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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 175 and 181

46 CFR Parts 160 and 169

[Docket No. USCG-2013-0263]

RIN 1625-AC02

Personal Flotation Devices Labeling and Standards

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to remove references to type codes in its regulations on the carriage and labeling of Coast Guard-approved personal flotation devices (PFDs). Removing these type codes from our regulations will facilitate future incorporation by reference of new industry consensus standards for PFD labeling that more effectively convey safety information, and is a step toward harmonization of our regulations with PFD requirements in Canada and in other countries.

DATES: This final rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of May 3, 2012.

ADDRESSES: To view documents mentioned in this final rule as being available in the docket, go to <http://www.regulations.gov> and insert “USCG–2013–0263” in the

“Search” box. Click “Search” and then click the “Open Docket Folder” icon. The following link will take you directly to the docket:

<http://www.regulations.gov/#!docketDetail;D=USCG-2013-0263>.

FOR FURTHER INFORMATION CONTACT: For information about this document call or e-mail Ms. Brandi Baldwin, Lifesaving and Fire Safety Division, Coast Guard; telephone 202-2-372-1394, e-mail *brandi.a.baldwin@uscg.mil*. For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FDA	Food and Drug Administration
FR	<u>Federal Register</u>

LEO	Law enforcement officer
NPRM	Notice of proposed rulemaking
NBSAC	National Boating Safety Advisory Council
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PFD	Personal flotation device
Pub. L.	Public Law
RA	Regulatory Analysis
§	Section
U.S.C.	United States Code

II. Basis and Purpose

Under 46 U.S.C. 3306, 4102, and 4302, the Secretary of the Department in which the Coast Guard is operating is charged with prescribing safety requirements for lifesaving equipment on inspected vessels, uninspected vessels, and recreational vessels. Type approval and carriage requirements for personal flotation devices (PFDs) fall under this authority. In Department of Homeland Security Delegation No. 0170.1(II)(92)(b), the Secretary delegated this 46 U.S.C., Subtitle II, authority to the Commandant. As required under 46 U.S.C. 4302(c)(4), the Coast Guard has consulted with the National Boating Safety Advisory Council (NBSAC) regarding the issue addressed by this final rule. See NBSAC [Resolution 2012-90-05](#) (available in the docket).

The purpose of this final rule, which removes references to type codes in our regulations on the carriage and labeling of Coast Guard-approved PFDs, is to facilitate future adoption of new industry consensus standards for PFD labeling that more effectively convey safety information, and to help harmonize our regulations with PFD requirements in Canada and in other countries. Specifically, this final rule will enable the Standards Technical Panel (Panel), the panel charged with the new industry consensus standards, to complete development of a standard for wearable PFDs without including

unnecessary references to type codes. By paving the way for the Panel to develop a new standard, this final rule supports the efforts of the U.S.-Canada Regulatory Cooperation Council, a bilateral effort coordinated by the Office of Management and Budget (OMB) to develop a “North American Standard for lifejackets.”

III. Background

Labeling of PFDs is an important safety matter, as it is the primary means by which the manufacturer communicates to the end user how to select the right PFD and use and maintain it properly. Based on the volume of queries to the Coast Guard in recent years, including questions from NBSAC members, we believe that the current labels on Coast Guard-approved PFDs are confusing to the boating public and do not effectively communicate important safety and regulatory information to users and law enforcement personnel.

As noted in the previous section, the Coast Guard is charged with establishing minimum safety standards, as well as procedures and tests required to measure compliance with those standards, for commercial and recreational vessels, and associated equipment. Under this authority, the Coast Guard has established requirements for the carriage of approved PFDs that meet certain minimum safety standards.

The minimum requirements for Coast Guard-approved PFDs are codified in 46 CFR part 160, and include requirements for labeling. Our current regulations require that a type code be marked on each Coast Guard-approved PFD. The Coast Guard historically has used type codes in its regulations to identify the level of performance of an approved PFD. Types I, II, and III refer to wearable PFDs (lifejackets) in decreasing order of performance; Type IV refers to throwable PFDs; and Type V refers to any PFD

that is conditionally approved as equivalent in performance to Type I, II, III, or IV.

Coast Guard regulations specify which Coast Guard-approved PFDs are acceptable for particular applications. Although most of the carriage requirements for inspected vessels identify the appropriate PFDs by the applicable approval series¹ (*see, for example*, 46 CFR 199.10 and 199.70(b)), our carriage requirements for recreational boats (33 CFR part 175), uninspected commercial vessels (46 CFR part 25) and sailing school vessels (46 CFR part 169) specify particular type codes.

In 2004, the consultant Applied Safety and Ergonomics studied the current PFD classification and labeling system through the National Non-Profit Organization Recreational Boating Safety Grant Program. The consultant's final report, entitled “Revision of Labeling and Classification for Personal Flotation Devices (PFDs)” (available in the docket), suggested that our current labels are inadequate and that users do not adequately understand our PFD type codes.

