representative effective January 1, 2002 and vote to certify a new employee representative effective the same date. As a consequence, on January 1, 2002 they cease to be covered under *M* and commence to be covered under multiemployer group health plan *N*.

(ii) Effective January 1, 2002, *N* has the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with W. The loss of coverage under *M* for those employees of W who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

§ 54.4980B–10 Interaction of FMLA and COBRA.

The following questions-and-answers address how the taking of leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601–2619) affects the COBRA continuation coverage requirements:

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

A–1: (a) The taking of leave under FMLA does not constitute a qualifying event. A qualifying event under Q&A–1 of § 54.4980B–4 occurs, however, if—

(1) An employee (or the spouse or a dependent child of the employee) is covered on the day before the first day of FMLA leave (or becomes covered during the FMLA leave) under a group health plan of the employee's employer;

(2) The employee does not return to employment with the employer at the end of the FMLA leave; and

(3) The employee (or the spouse or a dependent child of the employee) would, in the absence of COBRA continuation coverage, lose coverage under the group health plan before the end of the maximum coverage period.

(b) However, the satisfaction of the three conditions in paragraph (a) of this Q&A–1 does not constitute a qualifying event if the employer eliminates, on or before the last day of the employee's FMLA leave, coverage under a group health plan for the class of employees (while continuing to employ that class of employees) to which the employee would have belonged if the employee had not taken FMLA leave.

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

A–2: A qualifying event described in Q&A–1 of this section occurs on the last day of FMLA leave. (The determination of when FMLA leave ends is not made under the rules of this section. See the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800).) The maximum coverage period (see Q&A–4 of § 54.4980B–7) is measured from the date of the qualifying event (that is, the last day of FMLA leave). If, however, coverage under the group health plan is lost at a later date and the plan provides for the extension of the required periods (see paragraph (b) of Q&A–4 of § 54.4980B–7), then the maximum coverage period is measured from the date when coverage is lost. The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employee *B* is covered under the group health plan of Employer *X* on January 31, 2001. *B* takes FMLA leave beginning February 1, 2001. *B*'s last day of FMLA leave is 12 weeks later, on April 25, 2001, and *B* does not return to work with *X* at the end of the FMLA leave. If *B* does not elect COBRA continuation coverage, *B* will not be covered under the group health plan of *X* as of April 26, 2001.

(ii) *B* experiences a qualifying event on April 25, 2001, and the maximum coverage period is measured from that date. (This is the case even if, for part or all of the FMLA leave, *B* fails to pay the employee portion of premiums for coverage under the group health plan of *X* and is not covered under *X*'s plan. See Q&A–3 of this section.)

Example 2. (i) Employee *C* and *C*'s spouse are covered under the group health plan of Employer *Y* on August 15, 2001. *C* takes FMLA leave beginning August 16, 2001. *C* informs *Y* less than 12 weeks later, on September 28, 2001, that *C* will not be returning to work. Under the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800), *C*'s last day of FMLA leave is September 28, 2001. *C* does not return to work with *Y* at the end of the FMLA leave. If *C* and *C*'s spouse do not elect COBRA continuation coverage, they will not be covered under the group health plan of *Y* as of September 29, 2001.

(ii) *C* and *C*'s spouse experience a qualifying event on September 28, 2001, and the maximum coverage period (generally 18 months) is measured from that date. (This is the case even if, for part or all of the FMLA leave, *C* fails to pay the employee portion of premiums for coverage under the group health plan of *Y* and *C* or *C*'s spouse is not covered under *Y*'s plan. See Q&A–3 of this section.)

Q–3: If an employee fails to pay the employee portion of premiums for coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

A–3: No. Any lapse of coverage under a group health plan during FMLA leave is irrelevant in determining whether a set of circumstances constitutes a qualifying event under Q&A–1 of this section or when such a qualifying event occurs under Q&A–2 of this section.

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

A–4: No. Any state or local law that requires coverage under a group health plan to be maintained during a leave of absence for a period longer than that required under FMLA (for example, for 16 weeks of leave rather than for the 12 weeks required under FMLA) is disregarded for purposes of determining when a qualifying event occurs under Q&A–1 through Q&A–3 of this section.

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

A–5: No. The U.S. Department of Labor has published rules describing the circumstances in which an employer may recover premiums it pays to maintain coverage, including family coverage, under a group health plan during FMLA leave from an employee who fails to return from leave. See 29 CFR 825.213. Even if recovery of premiums is permitted under 29 CFR 825.213, the right to COBRA continuation coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

Approved: December 18, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 01–5 Filed 1–9–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95 and 177

[USCG–1998–4593]

RIN 2115–AF72

Revision to Federal Blood Alcohol Concentration (BAC) Standard for Recreational Vessel Operators

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Federal Blood Alcohol Concentration (BAC) standard under which a recreational vessel operator

would be considered operating while ''intoxicated.'' For recreational vessel operators, the final rule lowers the current Federal BAC threshold from .10 BAC to .08 BAC. This change is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State recreational boating laws toward the .08 BAC standard. Further, the revised Federal BAC standard does not supercede or preempt any enacted State BAC standard. Additionally, the final rule replaces the term ''intoxicated'' with the phrase ''under the influence of alcohol or a dangerous drug.'' This change brings the regulations into conformance with current statutory language. The final rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

DATES: This final rule is effective March 12, 2001.

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–1998–4593 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 14, 1987, we published a final rule in the **Federal Register** (52 FR 47526), in which we set a Federal standard for intoxication applicable to recreational vessel operators using a .10 BAC. The rule adopted any enacted State BAC standard of intoxication as the Federal BAC standard, and applied the State BAC standard to recreational vessel operators within that State. If a State did not have an enacted BAC standard for ''intoxication,'' a provision allowed us to adopt a State BAC standard for ''under the influence'' or ''while impaired,'' instead of ''intoxicated.'' In that final rule, we noted that we would consider revising the Federal BAC standard if the States developed a trend toward adopting the .08 BAC standard for operating a vessel on the water.

We began this rulemaking project in response to recommendations from the National Boating Safety Advisory Council (NBSAC), to update the existing regulations, and to ensure that terminology in our regulations conforms with current statutory authorities.

Although the number of boating deaths dropped from 1100 in 1986 to 734 in 1999, the number of fatal incidents where alcohol was reported as a causal factor remains stable at about 120. A review of statistics on recreational boating accidents during 1999 showed that there was evidence, or a reasonable likelihood, that alcohol involvement in reported accidents accounted for 26 percent of all boating fatalities.

The Oil Pollution Act of 1990 revised 46 U.S.C. 2302(c) by substituting the term ''under the influence of alcohol, or a dangerous drug in violation of a law of the United States'' for the term ''intoxicated.'' As a result, the terms ''intoxication'' and ''intoxicated,'' used in 33 CFR parts 95 and 177, no longer conform to the statutory authority. This rule revises them accordingly.

After studying recreational boating safety regulations in October 1997, NBSAC recommended that the Coast Guard track State BAC levels. They suggested that if we found a trend toward revising State standards to .08 BAC, then we should support that effort by revising the Federal standard, found in 33 CFR 95.020, to .08 BAC as well.

In 1987 only 21 States had enacted statutes using a BAC to define ''intoxication'' or ''under the influence'' for recreational vessel operation. Nineteen States used a .10 BAC and two States used a .08 BAC. Today 54 State jurisdictions, as defined in 46 U.S.C. 2101(36), have a BAC standard. Thirty-four use .10 BAC, nineteen use .08 BAC, and one uses .08 BAC only when there has been an injury. Also, eleven of the original twenty-one States and three additional States that initially set a .10 BAC standard have revised their standard from .10 BAC to .08 BAC. We acknowledge that the trend among States is toward using a .08 BAC standard, and we are revising the Federal BAC standard accordingly. We will continue to adopt a State's BAC standard for waters under the State's jurisdiction.

In a memorandum dated March 3, 1998, the President directed the Secretary of Transportation to develop an Action Plan to promote adoption of the .08 BAC standard for operating a vehicle on ''Federal property, including areas in national parks, and on Department of Defense installations, and ensuring strong enforcement and publicity of this standard.'' The Secretary's Action Plan included the proposed revision of the Federal BAC standard for operator's of recreational vessels, providing support for the DOT effort on water as well as on land. The Federal BAC standard for operators of vessels that are inspected, or subject to inspection under Chapter 33 of Title 46, United States Code, will remain at .04 BAC.

Regulatory History

On March 16, 2000, we published a notice of proposed rulemaking entitled Revision to Federal Blood Alcohol Concentration (BAC) Standard for Recreational Vessel Operators in the **Federal Register** (*65 FR 14223*). We received 20 letters commenting on the proposed rule. No public hearing was requested and none was held.

Discussion of Comments and Changes

We received a total of 20 comments on the proposed revisions to the regulations during the comment period. Two of the comments were from State Boating Law Administrators and an additional comment was submitted by the National Association of State Boating Law Administrators (NASBLA). Two other comments were submitted by the National Boating Federation (NBF) and the Boaters Against Drunk Driving (BADD).

Twelve of the comments, including the comments from the Missouri and the California Boating Law Administrators, NASBLA, NBF and BADD, generally supported revising the Federal BAC standard from .10 BAC to .08 BAC.

One comment supporting the BAC revision suggested that in addition to lowering the BAC standard, the Coast Guard needs to increase its detection and arrest of intoxicated operators; enforcement cannot be borne solely by the States.

Eight of the comments generally opposed revising the Federal BAC standard from .10 BAC to .08 BAC, several suggesting that the change would do little or nothing to reduce the number of drunk boaters.

One comment stated that there is not enough funding to enforce the new .08 BAC level.

Several other comments stated that we needed something else instead of new laws, either more education, more boater awareness, more enforcement, or more life saving.

Another comment suggested that not many accidents actually involved individuals with a BAC between .10 and .08.

One comment stated that machines testing BAC are inaccurate compared to blood tests, are polluted by previous tests administered, that individual health condition, fat to muscle ratio, and age determines the effect of alcohol on the individual, and suggested that behavior is a better indicator than BAC level.

One comment expressed concern that the change would send the wrong message to law enforcement officers and adversely affect the wrong people, the dinner crowd.

Another comment asserted that most arrests for BUI are made in harbors to people in dinghies or powerboats exceeding the 6 knot speed limit and that most accidents occur outside of harbors where speed, adherence to rules of the road and sheer stupidity are not monitored.

When setting the initial standard at .10 BAC, we decided against .08 BAC because the majority of States then used a .10 BAC. However, in view of the Presidential initiative to establish a .08 BAC standard on the land and the increasing number of States setting a .08 BAC standard on the water, we've decided it is now appropriate to revise the Federal standard on the water to .08 BAC. The revised standard is not an attempt at zero tolerance policy and will neither increase the cost of enforcement nor change the effectiveness of the BAC testing equipment currently in use.

This rulemaking would impose no costs for the boating public or even to the Government, since the Coast Guard Boarding Officer personnel already enforce the .08 BAC or other BAC level in those States with such a BAC level. Boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths, and we support the trend in State boating laws toward the .08 BAC standard. The rule should reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

The Coast Guard will continue its efforts to make boaters more aware of the effects of alcohol on operation of a recreational vessel and to work with State law enforcement officers to ensure appropriate levels of enforcement on the water. We will continue to enforce all appropriate laws and regulations, including negligent operation of a vessel and the navigation rules. Comments suggesting changes related to increasing State funding and revising the BAC standard for commercial vessel operators are beyond the scope of this rulemaking.

After considering all of the above comments, the Coast Guard has decided to adopt the revision to the BAC standard and make other technical changes as proposed.

Regulatory Evaluation

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

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Rule

This rulemaking would impose no costs for the boating public. Costs to the government would be non-existent as well because the Coast Guard already trains its Boarding Officer personnel on use of the .08 BAC level to properly prepare them for working in those States with such a BAC level.

2. Benefit of Rule

This rule is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State boating laws toward the .08 BAC standard. The rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This revision of the Federal BAC standard applies to operators of recreational vessels on waters subject to the jurisdiction of the United States, as defined in 33 CFR 2.05–30. This revision of the Federal BAC standard will continue to apply to recreational vessels owned in the United States, while operating on the high seas, as defined in 33 CFR 2.05–1. Further, since this rule would continue to adopt State enacted BAC standards, recreational vessel operators in States with enacted BAC standards would not be subject to a new BAC standard unless a State changes its own enacted BAC standard. Only those recreational vessel operators in States without enacted BAC standards and on navigable waters of the U.S. outside of the States would be subject to a new BAC standard.

Because the provisions of the Regulatory Flexibility Act do not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effect on them and participate in the rulemaking. We provided the name, telephone number and e-mail address of a contact for small entities if they felt that the rule would affect their small business, organization, or governmental jurisdiction and if they had questions concerning its provisions or options for compliance. 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).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that, because the Federal BAC standard will not supercede or preempt any enacted State BAC standard, this rule does not have implications for federalism under that Order.

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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The rule makes a minor revision to the Federal BAC standard for the level at which an operator of a recreational vessel is deemed to be impaired. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 95

Alcohol and alcoholic beverages, Drugs, Marine safety, Vessels.

33 CFR Part 177

Alcohol and alcoholic beverages, Drugs, Marine safety, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 95 and 177 as follows:

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

1. The authority citation for part 95 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

2. Revise the part heading to read as shown above.

§ 95.001 [Amended]

3. In § 95.001(a), remove the words ''intoxication.'' and ''intoxicated'' and add, in their place, the words ''under the influence of alcohol or a dangerous drug.''

4. Amend § 95.010 by adding the following definitions in alphabetical order to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Blood alcohol concentration level means a certain percentage of alcohol in the blood.

* * * * *

State means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

* * * * *

Under the influence means impaired or intoxicated by a drug or alcohol as a matter of law.

* * * * *

5. Amend § 95.020 by revising the section heading, the introductory text, and paragraph (a) to read as follows:

§ 95.020 Standard for under the influence of alcohol or a dangerous drug.

An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08 percent or more, by weight, in their blood;

* * * * *

6. Amend § 95.025 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 95.025 Adoption of State blood alcohol concentration levels.

(a) This section applies to operators of recreational vessels on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol.

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in § 95.020(a) of this part.

* * * * *

§ 95.030 [Amended]

7. Amend § 95.030 by revising the section heading and the introductory text to read as follows:

§ 95.030 Evidence of under the influence of alcohol or a dangerous drug.

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

* * * * *

§ 95.040 [Amended]

8. In § 95.040, paragraph (a), remove the word ''intoxicated'' and add, in its place, the words ''under the influence of alcohol or a dangerous drug.''

PART 177—[AMENDED]

9. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; 49 CFR 1.45 and 1.46.

§ 177.07 [Amended]

10. In § 177.07(b), remove the word ''intoxicated'' and add, in its place, the words ''under the influence of alcohol or a dangerous drug.''

Dated: December 27, 2000.

Terry M. Cross,

Rear Admiral, Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01–551 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–15–P