot confirm recreational fatalities for this class of vessel beyond a single rowing scull fatality that occurred in Pennsylvania. There is no indication of a need for the individual States to regulate these vessels. Therefore, the Coast Guard has removed the exemption from preemption for the States to regulate this racing class of recreational vessels.

Canoes and kayaks. A number of comments supported allowing States to set PFD wearing requirements for operation of canoes and kayaks as proposed. Additional comments supported the proposed exemption if State requirements were made on an area-wide basis, while another suggested that requiring whitewater kayakers to wear a PFD while descending rivers and requiring open water kayakers to wear PFDs under Small Craft Advisory conditions would

achieve the desired increased safety. A similar number of comments opposed the proposed exemption, with one specifically opposing States setting blanket PFD wearing requirements. Several objected to either Federal or State wearing requirements for currently available PFDs on canoes or kayaks under strenuous paddling, marathon voyage or racing conditions in warm weather due to likely overheating. One comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard has adopted this exemption as proposed. The Coast Guard is allowing each State to set PFD wearing requirements on canoes and kayaks as it deems appropriate due to climate or weather conditions within its boundaries, specific waterway characteristics or difficulty of navigation, and other conditions, which may be specific to each State's waterways. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

Sailboards. Two comments opposed exempting sailboards from Federal PFD carriage requirements. Two other comments addressed a requirement to wear a PFD while operating a sailboard, one in favor and one opposed.

The Coast Guard has adopted this exemption as proposed. Although the Coast Guard is not setting a Federal requirement that a PFD be carried or worn while operating a sailboard, a State should be allowed to do so in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirements on the States to establish PFD wearing requirements. Operators of sailboards continue to be subject to Federal and State regulations regarding vessel navigation and intoxicated operation of a vessel.

Personal watercraft. Eight comments supported allowing States to set PFD wearing requirements for operation of personal watercraft as proposed, with one comment supporting Federal, State or local requirements. One comment opposed any exemption to PFD carriage requirements for personal watercraft. Another comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard has adopted this exemption as proposed. Personal watercraft are still subject to requirements applicable to "recreational vessels" and a State will be allowed to establish PFD wearing requirements for personal watercraft in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. Although the Coast Guard is delaying selection of a national definition of "personal watercraft", a State establishing requirements for personal watercraft likely will sufficiently describe the watercraft subject to any such requirements.

Subpart B—Personal Flotation Devices
Section 175.11 Applicability

No comments opposed this section and the Coast Guard has adopted it as proposed.

Section 175.15 Personal Flotation Devices Required

Elimination of Type IV PFD as a primary device on vessels under 16'. Over 100 comments supported the proposed requirement to carry a wearable PFD for each person on board a recreational vessel under 16 feet in length. Another 70 comments opposed the proposal, with three of the comments emphasizing that a Type IV PFD (cushion) is better than a wearable PFD if the wearable PFD is not worn. Eighteen of the comments requested that canoe or kayak livery and rental businesses be allowed to continue using the Type IV as a primary personal flotation device on their vessels. One of the comments also recommended granting a special exemption to allow livery and rental businesses one or two seasons to phase-in compliance. Several of the comments indicated that replacing hundreds of PFDs costing \$15-\$60 would create a financial burden of \$1,000-\$10,000 for livery or rental businesses. Several additional comments suggested exempting various types and sizes of vessels from carrying wearable PFDs, including: Inflatables, canoes and kayaks, sailboats, vessels 10 feet in length and under, and hand-powered vessel tenders or boats used within designated harbors or anchorages. Several comments suggested a requirement to wear PFDs on boats under 16 feet in length. A number of comments suggested applying the PFD wearing requirements to boats 18 feet (vs. 16 feet) and over; treating boats over and under 16 feet the same; or opposed setting Federal

requirements to use PFDs based on vessel length at all.

Other comments suggested using vessel waterline width instead of vessel length to apply the rules, or status as rented recreational vessels. Other comments opposed any national requirement to wear PFDs on recreational boats under 16 feet in length.

The Coast Guard has adopted the new PFD carriage requirement as proposed. The effective date of § 175.15(a) is May 1, 1995, in order to provide the boating public sufficient notice of the new wearable PFD requirement, allow PFD manufacturers to produce a sufficient quantity of wearable PFDs available for sale, and provide adequate opportunity for the boating public to comply. However, in consideration of the larger numbers of vessels and associated PFDs maintained by livery and rental businesses, some of which may be considered small entities, a special temporary exemption has been added to § 175.17. This will allow these businesses an additional boating season, until May 1, 1996, to phase-in compliance and reduce the annual economic impact of the new requirement on them. While it is allowing extra time for these businesses to obtain needed wearable PFDs for their vessels, the Coast Guard urges them to comply as soon as is practicable.