We published a notice of proposed rulemaking (NPRM) on August 14, 2013 (78 FR 49412) that proposed to remove references to type codes in our regulations on the carriage and labeling of Coast Guard-approved PFDs. Removing these type codes from our regulations will free the Panel to develop improved industry consensus standards for the specific content and format of PFD labels and facilitate future incorporation by reference of new industry consensus standards for PFD labeling that will more effectively convey safety information, and is a step toward harmonization of our regulations with PFD requirements in Canada and in other countries. Once the Panel completes their work on revising the standards, the Coast Guard intends to evaluate those standards for

¹ Approval series refers to the first six digits of a number assigned by the Coast Guard to approved equipment.

possible incorporation by reference in our regulations; any such incorporation by reference would involve a separate notice-and-comment rulemaking.

IV. Discussion of Comments and Changes

We received 31 written submissions to the docket. No public meetings were requested and none were held.

Several commenters noted that current PFD labeling is confusing, and that most people who use PFDs do not know or do not care about type codes. The Coast Guard agrees that current PFD labeling is not well understood by the public.

One commenter agreed with the Coast Guard in that the type code system is flawed, but stated he is not sure a new system will be any easier. Another commenter pointed out that the type codes are currently being taught in the state boating safety education classes. Other commenters expressed concern that the removal of type codes would leave recreational boaters and commercial vessel operators with no information for selecting the correct PFD. The Coast Guard notes that, although this rule will remove the type code terminology from CFR sections in the regulatory text, PFD labels will not change until the industry consensus standards are revised. Although we expect that the transition to a new system of classification and labeling would require some re-education of the boating community, we are confident that the public would ultimately benefit from a system of classification and labeling that uses plain language terminology. Throughout this transition, PFD users will have sufficient information to comply with PFD requirements because our definition for a "throwable PFD" or a "wearable PFD" readily conveys whether a PFD with a type code on it meets the requirement.

Several commenters expressed concerns about the impact that eliminating the existing type code system will have on boaters and their existing PFDs. This final rule removes type code language from our carriage requirements and from our regulations for labeling of new PFDs, but does not make any changes to the number of wearable or throwable PFDs required. Also we are not requiring any changes to any existing approved PFDs already purchased and in use. The Coast Guard acknowledges that PFDs are typically carried on boats for several years and reaffirms that approved PFDs marked with type codes will still meet carriage requirements as wearable or throwable PFDs, as appropriate, as long as they remain in serviceable condition.

Several commenters had specific suggestions for alternate formatting and content of a new PFD label. Our proposed rule addressed only the minimum information required to be present on PFD labels, not the specific format. Therefore, these comments are beyond the scope of this rulemaking. The Coast Guard will refer those concerns to the Panel, so that they may be considered as appropriate during the standards development process.

One commenter proposed that the Coast Guard PFD performance and labeling requirements should align exactly with International Convention for the Safety of Life at Sea (SOLAS) standards. Another commenter suggested that instead of labeling, the Coast Guard reorient its focus to increased performance standards. Comments regarding PFD performance requirements are beyond the scope of this rulemaking, which focuses only on simplifying PFD labeling and the removal of type code language from our regulations.

Two commenters suggested eliminating the "throwable" classification, as defined in our NPRM, and no longer requiring carriage of throwable PFDs. The Coast Guard believes the "throwable" classification is a necessary distinction from "wearable" PFDs. Wearable and throwable PFDs are evaluated to different standards, have different purposes, and meet different carriage requirements. Additionally, removing the carriage requirement for throwable PFDs is beyond the scope of this rulemaking.

One commenter referenced the exemption from carriage requirements for sailboats in our proposed 33 CFR 175.17(c) (existing 33 CFR 175.17(d)). Our edits to 33 CFR 175.17 remove existing paragraph (a), which relates to labeling, and reorganize the subsequent paragraphs accordingly. This rule does not exempt sailboats or any other vessels - changes to the current carriage requirements are beyond the scope of this rulemaking.

One commenter suggested breaking the proposed "wearable" category further into "active" and "passive." The Coast Guard notes that delineating between active and passive PFDs would be of no consequence without a change to the carriage requirements, which is beyond the scope of this rulemaking. However, the Coast Guard acknowledges that the activation mechanism of the PFD can help the user make an informed decision when selecting an appropriate PFD for a particular activity and will refer this comment to the Panel for consideration in future standard development efforts.

One commenter suggested that "PFD" is confusing as a term, and that the Coast Guard should refer to PFDs as "lifejackets." The Coast Guard agrees that the term lifejacket is more widely understood by the public, and uses the term lifejacket to refer to wearable PFDs in media and other public outreach materials. However, the Coast Guard

prefers to use the term PFD in regulatory and standards language because it appropriately captures both wearable devices (e.g., lifejackets, buoyancy aids) and throwable devices (e.g., ring buoys, buoyant cushions).

