

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 175 and 183

[Docket No. USCG–2009–0206]

RIN 1625–AB34

Installation and Use of Engine Cut-off Switches on Recreational Vessels

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public input on whether changes are needed to the regulations covering standard safety features on certain recreational vessels. Specifically, the Coast Guard is seeking comment on whether it should require engine cut-off switches as a standard safety feature on propulsion machinery and/or starting controls installed on recreational vessels less than 26 feet in length, and whether it should require operators of these recreational vessels to use engine cut-off switches. Comments should address the public safety aspects of the new requirements, as well as the cost implications and regulatory burden.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before September 6, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0206 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this advanced notice of proposed rulemaking, call or e-mail Mr. Jeff Ludwig, Coast Guard;

telephone 202–372–1061, e-mail Jeffrey.A.Ludwig@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to respond to this advance notice of proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0206), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2009–0206” in the “Keyword” box. Click “Search,” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box, insert “USCG–2009–0206” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

- ABYC American Boat and Yacht Council
- BARD (Coast Guard) Boating Accident Report Database
- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- FR **Federal Register**
- NBSAC National Boating Safety Advisory Council
- NMMA National Marine Manufacturers Association
- PWC Personal Watercraft
- U.S.C. United States Code

III. Background

In a recent 5-year period, approximately 82.1 million people annually participated in recreational boating as an outdoor recreation activity

in the United States.¹ Of that population, approximately 53.8 million people enjoyed recreational boating on a motorized recreational vessel. Unfortunately, motorized recreational boating poses risks, including property damage, human injury, and even death. One of these risks is boating casualties caused by persons being struck by a recreational vessel or a propeller. Under 46 U.S.C. Chapter 43 (Recreational Vessels), the Secretary of the Department of Homeland Security is responsible for establishing minimum safety standards for recreational vessels and associated equipment, and requiring installation, carrying, or use of associated equipment. *See* 46 U.S.C. 4302(a). The Coast Guard, on behalf of the Secretary, carries out this responsibility.

Since the mid-1990s, the Coast Guard has investigated the appropriate course of action to address the recreational vessel and propeller strike-related casualty issue, trying to understand the causes of these casualties and determine the best way to prevent them. The Coast Guard has solicited requests for comments on various proposals to reduce recreational vessel and propeller strike-related casualties, and proposed and withdrawn two separate rulemakings to address this issue. The first rulemaking sought public input on the use of swimming ladders, warning notices, clear aft vision, propeller-shaft engagement alarms, engine cut-off switches, and education to address recreational vessel and propeller strike-related casualties. *See* 60 FR 25191 (May 11, 1995) (Request for comments), 61 FR 13123 (March 26, 1996) (Advance notice of proposed rulemaking), 62 FR 22991 (April 28, 1997) (Request for comments). The Coast Guard withdrew this rulemaking because it lacked sufficient data for the proposals at that time. *See* 66 FR 63650 (December 10, 2001) (Notice of Withdrawal).

At the same time the Coast Guard withdrew the first rulemaking, it initiated the second rulemaking focusing on propeller injury mitigation devices commonly referred to as “propeller guards.” The notice of proposed rulemaking proposed requiring owners of certain recreational houseboats to install a propeller guard or use all of the following propeller

injury avoidance measures: a swim ladder interlock, an aft visibility device, and an engine cut-off switch. 66 FR 63645 (December 10, 2001). The Coast Guard withdrew this rulemaking after public comments raised several issues, including the lack of a practical definition of a houseboat and straightforward performance requirements, and the potential costs of installing propeller guards. 72 FR 59064 (October 18, 2007) (Notice of Withdrawal). In the Notice of Withdrawal, the Coast Guard stated that it is still “exploring options that would more effectively prevent propeller injuries and impose a smaller burden on the economy,” and specifically noted engine cut-off switches and boating safety education. *Id.* at 59065.