The separation of safety equipment carriage requirements for vessels under 16 feet in length, and vessels 16 feet in length and over has been in effect since 1973. Safety would not likely be improved by changing the separation reference point in this rulemaking. The Coast Guard also emphasizes that the new requirement to carry wearable PFDs on boats 16 feet in length and under does not prohibit boaters from also carrying Type IV PFDs voluntarily.

The Coast Guard is also mindful that current USCG approved PFD labels and PFD information pamphlets indicate that Type IV PFDs are approved for use as primary devices on recreational vessels under 16 feet in length. The Coast Guard intends to work with Underwriters Laboratories, Inc., to revise the current UL standard 1123 to reflect these changes and to initiate a regulatory project to incorporate the revised UL standard 1123 by reference for PFD information pamphlet requirements in 33 CFR 181.703 and revise the USCG approved Type IV PFD labelling requirements in 46 CFR subpart 160. In the interim, PFD manufacturers are encouraged to provide alternate PFD information pamphlets and text on Type IV PFD

labels that reflect the current revised PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length. To facilitate the efforts of cooperating PFD manufacturers in providing accurate information on PFD requirements on recreational vessels, the Coast Guard has included exemptions from 33 CFR 101.703 and 46 CFR 160.048-6, 160.049-6, 160.050-6, and 160.064-6 for PFD manufacturers. This will give them time to revise their information pamphlets and PFD labels to reflect this change in PFD carriage requirements for recreational vessels under 16 feet in length.

Vessels 16 feet in length and over. Two comments supported the proposed removal of the existing exemption for canoes and kayaks 16 feet in length and over from the requirement to carry a Type IV PFD in addition to the wearable PFDs for persons on board. Over 261 comments opposed the proposal. Many of the objections described the lack of stowage area on kayaks and the instability of a canoe as a platform for throwing a Type IV PFD to a person in the water. Many comments expressed concern over the added cost impact of hundreds to thousands of dollars that the proposed requirements could have on over 3,000 liveries, canoe rentals and outfitters to purchase enough new PFDs to equip their rental vessels. A few of the comments incorrectly believed they must provide an additional Type IV PFD for each person in a canoe or kayak 16 feet in length and over, or that only a Type V PFD or only a Type III PFD would be allowed to meet USCG PFD carriage requirements.

The Coast Guard agrees with the comments regarding canoes and kayaks in support of retaining the existing exemption for canoes and kayaks 16 feet in length and over (currently in § 175.15(b)) as one of several exemption provisions listed in § 175.17. Further, by continuing the exemption for canoes and kayaks from the additional PFD carriage requirements for vessels 16 feet in length and over and by allowing the additional boating season for liveries and canoe rental businesses to phase-in compliance, the financial impact on these small businesses will be reduced by apportioning the costs over almost three years. Section 175.17 Exemptions (Formerly Exceptions)

The heading of this section has been revised from the term "Exceptions" to the term "Exemptions" for clarity and consistent use in this part.

Four comments supported all the proposed exemptions. One comment suggested adding additional specific exemptions from carrying wearable PFDs for surfboards, windsailers, inner

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tubes, lounge rafts, etc. Two comments opposed making any of the proposed changes. Two other comments suggested setting a national PFD wearing requirement for operators of personal watercraft. Other comments suggested various exemptions, such as exempting small sailing craft (sea kayaks) from carrying an extra Type IV PFD if a Type III or V PFD is being worn; exempting kayaks, catamarans and racing sailboats from carrying an extra Type IV PFD if a Type III PFD is being worn; and exempting marathon racing canoes, kayaks, and Oriental Long Boats exceeding 45 feet in length during training sessions and during competition from wearing lifejackets if the craft is carrying a readily available, throwable Type IV PFD or a Type II PFD for each occupant. Several comments suggested requiring carriage of a Type IV PFD in addition to the wearable PFDs for each person; that any Federal or State PFD wearing requirements adopt the phrase, "Unapproved devices, including inflatables, may be used."; clarifying whether the exemption also applies to shore boats and dinghies used to transport boaters to and from shore and their boats (vessel tenders); and that more effective enforcement of existing requirements to carry Type I, II, III, or IV PFDs on all boats under 16 feet in length would achieve better results.

Regarding additional specific exemptions for surfboards, inner tubes, lounge rafts, etc., the Coast Guard does not issue exemptions for watercraft that it does not consider to be vessels. Windsailers are included in the exemption for sailboards. Further, unless subject to a specific State requirement a personal watercraft is subject to the same Federal requirements as other recreational vessels of the same size.

Racing, shells, rowing, sculls, and racing kayaks. Some comments supported the exemption as proposed. Additional comments supported the proposed exemption if it only applied during competition or if it imposed a requirement to carry PFDs on racing shells. More comments suggested adding racing canoes to the exemption for racing class vessels or basing the exemption on the competitor status of the operator instead of the vessel class. A similar number of comments opposed a requirement to carry PFDs on racing shells, racing canoes, racing kayaks or rowing sculls or on a tender during competition practice. Another comment opposed limiting the exemption to only when the tender vessel is close enough to assist if needed. Many of the objecting comments discussed the lack of a safe and accessible place on these

racing craft to carry a PFD or the impracticality of having a tender carrying PFDs accompany these racing craft during competition practice. They also pointed out the lack of a suitable design of wearable USCG approved PFD that would not increase the likelihood of overheating on warm days, or that would not interfere with rowing or paddling motions, or that would otherwise increase the safety of operators of these racing craft.

The Coast Guard agrees with the suggestion to include racing canoes in this exemption, along with racing kayaks and has revised the exemption, in § 175.17 and the definition in § 175.3 to reflect this. The Coast Guard also agrees with the comments opposing the proposal because of difficulties in operating these racing craft while wearing or carrying USCG approved PFDs and for having tenders carry USCG approved PFDs for all racing craft and their occupants. Further, the Coast Guard agrees with the comments regarding difficulty discerning recreational rowing from competition practice rowing. For these reasons, the Coast Guard has retained the existing exemption for racing shells, rowing sculls, and racing kayaks, and added racing canoes, in § 175.17.

Recreational submersibles. Nine comments supported the exemption as proposed. One comment opposed exempting submersibles from surface vessel PFD carriage requirements. Another suggested requiring that PFDs be worn on submersibles. One comment dealt with adding a definition of "recreational submersible."

The Coast Guard has adopted a revised exemption and intends to develop a definition for the term "recreational submersible" in a future rulemaking project to describe these vessels that are designed to operate on the surface or submerged. The revision will not exempt recreational submersibles from all PFD carriage requirements, but will allow use of USCG approved inflatable PFDs for commercial submersibles to meet the requirements. Recreational submersibles may alternatively carry a PFD that provides a minimum of 22 pounds of buoyancy inflated, has a means of manual inflation that can be activated with one quick and positive motion, and has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water. This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

Sailboards. Eight comments supported the exemption as proposed.

One additional comment stated that a sailboard is "a pretty good flotation device" in itself. Another suggested requiring that PFDs be worn on sailboards. Three opposed exempting sailboards from carrying PFDs.

The Coast Guard acknowledges that sailboards float, just as do surfboards, inner tubes, and motorboats meeting the level flotation requirements. However, none of these items are U.S. Coast Guard approved PFDs and, despite level flotation, such motorboats are not exempt from PFD carriage requirements. The Coast Guard has decided to formally exempt sailboards from Federal PFD carriage requirements, thus allowing each State to decide whether or not PFDs should be worn and/or carried on sailboards based on climate and navigation conditions within its boundaries.

Foreign competitors. Ten comments supported the exemption as proposed. One additional comment suggested requiring use of the foreign country's approved PFD instead of a blanket exemption from Coast Guard requirements. Two comments opposed exempting foreign competitors due to the unfair advantage they would have over U.S. competitors wearing PFDs.

The Coast Guard agrees with the concerns expressed and has revised the exemption to include the competitor's use of the sponsoring foreign country's accepted flotation devices.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The total effect of this rule on the economy will not result in annual costs of \$100 million or more, therefore, a full Regulatory Impact Analysis is not required. A Regulatory Evaluation has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES.

The Coast Guard has not compiled its own statistics on the number of vessels carrying only Type IV PFDs to meet the Federal PFD carriage requirements. However, based on the results of a national boating survey conducted by the American Red Cross under a Coast Guard grant and published in 1991, at least 60 percent of the individuals operating vessels under 16 feet in length reported wearing a PFD all or some of the time. This indicates that perhaps 40 percent of those surveyed carry either a Type IV PFD or no PFD at all, or carry but choose not to wear a Type I, II, or III PFD.