One commenter stated that there may be "unintended complications" from our efforts to harmonize terminology with Canada and to simplify the labeling of PFDs. The Panel consists of both U.S. and Canadian stakeholders, including representatives of the Coast Guard and Transport Canada, and both countries have agreed in principle to adopt this harmonized standard. The Coast Guard has worked with, and will continue to work with, our Canadian counterparts to resolve any complications to which the commenter alludes. Once the Panel completes their work, the Coast Guard will evaluate the new standard for incorporation by reference into our regulations; we would publish an NPRM soliciting public comment if we seek to incorporate the Panel standard by reference. The potential adoption or regulatory incorporation of a harmonized standard into Coast Guard regulations would be subject to notice-and-public-comment procedures, providing an additional venue for identifying and resolving complications.

Several commenters acknowledged this rulemaking as a step towards harmonization, but expressed concern over the current process for PFD approval and the availability of recognized independent laboratories for testing and factory follow-up. This rulemaking does not address approval or testing, and does not affect the existing requirements for recognized independent laboratories, and thus these comments are outside the scope of this rulemaking.

Some State agency commenters requested more time to comply with the changes introduced by this rule. They noted that costs will be incurred when updating and

revising not only State laws and regulations, as applicable, but also written material – such as guide books or educational pamphlets. As discussed above, this rulemaking is a necessary step to permit the transition to a new PFD labeling format. This final rule does not affect existing PFDs previously purchased or currently in use, because our definition for a "throwable PFD" or a "wearable PFD" readily conveys whether a PFD with a type code on it meets the requirement. Additionally, we believe that, even after a new label standard is completed, it will take industry time to exhaust its supplies of type labels and to begin printing the new labels. Therefore, we expect a prolonged transition to a new label format, during which time both label formats would be present in the market. Likewise, we anticipate that it will take time for States and other entities to update their outreach and education materials, which will result in an overlap period. States may choose not to update their training materials immediately since existing PFDs, with type codes on them, may still be used. However, this final rule must be effective to permit a transition phase to begin. This rule will become effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and we encourage all affected agencies to update their outreach materials as the market transitions over the next few years.

One commenter suggested that the Coast Guard reach out to authors of other voluntary consensus standards regarding possible impacts of this rule. As discussed in the NPRM, we reviewed material from other Federal and State regulatory agencies, particularly existing regulatory text, for potential impacts from the removal of the type codes from the Coast Guard's regulations. We also noted there may be other entities interested. We acknowledge the comment and note no additional entities identified their

organizations during the proposal's comment period or in response to the proposal's public affairs material. We would expect that others affected may emerge as they review the *Federal Register* and other public affairs materials and will work with them as the Panel develops the new standard.

One commenter pointed out several additional sections of regulatory text where references to type codes still appear in marking requirements and suggested that we amend these as well. The Coast Guard acknowledges that it did miss some references to type codes that should have been removed when we drafted the NPRM. To correct that omission, we made two changes to the regulatory text. We amended the regulatory text related to PFD marking requirements in 46 CFR 160.053-5 and 160.077-31. These changes are consistent with our proposed changes in the NPRM. However, the Coast Guard notes that it cannot remove every reference to type codes at this time. The industry consensus standards which are currently incorporated by reference into the regulations as the basis for Coast Guard approval of PFDs, which include requirements for materials, construction, and testing, as well as labeling, still use type codes. Therefore, the PFDs tested to these standards still are assigned a type code, even if that type code is no longer required to be printed on the label. But these remaining references to type codes will not hinder the Panel's efforts to develop improved industry consensus standards.

In addition to the changes noted above based on comments, we made a few editorial, non-substantive changes from the regulatory text proposed in the NPRM. For example, in 33 CFR 175.17 we changed our qualifier for canoes and kayaks from "16

feet in length and over” to “16 feet or more in length” to make it consistent with preferred language used in 33 CFR 175.15(b).

V. Discussion of the Rule

In this final rule, the Coast Guard removes references to longstanding PFD type codes from its regulations for the carriage and marking of Coast Guard-approved PFDs. Under these amendments, the number and kind of PFDs required to be carried on a vessel will not change, but the terminology used to refer to approved PFDs will. Our current assignment of a type code to a PFD does not affect the PFD’s suitability for meeting the applicable vessel carriage requirements. This final rule removes regulatory barriers to the development of a new industry consensus standard for PFD labels, which would potentially allow manufacturers to produce a more user-friendly label format on Coast Guard-approved PFDs in the future. For a detailed description of the proposed rule, see the NPRM (78 FR 49413, August 14, 2013).

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on 14 of these statutes or E.O.s.

A. Regulatory Planning and Review

E.O.s 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). E.O. 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Nonetheless, we developed a regulatory analysis (RA) describing the costs and benefits of the rule to ascertain its probable impacts on industry. A final RA follows.

The RA provides an evaluation of the economic impacts associated with this final rule. The table which follows provides a summary of the final rule's costs and benefits.

Table 1—Summary of the Rule's Impacts

Category	Summary
Affected Population	66 PFD manufacturers. 6 Federal agencies. Up to 56 State/territorial jurisdictions.
Costs (\$, 7% discount rate)	\$15,224 (annualized: \$692 private sector, \$14,532 government). \$106,928 (10-year: \$4,857 private sector, \$102,071 government).
Unquantified Benefits	* Improve effectiveness of PFD marking/labels without compromising safety. * Prevent misuse and misunderstandings of PFDs. * Remove impediment to future harmonization with international standards.

The final rule revises the existing regulations regarding labeling of PFDs, by removing requirements for type codes to be included on PFD labels.

Affected Population

Based on the Coast Guard Guard's Marine Information for Safety and Law Enforcement database, we estimate that this final rule affects approximately 66 PFD manufacturers. Up to 56 State and territorial jurisdictions may be impacted. There are

six Federal governmental agencies — the Department of Labor's Occupational Safety and Health Administration (OSHA); the Department of the Interior's Bureau of Reclamation, National Park Service, and United States Fish and Wildlife Service ; the Department of Agriculture's Forest Service; and the Department of Defense — which may have to adjust their regulations or policy documents because they incorporate Coast Guard standards that mention PFD type codes. Of these six, OSHA is the only agency we have identified that specifically references Coast Guard type codes in its regulations. We have coordinated with the OSHA Directorate of Standards and Guidance to ensure that OSHA's PFD-related regulations can be aligned readily with the revisions to the Coast Guard regulations. We also have reached out via the Interagency Working Group for Visitor Safety to the National Park Service, Bureau of Reclamation, Forest Service, U.S. Army Corps of Engineers, and the United States Fish and Wildlife Service, and they have not expressed any objections to our proposed action. We received no comments on the estimated affected population in the public comment period.

Costs

The Coast Guard expects that this rule will result in one-time costs of approximately \$114,413 (\$111,209 at 7% a discount rate). See Table 2 below. The Coast Guard estimates that \$5,197 (\$4,857 at 7% a discount rate) is attributable to the private sector. We estimate that this final rule affects 66 manufacturers of PFDs. No additional equipment will be required by the rule; however some labor may be required. PFD manufacturers may need to reprogram stitching machines or silk screen machines to conform with the new label requirements. This rule only affects labeling on PFDs manufactured after the effective date of this rule.

Table 2— Regulatory Cost Breakdown

	Duration (Hours)	Loaded Wage	Affected Entities	TOTAL
Private Sector Costs	1	\$78.74	66	\$5,197
Federal Regulatory Review	0.5	\$79.38	6	\$238
Federal Policy Document Update	10	\$79.38	6	\$4,763
Federal Stakeholder Notification	0.5	\$79.38	6	\$238
State Regulatory Review	0.5	\$73.43	56	\$2,056
State Stakeholder Notification	0.5	\$73.43	56	\$2,056
State Policy Update by Legislature	10	\$73.43	36	\$26,435
State Policy Update by Commission	100	\$73.43	10	\$73,430
Total				\$114,413

Federal agencies that incorporate by reference the Coast Guard regulations amended by this final rule may need to review their regulations to assure consistency with the change. Some States and Federal agencies may want to initiate rulemakings or legislation to update their regulations or statutes to remove unnecessary references to type codes. States and Federal agencies may need to communicate to law enforcement personnel the changes of the final rule and some authorities may need to update their boating safety training materials to reflect the changes. These costs are described in the following passages.

The Coast Guard acknowledges the States' concerns regarding the alignment of their statutes and regulations with Coast Guard requirements. However, our revised regulatory text includes the relevant type codes in the definitions of “wearable PFD” and “throwable PFD.” Therefore, language that references type codes would still be considered not inconsistent with these regulations at this time.

Recreational boaters will not experience a cost increase because of this rulemaking. Existing PFDs may continue to be used. No action is required by recreational boaters.

The table which follows presents the estimated cost associated with the rulemaking.

Table 3—Total Estimated Cost Associated with the Rulemaking

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	\$106,928	\$111,081	\$114,413
Year 2	\$0	\$0	\$0
Year 3	\$0	\$0	\$0
Year 4	\$0	\$0	\$0
Year 5	\$0	\$0	\$0
Year 6	\$0	\$0	\$0
Year 7	\$0	\$0	\$0
Year 8	\$0	\$0	\$0
Year 9	\$0	\$0	\$0
Year 10	\$0	\$0	\$0
Total	\$106,928	\$111,081	\$114,413
Annualized	\$15,224	13,022	\$11,441

The Coast Guard estimates that reprogramming stitching machines or silk screen machines takes approximately 1 hour per manufacturer. This estimate comports with the Food and Drug Administration’s (FDA’s) estimated cost of compliance for relabeling of sunscreens to comply with new labeling requirements.² This is the most similar Federal rulemaking we found in our research that involves a regulatory requirement on labels. Both the FDA’s and this rulemaking involve changes to labeling. The FDA estimated that it would take 0.5 hour to prepare, complete, and review the labeling for each product. The Coast Guard used a higher value than FDA: 1 hour per product to prepare, complete

² See SPF Labeling and Testing Requirements and Drug Facts Labeling for Over-the-Counter Sunscreen Drug Products; Agency Information Collection Activities; Proposed Collection (76 FR 35678, June 17, 2011); and Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use Final rule (76 FR 35620, June 17, 2011).

and review the new labeling. The higher value accounts for possible involvement of more than one type of machine (i.e., stitching or silk screen), more complex machinery for PFD labels and the need for management communication to multiple factories or stitching machine designers. The Coast Guard sought comment from PFD manufacturers regarding the costs associated with changing PFD labels in response to the proposed rule; however, no comments were provided by PFD manufacturers in response to the NPRM.

Labor costs for a PFD manufacturer are estimated at \$78.74 per hour (fully loaded) for a manager based on a mean wage rate of \$46.87; this estimate is based on Bureau of Labor Statistics data Occupational Employment Statistics, Occupational Employment and Wages, for Industrial Production Managers (11-3051, May 2012).³ From there, we applied a load factor (or benefits multiplier) of 1.68, to determine the actual cost of employment to employers and industry.⁴

For other costs, States will need to review their laws and regulations to assure conformity with the change, as some have, based on comments received on the NPRM. In turn, some States may need to initiate rulemakings or make statutory changes to remove references to type codes; we discuss this further in this section. The Coast Guard estimates that these agencies will take approximately 0.5 hour to review their laws and regulations. Their review task is estimated by the loaded wage rate of \$73.43 per hour (from an unloaded hourly mean wage rate of \$44.50 for a manager from Occupational Employment and Wages, May 2012, 11-1021 General and Operations Managers Local

³ The reader may review the source data at <http://www.bls.gov/oes/2012/may/oessrci.htm>.

⁴ This was calculated using data found on the Bureau of Labor Statistics' website. The load factor is calculated specifically for Production, transportation and material moving occupations, Full-time, Private Industry (Series ID: CMU2010000520610D, 2012, 2nd Quarter). This category was used as it was the closest available corresponding to the industry being analyzed in this regulatory analysis. Total cost of compensation per hour worked: \$26.61, of which \$15.84 is wages, resulting in a load factor of 1.6799 (\$26.61/\$15.84). We rounded this factor to 1.68. (Source: <http://data.bls.gov/cgi-bin/dsrv>) Using similar applicable industry groups and time periods results in the same estimate of load factor.

Government). The average cost for a State to perform this task would be approximately \$36.71.

Some commenters to the NPRM suggested that there may be additional tasks required of States; commenters stated that training materials would need to be updated. One commenter believed that “The vast majority of PFD users have no idea of one type of PFD from another...they don't know and they don't care. For those who do care they will be without guidance. Several years ago the USCG started to allow some traditional type V PFD to be called and used as type III. I have to decide now to issue citations to PFD users who think they are legal but in fact are not legal.” The Coast Guard does not intend for State law enforcement officers (LEOs) to issue citations based on this final rule’s changes. Existing PFDs may continue to be used. In response to the comment, the Coast Guard has added a cost to its estimate to reflect some labor that States may expend to communicate the change to law enforcement officials and to explain what will be expected of them as a result of the final rule. The Coast Guard estimates that the labor required for this task to be approximately 30 minutes (0.5 hour) to prepare an email and/or electronic bulletin board notice to LEOs. The Coast Guard anticipates that more than one layer of authority may be involved in disseminating this information and has estimated the task’s duration accordingly. In addition, although the Coast Guard anticipates that most States do not have training manuals for LEOs which cover this topic, we acknowledge that there may be some States that have a training manual which may need to be updated to reflect the final rule’s changes.⁵ For this reason, although they are not included in the total cost of the final rule, we estimate the cost of updating a training manual. If a State were to update their training manual, we estimate that it may

⁵ We estimate the number of States needing to update their training manuals would be fewer than 10.

take a given State 1 hour of labor time. The Coast Guard acknowledges that States may choose not to update their training materials immediately since existing PFDs, with type codes on them, may still be used.

In addition, this final rule impacts some Federal agencies and they will need to review their regulations or policy documents to determine if any changes are needed. The Coast Guard estimates that it would take 0.5 hour to do this task. The Coast Guard estimates the labor cost to be \$79.38 per hour for a Federal manager (Bureau of Labor Statistics, “Occupational Employment and Wages, First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators, 53-1031 Federal Executive Branch and a load factor of 1.65)⁶ and there are an estimated six Federal agencies potentially impacted. Based on these data, this task costs each affected Federal agency less than \$50 to review regulations or policy documents. To update a policy document, we estimate that 10 hours would be expended by a Federal agency to do so. We also estimate that Federal governmental agencies may expend 30 minutes (0.5 hour) to communicate the change to Federal LEOs.

Additional costs may occur as a result of this rule; these costs arise from labor expended for rulemaking. More specifically, some State and Federal agencies may require a rulemaking to update their regulations to incorporate this proposed change into their regulations, policy documents or statutes.

To assess these costs, we first note the rulemaking process varies greatly across State and territorial governmental units. The reader should note that not all impacted

⁶ This load factor is calculated specifically for Public Administration, State and Local Government occupations, Full-time (Series ID: CMU3019200000000D, CMU3019200000000P, 2012, 2nd Quarter. Total cost of compensation per hour worked: \$39.642, of which \$23.97 is wages, resulting in a load factor of 1.653734 (\$39.64/\$23.97). We rounded this factor to 1.65 (rounded to the nearest hundredth). (Source: <http://www.bls.gov/ncs/ect/data.htm>)

governmental units are expected to incur a cost associated with this task because some States incorporate by reference Coast Guard standards and will not need to take action. Some agencies may be able to update their regulations for this change by incorporating this change into an existing or planned rulemaking. Some also may choose not to pursue a rulemaking immediately.