In 2006, the National Boating Safety Advisory Council (NBSAC) established a Propeller Injury Working Group to consider the development of educational formats, review of technologies, risk management techniques, accident scenarios, cost benefit analysis, and high-risk recreational vessel definitions and determinations. (NBSAC Resolution # 2005–76–04.) The working group developed four recommendations: (1) Develop a rental vessel education kit, (2) require the installation of engine cut-off switches, (3) require operators to use installed engine cut-off switches, and (4) require operators of vessels to shut off the engine when individuals in the water are within an unsafe distance of the vessel. The NBSAC endorsed these recommendations and forwarded them to the Coast Guard for further consideration. (NBSAC Resolution Nos. 2006–77–01, 2006–77–02, 2006–77–03, and 2006–77–04, found in the docket for this rulemaking.)

To address the second and third recommendations involving the installation, maintenance, and use of engine cut-off switches,² the Coast Guard analyzed 5 years of recreational vessel accident report data to identify casualties that may have been prevented if the recreational vessel operators had used an engine cut-off switch. The results of this analysis are found in “Casualties Preventable by Use of an Engine Cut-off Switch” (the Report, also placed in the docket for this rulemaking).³ Staff members from the Boating Safety Division of the Coast

Guard’s Office of Auxiliary and Boating Safety and two civilian boating accident investigation experts (collectively, the reviewers) examined records drawn from the Coast Guard’s Boating Accident Report Database (BARD) of recreational vessel accidents that occurred from 2002 through 2006.

The reviewers examined the narrative section of the accident reports for those accidents that they determined would “likely have been prevented” and found that a common cause of the casualties was the operator being absent from the helm because of an accidental ejection or a fall overboard. *Id.* Appendix B—Accident Descriptions for Preventable Deaths and Injuries. An operator may be ejected or fall overboard from the recreational vessel if, for example, the vessel hits a large wake, turns too sharply, or collides with another vessel or object in the water. When this happens, the recreational vessel will typically continue to operate, usually moving in circles, until it runs out of fuel, runs aground, collides with another object, or is disabled. Because a recreational vessel normally maintains the speed at which it is operating when the operator is ejected or falls overboard, or when the controls are otherwise unattended, it is often difficult for any persons ejected from the vessel or already in the water to swim out of the vessel’s path, which may lead to one or more persons being struck by the vessel, a propeller, or a lower unit of the outboard or sterndrive. A “runaway” recreational vessel may also cause damage by striking vessels or other property.

The Coast Guard seeks comment on this list of accidents; specifically, whether casualties likely would have been prevented by the use of engine cut-off switches and whether there are additional accidents that should be included on the list.

To increase maritime domain safety and reduce and prevent recreational vessel and propeller strike-related casualties, the Coast Guard seeks data and information to inform its decision on whether it should require engine cut-off switch installation and use on these vessels. Although many, if not most, propulsion machinery and/or starting controls installed on recreational vessels are currently equipped with an engine cut-off switch, the Report’s accident report narratives, contained in Report Appendices D and E, state that the recreational vessels involved in the accidents continued to move without an operator.

The Coast Guard developed this notice after considering both the human factors and equipment failures that

¹ H. Ken Cordell et al., *Long-Term National Trends in Outdoor Recreation Activity Participation—1980 to Now*, May 2009 (A Recreation Research Report in the Internet Research Information Series), available at <http://warnell.forestry.uga.edu/nrr/nsre/IRISRec/IRISRec12rpt.pdf>. (This number represents the estimated number of people, operators, and passengers who participated in recreational boating in 2005–2009).

² In response to the first recommendation, the Coast Guard developed a rental education kit, which is now available to vessel liveries. The Coast Guard is still considering the fourth recommendation.