Type IV PFDs (cushions) and Type II PFDs are available at many boating supply stores at a cost of about \$8.00 and \$6.00, respectively. A few comments emphasized that the true costs of purchasing "more comfortable to wear" Type III PFDs ranged from \$35 to \$120 at many boating supply stores. If 40 percent of the owners of the estimated 10 million vessels under 16 feet in length (51% of the estimated 19.5 million total number of recreational vessels) were each required to purchase 3 wearable Type II PFDs as a result of this rulemaking, the one-time cumulative cost to the public may be as high as \$72 million. Voluntary purchases of the more expensive types of PFDs would increase the total cost. The actual cost may be less. It may be that many owners will only need to purchase 1 or 2 PFDs, or that the Type II PFDs purchased will be less expensive than the Type IV PFDs and other wearable type PFDs currently allowed. Furthermore, the cost of subsequent replacement of unserviceable wearable PFDs should not exceed the current cost of replacement of Type IV PFDs. Therefore, the Coast Guard has not included a recurring cost in this analysis.

Statistics compiled by the Coast Guard for 1990 indicate that of 865 boating fatalities, there were 300 drowning fatalities where PFDs were not used, or where there were insufficient or no PFDs on board vessels under 16 feet in length, the category of vessels directly affected by this rulemaking. Economic research indicates that \$2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. This figure is used to help quantify benefits of a rulemaking and in no way implies that the Coast Guard has actually attempted to set a value on a human life. Taking this into account, if as few as 6 of the estimated 300 drowning fatalities on vessels under 16 feet in length are prevented annually, the benefits of requiring the carriage of wearable Type I, II, or III PFDs on all recreational vessels will exceed the estimated one-time \$72 million cost within five years. The Coast Guard anticipates the annual saving of lives to continue indefinitely.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and

that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The overall impact of this rule will be to provide clearer and more appropriate requirements for carrying personal flotation devices on recreational vessels, leading to a safer recreational boating environment. To minimize the potential economic impact, the Coast Guard has chosen to tier the effective date of the wearable PFD carriage requirements by allowing two years for the boating public until May 1, 1995, (two boating seasons) and an additional year for boat rental and livery businesses until May 1, 1996 (three boating seasons), to comply with the requirements of § 175.15(a). It may have a one-time financial benefit as high as \$72 million to PFD manufacturers and retailers, some of which may be small entities. It will primarily impact individual recreational boaters, and boat rental or livery businesses, which also may be small entities, to a lesser extent. To the extent that small businesses are affected, the effect will be spread out over a two- to three-year period.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a further Federalism Assessment. This rule is intended to preempt State regulation and law on the same subject matter where they are not identical with it because recreational boating is a national activity and this rule provides uniform requirements for PFD carriage. However, portions of this rule are designed to provide for additional regulatory discretion by the States, where appropriate, because of special local conditions. Additionally, the National Association of State Boating Law Administrators (NASBLA) has been consulted regarding the exemption from preemption portion of this rule. A copy of the NPRM was provided to all NASBLA members and 18 responses were received from the States.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under sections 2.B.2(c) and (1) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule governs regulation of PFD carriage and use, and has no environmental consequences. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 175

Marine Safety.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 175 and 181, and 46 CFR part 160 as follows:

Title 33, Code of Federal Regulations

PART 175—EQUIPMENT REQUIREMENTS

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

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. In § 175.1, paragraph (e) is added to read as follows:

§ 175.1 Applicability

(e) Seaplanes on the water.

3. Section 175.3 is revised to read as follows:

§ 175.3 Definitions.

As used in this part:

Boat means any vessel manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.

Passenger means every person carried on board a vessel other than:

(1) The owner or his representative;

(2) The operator;

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any

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consideration, directly or indirectly, for his carriage.

Racing shell, rowing scull, racing canoe, and racing kayak means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

Recreational vessel means any vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

Sailboard means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast not secured to a hull by guys or stays.

Use means operate, navigate, or employ.

Vessel includes every description of watercraft used or capable of being used as a means of transportation on the water.

3. A new § 175.5 is added to read as follows:

§ 175.5 Exemption from preemption.

The States are exempted from preemption by Federal regulations when establishing, continuing in effect, or enforcing State laws and regulations on the wearing or the carriage of personal flotation devices directly related to the following subject areas within the jurisdictional boundaries of the State:

- (a) Children on board any vessel;
- (b) Operating a canoe or kayak;
- (c) Operating a sailboard; and
- (d) Operating a personal watercraft.

4. Section 175.11 is revised to read as follows:

§ 175.11 Applicability.

This subpart applies to all recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

5. Section 175.15 is revised to read as follows:

§ 175.15 Personal flotation devices required.

Except as provided in § 175.17:

(a) No person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

- (1) Type I PFD;
- (2) Type II PFD; or
- (3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless

one Type IV PFD is on board in addition to the total number of PFD's required in paragraph (a) of this section.

6. Section 175.17 is revised to read as follows:

§ 175.17 Exemptions.

