

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Parts 175, 179 and 181****46 CFR Parts 2, 159, and 160**

[CGD 93-055]

RIN 2115-AE58

**Approval of Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** As part of the Presidential Regulatory Reform Initiative, the Coast Guard is establishing approval procedures for recreational inflatable personal flotation devices (PFDs), designating recreational inflatable PFDs as "associated equipment" for purposes of defect notification, revising the approval procedures for other kinds of recreational PFDs, and making editorial changes. These procedures are intended to establish an efficient approval procedure for PFDs. The Coast Guard anticipates that recreational boaters will be more likely to wear inflatable PFDs than currently approved devices, thereby increasing use of PFDs by the boating public and saving lives.

**DATES:** This rule is effective on April 29, 1996. The Director of the Federal Register approves as of April 29, 1996 the incorporation by reference of certain publications listed in the regulations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kurt J. Heinz, Marine Safety and Environmental Protection Directorate, Lifesaving and Fire Safety Standards Branch (G-MMS-4), telephone (202) 267-1444, facsimile (202) 267-1069, or electronic mail "Kurt\_Heinz/G-M@cgsmt.p.uscg.mil".

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Inflatable Personal Flotation Devices" in the Federal Register (58 FR 59428). The ANPRM addressed structural and performance standards for inflatable PFDs, and procedures for approval and carriage requirements. On June 23, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Approval of Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters" in the Federal Register (60 FR 32861). The Coast Guard received 3 letters commenting on the

NPRM. No public hearing was requested and none was held.

## Background and Purpose

In the same Federal Register as the NPRM for this rulemaking, the Coast Guard published an interim rule (IR) containing structural and performance standards for recreational inflatable personal flotation devices (60 FR 32836). Limited procedures to allow for approval of these devices were included in the IR. The NPRM for this rulemaking proposed, as part of the Presidential Regulatory Reform Initiative, a reinvention of the process for approval of inflatable and other PFDs for recreational boats. The proposed rules would remove duplicative requirements from multiple subparts dealing with various types of PFDs, and allow for wider participation of independent laboratories in the approval process. These proposed rules were not published as part of the IR because they may affect the approval of other types of PFDs to a limited extent and the public had not yet had a chance to fully participate in their development.

## Discussion of Comments and Changes

The NPRM proposed to designate inflatable PFDs as "associated equipment" in 33 CFR Part 179 in accordance with 46 U.S.C. 4310. The effect of this designation would be to require manufacturers to establish and maintain a list of first purchasers of inflatable PFDs, and to notify those purchasers of any defects which have been discovered after the PFDs have been produced and sold.

Comments on this proposed provision were received from two PFD manufacturers and from the association representing PFD manufacturers. All three comments opposed the proposal. The association's comment suggested that designation of inflatable PFDs as "associated equipment" would place an inappropriate and inconsistent burden on inflatable PFDs in relation to requirements for other items of personal protection equipment. The two manufacturers' comments noted that the designation of inflatable PFDs as "associated equipment" did not appear to be consistent with the items which are currently so designated, i.e., inboard and outboard engines and stern drive units.

The Coast Guard does not agree with the comments which opposed designation of inflatable PFDs as "associated equipment" based solely on perceived similarity, or lack of similarity, to existing equipment. In the recreational boating arena, approved inflatable PFDs are an entirely new class

of equipment with which the Coast Guard and the boating public have had little practical experience. The Coast Guard is concerned that as manufacturers begin producing approved inflatable PFDs for the recreational boating market for the first time, there may be latent defects in manufacturing or materials introduced into the product which would become apparent only after extended use and exposure in the marine environment. The provisions in 46 U.S.C. 4310(c)(1)(A) for notification of first purchasers of "associated equipment" in the event of known defects or failures of compliance would facilitate the widespread introduction of inflatable PFDs into this unfamiliar market with a minimum of risk to both users and manufacturers. The designation of inflatable PFDs for recreational boats as "associated equipment" complements the "Recreational Inflatable Personal Flotation Device Standards" final rule published elsewhere in today's Federal Register, which allows for approval of these devices with a minimum of restrictions or conditions. Consequently, 33 CFR 179.03, paragraph (d) under "Associated equipment" is retained as proposed in the NPRM. Because this provision is intended only to manage the risk involved in the introduction of a new product to a generally inexperienced market, the Coast Guard will re-evaluate it five years from the effective date of these regulations and remove it if it determines it is no longer necessary. As was discussed in the NPRM, these regulations (like all regulations affecting recreational boats) are reviewed periodically at public meetings of the National Boating Safety Advisory Council (NBSAC).