³ The Report is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble.

cause recreational vessel accidents. As required under 46 U.S.C. 4302(c), the Coast Guard consulted with the NBSAC; considered the need for regulations and the extent to which regulations will contribute to recreational vessel safety, and the relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation. We believe that requiring engine cut-off switch use would address identified causes of recreational vessel and propeller strike-related casualties and support the Coast Guard's goal of improving maritime domain safety for all recreational boaters and others in and around our navigable waterways. The Coast Guard would like input from the public on the appropriateness of new regulations, and on other issues related to preventing boating casualties caused by persons being struck by a recreational vessel or propeller when the operator is separated from the operating controls.

IV. Advance Notice of Proposed Rulemaking Discussion

The Coast Guard seeks input from the public on whether it should add two new subparts to its boating safety regulations: (1) A new subpart E in 33 CFR part 175 would require the maintenance and use of engine cut-off switches, and (2) a new subpart N in 33 CFR part 183 would require the installation of engine cut-off switches. The Coast Guard is considering requirements in subpart E that would cover only those recreational vessels that are less than 26 feet in length and are equipped with an engine cut-off switch. Because the Coast Guard does not distinguish PWC (e.g., Sea-Doo®, AquaTrax®, JET SKI®, WaveRunner®) from other recreational vessels, this subpart would cover PWC that meet the length and equipment criteria. The Coast Guard is also considering a new subpart N that would cover propulsion machinery capable of developing static thrust of 115 pounds, approximately 3 horsepower or more, and associated starting controls manufactured for recreational vessels that are less than 26 feet in length, including PWC.

Engine cut-off switch use and maintenance would be required only for recreational vessels less than 26 feet in length, and engine cut-off switch installation would apply only to the associated equipment on those recreational vessels because these types of vessels are the most common type of recreational vessel and the type of recreational vessel on which the majority of recreational vessel or propeller strike-related accidents

occurred from 2002 through 2006. From 2002 through 2006, 82 percent of all reported recreational vessel and propeller strike-related accidents in BARD involved motorized recreational vessels less than 26 feet in length. To determine whether vessel length should be a factor in the analysis in the Report that initiated this rulemaking, the Coast Guard reviewed this data set from BARD and determined that most of the previously reported recreational vessel and propeller strike-related casualties occurred on recreational vessels less than 26 feet in length.

Recreational vessels are registered based on length, and recreational vessels that are less than 26 feet in length account for approximately 95 percent of all motorized recreational vessels covering two registration categories: (1) Recreational vessels under 16 feet in length, and (2) recreational vessels 16 feet to less than 26 feet in length.⁴ A recreational vessel's registration category is recorded in boating accident reports and subsequently captured in BARD. *See generally*, "Casualties Preventable by Use of an Engine Cut-off Switch" (analyzing data involving recreational vessels less than 26 feet in length only).

Engine cut-off switch installation requirements would apply only to propulsion machinery capable of developing at least 115 pounds of static thrust, and associated starting controls, because this type of machinery is already subject to Coast Guard safety regulations and is likely to already satisfy the proposed requirement. The start-in-gear safety regulations in 33 CFR part 183, subpart L, apply to propulsion machinery capable of developing at least 115 pounds of static thrust; this is the only existing safety requirement that applies to propulsion machinery. Additionally, based on industry information, the Coast Guard estimates that the majority of manufacturers already provide engine cut-off switches for this type of machinery.

A. Engine Cut-off Switch Use and Maintenance

The Coast Guard believes it would be necessary to add definitions that describe the terms "engine cut-off switch link," "engine cut-off switch," "person," "propulsion machinery," "starting control," and "static thrust." An

engine cut-off switch is typically a mechanical or electronic device that is connected to the propulsion machinery that will stop the propulsion machinery if the switch is not properly connected, or the switch components are submerged in water or separated from the switch by a predetermined distance. The Coast Guard is considering defining an engine cut-off switch as the piece of equipment that turns the propulsion machinery off, and an engine cut-off switch link as the equipment that is attached to the recreational vessel operator and activates the engine cut-off switch. These proposed definitions would cover current mechanical and electronic wireless devices, as well as new technological developments in engine cut-off switch and link design after the effective date of any final rule resulting from this rulemaking. Under a new subpart N in 33 CFR part 183, those new technological developments would have to be consistent with a consensus industry standard.

The Coast Guard is considering, in a new subpart E, requiring recreational vessel operators to attach an engine cut-off switch link for any installed engine cut-off switch to their person, clothing, or life jacket (if worn) when operating a recreational vessel less than 26 feet in length. This requirement, however, would not apply while operators are docking or trailering their recreational vessels. The Coast Guard seeks comments on whether other situations, such as emergencies, should also be excepted from proposed subpart E, and how best to define or describe such situations.

The Coast Guard is considering requiring recreational vessel owners to maintain any installed engine cut-off switch and engine cut-off switch link so they function properly while the vessel's propulsion machinery is in gear. The Coast Guard is considering prohibiting anyone from operating a recreational vessel if the engine cut-off switch has been disabled or removed, or does not function properly.

The Coast Guard is also considering enforcement measures to increase the use of engine cut-off switches. To that end, the Coast Guard is considering whether to make persons who fail to comply with the engine cut-off switch use and maintenance requirements subject to the civil penalties in 46 U.S.C. 4311(c). Section 4311(c) of 46 U.S.C. sets forth a civil penalty not to exceed \$1,000 for violating provisions of 46 U.S.C. Chapter 43 (Recreational Vessels) or any regulations prescribed under Chapter 43, which would include proposed subpart E. If a violation under 46 U.S.C. 4311(c) involves the operation

⁴ U.S. Coast Guard, *Recreational Boating Statistics 2008*, COMDTPUB P16754.21, p. 62, available at http://www.uscgboating.org/assets/1/Publications/Boating_Statistics_2008.pdf. (Table 37 shows that of 11,841,281 mechanically propelled registered vessels in 2008, 11,257,369 were less than 26 feet in length (4,989,889 "under 16 feet;" 6,267,480 "16 to less than 26 feet").

of a recreational vessel, the vessel is also liable *in rem* for the penalty and could be seized by the Coast Guard.

B. Engine Cut-off Switch Installation

The Coast Guard is considering requiring new propulsion machinery capable of developing 115 pounds of static thrust or more, or the associated starting controls, to be equipped with an engine cut-off switch and link. All covered newly manufactured, locally operated (“tiller”) outboards would be required to have an engine cut-off switch and link on the outboard. All covered newly manufactured, remotely operated outboard motors, inboard engines, and sterndrive engines would have to be equipped with starting controls containing an engine cut-off switch and link. If the Coast Guard adopts the installation requirement, the switch and link would have to comply with a consensus industry standard, American Boat & Yacht Council, Inc. (ABYC) A-33, *Emergency Engine/Propulsion Cut-Off Devices* (2009), which the Coast Guard would incorporate by reference into regulations. The Coast Guard is considering excluding starting controls installed inside a wheelhouse, cabin, or other permanent enclosure on a recreational vessel because there is a lesser likelihood of an operator being ejected or falling overboard from an enclosed space. The Coast Guard seeks comment on this exemption and on whether other groups of vessels should be exempted from engine cut-off switch installation.

The Coast Guard would like input from the public on how to phase-in any installation requirements. The Coast Guard is considering designating “new” propulsion machinery and starting controls as any such machinery or controls manufactured on or after January 1 of the second year following the year of the effective date of any final rule resulting from this rulemaking. For example, if a final rule became effective in January or December of 2012, manufacturers of propulsion machinery and starting controls would be required to comply with the rule by January 1, 2014. We seek comments on whether this 12–24 month implementation period would provide sufficient time to implement these proposed requirements.

The Coast Guard is also considering requiring manufacturers, distributors, and dealers installing new propulsion machinery and associated starting controls on a recreational vessel less than 26 feet in length to ensure that the propulsion machinery or starting control is equipped with an engine cut-

off switch and link that complies with a consensus industry standard incorporated by reference into the regulations. The Coast Guard is considering covering under the requirements installations by manufacturers, distributors, and dealers on new recreational vessels as well as existing recreational vessels. While the Coast Guard is considering covering any propulsion machinery and starting control replacements made by manufacturers, distributors, and dealers on existing boats, the Coast Guard is considering not requiring such replacements or any retrofitting of existing propulsion machinery and starting controls.

The Coast Guard is considering delaying the installation requirement so that it does not apply until July 1 of the second year following the year of the effective date of any final rule resulting from this rulemaking. The Coast Guard seeks comment on whether this 6-month delay, from the date that manufacturers would be required to provide engine cut-off switches on propulsion machinery or starting controls, would provide enough time for manufacturers, distributors, and dealers to have compliant propulsion machinery and starting controls for installation.⁵

The Coast Guard is considering including definitions for the terms “engine cut-off switch link,” “engine cut-off switch,” “person,” “propulsion machinery,” “starting control,” and “static thrust.” These potential definitions would also apply to engine cut-off switch use and maintenance requirements. The Coast Guard is also considering including definitions for the terms “dealer,” “distributor,” and “manufacturer,” which would be adopted from 33 CFR 183.705.

⁵ The Coast Guard must provide at least 180 days between publication of the final rule and the effective date of the final rule. See 46 U.S.C. 4302(b). For any final rule involving “major product design, retooling, or major changes in the manufacturing process,” the Coast Guard must make the rule effective within 24 months or less. *Id.* The Coast Guard does not consider proposed subpart N to involve a “major product design, retooling, or major changes in the manufacturing process” because the proposed requirement for propulsion machinery involves minor engineering adjustments to add engine cut-off switch capability to any currently manufactured propulsion machinery not equipped with this capability, and the installation requirements do not affect product design, retooling, or the manufacturing process. Therefore, only the 180-day delayed effective date statutory requirement applies to this rulemaking, and the 12–24 month implementation period for the proposed requirement that manufacturer provide engine cut-off switches on propulsion machinery and starting controls, and the 18–30 month implementation period (in order to include a 6-month delay, discussed in the text) for the proposed requirement covering installations, would satisfy this statutory requirement.

In order to bolster the importance and deterrent effect of the regulations in 33 CFR part 183, thereby preventing maritime deaths and injuries, the Coast Guard is considering making any person who fails to comply with engine cut-off switch use and maintenance requirements subject to civil (and possibly criminal) penalties under 46 U.S.C. 4311. In addition to the civil penalties under § 4311(c) discussed in relation to engine cut-off switch use and maintenance requirements, § 4311(b)(1) sets forth a civil penalty not to exceed \$5,000 for violating 46 U.S.C. 4307(a), which prohibits a person from manufacturing, constructing, assembling, selling, or offering for sale, a recreational vessel, associated equipment, or a component of either, unless it conforms to 46 U.S.C. Chapter 43 (Recreational Vessels) or any regulations prescribed under Chapter 43, which currently includes all regulations in 33 CFR part 183 and would also include installation requirements. Because the penalties in 46 U.S.C. 4311 currently apply to violations of any requirement in 33 CFR part 183, and would apply to violations of proposed installation requirements if made final, the Coast Guard is considering whether to add explicit language to its regulations incorporating these penalties. The Coast Guard is considering adding references to these statutory penalty provisions for clarity and to ensure that anyone reading Coast Guard regulations in part 183 understands that there are specific penalties, explicitly provided for by statute, for violating any regulation in part 183. Adding the reference to the statutory penalty provisions into the regulations would not create any new penalties.