(a) A Type V PFD may be carried in lieu of any PFD required under § 175.15, provided:

(1) The approval label on the Type V PFD indicates that the device is approved.

(i) For the activity in which the vessel is being used; or

(ii) As a substitute for a PFD of the Type required on the vessel in use;

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

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

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

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

(d) Sailboards are exempted from the requirements for carriage of any Type PFD required under § 175.15.

(e) Recreational submersibles are exempted from the requirements for carriage of any Type PFD required under § 175.15, provided the vessel carries for each person on board:

(1) A USCG approved inflatable PDG for commercial submersibles; or

(2) A flotation device that provides:

- (i) A minimum of 22 pounds of buoyancy inflated;
- (ii) Has a means of manual inflation that can be activated with one quick and positive motion; and
- (iii) Has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water.

This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

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

(g) Prior to May 1, 1996, a Type IV PFD may be carried in lieu of any Type PFD required under § 175.15(a) for each

person on the vessel, provided the recreational vessel is:

- (1) Leased or rented to another for the latter's pleasure as part of a livery or rental business; and
- (2) Manually-propelled.

PART 181—MANUFACTURER REQUIREMENTS

7. Section 181.703 is amended by adding a new paragraph (c) to read as follows:

§ 181.703 PFD information pamphlet requirements.

(c) A manufacturer of personal flotation devices may deviate from UL standard 1123 required text, as required under paragraph (a) of this section, to provide an alternate PFD information pamphlet that reflects the PFD carriage requirements in § 175.15 for recreational vessels under 16 feet in length.

Title 46, Code of Federal Regulations

PART 160—LIFESAVING EQUIPMENT

8. Section 160.048-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.048-6 Marking.

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

9. Section 160.049-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.049-6 Marking.

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

10. Section 160.050-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.050-6 Marking.

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

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1. Section 160.064-4 is amended by adding a new paragraph (c) to read as follows:

§160.064-4 Marking.

(c) A manufacturer of personal flotation devices may deviate from the

marking requirements of paragraph (a)(2) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

Dated: July 28, 1993.
W. J. Ecker,
Rear Admiral, Coast Guard, Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 93-18552 Filed 8-3-93; 8:45 am]
BILLING CODE 4810-14-M

51576 Federal Register / Vol. 58, No. 190 / Monday, October 4, 1993 / Rules and Regulations

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175 and 181

46 CFR Part 160

[CGD 92-045]

RIN 2115-AE26

**Recreational Boating Safety
Equipment Requirements**

AGENCY: Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: This notice corrects spelling and technical errors in the preamble and regulatory language of a final rule published in the Federal Register on August 4, 1993 (57 FR 41602). The final rule changed a number of Federal requirements for carriage of personal flotation devices (PFDs) on certain recreational vessels.

EFFECTIVE DATE: This rule is effective on October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary Boating and Consumer Affairs Division, (202) 267-0979.

Corrections

1. On page 41603, first column, correct the second paragraph by revising the last sentence in it to read as follows:

"In addition, the statistics indicate that of the 4-year total (830) reported fatalities involving manually propelled boats, about 62% of the boats of known length were under 16 feet in length."

2. On page 41603, first column, fourth paragraph, 5th line, replace the name "Balistreria" with "Balistren", the correct spelling for Balistreri Consulting, Inc.

3. On page 41606, second column, third paragraph, correct the last sentence by replacing the phrase "16 feet in length and under" with "under 16 feet", the correct phrase describing the applicable vessel length category.

4. On page 41608, second column, in 33 CFR 175.17, by correctly revising paragraphs (a)(1), introductory text, (e)(1), (g)(1) and (2); and correctly adding paragraph (g)(3) to read as follows:

§ 175.17 Exemptions.

(a) * * *

(1) The approval label on the Type V PFD indicates that the device is approved:

(e) * * *

(1) A USCC approved inflatable PFD for commercial submersibles; or

(g) * * *

(1) Leased or rented to another for the latter's pleasure as part of a livery or rental business;

(2) Manually-propelled; and

(3) Under 16 feet in length.

Dated: September 24, 1993.

W.J. Ecker,

Near Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-24209 Filed 10-01-93; 8:45 am]

BILLING CODE 4910-14-M

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MEMORANDUM

TO: Judy Cooper, Director
Administrative Law Division
Secretary of State's Office

DATE: May 19, 1995

FROM: Major W. B. Daniel, Assistant Chief 
DNR Law Enforcement Section

SUBJECT: Emergency Boating Regulations

Failure to follow through on the mandated federal requirements for personal flotation devices (PFDs) on all vessels may jeopardize over \$250,000 in federal funding.



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