The NPRM proposed that as a means of developing and maintaining a list of first purchasers, PFD manufacturers be required to provide a postage-paid product registration card with each inflatable PFD, and to retain the returned cards on file for five years. Two comments from PFD manufacturers opposed the requirement, in proposed new Subpart H of 33 CFR Part 181, for PFD manufacturers to provide a postage-paid registration card with each inflatable PFD sold. The comments cited the burden and expense associated with the provision of such cards.

In response to the comments, the Coast Guard has decided not to include the proposed 33 CFR Part 181, Subpart H in this final rule. With the designation of inflatable PFDs as "Associated equipment" in the new 33 CFR 179.05, PFD manufacturers will be expected to "exercise reasonable diligence in establishing and maintaining a list of

(first) purchasers and their current addresses." The Coast Guard acknowledges that there are other suitable means of accomplishing this end than by a mandated postage-paid card to be filled in by the first retail purchaser. PFD manufacturers may arrange for assistance of dealers and distributors in obtaining information concerning first purchasers, or provide for toll-free telephone or on-line registration by first purchasers. The removal of the postage-paid postcard requirement gives manufacturers flexibility to adopt the means best suited to their individual situations.

There are no comments on any of the other proposals in the NPRM. Those proposals were discussed in detail in the preamble to the NPRM, and are being adopted in this final rule with only minor editorial refinements and corrections, such as updating of Coast Guard staff symbols to reflect a recent Coast Guard reorganization.

The only substantive addition not specifically proposed in the NPRM is to redesignate 46 CFR 159.010-19, which specifies procedures for termination of acceptance or recognition of laboratories. Since termination of acceptance or recognition of a laboratory by the Commandant constitutes a final agency action, procedural measures have been added to ensure that such action cannot be taken by the Commandant without due process.

#### Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 181.4 and 46 CFR 159.001-4 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in those sections.

#### Regulatory Evaluation

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These rules are generally procedural, enabling boaters to purchase and use inflatable PFDs on their boats if they wish to do so. The only rule that will require affected

parties to do something they are not already doing is the designation of inflatable PFDs as "associated equipment", which will require that manufacturers "exercise due diligence in establishing and maintaining a list of (first) purchasers and their current addresses." Compliance with this requirement can be as simple as maintenance of returned postage-prepaid registration cards, as was proposed in the NPRM. Since that specific requirement is not included in this final rule, manufacturers will have flexibility to comply with the statutory requirement in the least burdensome manner for their particular circumstances. The total cost for this requirement, including overhead, is expected to be no more than 50¢ per device, resulting in a total cost to the industry of only \$25,000 annually if 50,000 units per year are produced.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

These rules are generally procedural, enabling boaters to purchase and use inflatable PFDs on their boats if they wish to do so. As discussed above, the economic impact of the new requirements is expected to be minimal, and no comments were received concerning the impact of this rulemaking on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The Coast Guard will publish a notice in the Federal Register when they have been approved. The section number is 46 CFR 159.010-7.

#### Federalism

The Coast Guard has analyzed this rulemaking under the principles and

criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking establishes and revises procedures for Coast Guard approval of inflatable and other PFDs. The authority to establish these requirements is committed to the Coast Guard by Federal statutes. Furthermore, since PFDs are manufactured and used in the national marketplace, safety standards for PFDs should be national in scope to avoid burdensome variances. Therefore, this rule preempts State action on the same subject matter.

#### Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. This rulemaking is procedural in nature, and contains nothing that would affect the environment.

#### List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Incorporation by Reference, Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, vessels.

46 CFR Part 159

Business and industry, Incorporation by Reference, Laboratories, 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, 179 and 181; and 46 CFR parts 2, 159, and 160 as follows:

#### Title 33—[Amended]

#### 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 § 175.21, paragraph (a) is revised to read as follows:

**§ 175.21 Condition; size and fit; approval marking.**

\* \* \* \* \*

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

\* \* \* \* \*

3. Section 175.23 is added to read as follows:

**§ 175.23 Serviceable condition.**

A PFD is considered to be in serviceable condition for purposes of § 175.21(a) only if the following conditions are met:

(a) No PFD may exhibit deterioration that could diminish the performance of the PFD, including—

(1) Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

(2) Webbing or straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from an attachment point on the PFD; or

(3) Any other rotted or deteriorated structural component that fails when tugged.

(b) In addition to meeting the requirements of paragraph (a) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit—

(1) Rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material;

(2) Buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

(3) Loss of buoyant material or buoyant material that is not securely held in position.

(c) In addition to meeting the requirements of paragraph (a) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with—

(1) Except as provided in paragraph (d) of this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed;

(2) Inflatable chambers that are all capable of holding air;

(3) Oral inflation tubes that are not blocked, detached, or broken;

(4) A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

(5) Inflator status indicators that are not broken or otherwise non-functional.

(d) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (a) and (c) of this section.

**PART 179—DEFECT NOTIFICATION**

4. The authority citation for Part 179 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

5. Section 179.01 is revised to read as follows:

**§ 179.01 Purpose.**

This part prescribes rules to implement 46 U.S.C. 4310, governing the notification of defects in boats and associated equipment.

6. Section 179.03 is revised to read as follows:

**§ 179.03 Definitions.**

*Associated equipment* means the following equipment as shipped, transferred, or sold from the place of manufacture and includes all attached parts and accessories:

(1) An inboard engine.

(2) An outboard engine.

(3) A stern drive unit.

(4) An inflatable personal flotation device approved under 46 CFR 160.076.

*Boat* means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Engaged in the carrying of six or fewer passengers.

*Manufacturer* means any person engaged in—

(1) The manufacture, construction, or assembly of boats or associated equipment;

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or

(3) The importation into the United States for sale of boats, associated equipment, or components thereof.

7. Section 179.05 is revised to read as follows:

**§ 179.05 Manufacturer discovered defects.**

Each manufacturer who is required to furnish a notice of a defect or failure to comply with a standard or regulation under 46 U.S.C. 4310(b), shall furnish that notice within 30 days after the manufacturer discovers or acquires information of the defect or failure to comply.

8. Section 179.07 is revised to read as follows:

**§ 179.07 Notice given by "more expeditious means".**

Each manufacturer who gives notice by more expeditious means as provided for in 46 U.S.C. 4310(c)(1)(C), must give such notice in writing.

9. In § 179.09 the introductory paragraph is revised to read as follows:

**§ 179.09 Contents of notification.**

Each notice required under 46 U.S.C. 4310(b) must include the following additional information:

\* \* \* \* \*

10. Section 179.11 is revised to read as follows:

**§ 179.11 Defects determined by the Commandant.**

A manufacturer who is informed by the Commandant under 46 U.S.C. 4310(f) that a boat or associated equipment contains a defect relating to safety or failure to comply with a standard or regulation issued under the authority of 46 U.S.C. 4302, shall within 30 days of receipt of the information—

(a) Furnish the notification described in 46 U.S.C. 4310(d) to the persons designated in 46 U.S.C. 4310(c), or

(b) Provide information to the Commandant by certified mail stating why the manufacturer believes there is no defect relating to safety or failure of compliance.

10a. In § 179.13, paragraphs (a) introductory text, (a)(1), and (a)(2) are revised to read as follows:

**§ 179.13 Initial report to the Commandant.**

(a) When a manufacturer gives a notification required under 46 U.S.C. 4310, the manufacturer shall concurrently send to the Commandant by certified mail—

(1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c);

(2) The manufacturer's best estimate of the total number of boats or items of associated equipment potentially affected by the defect or failure to comply with a standard or regulation prescribed under 46 U.S.C. 4302; and

\* \* \* \* \*

11. Section 179.17 is revised to read as follows:

**§ 179.17 Penalties.**

Each manufacturer who fails to comply with a provision of 46 U.S.C. 4310 or the regulations in this part, is subject to the penalties as prescribed in 46 U.S.C. 4311.

12. Section 179.19 is revised to read as follows:

**§ 179.19 Address of the Commandant.**

(a) Each report and communication sent to the Coast Guard and required by this part concerning boats and associated equipment other than inflatable personal flotation devices, must be submitted to Commandant (G-OPB-3), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001.

(b) Each report and communication sent to the Coast Guard and required by this part concerning inflatable personal flotation devices, must be submitted to Commandant (G-MMS-4), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001.

**PART 181—MANUFACTURER REQUIREMENTS**

13. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

**Subpart A—General**

14. In § 181.4, paragraph (b) is revised to read as follows:

**§ 181.4 Incorporation by reference.**

\* \* \* \* \*

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

*Underwriters Laboratories, Inc.*

333 Pfingsten Road, Northbrook, IL 60062.

UL 1123, Marine Buoyant Devices, 181.703.

February 17, 1995.

**Subpart G—Instruction Pamphlet For Personal Flotation Devices**

15. Section 181.702 is revised to read as follows:

**§ 181.702 Information pamphlet: requirement to furnish.**

(a) Each manufacturer of a Type I, II, III, IV, or V personal flotation device (PFD) must furnish with each PFD that is sold or offered for sale for use on a recreational boat, an information pamphlet meeting the requirements of § 181.703, § 181.704, or § 181.705 of this subpart, as appropriate.

(b) No person may sell or offer for sale for use on a recreational boat, a Type I, II, III, IV, or V PFD unless an information pamphlet required by this section is attached in such a way that it can be read prior to purchase.

16. Section 181.703 is revised to read as follows:

**§ 181.703 Information pamphlet: Contents.**

Unless otherwise specified in this subpart, each information pamphlet

must contain the information specified in sections 33, 34 and 35 of UL 1123.

17. Section 181.704 is added to read as follows:

**§ 181.704 contents of information pamphlet: Recreational hybrid PFD.**

Each information pamphlet for a recreational hybrid PFD approved under 46 CFR 160.077 must contain the information specified in 46 CFR 160.077-27.

18. Section 181.705 is added to read as follows:

**§ 181.705 Contents of information pamphlet: Recreational inflatable PFD.**

Each information pamphlet for a recreational inflatable PFD approved under 46 CFR 160.076 must contain the information required by 46 CFR 160.076-35.

**Title 46—[Amended]**

**PART 2—VESSEL INSPECTIONS**

19. The authority citation for part 2 is revised to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12334, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

20. In § 2.75-1, paragraph (f) is revised to read as follows:

**§ 2.75-1 Approvals.**

\* \* \* \* \*

(f) A listing of current and formerly approved equipment and materials is published by the Coast Guard from time to time in "Equipment Lists" (COMDTINST M16714.3 series), which is available for sale from the Superintendent of Documents, Government Printing Office.

**§ 2.75-17 [Removed]**

21. Section 2.75-17 is removed.

**§ 2.75-18 [Removed]**

22. Section 2.75-18 is removed.

**§ 2.75-19 [Removed]**

23. Section 2.75-19 is removed.

**§ 2.75-20 [Removed]**

24. Section 2.75-20 is removed.

**§ 2.75-30 [Removed]**

25. Section 2.75-30 is removed.

26. In § 2.75-50, the section heading and paragraph (a) are revised and a new paragraph (c) is added to read as follows:

**§ 2.75-50 Withdrawals or terminations of approvals and appeals.**

(a) The Commandant may withdraw approval for any item which is found

not to be in compliance with the conditions of approval, found to be unsuitable for its intended purpose, or does not meet the requirements of applicable regulations.

\* \* \* \* \*

(c) Any person directly affected by a decision to deny, withdraw, or terminate an approval may appeal the decision to the Director of Marine Safety and Environmental Protection (Commandant (G-M)) as provided in § 1.03-15 of this chapter.

**PART 159—APPROVAL OF EQUIPMENT AND MATERIALS**

27. The authority citation for part 159 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001-9 also issued under the authority of 44 U.S.C. 3507.

28. Section 159.001-2 is revised to read as follows:

**§ 159.001-2 Right of appeal.**

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal to the Director of Marine Safety and Environmental Protection (Commandant (G-M)) as provided in § 1.03-15 of this chapter.

29. Section 159.001-3 is revised to read as follows:

**§ 159.001-3 Definitions.**

As used in this part:

*Classification society* means an organization involved in the inspection of ships and ship equipment, and which, as determined by the Commandant, meets the standards in IMO Resolution A.739(18).

*Independent laboratory* means an organization which meets the standards for acceptance in § 159.010-3 of this part, and which is accepted by the Coast Guard for performing certain tests and inspections. In addition to commercial testing laboratories, the Commandant may also accept classification societies and agencies of governments that are involved in the inspection and testing of marine safety equipment that meet the requirements of § 159.010-3.

*Memorandum of Understanding (MOU)* is an agreement between the Coast Guard and a laboratory that specifies the approval functions a recognized independent laboratory performs for the Coast Guard and the recognized independent laboratory's working arrangements with the Coast Guard.

*Recognized independent laboratory* means an independent laboratory which meets the standards of § 159.010-3, and is accepted by the Coast Guard to

perform certain equipment approval functions on behalf of the Coast Guard, as described in a Memorandum of Understanding signed by the laboratory and the Coast Guard in accordance with § 159.010-7(b).

30. Section 159.001-4 is added to read as follows:

**§ 159.001-4 Incorporation by reference.**

(a) Certain materials is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC, and at the U.S. Coast Guard, Lifesaving and Fire Safety Standards Branch (G-MMS-4), 2100 Second Street SW, Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part (subchapter) and the sections affected are as follows:

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London SE1 7SR, England.

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22, 1993—159.001-3.

31. Section 159.001-5 is revised to read as follows:

**§ 159.001-5 Correspondence and applications.**

Unless otherwise specified, all correspondence and applications in connection with approval and testing of equipment and materials must be addressed to: Commandant (G-MMS-4), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001, Telephone: (202) 267-1444, Facsimile: (202) 267-1069, Electronic mail: MVI-3/G-M@cgsmtmp.uscg.mil.

**Subpart 159.005—Approval Procedures**

32. In § 159.005-13, paragraph (a)(4) is revised to read as follows:

**§ 159.005-13 Equipment or material: approval.**

(a) \* \* \*

(4) Publishes a record of the approval in "Equipment Lists." The most recent

edition of "Equipment Lists" U.S. Coast Guard Publication M16714.3 (series) is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.

\* \* \* \* \*

33. The title of subpart 159.010 is revised to read as follows:

**Subpart 159.010—Independent Laboratory: Acceptance, Recognition, and Termination**

34. Section 159.010-1 is revised to read as follows:

**§ 159.010-1 Purpose.**

This subpart contains the following:

(a) The standards and procedures under which the Coast Guard accepts an independent laboratory that a manufacturer proposes to use.

(b) The standards and procedures under which a laboratory is accepted as a recognized laboratory under applicable subparts.

(c) The circumstances under which the acceptance or recognition of a laboratory is terminated.

35. Section 159.010-5 is revised to read as follows:

**§ 159.010-5 Independent laboratory: application for acceptance.**

(a) Each application for acceptance of an organization as an independent laboratory must contain the following:

(1) The name and address of the organization.

(2) A list of the equipment or material that the organization would inspect, or test, or both, under this subchapter.

(3) A description of the organization's experience and its qualifications for conducting the inspections and tests required in the applicable subpart.

(4) A description of the apparatus and facilities available to the organization for conducting those inspections and tests.

(5) If instruments are used in the required tests and inspections, a description of the instrument calibration program applying to those instruments.

(6) The position titles of personnel who are to perform, supervise, or witness those inspections or tests, along with the training and experience required for personnel in those positions.

(7) A statement signed by the chief officer of the organization or the chief officer's representative, that an official representative of the Coast Guard is allowed access upon request to the place where tests and inspections take place, to verify the information submitted in the application, or to witness tests and inspections.

(b) Each application for acceptance as an independent laboratory that is not submitted by an agency of a state or another national government, or by a classification society, must also contain the following:

(1) The name and address of each subsidiary and division of the organization, or a statement that none are involved in the testing or manufacturing of equipment approved under this subchapter.

(3) The name, title, address, and principal business activity of each of the organization's officers and directors, and the name, address, and principal business activity of each person, company, or corporation that owns at least three-percent interest in the organization or in a company or corporation that controls the organization.

**§ 159.010-7 [Removed]**

36. Section 159.010-7 is removed.

**§ 159.010-9 [Redesignated as § 159.010-7]**

37. Section 159.010-9 is redesignated 159.010-7, and revised to read as follows:

**§ 159.010-7 Recognized independent laboratory: Memorandum of Understanding.**

(a) Only laboratories that have entered into an MOU with the Coast Guard may perform the functions of a recognized laboratory under this chapter.

