

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### Collection of Information

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

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

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

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise § 165.T11-098 to read as follows:

#### § 165.T11-098 Security Zones; San Francisco Bay and Delta ports

\* \* \* \* \*

(c) *Effective period.* This section is effective at 11:59 p.m. PDT on December

21, 2001, and will terminate at 11:59 p.m. PST on December 21, 2002.

\* \* \* \* \*

Dated: June 12, 2002.

**L.L. Hereth,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 02-15966 Filed 6-20-02; 2:17 pm]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 175

[USCG-2000-8589]

RIN 2115-AG04

### Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is requiring that most children under age 13 aboard recreational vessels wear personal flotation devices (PFDs), or lifejackets. During 1995-1998, 105 children under 13 died in the water, 66 of them by drowning. This Rule should reduce the number of children who drown because they are not wearing lifejackets.

**DATES:** This Interim Rule is effective December 23, 2002. Comments and related material must reach the Docket Management Facility on or before August 23, 2002.

**ADDRESSES:** To make sure they do not enter the docket [USCG-2000-8589] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand-delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Internet Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble

as being available in the docket, will become part of this docket and be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this Interim Rule, call Carl Perry, Coast Guard, telephone: 202-267-0979. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On May 1, 2001, we published in the **Federal Register** [66 FR 21717] a notice of proposed rulemaking (NPRM) titled "Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels". We received 46 letters commenting on the proposed rule. No public hearing was requested and none was held.

The NPRM followed two published notices of request for comments, both titled "Recreational Boating Safety-Federal Requirements for Wearing Personal Flotation Devices," under the docket number CGD 97-059. The first appeared in the **Federal Register** on September 25, 1997 [62 FR 50280]; the second, which extended the comment period, on March 20, 1998 [63 FR 13586]. The comments received in response to these notices we discussed in the NPRM.

After summarizing the comments received in response to the NPRM, we consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding the results. NBSAC recommended that we proceed to publish a Final Rule, as proposed in the NPRM.

We published a Final Rule in the **Federal Register** on February 27, 2002 [67 FR 8881], addressing requirements for children under age 13 to wear PFDs while the children are on deck and their vessels are under way. First, for States without their own statutes or rules on age, we established a Federal requirement complete in itself. Second, for States with unqualified statutes or rules on age (for most States with laws on age), we adopted those statutes or rules whole. Third, however, for States with their own statutes or rules on age qualified by, say, lengths of vessels, we purported to adopt those statutes or

rules though not so qualified. Even this could have worked except for one problem: Our boarding-officers and those States' boarding-officers would have been enforcing different laws on the same waters.

A State Boating Law Administrator alerted us to this potential misfit between our own rule and States' qualified statutes or rules. At the same time, as we prepared guidance for our own boarding officers on the fine points of enforcement, we observed the same misfit. We decided that we needed to withdraw the Final Rule as it stood and rectify it. We have already published a Notice of Withdrawal [67 FR 14645 (March 27, 2002)]. By this Interim Rule we rectify the Rule as it stood.

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG-2000-8589], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, by hand-delivery, by fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this Interim Rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The number of deaths by drowning of children under 13 has decreased from 26 in 1995 to 11 in 1998. This trend is favorable on its face, and suggests the possibility that the appropriate Federal policy may be one of watchful waiting. Yet a review of statistics on recreational-

boating accidents during 1998 showed that the rate of children drowning in States that require children to wear lifejackets (1.22 such drownings for every 1000 accidents) is lower than that of States that do not (1.31 such drownings for every 1000 accidents).

By late 1995, 26 States had enacted statutes or instated rules requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, were not consistent nationwide, affecting children of different ages, while aboard vessels of different sizes, and engaged in different activities. By late 1999, 36 States had enacted statutes or instated rules requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, still were not consistent nationwide. They varied by the age for wearing: from under age 18, when the vessel operator is under 18, to under age 6. They varied in other particulars, too: on the sizes of vessels (more than 26 feet in length; or less than 65 feet, 26 feet, 19 feet, 18 feet, or 16 feet in length); whether the vessels were under way, in motion, or not specified; and whether the children were on open decks, below decks, or in enclosed cabins.

In support of ongoing State efforts to improve boating safety, we are instating a requirement that children under 13 wear lifejackets approved by the Coast Guard while aboard recreational vessels under way, except when the children are below decks or in enclosed cabins. We are nevertheless adopting any State's statute or rule requiring children aboard recreational vessels to wear lifejackets within those States to avoid differences in enforcement between State and Federal boarding-officers. We encourage States to establish their own requirements for children and also encourage greater uniformity of State statutes and rules nationwide.

##### **Discussion of Comments and Changes**

By the close of the comment period on August 30, 2001, we had received 46 comments, from—

- 11 recreational boaters;
- 7 governmental agencies;
- 3 representatives of the boating industry;
- 1 general business;
- 1 boating organization;
- 20 general boating interests;
- 2 safety organizations; and
- The National Transportation Safety Board (NTSB).

Twenty-two comments supported the Rule as proposed in the NPRM, eight supported it with changes, and sixteen opposed it.

Most of the comments that supported the Rule, as proposed in the NPRM, stated that it would be a positive step toward reducing drownings and toward a uniform requirement across the States. Two comments indicated that requiring children to wear PFDs would make boating safer and more pleasant for parents because parents themselves often wear PFDs, again to influence children. Parents also know that mishaps happen quickly and that they cannot always watch children on a boat so use of PFDs increases their sense of safety. In separate comments, two agencies in North Carolina stated that that State's data on drownings indicate that most children who drowned there were not wearing PFDs at the time of the incidents.

Eight comments either suggested helpful changes or stated that they could support the Rule, or at least not object to it if certain changes were made.

Two comments requested that the Rule allow the use of automatic, inflatable PFDs or safety harnesses on all vessels or at least on every vessel more than 21 feet in length.

But the proposed rule never contemplated prohibiting, and this Interim Rule does not prohibit, the use of inflatable PFDs for children. The Coast Guard has already approved automatic, hybrid, inflatable PFDs for children, which means these PFDs meet the requirements of this Rule. Once the Coast Guard has approved automatic, fully inflatable PFDs for children to wear, such devices will also meet these requirements. Nor does this Rule prohibit the use of safety harnesses; it just does not allow their use instead of wearing PFDs. The Coast Guard has decided not to revise this Rule to take account of these two comments, because the Rule anticipates them.

One comment suggested limiting the Rule to children on boats less than 18 feet that are under way or making way, while another suggested limiting it to children on the decks of vessels more than 65 feet.

The Coast Guard has no data indicating any specific length above which children become safe even without wearing lifejackets. Even so, we want to avoid disparate applicability of Federal and State requirements for wearing PFDs within any specific State. Therefore, this rule adds a new § 175.25 to adopt any State statute or rule requiring certain children to wear lifejackets, including such limits on applicability as the lengths of vessels; whether the vessels are under way, in motion, or not specified; and whether

the children are on open decks, below decks, or in enclosed cabins.

Several comments asked the Coast Guard to lower the age limit because many 12-year-olds are better swimmers than many adults. One comment suggested lowering it to 6 years old when a vessel is not under way. Another comment recommended exempting those children who have passed a swimming course or a swimming-proficiency test.

In a study of Recreational Boating Safety from 1993, NTSB recommended that the Coast Guard work with the National Association of State Boating Law Administrators (NASBLA) and the American Academy of Pediatrics to develop "a uniform component of standards that establishes an age at or below which all children should be required by all States to wear personal flotation devices while in recreational boats." NTSB proposed this strategy instead of one that would set specific Federal age-based requirements for wearing PFDs. The Coast Guard, these two organizations, and others endorsed mandatory use of lifejackets for children 12 and under. The other organizations were the National Safety Council, NBSAC, the U.S. Coast Guard Auxiliary, the National Water Safety Congress, the National Recreational Boating Safety Coalition, the National Safe Boating Council, the National Marine Manufacturers Association, the PFD Manufacturers Association, the American Medical Association, the American Camping Association, and the National Safe Kids Campaign. At least 14 States selected the same age-based requirements for children to wear lifejackets, either under 13 years or 12 years and under, which squares with the recent recommendations of NBSAC and NTSB.

Therefore, we have retained in this Interim Rule the Federal age-based requirement of under 13, as proposed in the NPRM. (Under 33 CFR 175.5, the States may set their own wearing requirements different from the Federal ones. Still, under it, the Coast Guard need not defer to States that have set no such requirements by statute or rule; and it does not so defer here.)

Another comment suggested that the current wording of "appropriate PFDs" is too vague and requested that the "appropriate" be replaced with "a Type I, II, III, or V PFD."

In the preamble to the NPRM [66 FR 21717], under paragraph 2 of the discussion of section 175.15 of the proposed rule, we stated that the proposed requirement would be to wear lifejackets approved by the Coast Guard. We agree with the comment and have

revised this section to read "\* \* \* appropriate PFDs approved by the Coast Guard."

In its comment, the NTSB requested that the Coast Guard reconsider allowing States to set their own age-based requirements, even if lower than 12 years old. The NTSB urged the Coast Guard to establish a uniform standard for the mandatory use of PFDs for all children under age 13. According to NTSB, a national standard would help parents and law-enforcement agencies by minimizing confusion about which children must wear PFDs in which States. Another comment also asked that the Rule preempt the different age-based requirements from State to State.

Again, the Coast Guard has decided not to amend 33 CFR 175.5 so as to preempt the States from setting their own wearing requirements different from the Federal ones and, in fact, is adopting them where they exist. States' requirements, even where they vary, represent a real improvement.

Seven of the sixteen opposing comments stated that mandatory use of lifejackets is a State issue.

One comment expressed concern that Federal action would interfere with individual State efforts to mandate use of PFDs. It and another suggested that each State be allowed to continue drafting laws tailored to its own distinct waters and boating community. Another comment stated that the low number of children's drownings that appear in national statistics indicate that States are handling the issue properly. Two others disapproved of a Federal requirement because it would create confusion at a time when most States already require that children wear lifejackets. One of those, from the Virginia Department of Game and Inland Fisheries, stated that, because under the proposed rule States would continue to enforce existing age limits, it is "unclear how [that rule] would encourage greater uniformity of boating laws." It added that Virginia's own data on boating accidents did not support imposing the requirement on "potentially hundreds of thousands of 'recreational vessel users'."

This Interim Rule acknowledges the law-enforcement efforts of the many States that already require children under specific ages to wear lifejackets while on board recreational vessels and, by adopting any statutes or rules requiring children to wear lifejackets, including any limits on applicability, within those States, does not interfere with those efforts. It adds authority for boarding officers of the Coast Guard, enforcing Federal law (or State law assimilated to it), to support those

efforts. Further, we encourage other States to undertake their own such efforts, without imposing a Federal mandate in this Interim Rule.

Other opposing comments stated that national statistics do not warrant a Federal rule, and one suggested that the Coast Guard focus on education rather than regulation. Another questioned whether the Coast Guard's own statistics supported the Rule. It stated that some entries in the Boating Accident Reporting Database (BARD) first report deaths as due to drownings, which coroners later conclude were actually due to carbon-monoxide poison. Another responded that the data indicate that the Rule would not have saved most children who drowned; and it concluded that age 12 "is certainly too old."

The Coast Guard has fostered and will continue to foster safety in recreational boating through education and public awareness. However, we disagree with the comments implying that our boarding officers should not be authorized to support States' law-enforcement officers by enforcing requirements for children to wear lifejackets within the States with such requirements. Our applying "under 13" agrees with recommendations from NBSAC and the NTSB. Whether or not our statistics compel Federal measures, they do, as we observe, support them. Therefore, we have retained the age-based requirement as proposed.

Other comments objecting to the Rule noted the Coast Guard's limited funds for enforcement. One stated that because most States already have a mandated age limit, generally 12, the Coast Guard would be wasting valuable man-hours handing out citations like parking tickets. It also voiced concern that the citations could lead to higher insurance costs for individual boaters. Another stated that a Federal rule would be ineffective because there would be no added funding for enforcement.

In the preamble to the NPRM, under paragraph 1 of the Regulatory Evaluation discussing the costs of the proposed rule, we stated that "\* \* \* the Coast Guard already trains its boarding officers to check safety equipment." Enforcement of the Rule will entail few if any stops that these officers would not have been making anyway during enforcement of, say, rules on carriage of that equipment. The Coast Guard has decided that the Rule, as proposed in the NPRM, anticipates these comments and it adopts that Rule, unchanged in these respects, as this Interim Rule.

Three comments voiced concern that the proposed rule did not consider how uncomfortable lifejackets can be for

children, especially those boating in hot, humid climates. One of the three stated that children wearing lifejackets in those climates could suffer heat stroke and argued that the Rule would discriminate against children who are under 13 but who are good, even excellent, swimmers. Another added that the Coast Guard could reduce the number of drownings more effectively if it focused educational campaigns on adults who use canoes and johnboats to go fishing or bird-watching. These people view boating only as a means to doing the primary activity, so they may not be as aware of boating safety as boaters with children on board.

Some models and types of lifejackets are more comfortable than others, designs are ever-evolving, and there are already some designs available in the marketplace that reduce the threat of injury by heat stroke. Voluntary swimming is not the same as involuntary swimming after falling overboard or after a collision. Again, the Coast Guard has fostered and will continue to foster recreational boating safety through education and public awareness, even where boating is involved but where it is not the primary activity. The Coast Guard adopts the proposed rule, unchanged in these respects, as this Interim Rule.

Other comments stated that the decision whether to place a child in a lifejacket should belong to the parents or guardians and that the government cannot protect people from their own poor judgment.

This Interim Rule does not preclude parents and guardians from the exercise of good judgment, but it does prohibit the operator of the boat from getting under way until each child on board and on deck is wearing a lifejacket. It is likely to have the same effect on the judgment of parents and guardians as laws that require the use of seatbelts and special seats for children in cars. Even if "government cannot protect people from their own poor judgment," it can protect some people from some others' poor judgment. The Coast Guard adopts the proposed rule, unchanged in these respects, as this Interim Rule.

#### Discussion of Interim Rule

1. Section 175.3 adds a definition of the term "State" to clarify the applicability of non-Federal requirements and the Federal adoption of those requirements.

2. Section 175.15 accomplishes a minor editorial change and adds a new paragraph establishing a requirement for children under 13 to wear lifejackets approved by the Coast Guard while aboard recreational vessels.

3. Subpart B adds a new section 175.25 adopting States' statutes or rules requiring children to wear lifejackets while aboard recreational vessels within those States.

This Interim Rule (once effective) applies the Federal standard in full only where a State has not enacted or instated such a requirement. It would apply in full now, therefore, only in American Samoa, Colorado, Guam, Hawaii, Idaho, Indiana, Iowa, Minnesota, the Northern Mariana Islands, Nevada, New Mexico, North Carolina, North Dakota, South Dakota, the Virgin Islands, Virginia, Wisconsin, and Wyoming [see the 1999 edition of the National Association of State Boating Law Administrators, *Reference Guide to State Boating Laws*]; and, for recreational vessels owned in the United States, it applies (once effective) on the high seas.

#### Regulatory Evaluation

This Interim Rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, 1979)].

An interim Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

##### 1. Cost of Rule

This Interim Rule imposes no costs on the boating public. Existing rules require the carriage of an appropriate lifejacket for each passenger. Costs to the Government are non-existent as well because the Coast Guard already directs its boarding officers to board recreational vessels and already trains them to check safety equipment, once there.

##### 2. Benefit of Rule

This Interim Rule is appropriate because, even though statistics on boating accidents show that the actual numbers of children under 13 that drowned in recent years were relatively small (14 in 1998, 14 in 1999, and 7 in 2000), these few drownings were avoidable. It should reduce the number of children under 13 that drown every year because they are not wearing lifejackets.

This Rule affects only those States that have not established requirements, by statute or rule, for children to wear lifejackets. In those States, there were 7

drownings and 1 moderate injury and 3 critical injuries due to near-drownings of children under 13 from 1996 through 2000. These drownings and near-drownings might have been prevented if the children had worn lifejackets. (These numbers may overstate the number of lives that could have been saved if the children had worn lifejackets: Narratives in accident reports may fail to disclose circumstances in which the victims were pinned, for example, and would have drowned anyway. Equally, though,

they may understate the number of lives that could have been saved: Many accidents go unreported entirely.)

A memorandum from the Office of the Secretary of Transportation, dated January 29, 2002, sets the benefit of averting an accidental fatality in regulatory analyses at \$3.0 million. Another memorandum from that Office, dated January 8, 1993, yet never superseded, advises agencies within the Department to classify injuries as minor, moderate, serious, severe, critical, or fatal. The latter memorandum also

assigns to each degree of injury averted a certain percentage of the value of society's willingness to pay to avert a fatality. To calculate the value of society's willingness to pay to avert each degree of injury, we multiplied \$3.0 million by the percentage assigned to each degree of injury averted.

If we consider a 100% rate of compliance with a requirement for children to wear lifejackets, we can calculate the retrospective benefits of this Rule as below:

#### BENEFIT OF AVERTING ACCIDENTAL INJURIES AND FATALITIES FOR STATES WITHOUT EXISTING RULES

Severity category of injury	Benefit of averting an accidental injury or fatality	Number of injuries (1996–2000)	Benefit if accidental injuries and fatalities are averted
Minor .....	$(\$3,000,000)(0.0020) = \$6,000$	0	$(\$6,000)(0) = 0$
Moderate .....	$(\$3,000,000)(0.0155) = \$46,500$	1	$(\$46,500)(1) = \$46,500$
Serious .....	$(\$3,000,000)(0.0575) = \$172,500$	0	$(\$172,500)(0) = 0$
Severe .....	$(\$3,000,000)(0.1875) = \$562,500$	0	$(\$562,500)(0) = 0$
Critical .....	$(\$3,000,000)(0.7625) = \$2,287,500$	3	$(\$2,287,500)(3) = \$6,862,500$
Fatal .....	$(\$3,000,000)(1.000) = \$3,000,000$	7	$(\$3,000,000)(7) = \$21,000,000$
Total .....		11	\$27,909,000

The total value of injuries and fatalities averted for 1996–2000 would have been \$27,909,000. Therefore, the average annual value of injuries and fatalities averted would have been \$5,581,800, calculated as  $(\$27,909,000)/(5 \text{ years})$ .

#### Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this Interim Rule has a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Federal requirement for children under 13 to wear lifejackets applies (once effective) to operators of recreational vessels on waters subject to the jurisdiction of the United States (as defined in 33 CFR 2.05–30). Further, it applies likewise to operators of recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05–1). Last, since this Rule adopts any State statute or rule requiring certain children to wear lifejackets, including any limits on applicability, within those States, this requirement applies likewise to operators of recreational vessels either in States with such requirements or on

navigable waters of the United States outside States altogether.

Because the Regulatory Flexibility Act does not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this Rule does not have a significant economic impact on a substantial number of small entities. If you think that this Rule affects small entities, that your business, organization, or governmental jurisdiction qualifies as a small entity, and that this Rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think this Rule affects small entities, how your business, organization, or governmental jurisdiction qualifies, and how and to what degree this Rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we have offered to assist small entities in understanding this Interim Rule so that they can better evaluate its effects on them and participate in the rulemaking. If the Rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–

267–0979, or by e-mail at [cperry@comdt.uscg.mil](mailto:cperry@comdt.uscg.mil).

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

This Interim Rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

#### Federalism

We have analyzed this Interim Rule under Executive Order 13132 and have determined that, because the Federal requirement for children under 13 to wear lifejackets will not supersede or preempt any State's comparable requirement, this Rule does not have implications for federalism under that Order. The Federal requirements apply in full only where there are no State requirements; where there are State requirements, the Federal requirements apply only so as to assimilate the State requirements.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government, or the private sector, incur direct costs without the Federal Government's having first provided the funds to pay those costs. This Interim Rule does not impose an unfunded mandate.

*Taking of Private Property*

This Interim Rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Reform of Civil Justice*

This Interim Rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Protection of Children*

We have analyzed this Interim Rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule. Nor does it create an environmental risk to health or risk to safety that may disproportionately affect children; on the contrary, it advances the welfare of children even though it defers to States' limits on applicability of their requirements for children to wear lifejackets.

*Indian Tribal Governments*

This Interim Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Energy Effects*

We have analyzed this Interim Rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs within OMB as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Environment*

We have considered the environmental impact of this Interim Rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.ID, this Rule is categorically excluded from further environmental documentation. The Rule requires that certain children aboard recreational vessels wear lifejackets. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 175**

Marine Safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 175 as follows:

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

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

2. Amend § 175.3 by adding the following definition in alphabetical order to read as follows:

**§ 175.3 Definitions.**

\* \* \* \* \*

*State* means a State or Territory of the United States of America, whether a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

\* \* \* \* \*

3. Amend § 175.15 by removing from the introductory text the cite "§ 175.17" and adding in its place the cite §§ 175.17 and 175.25"; by removing from paragraph (b) the term "PFD's" and adding in its place the term "PFDs"; and by adding a new paragraph (c), to read as follows:

**§ 175.15 Personal flotation devices required.**

\* \* \* \* \*

(c) No person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either—

(1) Wearing an appropriate PFD approved by the Coast Guard; or  
(2) Below decks or in an enclosed cabin.

4. Add a new § 175.25 to subpart B, to read as follows:

**§ 175.25 Adoption of States' requirements for children to wear personal flotation devices.**

On waters within the geographical boundaries of any State that has established by statute or rule a requirement under which each child must wear an appropriate PFD approved by the Coast Guard while aboard a recreational vessel, no person may use such a vessel in violation of that statute or rule.

Dated: June 3, 2002.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.*

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**BILLING CODE 4910–15–P**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****36 CFR Part 1206**

**RIN 3095–AA93**

**National Historical Publications and Records Commission Grant Regulations**

**AGENCY:** National Historical Publications and Records Commission, National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** The rule updates and clarifies the National Historical Publications and Records Commission (NHPRC or "the Commission") regulations using plain language. We are removing outdated information, and expanding sections for greater clarity and conformity with our current guidelines. This revised regulation applies to all NHPRC applicants and grantees.

**EFFECTIVE DATE:** July 24, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Nancy Allard at 301–837–1850, or Nancy Copp at 202–501–5610.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the February 6, 2002, **Federal Register** (67 FR 5542) for a 60-day public comment period. NARA announced the availability of the proposed rule widely, including to all current grantees and State historical records coordinators. A copy of the proposed rule was also posted on the NARA web site for review. No timely comments were received. We are issuing this final rule without change.

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the