C. Preemption

The engine cut-off switch requirements discussed here would preempt those State laws on waters subject to the jurisdiction of the United States that are not identical to any final rule resulting from this rulemaking, and would create a national standard for engine cut-off switch installation and use. Currently, five States (Alabama,⁶

⁶ Ala. Code 1975 § 33–5–72(a) (2009) (“It shall be unlawful on the waters of this state for any person to operate, or give permission to another person to operate, any vessel less than 24 feet in length having an open construction and having more than 50 horsepower, unless the vessel is equipped with an emergency engine or motor shut-off switch.”).

Arkansas,⁷ Louisiana,⁸ Illinois,⁹ and Nevada¹⁰) have already enacted their own requirements for recreational vessel operators to use engine cut-off switches, and 46 States¹¹ have enacted engine cut-off switch requirements for personal watercraft (PWC) only.

Pursuant to 46 U.S.C. 4306, Federal regulations establishing minimum safety standards for recreational vessels and associated equipment and establishing procedures and tests required to measure conformance with those standards preempt State law, unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. Because of this express preemption, States may not establish, continue in effect, or enforce any law or regulation addressing engine cut-off switch requirements that is not identical to any

⁷ A.C.A. § 27-101-203(e)(1)(A) (2009) (“No person shall operate a motorboat equipped by the manufacturer with a lanyard-type engine cut-off switch while the engine is used to propel the boat without attaching the lanyard to the operator, the operator’s clothing, or, if the operator is wearing a personal flotation device, to the device as appropriate for the specific vessel”).

⁸ LAC 76:XL111.C (2009) (“No person shall operate a Class A or Class One motorboat with a hand tiller outboard motor in excess of ten horsepower designed to have or having an engine cut-off switch, while the engine is running and the motorboat is underway, unless the engine cut-off switch is fully functional and in operable condition; and the engine cut-off switch link is attached to the operator, the operator’s clothing, or if worn, the operator’s personal flotation device”).

⁹ 625 ILCS 45/4-11 (2009) (“No person may operate any motor boat, including personal watercraft or specialty prop-craft, which is equipped with a lanyard type engine cut-off switch unless such lanyard is properly attached to his or her person, clothing or worn PFD, as appropriate for the specific vessel.”)

¹⁰ N.R.S. 488.585.1 (2009) (“A person who owns or controls a motorboat that is equipped with an engine cut-off switch shall not operate or authorize another person to operate the motorboat at a rate of speed greater than 5 nautical miles per hour if the engine cut-off switch or engine cut-off switch link is missing, disconnected or not operating properly”).

¹¹ See National Association of State Boating Law Administrators Reference Guide to State Boating Laws available at <http://www.nasbla.net/referenceguide/index.php?queryID=4.8>. Some States require use of a cut-off device if the device is present. See e.g., Arizona Revised Statutes § 35-350.B (“A person who operates a personal watercraft that is equipped by the manufacturer with a lanyard type engine cut-off switch shall attach the lanyard to his body, clothing or personal flotation device as appropriate for the specific watercraft”). Others States require personal watercraft to have either a cut-off device or self-circling device. See e.g., 23 Delaware Code § 2212(d) (“No person shall operate a personal watercraft unless the personal watercraft is equipped with a self-circling device or a lanyard-type engine cut-off switch * * *”).

final rule resulting from this rulemaking. The Coast Guard seeks comments, specifically from States, regarding this proposal’s preemption of State laws.

V. Information Requested

The Coast Guard requests comments on engine cut-off switch devices and other information that would assist us with this proposal. We have provided the following list of specific questions to guide commenters in providing input that will assist us with developing this proposal. Please support your input with quantitative data where possible and include sources and complete citations for any quantitative data.

