

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
<b>Region VIII</b>				
North Dakota: Hettinger County, Unincorporated Areas	380293	July 7, 1975, Emerg; February 19, 1987, Reg; March 2, 2012, Susp.	.....do .....	Do.
Mott, City of, Hettinger County .....	380038	October 20, 1972, Emerg; December 15, 1976, Reg; March 2, 2012, Susp.	.....do .....	Do.
Regent, City of, Hettinger County .....	380198	August 5, 1975, Emerg; January 30, 1984, Reg; March 2, 2012, Susp.		

\*do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 7, 2012.

**David L. Miller,**

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Part 160

[Docket No. USCG-2010-0048]

RIN 1625-AB46

#### Lifesaving Equipment: Production Testing and Harmonization With International Standards

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule.

**SUMMARY:** The Coast Guard is amending the interim rule addressing lifesaving equipment to harmonize Coast Guard regulations for inflatable liferafts and inflatable buoyant apparatuses with recently adopted international standards affecting capacity requirements for such lifesaving equipment.

**DATES:** This interim rule is effective March 22, 2012. The Director of the Federal Register has approved the incorporation by reference of certain publications listed in this rule effective March 22, 2012.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0048 and are available for inspection or copying at the 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, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2010-0048 in the “Keyword” box, and then clicking “Search.”

*Viewing incorporation by reference material.* You may inspect the material incorporated by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-7126 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-372-1389. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, email or call Ms. Jacqueline Yurkovich, Commercial Regulations and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG-5214), Coast Guard; email [TypeApproval@uscg.mil](mailto:TypeApproval@uscg.mil), telephone 202-372-1389. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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#### I. Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
IMO International Maritime Organization  
LSA Life-saving Appliance  
MSC Maritime Safety Committee of the International Maritime Organization  
NEPA National Environmental Policy Act 1969 (42 U.S.C. 4321-4370f)  
NPRM Notice of Proposed Rulemaking  
NTTAA National Technology Transfer and Advancement Act (15 U.S.C. 272 note)  
OMB Office of Management and Budget  
SNPRM Supplemental Notice of Proposed Rulemaking  
SOLAS International Convention for Safety of Life at Sea, 1974, as amended  
§ Section symbol  
USCG United States Coast Guard

#### II. Regulatory History

On August 31, 2010, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Lifesaving Equipment: Production Testing and Harmonization With International Standards” in the **Federal Register**. See 75 FR 53458. On October 11, 2011, the Coast Guard published an interim rule titled “Lifesaving Equipment: Production Testing and Harmonization With International Standards; Interim Rule” (2011 interim rule) making effective changes proposed in the NPRM. 76 FR 62962. Also on October 11, 2011, the Coast Guard published a supplementary notice of proposed rulemaking (SNPRM) proposing amendments to the portion of the Code of Federal Regulations (CFR) modified by the 2011 interim rule regarding inflatable liferafts and buoyant apparatuses. 76 FR 62714. The SNPRM addressed amendments to international standards affecting capacity requirements for inflatable liferaft and inflatable buoyant apparatuses that were recently adopted by the International Maritime Organization (IMO) and that entered into force on January 1, 2012.

The IMO amendments to the international standards affect the 2011 interim rule regarding inflatable liferafts and inflatable buoyant apparatuses. The IMO amendments affect capacity requirements for such liferafts, and by extension buoyant apparatuses, but do not affect any other part of the 2011 interim rule.

### III. Basis and Purpose

The Coast Guard is charged with ensuring that lifesaving equipment used on vessels subject to inspection by the United States meets specific design, construction, and performance standards, including those found in the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS), Chapter III "Life-saving appliances and arrangements." See 46 U.S.C. 3306. The Coast Guard carries out this charge through the approval of lifesaving equipment per 46 CFR part 2, subpart 2.75. The approval process includes pre-approving lifesaving equipment designs, overseeing prototype construction, witnessing prototype testing, and monitoring production of the equipment for use on U.S. vessels. See 46 CFR part 159. At each phase of the approval process, the Coast Guard sets specific standards to which lifesaving equipment must be built and tested.