To estimate a cost for this step, we reviewed publicly available data on the Internet for States and territories. Based on that review, we estimated the number of States and territories which would fall into the various categories of rulemaking. In the first category, we estimate that there would be six States and territories which incorporate by reference Coast Guard regulations and, therefore, would incur no costs. Next, we estimate another 36 States and territories engage in rulemaking activities by State agencies. In the next category, an estimated 10 States and territories will update their regulations by more lengthy processes; either by statute change via a legislative vote, or by a rulemaking process involving the legislative branch of government or the State-level executive branch of government. The change may be a stand-alone proposed rule or legislation, or the change may be part of an omnibus set of changes. In the last category, we estimate that four States and territories would take no rulemaking action; for these, their regulations or statutes may not need revision because of how they are written. The table which follows presents a summary of this data.

Table 4—Estimated Rulemaking Activities for States and Territories

Level of activity	Number of States or territories	Level of effort required (hours)	Total cost
Incorporate by Reference	6	0	\$0
State Policy Update by Legislature	36	10	\$26,435
State Policy Update by Commission	10	100	\$73,430
No change necessary	4	0	\$0

Total	\$99,865
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We estimate that costs to a given State or territory for this step range from no cost to \$7,343. Some costs may be offset because some States may have already started this process in anticipation of the new industry consensus standard for PFD labeling through the Panel.

During the public comment period, the Coast Guard received two comments on its cost estimates. One commenter wrote "Florida is one of the ten states referenced where making appropriate changes in state law will require legislative action. Both the estimated number of hours and associated cost as provided...are considered to be reasonable estimates...the benefit of the intended outcomes outweigh the challenge of making changes to state law." Another commenter suggested that our estimate of 100 hours for a legislative change may be too low but acknowledged that "it is difficult to define what would be an accurate number of hours" due to extraneous factors, and further acknowledged that the commenter's State authorities may not take action immediately to implement the change since existing PFDs are still useable. The Coast Guard has not changed its estimates for the cost of legislative changes since no data are available to refine its estimates and some States may not act immediately. The commenter similarly noted that boater education manuals and website materials may need to be updated. The Coast Guard agrees that boater education material may need to be updated for some States and notes that some States may choose not to do so immediately since existing PFDs are still useable.

As noted earlier, the Coast Guard received a comment on the need of State (and Federal) governmental agencies to update training manuals on the subject. The Coast

Guard agreed, but it is unknown if Federal agencies have training manuals for their LEOs which cover PFDs. In the case of any Federal agency which has a training manual which covers PFD types, we estimate that Federal governmental agencies may expend one hour to do so. We also estimate that Federal governmental agencies may expend 30 minutes (0.5 hour) to communicate the change to Federal LEOs. In addition to the costs noted in the previous paragraphs, the Coast Guard may experience some costs in subsequent years to augment existing boater education efforts to include information associated with this final rule. However, the Coast Guard may be able to use existing partnerships, Internet resources, and other technologies which offer more cost effective solutions.

Benefits

The final rule amends existing regulations regarding labeling of PFDs. The rulemaking promotes maritime safety by eliminating confusion associated with type codes, and by improving the understanding of PFD performance and use. The Coast Guard is pursuing this amendment to allow the Panel to develop new labeling standards that better prevent misuse, misunderstandings, and inappropriate selection of PFDs without compromising the existing level of safety.

The rulemaking improves the relevance of markings on PFDs. The Coast Guard believes that removing irrelevant information increases the likelihood that the user will read and understand the label, and thus select the proper PFD and be able to use it correctly. This also would provide benefits by reducing confusion among enforcement officers and the boating public over whether a particular PFD is approved and meets the relevant carriage requirements.

The rulemaking also allows for the harmonization of our regulations with other countries, and allows for the adoption of future industry consensus standards for label requirements. For recreational PFDs, which comprise about 97 percent of the U.S. PFD market, the approvals are based on industry consensus standards that contain marking requirements. By referring to those standards directly, the Coast Guard reduces regulatory redundancy and minimizes the risk of conflict between regulatory requirements and industry consensus standards.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would 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.

The Coast Guard expects that this rule will not have a significant economic impact on small entities. As described in the “Regulatory Planning and Review” section, the Coast Guard expects this rule to result in costs to industry (approximately \$78 per PFD manufacturer). An estimated 92.4 percent of the 66 PFD manufacturers are considered small by the Small Business Administration size standards. The compliance costs for this rulemaking amount to less than 1 percent of revenue for all small entities. Costs will be incurred in the first year of the final rule’s enactment for PFD manufacturers. No additional costs for labor or equipment will be incurred in future years. No small governmental jurisdictions are impacted by the rulemaking.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will

not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rule will not require a change to existing OMB-approved collection of information (1625-0035 Title 46 CFR Subchapter Q: Lifesaving, Electrical, Engineering and Navigation Equipment, Construction and Materials & Marine Sanitation Devices (33 CFR part 159)). The final rule will not require relabeling of PFDs, but instead will remove minor data elements from existing labeling requirements. Labeling of PFDs is an automated process, and the change in content will not result in any change in burden hours.