(b) An independent laboratory seeking to become a recognized independent laboratory must submit a signed MOU to the Commandant that includes—

(1) A statement of purpose;

(2) An identification and description of the parties involved;

(3) A description of the problem resolution and appeals processes;

(4) A description of the process for measuring effectiveness and efficiency of the program under the MOU;

(5) The effective date of the MOU and terms for its termination;

(6) A statement to the effect that the MOU is not an exclusive agreement between the recognized independent laboratory and the Coast Guard;

(7) An agreement to conduct comparison testing with other recognized laboratories as directed by the Coast Guard, no more often than twice each year, with the laboratory bearing the cost of sample acquisition and testing;

(8) A statement as to how the costs of implementing the MOU will be borne; and

(9) A description of each party's responsibilities for—

(i) Equipment review and approval;

(ii) Coast Guard oversight of the recognized independent laboratory's procedures and processes;

(iii) Coordination between the parties;

(iv) Developing and maintaining regulations and standards;

(v) Handling review and approval of new and novel items not anticipated by existing regulations and standards;

(vi) Testing and inspection facilities and procedures;

(vii) Production quality control; and

(viii) Maintenance of records.

(c) The signature on the MOU required by paragraph (b) of this section must be that of the chief officer of the independent laboratory or the chief officer's representative. The Commandant or an authorized representative of the Commandant will review the MOU to ensure that it contains the information required by paragraph (b) of this section, and that the substantive provisions submitted in compliance with that paragraph are equivalent to those contained in other MOUs signed by the Commandant. If the Commandant determines that the MOU is acceptable and the independent laboratory is capable of carrying out the equipment approval functions identified in the MOU in accordance with all appropriate requirements, the Commandant or authorized representative may at his discretion sign the MOU. Where qualitative tests or determinations are required for approval or follow-up, provision must be made for conducting comparison tests with other recognized laboratories.

(d) Copies of MOUs signed by the Commandant in accordance with this part and of lists of independent laboratories which have been accepted as recognized laboratories but which have not yet been added to the lists included in this subchapter may be obtained at the address listed in § 159.001-5.

**§ 159.010-11 [Removed]**

38. Section 159.010-11 is removed.

**§ 159.010-17 [Redesignated as § 159.010-11]**

39. Section 159.010-17 is redesignated 159.010-11, and revised to read as follows:

**§ 159.010-11 Changes in the laboratory's qualifications.**

(a) If any of the information submitted under § 159.010-5(a) changes, the laboratory shall notify the Commandant in writing of each change within 30 days after the change has occurred.

(b) If any change in the independent laboratory occurs which affects its performance under the MOU required

under § 159.010-7, the laboratory shall notify the Commandant in writing within 30 days after the change occurs. The Commandant may terminate the MOU, or may require amendments or revisions.

**§ 159.010-19 [Redesignated § 159.010-17]**

40. Section 159.010-19 is redesignated 159.010-17, and revised to read as follows:

**§ 159.010-17 Termination of acceptance or recognition of an independent laboratory.**

The acceptance or recognition of a laboratory terminates if the laboratory—

(a) Requests termination;

(b) Is no longer in business;

(c) Knowingly fails to perform or supervise an inspection or test, or both, as required in an applicable subpart;

(d) Knowingly attests to the lack of errors, omissions, or false statement of an approval test report that contains errors omissions, or false statements;

(e) Does not meet the requirements of § 159.010-3(a);

(f) Does not comply with § 159.010-11;

(g) Contracts or transfers the performance or supervision of required inspections or tests to another laboratory or person without the approval of the Commandant; or

(h) Fails to, or in the opinion of the Commandant is unable to, carry out its responsibilities under an MOU required by § 159.010-7.

**§ 159.010-21 [Redesignated as § 159.010-19]**

41. Section 159.010-21 is redesignated 159.010-19, and revised to read as follows:

**§ 159.010-19 Termination of acceptance or recognition: Procedure.**

(a) If the Coast Guard receives evidence of grounds for termination of acceptance or recognition of an independent laboratory under § 159.010-17, the Commandant will notify the laboratory that termination is under consideration. The laboratory may submit written comments to the Commandant within 21 days of receipt of the notification. The Commandant will take all timely written comments into account before taking final action in the matter, and in no case will the Commandant take final action until at least 30 days after the laboratory has received the notification. Any final action taken by the Commandant is final agency action on the matter.