The Coast Guard's specific standards for inflatable liferafts are found in 46 CFR part 160, subparts 160.151 (Inflatable Liferafts (SOLAS)) and 160.051 (Inflatable Liferafts for Domestic Service). The Coast Guard's specific standards for inflatable buoyant apparatuses are found in 46 CFR part 160, subpart 160.010 (Buoyant Apparatus for Merchant Vessels). Current subpart 160.151 satisfies SOLAS requirements, and current subparts 160.051 and 160.010 require compliance with the standards in subpart 160.151, with some specifically listed exceptions. See 46 CFR 160.051-1 and 160.010-3(a).

Subpart 160.151 implements SOLAS requirements by incorporating by reference the IMO standards referenced by Chapter III of SOLAS. The primary IMO standards referenced by Chapter III of SOLAS are the "Revised recommendation on testing of life-saving appliances" (Recommendation on Testing), IMO Resolution MSC.81(70), and the "International Life-saving Appliance Code" (LSA Code), IMO Resolution MSC.48(66). The IMO updates these standards by adopting MSC resolutions promulgating amendments to these standards.

In the 2011 interim rule, the Coast Guard revised subpart 160.151 to,

among other things, update the version of the Recommendation on Testing incorporated by reference, and incorporate by reference for the first time the LSA Code. Subpart 160.151-5(d)(3) and (4) of Title 46 of the CFR incorporate by reference the LSA Code (as amended up through resolutions MSC.207(81), MSC.218(82), and MSC.272(85)), and the Recommendation on Testing (as amended up through resolutions MSC.226(82) and MSC.274(85)). Subparts 160.051 and 160.010 retain, with some specifically listed exceptions, the requirement for compliance with the standards in subpart 160.151, which will now also include the updated versions of the Recommendation on Testing and the LSA Code.

IMO recently adopted two new MSC resolutions further amending the LSA Code and the Recommendation on Testing: "Adoption of Amendments to the International Life-Saving Appliance (LSA) Code" (MSC.293(87)) and "Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances" (MSC.295(87)).

Resolution MSC.293(87) amends the LSA Code and entered into force on January 1, 2012. This resolution increases the assumed average mass of liferaft occupants from 75 kg to 82.5 kg for inflatable liferaft design and approval testing purposes.<sup>1</sup>

Resolution MSC.295(87) amends the Recommendation on Testing and also entered into force on January 1, 2012. This resolution specifies revisions necessary to account for this assumed average mass increase with respect to certain existing tests. The tests required by the Recommendation on Testing, Part 1 (Prototype Tests), significantly affected by Resolution MSC.295(87), are: The jump test, loading and seating test, davit-launched liferaft boarding test, damage test, righting test, and davit-launched inflatable liferaft strength tests.

Based on these amendments, the Coast Guard is revising the regulations

<sup>1</sup> Although the numbers are similar, the assumed average occupant mass of 82.5 kg (181.5 lbs) adopted by IMO for survival craft design and approval testing purposes and the average passenger weight of 185 lbs used in the Coast Guard's Passenger Weight and Inspected Vessel Stability Requirements Final Rule (75 FR 78064) are not related. The Passenger Weight Final Rule updated regulations that address vessel stability and the assumed average passenger weights that directly affect vessel stability. This rule, however, would use the assumed average occupant mass of 82.5 kg (181.5 lbs) to address safe loading of inflatable liferafts and buoyant apparatuses, and does not address vessel stability. The IMO-adopted assumed average occupant mass is the international consensus standard, and the Coast Guard views this IMO standard as the best standard in this context.

modified by the 2011 interim rule to include the increased average mass of liferaft occupants and to require liferaft performance under subpart 160.151 to comply with the revisions to tests necessitated by the occupant weight increase. This revision to subpart 160.151 will also, by extension, affect liferaft performance under subpart 160.051 and inflatable buoyant apparatus performance under subpart 160.010.