1. Recreational boating accidents can cause a variety of negative impacts, including loss of life, injuries, and property damage. As described above and based on the report “Casualties Preventable by Use of an Engine Cut-off Switch,” a causal factor in recreational vessel and propeller strike-related casualties is the recreational vessel operator being separated from the helm because of an accidental ejection or a fall overboard. Data from this report suggests that the use of an engine cut-off switch would reduce the risk of boating casualties caused by persons being struck by a recreational vessel or propeller when the operator is separated from the helm. In addition to this information, are there other sources of data or information detailing benefits or avoided damages which may result from the use of engine cut-off switches?

2. What vessel types should be considered for mandatory engine cut-off switch requirements (e.g., all motor vessels, motor vessels with hand-tiller motors, PWCs, houseboats)?

3. What vessel lengths should not be considered for mandatory engine cut-off switch requirements (e.g., motor vessels greater than 26 feet in length)?

4. What engine power (“horsepower”) measures should be considered for mandatory engine cut-off switch requirements (e.g., engines greater than 3 horsepower)?

5. What other engine or vessel features should the Coast Guard consider to determine the boating population that should be covered by engine cut-off switch requirements?

6. Based on information provided by the National Marine Manufacturers Association (NMMA), manufacturers have been routinely installing engine cut-off switches on engines or their associated starting controls.¹² What data

¹² According to National Marine Manufacturers Association (NMMA), “for more than ten years, many of the motorboats on the market have been

exists to estimate the percentage of recreational vessels and engines that have engine cut-off switches provided as standard equipment?

7. How many and what types of recreational vessels or engines do not have engine cut-off switches provided as standard equipment (e.g., boats constructed by owner)?

8. According to a report by the Outdoor Foundation in partnership with the Recreational Boating and Fishing Foundation, one measure of the number of outings or trips for non-commercial recreational vessels is 15 per year for powerboat users.¹³ Are there any additional sources documenting the number of trips for recreational vessels or recreational vessel use rates by vessel types?

9. Similarly, are there any sources documenting the average number of trips commercial operators of recreational vessels make in a year?

10. What is the average number of times an engine cut-off switch lanyard or device would be attached and detached in a trip by the vessel operator?

11. What is the average amount of time it would take for a vessel operator to attach or detach the lanyard?

12. How would operators and passengers be impacted by the number of times an engine cut-off switch is attached and detached by the vessel operator? How should the Coast Guard consider the potential “hassle factor” associated with using an engine cut-off switch?

13. If a vessel or engine currently does not have an engine cut-off switch installed, what are the installation costs, separated out into parts and labor categories?

14. What is the average lifespan of an engine cut-off switch?

15. What are the associated maintenance and replacement costs of engine cut-off switch devices?

16. What is the recommended lanyard replacement schedule? How often are lanyards replaced? What is the average cost of the lanyard replacement? When operating a recreational vessel equipped with an engine cut-off switch, does the operator purchase and maintain a spare lanyard?

17. How many boaters use wireless engine cut-off switch devices? What percentage of total cut-off switch use

equipped with engine cut-off switches”. (Press release, April 10, 2006: <http://www.nmma.org/news/news.asp?id=12346&sid=43>)

¹³ The Outdoor Foundation in partnership with the Recreational Boating and Fishing Foundation, “A Special Report on Fishing and Boating”, 2009, page 36 (see <http://www.outdoorfoundation.org/research.fishing.html>).

does this represent? What percentage of these wireless devices are standard (original) equipment on vessels and engines? What are the installation and maintenance costs (labor and equipment) of wireless devices? What is the expected lifespan of wireless devices? Are there any special performance or failure issues unique to wireless devices?

18. How would this proposal change boater preference for wireless engine cut-off switch devices? Would boaters choose more expensive wireless systems over standard non-wireless systems? If so, why and how many?

19. As a result of this proposal, would vessel and engine manufacturers adopt wireless technology as standard equipment?

20. Would this proposal increase the use and wear of engine cut-off switch devices over and above the manufacturer's recommended use? Would this proposal increase the replacement costs of engine cut-off switch devices?

21. What is the risk of unintended activations of engine cut-off switch devices? What is the current estimated rate of unintended activations? What are the impacts of unintended activations? Are there any injuries or fatalities associated with unintended activations?

22. What is the risk of engine cut-off switch device failure (i.e., engine does not cut off when operator is ejected)? What is the current estimated rate of engine cut-off switch device failures? What are the impacts of engine cut-off switch device failures? Are there any injuries or fatalities associated with engine cut-off switch device failures?

23. What data or information exists that could be used to estimate compliance rates of this proposal? What data exists to estimate how compliance with proposal will change from initial phase-in to full implementation?

24. How would the challenge to visually inspect from a distance whether an engine cut-off switch device is being used affect compliance with engine cut-off switch device requirements?

25. What are the compliance rates with State laws that require use of engine cut-off switch devices?

26. What is the voluntary use rate of engine cut-off switch devices in States without engine cut-off switch device laws?

27. Five States (Alabama, Arkansas, Illinois, Louisiana, and Nevada) currently require boaters to use engine cut-off devices on certain recreational vessels. What other State laws are being developed for engine cut-off switch device regulations? Please provide any data or information from the

implementation or development of these State regulations to assist the Coast Guard as it considers whether to require engine cut-off switch device use.

28. What are the costs associated with implementation of State laws requiring mandatory use of engine cut-off switch devices?

29. What is the effectiveness based on the reduction in fatalities, injuries, and property damage from recent changes in State laws regarding the use of engine cut-off switch devices?

Dated: June 2, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 246, and 252

RIN 0750-AG74

Defense Federal Acquisition Regulation Supplement (DFARS); Warranty Tracking of Serialized Items, DFARS Case 2009-D018

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology and Logistics dated February 6, 2007, which required definition of the requirements to track warranties for Item Unique Identification-required items in the DoD Item Unique Identification Registry. This final rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness.

DATES: *Effective date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703-602-0310.

SUPPLEMENTARY INFORMATION:

I. Background

The Undersecretary of Defense for Acquisition, Technology and Logistics issued a policy memorandum dated February 6, 2007, which instructed the Director of Defense Procurement and Acquisition Policy to define the requirements to track warranties for Item Unique Identification-required

items in the DoD Item Unique Identification Registry. The capability to track warranties will significantly enhance the ability of DoD to—

- Identify and enforce warranties;
- Ensure sufficient durations of warranties for specific goods; and
- Realize improved material readiness.

DoD issued a proposed rule in the **Federal Register** at 75 FR 52917 on August 30, 2010, to address the requirement to more effectively track warranties for Item Unique Identification items. The comment period closed October 29, 2010.

II. Public Comment

One respondent submitted comments to the proposed rule, which are discussed below.

Comment: The respondent states that while the unique item identification requirement was not established for the purpose of tracking warranty items, its use as a warranty-tracking methodology would result in increased costs for contractors and the Government. The addition of warranted items to DFARS 211.274-2 will expand the criteria for selecting the items to be uniquely identified. Today, that determination is based almost completely on the value of the item. Warranted items may or may not meet the value criterion established for determining what should be uniquely identified and marked. An application of unique item identification to warranted items may cause a part to be covered by unique item identification under a contract calling for warranty and not covered by unique item identification on another contract without warranty.

Response: This requirement applies to any "warranted serialized item," and a clarifying change was made at 211.274-2(4)(iii) by adding the term "any warranted serialized item."

Comment: The respondent also recommends that DoD not publish a final rule on warranty tracking of serialized items.

Response: DoD requires a more effective way to track warranties for Item Unique Identification items. Presently, DoD lacks the enterprise capability to provide visibility and accountability of warranty data associated with acquired goods. The tracking of warranties, from the identification of the requirement to the expiration date of the warranted item, will significantly enhance the ability of DoD to take full advantage of warranties when they are part of an acquisition. This will result in reduced costs, ability to recognize benefits, and the ability to compare performance against