(b) If a deficiency could materially affect the validity of an approval issued under an applicable subpart, the Commandant may temporarily suspend the acceptance of the laboratory and

may direct the holder of the certificate of approval to cease claiming that the items tested or inspected by the laboratory are Coast Guard approved, pending a final decision in the matter.

**PART 160—LIFESAVING EQUIPMENT**

42. The authority citation for Part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**Subpart 160.021—Hand Red Flare Distress Signals**

**§ 160.021-9 [Removed]**

44. Section 160.021-9 is removed.

**Subpart 160.022—Floating Orange Smoke Distress Signals (5 Minutes)**

**§ 160.022-9 [Removed]**

43. Section 160.022-9 is removed.

**Subpart 160.023—Hand Combination Flare and Smoke Distress Signals**

**§ 160.023-9 [Removed]**

44. Section 160.023-9 is removed.

**Subpart 160.024—Pistol-Projected Parachute Red Flare Distress Signals**

**§ 160.024-9 [Removed]**

45. Section 160.024-9 is removed.

**Subpart 160.028—Signal Pistols For Red Flare Distress Signals**

**§ 160.028-9 [Removed]**

46. Section 160.028-9 is removed.

**Subpart 160.031—Line-Throwing Appliance, Shoulder Gun Type (And Equipment)**

**§ 160.031-9 [Removed]**

47. Section 160.031-9 is removed.

**Subpart 160.036—Hand-Held Rocket-Propelled Parachute Red Flare Distress Signals**

**§ 160.036-9 [Removed]**

48. Section 160.036-9 is removed.

**Subpart 160.037—Hand Orange Smoke Distress Signals**

**§ 160.037-9 [Removed]**

49. Section 160.037-9 is removed.

**Subpart 160.040—Line-Throwing Appliance, Impulse-Projected Rocket Type (And Equipment)**

**§ 160.040-9 [Removed]**

50. Section 160.040-9 is removed.

**Subpart 160.047—Specifications for a Buoyant Vest, Kapok, or Fibrous Glass, Adult and Child****§ 160.047–6a [Removed]**

51. Section 160.047–6a is removed.

**§ 160.047–6b [Removed]**

52. Section 160.047–6b is removed.

**§ 160.047–6c [Removed]**

53. Section 160.047–6c is removed.

54. Section 160.047–7 is revised to read as follows:

**§ 160.047–7 Recognized Laboratory**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.047–9 [Removed]**

55. Section 160.047–9 is removed.

**§ 160.047–10 [Removed]**

56. Section 160.047–10 is removed.

**Subpart 160.048—Specification for a Buoyant Cushion, Fibrous Glass****§ 160.048–7 [Amended]**

57. Section 160.048–7, removed paragraphs (a) and (b) and redesignate paragraphs (b), (c), and (e) as (a), (b), and (c) respectively.

**§ 160.048–7a [Removed]**

58. Section 160.048–7a is removed.

59. Section 160.048–8 is revised to read as follows:

**§ 160.048–8 Recognized Laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performed production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.048–9 [Removed]**

60. Section 160.048–9 is removed.

**§ 160.048–10 [Removed]**

61. Section 160.048–10 is removed.

**Subpart 160.049—Specification for a Buoyant Cushion, Plastic Foam**

62. In § 160.049–7, revise the heading, remove paragraphs (a) and (d) and redesignate paragraphs (b), (c), and (e) as (a), (b), and (c) respectively, to read as follows:

**§ 160.049–7 Procedure for approval****§ 160.049–7a [Removed]**

63. Section 160.049–7a is removed.

63. Section 160.049–8 is revised to read as follows:

**§ 160.049–8 Recognized laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.049–9 [Removed]**

65. Section 160.049–9 is removed.

**§ 160.049–10 [Removed]**

66. Section 160.049–10 is removed.

**Subpart 160.052—Specification For a Buoyant Vest, Unicellular Plastic Foam, Adult and Child****§ 160.052–8a [Removed]**