E. Federalism

A rule has implications for federalism under E.O. 13132 ("Federalism") if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in the Executive Order. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered for inspected vessels in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) In this final rule, the Coast Guard replaces unnecessary references to type codes in labeling and carriage requirements for Coast Guard-approved PFDs on inspected vessels and recreational vessels. With regard to these regulations promulgated under the authority of 46 U.S.C. 3306 concerning inspected vessels, they fall within fields foreclosed from regulation by State or local governments. Therefore, this final rule is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

With regard to regulations promulgated under 46 U.S.C. 4302 concerning recreational vessels, under 46 U.S.C. 4306, those Federal regulations that establish minimum safety standards for recreational vessels and their associated equipment, as well as regulations that establish 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. As an exemption has not been granted, and because the States may not issue regulations that differ from Coast Guard regulations within these categories for recreational vessels, this final rule is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

In the NPRM, we invited affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments on the proposed rule. We also noted we would document the extent of our consultation with State and local officials that submit comments, summarize the nature of concerns raised by State or local governments and our response, and state the extent to which the concerns of State and local officials have been met.

Our consultation with State and local governments and their representative national organizations who submitted comments has been reflected in our responses to those comments in the preamble of this final rule. In the Discussion of Comments and Changes section above, we summarized all comments received and provided our responses to those comments, which included comments from State or local governments.

We believe we have met the concerns expressed by State and local officials. Outside the preamble of this final rule, we did not respond separately in writing to submissions from State agencies.

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 E.O. 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 E.O. 12988, (“Civil Justice Reform”), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Tribal Governments

This rule does not have Tribal implications under E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), because it would not have a substantial direct effect on one or more Tribal governments, on the relationship between the Federal

Government and Tribal governments, or on the distribution of power and responsibilities between the Federal Government and Tribal governments.

K. Energy Effects

We have analyzed this rule under E.O. 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 E.O. 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, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 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 is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) of the Instruction and under section 6(a) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48244, July 23, 2002). This rule involves regulations which are editorial and concern carriage requirements and vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

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

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 175 and 181, and 46 CFR parts 160 and 169 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 175—EQUIPMENT REQUIREMENTS

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

Authority: 46 U.S.C. 4302; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 175.13 to read as follows:

§ 175.13 Definitions.

As used in this subpart:

Personal flotation device or *PFD* means a device that is approved by the Commandant under 46 CFR part 160.

Throwable PFD means a PFD that is intended to be thrown to a person in the water. A PFD marked as Type IV or Type V with Type IV performance is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

Wearable PFD means a PFD that is intended to be worn or otherwise attached to the body. A PFD marked as Type I, Type II, Type III, or Type V with Type (I, II or III) performance is considered a wearable PFD.

3. Amend § 175.15 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 175.15 Personal flotation devices required.

Except as provided in §§ 175.17 and 175.25:

(a) No person may use a recreational vessel unless—

(1) At least one wearable PFD is on board for each person;

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

(3) Each PFD is used in accordance with any requirements in its owner's

manual, if the approval label makes reference to such a manual.

(b) No person may use a recreational vessel 16 feet or more in length unless one throwable PFD is onboard in addition to the total number of wearable PFDs required in paragraph (a) of this section.

* * * * *

4. Revise § 175.17 to read as follows:

§ 175.17 Exemptions.

(a) Canoes and kayaks 16 feet or more in length are exempted from the requirements for carriage of the additional throwable PFD required under § 175.15(b).

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

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

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

5. Revise § 175.19 to read as follows:

§ 175.19 Stowage.

(a) No person may use a recreational boat unless each wearable PFD required by § 175.15 is readily accessible.

(b) No person may use a recreational boat unless each throwable PFD required by § 175.15 is immediately available.

6. Amend § 175.21 by revising the introductory text to read as follows:

§ 175.21 Condition; size and fit; approval marking.

No person may use a recreational boat unless each PFD required by § 175.15 is—

* * * * *

PART 181—MANUFACTURER REQUIREMENTS

7. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302; Department of Homeland Security Delegation No. 0170.1 (92).

§ 181.702 [Amended]

8. Amend § 181.702(a) and (b) by removing, wherever they appear, the words "Type I, II, III, IV, or V".

TITLE 46—SHIPPING

PART 160—LIFESAVING EQUIPMENT

9. 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; and Department of Homeland Security Delegation No. 0170.1.

§ 160.001-1 [Amended]

10. Amend § 160.001-1(a)(1) by removing the words "(Type I personal flotation devices (PFDs))".

§ 160.001-3 [Amended]

11. Amend § 160.001-3(d) as follows:

- a. Remove paragraph (d)(4); and
- b. Redesignate paragraphs (d)(5), (6), (7), and (8) as paragraphs (d)(4), (5),

(6), and (7), respectively.

§ 160.002-6 [Amended]

12. Amend § 160.002-6(b) by removing the words "Type I Personal Flotation Device."

§ 160.005-6 [Amended]

13. Amend § 160.005-6(b) by removing the words "Type I—Personal Flotation Device."

§ 160.047-6 [Amended]

14. Amend § 160.047-6(a) by removing the words "Type II Personal Flotation Device."

§ 160.052-8 [Amended]

15. Amend § 160.052-8(a) by removing the words "Type II-Personal flotation device."

§ 160.053-5 [Amended]

16. Amend § 160.053-5(a) by removing the words "Type V—Personal flotation device."

§ 160.055-8 [Amended]

17. Amend § 160.055-8(b) by removing the words "Type I or Type V Personal Flotation Device."

§ 160.060-8 [Amended]

18. Amend § 160.060-8(a) by removing the words "Type II Personal Flotation Device."

19. Revise § 160.064-4 to read as follows:

§ 160.064-4 Marking.

(a) *Labels.* Each water safety buoyant device must be marked in accordance with the recognized laboratory's listing and labeling requirements in accordance with § 160.064-3(a). At a minimum, all labels must include—

- (1) Size information, as appropriate;
- (2) The Coast Guard approval number;
- (3) Manufacturer's contact information;
- (4) Model name/number;
- (5) Lot number, manufacturer date; and
- (6) Any limitations or restrictions on approval or special instructions for use.

(b) *Durability of marking.* Marking must be of a type which will be durable and legible for the expected life of the device.

20. Amend § 160.076-5 as follows:

- a. Remove the parenthetical “(I, II, or III)” from the definition of "Performance type";
- b. Remove the definition of "PFD Approval Type"; and
- c. Revise the definitions of "Conditional approval" to read as follows:

§ 160.076-5 Definitions.

* * * * *

Conditional approval means a PFD approval which has condition(s) with which the user must comply in order for the PFD to be counted toward meeting the carriage requirements for the vessel on which it is being used.

* * * * *

§ 160.076-7 [Removed and Reserved]

21. Remove and reserve § 160.076-7.

22. Amend § 160.076-9 as follows:

a. In paragraph (a), remove the words "is categorized as a Type V PFD and";

and

b. Revise paragraph (b) to read as follows:

§ 160.076-9 Conditional approval.

* * * * *

(b) PFDs not meeting the performance specifications in UL 1180

(incorporated by reference, *see* § 160.076-11) may be conditionally approved when the Commandant determines that the performance or design characteristics of the PFD make such classification appropriate.

§ 160.076-13 [Amended]

23. Amend § 160.076-13 as follows:

a. Remove paragraph (c)(3); and

b. Redesignate paragraphs (c)(4), (5), (6), (7), (8), and (9) as paragraphs

(c)(3), (4), (5), (6), (7), and (8), respectively.

§ 160.076-23 [Amended]

24. Amend § 160.076-23(a)(1) by removing the words "applicable to the PFD performance type for which approval is sought".

§ 160.076-25 [Amended]

25. Amend § 160.076-25(b) by removing the words "that are applicable to the PFD performance type for which approval is sought".

26. Revise § 160.076-39 to read as follows:

§ 160.076-39 Marking.

Each inflatable PFD must be marked as specified in UL 1180 (incorporated by reference, *see* § 160.076-11). At a minimum, all labels must include—

- (a) Size information, as appropriate;
- (b) The Coast Guard approval number;
- (c) Manufacturer's contact information;
- (d) Model name/number;
- (e) Lot number, manufacturer date; and
- (f) Any limitations or restrictions on approval or special instructions for use.

§ 160.077-31 [Amended]

27. Amend § 160.077-31 as follows:

- a. In paragraph (c), remove the words "Type [II, III, or V, as applicable] PFD"; and
- b. In paragraph (d), remove the words "Type ["I", "V", or "V Work Vest Only", as applicable] PFD".

§ 160.176-23 [Amended]

28. Amend § 160.176-23 as follows:

- a. In paragraph (c), remove the words "Type V PFD-" and "in lieu of (*see paragraph (f) of this section for exact text to be used here*)"; and
- b. Remove paragraph (f).

PART 169—SAILING SCHOOL VESSELS

29. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103-206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

30. Amend § 169.539 as follows:

- a. In the introductory text, remove the word “either”;
- b. In paragraph (a), remove the words "A Type I approved" and add, in their place, the word "Approved", and remove the second use of the word "or";
- c. In paragraph (b), remove the words "a Type V approved" and add, in their place, the word "Approved"; and
- d. Revise paragraph (c) to read as follows:

§ 169.539 Type required.

* * * * *

(c) Approved under subparts 160.047, 160.052, or 160.060 of this chapter or approved under subpart 160.064 of this chapter if the vessel carries exposure suits or exposure PFDs, in accordance with § 169.551.

Dated: September 15, 2014.

J. G. Lantz,
Director of Commercial Regulations and Standards,
U. S. Coast Guard.

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