liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in § 48.4081–5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(iv) *Customs bond.* In the case of an entry of taxable fuel on or after September 28, 2004, the Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A surety bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in § 48.4081–5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(d) through (j) [Reserved]. For further guidance, see § 48.4081–3(d) through (j).

**§ 48.4081–5 [Amended]**

■ **Par. 6.** Section 48.4081–5 is amended as follows:

■ a. Paragraph (a) is amended by removing the language ''48.4081–2(c)(3),'' and by adding ''48.4081–2(c)(2)(ii), 48.4081–3T(c)(2)(iii) and (iv),'' in its place.

■ b. Paragraph (b)(2) is amended by removing the language ''gasoline registrant'' and adding ''taxable fuel registrant'' in its place.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 48.4081–3T | 1545–1897 |
| * * * * * | |

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 14, 2004.

**Gregory Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–17449 Filed 7–29–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 175

**[USCG–2000–8589]**

**RIN 1625–AA62 (Formerly 2115–AG04)**

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with two changes, the interim rule published on June 24, 2002, which required certain children under the age of thirteen aboard recreational vessels to wear a personal flotation device (PFD). It changes the requirement from ''each child'' under the age of thirteen, to ''certain children'' under the age of thirteen, and addresses in more detail when Federal or State requirements apply. These changes clarify the Coast Guard's enforcement of existing State standards. This final rule is intended to reduce the number of children who drown because they are not wearing PFDs.

**DATES:** This final rule is effective August 30, 2004.

**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–2000–8589 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 Final Rule, call Carlton Perry, U.S. Coast Guard, telephone: 202–267–0979. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

This rulemaking began with our publication of two notices requesting comment, both titled ''Recreational Safety-Federal Requirements for Wearing Personal Flotation Devices,'' in the **Federal Register**. We published the first notice in the **Federal Register** on September 25, 1997, CGD 97–059 [62 FR 50280]. It included questions about potential PFD-wearing requirements for recreational boaters. We extended the comment period in a notice published in the **Federal Register** on March 20, 1998, CGD 97–059 [63 FR 13586]. We published another notice, focusing on certain children, riders on personal watercraft, and persons being towed behind recreational vessels, in the **Federal Register** on October 5, 1999, USCG–1999–6219 [64 FR 53971].

We received approximately 600 comments for the first notice and another 600 comments for the second notice. We developed a Notice of Proposed Rulemaking (NPRM), after considering all the comments, proposing Federal requirements for certain children to wear personal flotation devices (PFDs).

We published an NPRM titled ''Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels'' in the **Federal Register** on May 1, 2001 [66 FR 21717]. The NPRM proposed that children under the age of thirteen be required to wear PFDs when they are above decks aboard recreational vessels that are under way. The NPRM discussed the approximately 1,200 comments that we received in response to the two requests for comments. No public hearing was requested and none was held.

By the close of the NPRM comment period on August 30, 2001, we had received 46 more comments. Of those, 22 comments supported the rule as proposed in the NPRM, 8 supported it with changes, and 16 opposed it. Most comments that supported the rule as proposed in the NPRM stated that it would be a positive step toward reducing drownings and toward uniform requirements across the States. Opposing comments expressed concern that Federal action would interfere with individual State efforts to mandate the use of PFDs.

After summarizing the comments received in response to the NPRM, we

consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding those comments and recommendations. NBSAC recommended that we proceed to publish the Final Rule, as proposed in the NPRM.

We published a Final Rule in the **Federal Register** on February 27, 2002 [67 FR 8881]. The Final Rule discussed the 46 comments that we received in response to the NPRM. It required children under age 13 to wear PFDs when they are above decks aboard recreational vessels that are under way. The Final Rule had three distinct requirements: (1) For States without their own statutes or rules on ages, it established a Federal requirement complete in itself; (2) for States with statutes or rules on age only, provided for enforcing those statutes or rules in whole; and (3) for States with their own statutes or rules on age that include other qualifications, such as lengths of vessels, it provided for enforcing the age limits of those statutes or rules but not the other qualifications.

We published a Notice of Withdrawal in the **Federal Register** on March 27, 2002 [67 FR 14645], after a State Boating Law Administrator alerted us to a potential conflict between our own rule and States' qualified statutes or rules. The same conflict was noticed as we prepared training guidance for the Coast Guard boarding officers. Under the Final Rule as published, the Coast Guard's boarding officers would have enforced the age requirement on all recreational vessels regardless of any State qualifiers. At the same time and on the same waters, States' boarding officers would have only been enforcing the age requirement on certain vessels, as determined by the State regulation.

On June 24, 2002, we published in the **Federal Register** [66 FR 21717] an Interim Rule with a request for comments titled ''Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels.'' Under the Interim Rule, the Coast Guard established a requirement for children under 13 to wear a PFD in those States without any requirement. It also provided for the Coast Guard to enforce each State's statute or rule in its entirety, including any qualifications. Thus, Coast Guard boarding officers will enforce the same requirements for wearing a PFD as do State boarding officers. We received 12 comments concerning the Interim Rule.

The Interim Rule provided for enforcing existing State statutes and rules, and added authority for Coast Guard boarding officers to support those efforts. Further, we encouraged other States to undertake their own such efforts without imposing a Federal mandate. Four of the 12 comments supported the rulemaking but recommended a different age limit. However, the Coast Guard's limit of ''under 13'' is supported by recommendations from NBSAC and the National Transportation Safety Board.

**Discussion of Comments and Changes**

The Coast Guard received 12 comments in response to the Interim Rule. These came from: 4 recreational boaters; 4 governmental agencies; 1 boating organization; and 3 safety or medical organizations.