### IV. Discussion of This Interim Rule

In this new interim rule, the Coast Guard is revising § 160.151-5(d) to incorporate by reference Resolution MSC.293(87) and Resolution MSC.295(87), and revising all references to the LSA Code and Recommendation on Testing to include the newly incorporated by reference Resolutions. References to the LSA Code will become "LSA Code, as amended by Resolution MSC.293(87)," and references to the Recommendation on Testing will become "Revised recommendation on testing, as amended by Resolution MSC.295(87)." These revisions will affect the tests in §§ 160.151-27, 160.151-29, 160.151-31, and 160.151-57, which refer to the Recommendation on Testing. A complete discussion of these changes is available in the SNPRM, published October 11, 2011. 76 FR 62714.

The Coast Guard received one comment in response to the SNPRM. The comment addresses the Coast Guard's expanded use of qualified independent laboratories, instead of Coast Guard inspectors, during the approval process and for production inspections of certain types of lifesaving equipment. This comment is beyond the scope of the SNPRM and this interim rule, which addresses the increase in occupant mass for SOLAS life rafts based on two new IMO Resolutions only. The Coast Guard sought public comment in the 2010 NPRM on the Coast Guard's proposal regarding expanded use of independent laboratories, and finalized that proposal in the 2011 interim rule. As stated in the 2011 interim rule, the Coast Guard still finds the use of independent laboratories in the Coast Guard's approval process to be "the most effective manner" of executing and carrying out its obligations under 46 U.S.C. section 3306. See the discussion regarding the use of independent labs to perform these inspections in III.B "Independent Laboratories" in the Preamble of the interim rule published on October 11, 2011. The Coast Guard did not make any changes to the regulations in response to this comment.

In this interim rule, the Coast Guard is making non-substantive changes to the citations for the IMO resolutions incorporated by reference. The changes update the citations for IMO resolutions to make them easier to identify and to obtain copies. These citation updates have not changed the IMO resolutions or the versions of the IMO resolutions from the SNPRM to the interim rule.

**V. Incorporation by Reference**

The Director of the Federal Register has approved the material in 46 CFR 160.151-5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in paragraph (d) of § 160.151-5.

**VI. Regulatory Analyses**

The Coast Guard developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below the Coast Guard summarizes these analyses based on 14 of these statutes or executive orders.

*A. Regulatory Planning and Review*

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the interim rule has not been reviewed by the Office of Management and Budget.

The Coast Guard received no comments that altered our assessment of impacts in the SNPRM. We have found no additional data or information that changed our findings in the NPRM. We have adopted the assessment in the SNPRM for this rule as final.

The SNPRM is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. A summary of the analysis follows: This interim rule addresses the change in the international standard for occupant weight used in testing equipment to establish the rated capacity of inflatable liferafts and inflatable buoyant apparatuses. This interim rule revises the occupant weight or “assumed average occupant mass” from the current 75 kg to the new weight standard of 82.5 kg.

The Coast Guard issues a Certificate of Approval for inflatable liferafts and

inflatable buoyant apparatuses under the applicable subpart in 46 CFR part 160 after successful testing of those appliances by their manufacturers. A Certificate of Approval specifies the number of occupants (or rated capacity) for which the inflatable liferaft or inflatable buoyant apparatus is designed and has been successfully tested, and the Certificate must be renewed every 5 years. New testing is not required to renew a current Certificate, but new approval requests require testing before a Certificate can be issued.

**Costs**

While this interim rule requires manufacturers to conduct prototype and production tests for inflatable liferafts and inflatable buoyant apparatuses manufactured on or after March 22, 2012 using the new occupant weight standard, it would limit re-testing of currently approved equipment, thus limiting the cost impact on manufacturers. And, as discussed in section IV. *Discussion of the Interim Rule* (referencing the complete discussion of the rule in the SNPRM, published October 11, 2011 (76 FR 62714)), this interim rule does not apply to liferafts currently in service aboard U.S. vessels; thus, no vessel would incur replacement costs for liferafts. A summary of changes to the baseline testing requirements is shown in Table 1.

TABLE 1—SUMMARY OF CHANGES

Device	Testing type	Existing equipment (approval prior to January 1, 2012)		New equipment (approval after January 1, 2012)	
		Testing	Impacts	Testing	Impacts
SOLAS Inflatable Liferafts (160.151).	Prototype testing ..	Manufacturers must obtain a new Certificate of Approval certifying rated occupancy using the new occupant weight standard. Manufacturers may either re-test or have a certification made using previous test results adjusted for the new occupant weight standard. Testing costs are negligible on a unit cost basis.	Units with rated capacity of less than 6 occupants are ineligible for SOLAS service. Costs of testing unchanged as nature of the test is unchanged.	All tests use the new occupant weight standard to establish occupancy rating. Costs of testing unchanged as nature of the test is unchanged.	Units with rated capacity of less than 6 occupants are ineligible for SOLAS service.
	Production Testing	All tests use the new weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.	All tests use the new occupant weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.
Non-SOLAS Inflatable Liferafts (160.051).	Prototype testing ..	Existing Certificates of Approval may be renewed without re-testing.	No cost or benefit as the use of the new occupant weight standard is optional.	All tests use the new occupant weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.

TABLE 1—SUMMARY OF CHANGES—Continued

Device	Testing type	Existing equipment (approval prior to January 1, 2012)		New equipment (approval after January 1, 2012)	
		Testing	Impacts	Testing	Impacts
	Production Testing	No cost or benefit. The use of the new occupant weight standard is optional for equipment manufactured under an existing Certificate of Approval.		All tests use the new occupant weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.
Inflatable Buoyant Apparatus (160.010).	Prototype testing ..	Existing Certificates of Approval may be renewed without re-testing.	No cost or benefit as the use of the new occupant weight standard is optional.	All tests use the new occupant weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.
	Production Testing	No cost or benefit. The use of the new occupant weight standard is optional for equipment manufactured under an existing Certificate of Approval.		All tests use the new occupant weight standard to establish occupancy rating.	Costs of testing unchanged as nature of the test is unchanged.

SOLAS Inflatable Liferafts (Subpart 160.151)

As shown in Table 1 above, manufacturers of SOLAS inflatable liferafts approved under subpart 160.151 (SOLAS liferafts) and manufactured on or after March 22, 2012 are allowed the option of either re-testing using the new occupant weight standard or requesting certification for a lower rated occupancy (adjusted for the new occupant weight standard) based on the certification testing submitted for their current approval.

The principal cost impact for manufacturers of SOLAS liferafts will be for currently approved inflatable liferafts whose rated capacity is six using the current 75 kg occupant weight

standard. Since SOLAS requires that inflatable liferafts have a minimum capacity of six, any SOLAS liferaft currently approved for six occupants will have to be re-tested under the new occupant weight standard in order to retain approval.

Currently, there are 10 manufacturers that produce 109 models of SOLAS liferafts. Of these, there are 11 liferaft models (from eight manufacturers) whose rated capacity is six (Table 2). These 11 models will be required to re-test to maintain their SOLAS certification. Three of these eight manufacturers are U.S. firms and they each produce one model of inflatable liferaft with a rated occupancy of six occupants. Of those three models, one model is designed primarily for use in

aircraft under a Federal Aviation Administration approval number. The three models produced by U.S. firms and the eight models manufactured by foreign firms will have to be re-tested in order to verify a minimum occupancy rating under the new occupant weight standard to be used on SOLAS vessels. From estimates obtained from industry, we estimate the costs of re-testing for compliance with the new occupant weight standard at \$1,800 for each model.

We estimate the total cost to industry to re-test all current SOLAS liferaft models as \$19,800 (\$14,400 for foreign manufacturers and \$5,400 for U.S.-owned manufacturers). See Table 2 below.

TABLE 2—SOLAS LIFERAFTS

Manufacturer	Number of manufacturers	Total number of models of liferaft produced	Total number of models of liferaft produced with an occupancy rating of 6	Cost to re-test each SOLAS liferaft	Total cost to retest
Foreign owned .....	7	104	8	\$1,800	\$14,400
U.S. owned .....	3	5	3	1,800	5,400
Total .....	10	109	11	1,800	19,800

Non-SOLAS Inflatable Liferafts (Subpart 160.051) and Inflatable Buoyant Apparatus (Subpart 160.010)

As shown earlier in Table 1, manufacturers of domestic service inflatable liferafts under subpart 160.051 (domestic service liferafts) and inflatable buoyant apparatuses under subpart 160.010 manufactured on or after March 22, 2012 under current

Certificates of Approval, have the option of using either the old 75 kg or the new 82.5 kg occupant weight standard. If a manufacturer of domestic service liferafts or a manufacturer of inflatable buoyant apparatuses with current Certificates of Approval chooses to use the new occupant weight standard, it also has the option of either re-testing using the new occupant weight standard

or requesting re-certification for a lower number of occupants (adjusted for the new occupant weight standard). Manufacturers of domestic inflatable liferafts under subpart 160.051 or inflatable buoyant apparatuses under 160.010 are required to use the new occupant weight standard only when testing domestic inflatable liferafts or

inflatable buoyant apparatuses approved after March 22, 2012.

In terms of the cost of the regulation:

1. While prototype testing for all SOLAS liferafts on or after March 22, 2012, will have to employ the new occupant weight standard, there is no additional cost in performing the required tests due to the change in the testing weight because the nature of the test remains the same.

2. Production testing of all SOLAS liferafts manufactured on or after March 22, 2012 will require testing using the new occupant weight standard. As with prototype testing, there is no additional cost in performing the required tests due to the change in the testing weight because the nature of the test remains the same.

3. For production testing of SOLAS liferafts, the manufacturer may either request a certification with a lower maximum occupancy based on the new occupant weight standard or re-test the equipment for certification of its current rated capacity using the new occupant weight standard.

4. The 11 models (three models made by U.S. manufacturers) of SOLAS inflatable liferafts whose current rated capacity is six occupants, would have to verify that they meet the minimum SOLAS requirements for a capacity of six occupants at the new occupant weight standard if they wish to continue their current SOLAS approval status.

5. For both prototype and production testing of domestic service inflatable liferafts and inflatable buoyant apparatuses approved by the Coast Guard prior to March 22, 2012 the manufacturer may test under either the 75 kg or the 82.5 kg occupant weight standard with no change to testing based on the new occupant weight standard.

6. For prototype and production testing of domestic service inflatable liferafts and inflatable buoyant apparatuses approved on or after March 22, 2012 the manufacturer must test under the 82.5 kg occupant weight standard.

For inflatable liferafts approved under subpart 160.051 prior to March 22, 2012 and inflatable buoyant apparatuses approved under subpart 160.010 prior to March 22, 2012, the cost of testing equipment at the higher occupant weight standard is voluntary, as domestic liferafts and inflatable buoyant apparatuses may be certified using either occupant weight standard. Likewise, equipment manufactured under a current Certificate of Approval is required to be re-tested only if the manufacturer elects to retain their current rated capacity for their

equipment under the higher occupant weight standard. However, manufacturers have the option to reduce the current rated capacities of their equipment to comply with the new occupant weight standard, provided that the resulting capacity does not conflict with the minimum required capacity applicable to that equipment.

Prototype and production testing of all SOLAS liferafts approved under subpart 160.151 is required using the higher 82.5 kg occupant weight standard. The Coast Guard has no evidence to suggest that testing at the higher occupant weight standard will involve additional testing costs for manufacturers because the nature of the test remains the same.

#### Benefits

The principal benefit of the interim rule is the protection of life at sea by establishing capacity standards for inflatable liferafts and inflatable buoyant apparatuses reflecting a global increase in mariner weights. Additionally, the rule ensures compliance with internationally applicable standards for SOLAS adopted by IMO where noncompliance would exclude the use of inflatable liferafts manufactured under subpart 160.151 aboard SOLAS vessels.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have 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.

An SNPRM discussing the impact of this rule on small entities is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. In the SNPRM, the Coast Guard certified under 5 U.S.C. 605(b) that the rule would not have a significant economic impact on a substantial number of small entities. We received no comments on this certification and have made no changes that would alter our assessment of the impacts in the SNPRM.

We have identified three U.S.-owned entities involved in the manufacture of SOLAS liferafts manufactured under subpart 160.151. All are business entities, and all are small entities. For manufacturers seeking certification of equipment currently approved under subpart 160.151 whose rated capacity is

six, re-testing at the higher occupant weight standard will be required to retain their SOLAS approval status since SOLAS inflatable liferafts must have a minimum rated capacity of at least six. For the three models of liferafts currently approved under subpart 160.151, the cost estimates for certification testing, obtained from industry sources, are approximately \$1,800 per liferaft, for a total industry cost of \$5,400 (3 liferaft models × \$1,800 testing cost per model). As each of the three U.S. owned small businesses directly impacted by this rule will likely need to retest one model, the costs to these three small businesses is \$1,800 per business. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule will not have a significant economic impact on a substantial number of small entities.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ms. Jacqueline Yurkovich, Commercial Regulations and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–5214), Coast Guard; email [TypeApproval@uscg.mil](mailto:TypeApproval@uscg.mil), telephone 202–372–1389. The Coast Guard will not retaliate against individuals or small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

#### D. Collection of Information

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

### E. 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.

The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. *See, e.g., Kelly v. Washington ex rel Foss*, 302 U.S. 1 (1937) and the consolidated cases of *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 113–116 (2000). Therefore, the Coast Guard's view is that regulations issued under the authority of 46 U.S.C. 3306 in the areas of design, construction, alteration, repair, operation, superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, accommodations for passengers and crew, sailing school instructors, sailing school students, lifesaving equipment and its use, firefighting equipment, its use and precautionary measures to guard against fire, inspections and tests related to these areas and the use of vessel stores and other supplies of a dangerous nature have preemptive effect over State regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject or not, and regardless of the existence of conflict between the State and Coast Guard regulation.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the States (see *U.S. v. Locke*, above), the Coast Guard recognizes the key role state and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard will provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invited affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking. We received no such indications.

### F. Unfunded Mandates Reform Act

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

### G. Taking of Private Property

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

### H. Civil Justice Reform

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

### I. Protection of Children

The Coast Guard has 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 might disproportionately affect children.

### J. Indian Tribal Governments

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

### K. Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has 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.

### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards:

- Resolution MSC.293(87), Adoption of Amendments to the International Life-Saving Appliance (LSA) Code;
- Resolution MSC.295(87), Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81(70)).

The sections that reference these standards and the locations where these standards are available are listed in 46 CFR 160.151–5.

### M. Coast Guard Authorization Act Sec. 608 (46 U.S.C. 2118(a))

Section 608 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) adds new section 2118 to 46 U.S.C. Subtitle II (Vessels and Seamen), Chapter 21 (General). New section 2118(a) sets forth requirements for standards established for approved equipment required on vessels subject to 46 U.S.C. Subtitle II (Vessels and Seamen), Part B (Inspection and Regulation of Vessels). Those standards must be "(1) based on performance using the best available technology that is economically achievable; and (2) operationally practical." *See* 46 U.S.C. 2118(a). This rule addresses lifesaving equipment for Coast Guard approval that is required on vessels subject to 46 U.S.C. Subtitle II, Part B, and the Coast Guard has ensured that this rule satisfies the requirements of 46 U.S.C. 2118(a), as necessary.

### N. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is

one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves regulations which are editorial, regulations concerning equipping of vessels, and regulations concerning vessel operation safety standards. This rule is categorically excluded under Section 2.B.2, Figure 2-1, paragraphs (34)(a) and (d) of the Instruction and under paragraph 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 46 CFR Part 160

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 160 as follows:

#### PART 160—LIFESAIVING EQUIPMENT

■ 1. The authority citation for part 160 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

#### Subpart 160.151—Inflatable Liferrafts (SOLAS)

■ 2. Amend § 160.151-5 by adding paragraphs (d)(5) and (d)(6) to read as follows:

##### § 160.151-5 Incorporation by reference.

\* \* \* \* \*

(d) \* \* \*

(5) Annex 7 to MSC 87/26, Report of the Maritime Safety Committee on its Eighty-Seventh Session, "Resolution MSC.293(87), Adoption of Amendments to the International Life-Saving Appliance (LSA) Code," (adopted May 21, 2010), IBR approved for §§ 160.151-7, 160.151-15, 160.151-17, 160.151-21, 160.151-29, and 160.151-33 ("Resolution MSC.293(87)").

(6) Annex 9 to MSC 87/26, Report of the Maritime Safety Committee on its Eighty-Seventh Session, "Resolution MSC.295(87), Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81(70))," (adopted May 21, 2010), IBR approved for §§ 160.151-21, 160.151-27, 160.151-29, 160.151-31, and 160.151-57 ("Resolution MSC.295(87)").

\* \* \* \* \*

##### § 160.151-7 [Amended]

■ 3. Amend § 160.151-7 by removing the words "IMO LSA Code" wherever they appear and adding, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)".

##### § 160.151-15 [Amended]

■ 4. Amend § 160.151-15 by removing the words "IMO LSA Code" wherever they appear and adding, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)".

##### § 160.151-17 [Amended]

■ 5. Amend § 160.151-17 by removing the words "IMO LSA Code" wherever they appear and adding, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)".

##### § 160.151-21 [Amended]

■ 6. Amend § 160.151-21 as follows:

■ a. Remove the words "IMO LSA Code" wherever they appear and add, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)"; and

■ b. In paragraph (f), remove the words "IMO Revised recommendation on testing" and add, in their place, the words "IMO Revised recommendation on testing, as amended by Resolution MSC.295(87)".

##### § 160.151-27 [Amended]

■ 7. Amend § 160.151-27 by removing the words "IMO Revised recommendation on testing" wherever they appear and adding, in their place, the words "IMO Revised recommendation on testing, as amended by Resolution MSC.295(87)".

##### § 160.151-29 [Amended]

■ 8. Amend § 160.151-29 as follows:

■ a. In the introductory text, remove the words "IMO LSA Code" and add, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)"; and

■ b. In the introductory text, remove the words "IMO Revised recommendation on testing" and add, in their place, the words "IMO Revised recommendation on testing, as amended by Resolution MSC.295(87)".

##### § 160.151-31 [Amended]

■ 9. Amend § 160.151-31 by removing the words "IMO Revised recommendation on testing" wherever they appear and adding, in their place, the words "IMO Revised recommendation on testing, as amended by Resolution MSC.295(87)".

##### § 160.151-33 [Amended]

■ 10. Amend § 160.151-33 by removing the words "IMO LSA Code" wherever they appear and adding, in their place, the words "IMO LSA Code, as amended by Resolution MSC.293(87)".

##### § 160.151-57 [Amended]

■ 11. Amend § 160.151-57 by removing the words "IMO Revised recommendation on testing" wherever they appear and adding, in their place, the words "IMO Revised recommendation on testing, as amended by Resolution MSC.295(87)".

Dated: February 1, 2012.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 173

[Docket No. PHMSA-2011-0157; Notice No. 11-6]

#### Clarification on the Division 1.1 Fireworks Approvals Policy

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Clarification.

**SUMMARY:** In this document, PHMSA is responding to comments received from its initial Notice No. 11-6 clarifying PHMSA's policy regarding the fireworks approvals program. Furthermore, in this document PHMSA is restating its policy clarification that it will accept only those classification approval applications for Division 1.1 fireworks that have been examined and assigned a recommended shipping description, division, and compatibility group by a DOT-approved explosives test laboratory, or those that have been issued an approval for the explosive by the competent authority of a foreign government acknowledged by PHMSA's Associate Administrator. This policy clarification is intended to enhance safety by ensuring that fireworks transported in commerce meet the established criteria for their assigned classification, thereby minimizing the potential shipment of incorrectly classified or forbidden fireworks.

**DATES:** The policy clarification discussed in this document is effective February 21, 2012.