67. Section 160.052–8a is removed.

**§ 160.052–8b [Removed]**

68. Section 160.052–8b is removed.

**§ 160.052–8c [Removed]**

69. Section 160.052–8c is removed.

70. Section 160.052–9 is revised to read as follows:

**§ 160.052–9 Recognized Laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.052–11 [Removed]**

71. Section 160.052–11 is removed.

**§ 160.052–12 [Removed]**

72. Section 160.052–12 is removed.

**Subpart 160.057—Floating Orange Smoke Distress Signals (15 Minutes)****§ 160.057–9 [Removed]**

73. Section 160.057–9 is removed.

**Subpart 160.060—Specification For a Buoyant Vest, Unicellular Polyethylene Foam, Adult and Child****§ 160.060–8a [Removed]**

74. Section 160.060–8a is removed.

**§ 160.060–8b [Removed]**

77. Section 160.060–8b is removed.

**§ 160.060–8c [Removed]**

75. Section 160.060–8c is removed.

76. Section 160.060–9 is revised to read as follows:

**§ 160.060–9 Recognized Laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval

procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010-7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709-3995, (919) 549-1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.060-11 [Removed]**

77. Section 160.060-11 is removed.

**§ 160.060-12 [Removed]**

78. Section 160.060-12 is removed.

**Subpart 160.064—Marine Buoyant Devices**

**§ 160.064-5 [Removed]**

79. Section 160.064-5 is removed.

**§ 160.064-5a [Removed]**

80. Section 160.064-5a is removed.

**§ 160.064-5b [Removed]**

81. Section 160.064-5b is removed.

82. Section 160.064-7 is revised to read as follows:

**§ 160.064-7 Recognized Laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010-7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709-3995, (919) 549-1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

**§ 160.064-8 [Removed]**

83. Section 160.064-8 is removed.

**§ 160.064-9 [Removed]**

84. Section 160.064-9 is removed.

**Subpart 160.066—Distress Signal for Boats, Red Aerial Pyrotechnic Flare**

85. In § 160.066-11, paragraph (c) is revised to read as follows:

**§ 160.066-11 Approval procedures.**

\* \* \* \* \*

(c) The approval tests must be performed by an independent laboratory accepted by the Commandant under Subpart 159.010 of this chapter.

**§ 160.066-18 [Removed]**

86. Section 160.066-18 is removed.

**Subpart 160.077—Hybrid Inflatable Personal Flotation Devices**

87. Section 160.077-9 is revised to read as follows:

**§ 160.077-9 Recognized Laboratory.**

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.055 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010-7 of this part, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709-3995, (919) 549-1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

Dated: March 20, 1996.

J.C. Card,

*Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.*

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**46 CFR Part 160**

[CGD 94-110]

RIN 2115-AE96

**Recreational Inflatable Personal Flotation Device Standards**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adopting a final rule that establishes structural and performance standards for inflatable personal flotation devices (PFDs) for

recreational boaters, as well as the procedures for Coast Guard approval of inflatable PFDs. These standards allow for approval of inflatable PFDs which are more amendable to continuous wear by recreational boaters than inherently buoyant PFDs, thereby encouraging use of PFDs by the boating public and saving lives.

**DATES:** This rule is effective on September 24, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referred to 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., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert L. Markle, U.S. Coast Guard, Marine Safety and Environmental Protection Directorate, telephone (202) 267-6446, facsimile (202) 267-1069, or electronic mail "mvi-3/G-M18@cgsmt.uscg.mil". A copy of this final rule may be obtained by calling the Coast Guard's toll-free Customer Infoline, 1-800-368-5647. In Washington, DC, call (202) 267-0780.

**SUPPLEMENTARY INFORMATION:**

Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Inflatable Personal Flotation Devices" in the Federal Register (58 FR 59428). On June 23, 1995, the Coast Guard published an interim rule (IR) entitled "Inflatable Personal Flotation Device Standards" in the Federal Register (60 FR 32836). This IR became effective on July 24, 1995. Due to requests, a public meeting, announced in the August 2, 1995, Federal Register (60 FR 39268), was held at Coast Guard Headquarters on August 28, 1995. On October 10, 1995, the Coast guard published a notice in the Federal Register (60 FR 52631, October 10, 1995) extending the comment period on the IR from October 23, 1995, to November 6, 1995, to allow discussion of the rule at the National Boating Safety Advisory Council (NBSAC) meeting on October 30-31, 1995. Additionally, minor editorial changes reflecting Coast Guard organizational changes were made to the regulations established by the IR by a final rule published September 29, 1995, in the Federal Register (60 FR 50455).