Two comments supported the rulemaking as is, stating that while education concerning PFD use is often effective, this rulemaking would provide additional incentive for parents to ensure their children are wearing PFDs.

Six comments opposed the rulemaking, stating that the Federal government should not be involved in the decision concerning which children must wear PFDs. A comment from a Virginia legislative delegate stated that the Commonwealth's legislature had rejected such a rule twice. The Ohio Waterways Safety Council stated that there are more important boating safety issues and that the States were already successfully addressing the PFD matter.

The Coast Guard did consider exempting selected States from the Federal regulation. However, the Coast Guard has decided that in order to maintain national uniformity, a Federal requirement should apply on waters subject to the concurrent jurisdiction of the United States and the State where that State has not established any requirement for children to wear an appropriate Coast Guard-approved PFD while aboard a recreational vessel.

Four comments supported the rulemaking, but with changes. The American Academy of Pediatrics requested that the age be changed to 18 and under, and that the Federal government set the minimum safety standard while allowing States to choose whether to exceed the Federal requirements. A comment from an individual requested that the age limit be lowered to 9 years old because a child above that age who is around boats would likely know how to swim. If a child does not know how to swim, the parent or guardian, not the government, should take responsibility for the child's safety, including whether the child should wear a PFD. The comment also suggested fines for those violating the Federal regulation requiring children 9 and under to wear PFDs.

As discussed in the Interim Rule, the Coast Guard has decided to retain the Federal requirement that children under 13 years of age must wear a PFD. A maximum civil penalty of $1,100 could be assessed for a violation of the Federal requirement or of a State requirement being enforced under the Federal regulation.

Two comments from the State of Wisconsin's Department of Natural Resources asked that the regulation language in § 175.25 be changed from ''each child'' to ''certain children'' to avoid confusion when applying State requirements. The regulation would read, ''* * * any State that has established by statute or rule a requirement under which certain children must wear an appropriate PFD.''

The Coast Guard agrees and has revised § 175.25 to reflect the enforcement of State requirements requiring certain children (instead of each child) to wear personal flotation devices.

The Coast Guard further expanded this section to address in more detail when Federal requirements apply and when State requirements apply. This change clarifies exactly when the Coast Guard will enforce existing State standards.

**Regulatory Evaluation**

The analyses we conducted in connection with the interim rule all remain unchanged, and the Analysis Documentation prepared for the interim rule remains in the docket. This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Please consult the Regulatory Evaluation provided in the interim rule for further information.

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

Marine safety.

■ Accordingly, the interim rule amending 33 CFR part 175 which was published at 67 FR 42488 on June 24, 2002, is adopted as a final rule with the following change:

## PART 175—EQUIPMENT REQUIREMENTS

■ 1. The authority citation for part 175 is revised to read as follows:

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

■ 2. Revise § 175.25 to subpart B, to read as follows:

**§ 175.25 Enforcement of State requirements for children to wear personal flotation devices.**

(a) This section applies to operators of recreational vessels on waters subject to the jurisdiction of any State that has established by statute a requirement for children of a certain age to wear an appropriate PFD approved by the Coast Guard, while aboard a recreational vessel.

(b) If the applicable State statute establishes any requirement for children of a certain age to wear an appropriate PFD approved by the Coast Guard, then that requirement applies on the waters subject to the State's jurisdiction instead of the requirement provided in § 175.15(c) of this part.

Dated: June 10, 2004.

**David S. Belz,**

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

[FR Doc. 04–17411 Filed 7–29–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### 33 CFR Part 334

### Department of Air Force, Wisconsin Air National Guard Danger Zone Under Restricted Air Space R–6903, Lake Michigan, Sheboygan County, WI

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is amending its regulations which establish a Danger Zone at an existing Military Exercise Area located off the Wisconsin shoreline in Lake Michigan from Manitowoc to Port Washington, as shown on NOAA Chart 14901 (1999). These regulations will enable the Wisconsin Air National Guard (WiANG) to advise fishermen and mariners in the vicinity when a military exercise is scheduled and thus ensure their safety by alerting them of temporary, potentially hazardous conditions which may exist as a result.

**DATES:** *Effective Date:* August 30, 2004.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joanne M. Barry, Headquarters Regulatory Branch, Washington, DC, at (202) 761–7763, or Ms. Maria T. Valencia, Corps of Engineers, St. Paul District, Regulatory Branch, at (651) 290–5364.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the restricted area regulations in 33 CFR part 334 by adding § 334.145 which identifies the existing danger zone in Lake Michigan offshore from Manitowoc and Sheboygan Counties in Wisconsin, as shown on NOAA Chart 14901 (1999). By correspondence dated 3 July 2001, the WiANG has requested the Corps of Engineers to re-identify this danger zone. The area is located under Restricted Air Space R–6903 which is shown on existing aeronautical charts. This amendment of the regulation will allow WiANG to request that the Coast Guard issue a Notice to Mariners when exercises are planned and thus better inform fishermen and mariners of military activities in this area. WiANG intends to continue to schedule this area for use in a similar manner as it has been used during the past 20 years. Historical activity includes, but is not limited to, inert air-to-air and air-to-surface delivery, defensive countermeasures training and sonar buoy drops.

### Procedural Requirements

*a. Review Under Executive Order 12866*

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the identification of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

The St. Paul District has prepared an Environmental Assessment (EA) for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has concluded that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an Environmental Impact Statement is not required. The EA may be reviewed at the St. Paul District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

*d. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found, under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

*e. Submission to Congress and the General Accounting Office*

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of section 804(2) of the Administrative Procedures Act, as amended.

### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334, as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.845 is added to read as follows: