

**DEPARTMENT OF TRANSPORTATION****Coast Guard****46 CFR Part 28**

[CGD 96-046]

RIN 2115-AF35

**Commercial Fishing Industry Vessel Regulations**

AGENCY: Coast Guard, DOT.

ACTION: Interim Rule with request for comments.

**SUMMARY:** This interim rule adopts requirements for safety equipment and vessel operating procedures on commercial fishing industry vessels. The Coast Guard is issuing these regulations to improve the overall safety of U.S. Commercial Fishing Industry Vessels pursuant to the Commercial Fishing Industry Vessel Safety Act of 1988 and to make several technical corrections.

**DATES:** This interim rule is effective on February 3, 1997, except for § 28.120 on survival craft which is effective May 5, 1997. Written comments must be received on or before December 20, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** Commander Mark D. Bobal, Project Manager, G-MSO-2, telephone (202) 267-0836.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 88-079a) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons desiring an acknowledgment that their comments were received should include a self-addressed stamped postcard or envelope.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to the Marine Safety Council at the address under

**ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If local presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the Federal Register.

## Background and Regulatory History

*Commercial Fishing Industry Vessel Safety Act of 1988*

On September 9, 1988, title 46, United States Code, was amended in chapter 45 (Uninspected Commercial Fishing Industry Vessels, sections 4501 through 4508) by the Commercial Fishing Industry Vessel Safety Act of 1988, Pub. L. 100-424 ("the Act"). The Act requires the Secretary of Transportation to prescribe regulations for safety equipment and vessel operating procedures on commercial fishing industry vessels. The Secretary further delegated the authority to regulate commercial fishing vessel to the Commandant of the Coast Guard. This rulemaking was initiated to implement certain provisions of the Act. This rulemaking project does not include requirements pertaining to immersion suits (found in CGD 88-079c, Notice of Proposed Rulemaking dated May 20, 1993) or vessel stability; these provisions will be included in future rulemaking.

*Advance Notice of Proposed Rulemaking (ANPRM)*

An ANPRM was published in the Federal Register on December 29, 1988 (53 FR 52735), addressing potential requirements for uninspected fishing, fish processing, and fish tender vessels. In response to this ANPRM, nearly 200 comment letters were received and considered in developing the Notice of Proposed Rulemaking.

*Notice of Proposed Rulemaking (NPRM)*

On April 19, 1990, the Coast Guard published a NPRM in the Federal Register (55 FR 14924), addressing proposed requirements for uninspected fishing, fish processing, and fish tender vessels. In response to the NPRM, the Coast Guard received 500 comments. On August 14, 1991, in order to expedite the regulation package for commercial fishing industry vessels, the Coast Guard published a final rule.

*Final Rule (FR)*

A final rule entitled "Commercial Fishing Industry Vessel Regulations" was published in the Federal Register

(56 FR 40364). These regulations are for U.S. documented or state numbered uninspected fishing, fish processing and fish tender vessel to implement provision of the Commercial Fishing Industry Vessel Safety Act of 1988. The final rule indicated that the below listed controversial topics would be the subject of a subsequent supplemental notice of proposed rulemaking (SNPRM).

*Supplemental Notice of Proposed Rulemaking (SNPRM)*

On October 27, 1992, the Coast Guard published a SNPRM in the Federal Register (57 FR 48670). The controversial topics addressed in the SNPRM included the Aleutian Trade Act of 1990 (Pub. L. 101-595); stability for fishing vessels less than 79 feet in length; administration of exemptions authorized by 46 U.S.C. 4506; termination of unsafe operations; requirements for survival craft on fishing vessels with 3 or fewer individuals on board operating within 12 miles of the coastline and outside the boundary line; and acceptance criteria for instructors and course curricula.

This interim rule adopts the SNPRM with some changes. It does not include the provisions relating to the Aleutian Trade Act, and stability for fishing vessels less than 79 feet in length.

On October 24, 1995, the Coast Guard published a final rule relating only to the Aleutian Trade Act (60 FR 54441).

Currently, the Coast Guard is working with the Commercial Fishing Industry Vessel Advisory Committee to finalize the stability section for vessels less than 79 feet in length which was included in the SNPRM. The Coast Guard received comments that this section was too confusing, too costly, and did not address the real causes of vessel losses. The comments suggested that the majority of problems encountered by commercial fishing vessels were not caused by instability, but by uncontrolled flooding which then resulted in vessel instability. Therefore, the stability section of the SNPRM is being held in abeyance until further notice.

## Discussion of Comments and Changes

In response to the SNPRM, the Coast Guard received 794 comments during the 120-day comment period. The major concern expressed during the comment period pertained to proposed survival craft requirements. Over 400 comments were opposed to the proposed requirements. The Coast Guard received 326 comments opposing the stability criteria as written, while only five comments supported the stability

criteria. Other letters expressed agreement or comment on the other topics.

Of those comments for which the source could be positively identified, 464 were from commercial fishermen, 63 from companies directly related to the fishing industry, 62 from the general public, 50 from organizations or associations representing groups of individuals such as fishermen or vessel owners who are involved in the fishing industry, 28 from manufacturers of safety equipment to which this chapter applies, and 18 from naval architects. Several comments were received from shipyards, government agencies, insurers of commercial fishing vessels, and equipment suppliers.

The Coast Guard considered existing relevant international standards for commercial fishing vessels throughout the development of this rule. Regulations I/3 of the International Convention for the Safety of Life at Sea, (SOLAS), exempts fishing vessels. However, in order to meet the demands of the market place, and in anticipation of the Coast Guard rulemaking to make Ocean and Limited Service liferafts obsolete (59 FR 52590; October 18, 1994), manufacturers have almost entirely shifted their production to SOLAS A and SOLAS B liferafts to promote manufacturing efficiency. These SOLAS A and SOLAS B liferafts are the same liferafts required for inspected vessels under Subchapter W (61 FR 25272; May 20, 1996) and do not exceed the prescribed international standards for such liferafts.

The Coast Guard also reviewed other international standards concerning fishing vessels that are proposed but not yet ratified by the International Maritime Organization. The regulations do not establish requirements in excess of those found in the Torremolinos International Convention for the Safety of Fishing Vessels dealing with the construction and equipment standards, and the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessels, (STCW-F).

The following discussion summarizes the comments and explains substantive changes made to the SNPRM in response to the comments. Comments are categorized by the specific section of the CFR to which they apply. In addition to these changes, editorial changes have been made to clarify the rule or standardize terminology. The following sections have changes that are purely editorial: 28.80(a)(2), 28.120(h), 28.225(3) (i) and (ii), 28.320(b)(1), 28.380(j) and 28.555 (c) and (d).

1. *Section 28.50 Definitions.* The terms "Alcohol concentration", "Coast Guard Boarding Officer" and "District Commander", although appearing in 33 CFR 95.010, 33 CFR 177.03 and 46 CFR 1.01-05(b) respectively, are defined here for the public's clarification and convenience. The definition of "Coastline" found in this section is taken from 33 CFR 2.05-10, Territorial Sea Baseline. The term "Especially hazardous condition" is added as a result of the new 28.65, which addresses termination of unsafe operations. The terms "Auxiliary Craft", "Buoyant Apparatus", "Coastal Service Pack", "Equipment Pack", "Inflatable Liferaft", "Inflatable Buoyant Apparatus", "Lifeboat" and "Liferaft" are defined for 28.120. The terms "Fishing Vessel Drill Conductor" and "Fishing Vessel Safety Instructor" have been added due to the new 28.275, which addresses acceptance criteria for instructors and course curricula.

2. *Section 28.60 Exemption Letter.* This section addresses exemptions authorized under section 4506 of the Commercial Fishing Industry Vessel Safety Act (46 U.S.C. 4501-4508). The Act provides for exemptions in section 4506(a) when good cause exists for granting an exemption and when the safety of the vessel and those on board will not be adversely affected. While Congress provided for exemptions, the intent was not to reduce the Act's safety equipment and operating provisions.

The SNPRW would have allowed each District Commander to handle specific exemption requests under 46 U.S.C. 4506. However, the Coast Guard determined that many vessels transit between Districts and that localized exemptions could create confusion and inconsistencies in granting of the exemption. As a result, exemptions will be granted by the Commandant, acting through the Chief of the Compliance Office (G-MOC). However, the exemption requests will be submitted in writing via the cognizant District Commander.

All requests will be reviewed by the District Commander and forwarded with the recommendation to Commandant (G-MOC), prior to the issuance of an exemption. This will allow District Commanders, who are most familiar with area conditions and hazards, to fully evaluate the acceptability of a particular exemption request. If granted by Commandant (G-MOC), the exemption will be accompanied by a letter specifying the conditions under which the exemption is being issued. This accompanying letter will have to be kept on board the vessel for the term of the exemption. Exemptions granted

may be rescinded by Commandant (G-MOC) if it is determined that the safety of the vessel and those onboard is adversely affected.

Exemptions for a class or fleet of vessels will also be required to be submitted in writing to the District Commander. If Commandant (G-MOC) grants an exemption, it will be accompanied by a letter specifying the terms under which it is issued. This letter, or suitable copy, will be required to be maintained on each vessel. Any person directly affected by a decision or action taken under this part may appeal in accordance with subpart 1.03 of this chapter.

3. *Section 28.65 Termination of unsafe operations.* This section contains criteria for the termination of unsafe operations under 46 U.S.C. 4505.

When a Boarding Officer determines that an especially hazardous condition exists, the official may direct, with the concurrence of the District Commander, or staff authorized by the District Commander to handle commercial fishing vessel termination matters, the master or individual in charge of the vessel to return the vessel to a mooring until the especially hazardous condition is corrected. Other possible enforcement options include, but are not limited to, the following:

1. Requiring immediate correction of the hazardous condition.
2. Filing of a Report of Violation against the owner, master, or individual in charge of the vessel.
3. Referral to the Marine Safety Office or Marine Inspection Office for investigation and possible suspension and revocation action against any Coast Guard issued licenses.

The Coast Guard realizes that terminating a commercial fishing vessel's operations may have a serious economic impact to vessel owners and employees. However, the safety of individuals on board vessels should be the highest priority. When an operation is considered to be life threatening or has the possibility of leading to a serious injury, immediate cessation of that operation is warranted.

Guidance on terminating operations was published in Navigation and Vessel Inspection Circular Number 12-91 issued on September 13, 1991. The Commercial fishing fleet population is estimated to be over 120,000 vessels. In 1993, there were only 130 instances nationwide where conditions aboard commercial fishing industry vessels warranted the termination of the vessel's voyage. In 1994, this number decreased to 59 cases.

There were comments suggesting that Coast Guard Boarding Officers were ill-

equipped and untrained to adequately determine the stability of a vessel and that Boarding Officers should not be making termination decisions without additional training or support. In response to these concerns, the Coast Guard has determined that no vessel operation should be terminated without the approval of the cognizant District Commander or his/her staff authorized to make this determination. Thus, as a safeguard against any indiscriminate judgment, a Boarding Officer may not terminate vessel operations independently, but must objectively assess the vessel's condition and report the facts to his/her superiors who, in turn, will evaluate the situation surrounding the case and make the final determinations.

4. *Section 28.120 Survival craft.* The Coast Guard received 518 comments opposing the proposed survival craft requirements. The main objection to the carriage of survival craft was that requiring additional equipment on small vessels might act contrary to the intended purpose of the Act and could actually create hazards, inhibit stability, and thus reduce safety on smaller, near shore vessels.

The Coast Guard agrees in part and, therefore, is modifying the requirements for a buoyant apparatus as a minimum requirement for vessels 10.97 meters (36 feet) or more in length operating within 12 miles of the coastline. The Coast Guard is also revising its proposed regulation to exempt all documented or undocumented commercial fishing industry vessels less than 10.97 meters (36 feet) in length with 3 or fewer individuals on board operating within 12 miles of the coastline from having to carry any form of survival craft. Thus, a buoyant apparatus is required for all documented or undocumented vessels 10.97 meters (36 feet) or more in length with 3 or fewer individuals on board operating within 12 miles of the coastline.

Several comments misinterpreted the phrase "less than 4 individuals" to mean 4 or fewer individuals. To reduce confusion, the Coast Guard has changed the language to reflect that a vessel less than 10.97 meters (36 feet) in length with "3 or fewer individuals" on board is exempt from survival craft carriage.

Other comments opposed the requirement because many individuals operate "day boats" that fish in groups during daylight hours, in fair weather, and inside the Boundary Line, which are likely to receive immediate aid from other vessels in an emergency. The Coast Guard disagrees. Day boat operations may be relatively safe under ideal conditions; however, in less than

ideal weather conditions, the advantage of day boat operations will be lessened because the proximity to other vessels may be lost.

5. *Section 28.270 Instruction, drills, and safety orientation.* Paragraph (c) of this section is revised to reflect instructor and training requirements for licensed individuals to meet the requirements of section 28.275.

6. *Section 28.275 Acceptance Criteria for Instructors and course curricula.* This section will require a Fishing Vessel Safety Instructor to be trained in the proper procedures for conducting the drills required of federally documented commercial fishing industry vessels that operate beyond the Boundary Line or with more than 16 individuals on board. Accepted instructors must meet a minimum Coast Guard standard of qualification and the course curricula will need to be evaluated for content and consistency. Requirements for acceptance of safety instructors and course curricula were published in Navigation and Vessel Inspection Circular Number 7-93 issued on August 24, 1993.

Several comments urged that the Red Cross, firefighters, police officers, U.S. Coast Guard Auxiliary and 100 ton Coast Guard license holders not be certified to conduct the required training. Other comments urged that safety instructors be required to receive specialized background and training to teach effectively. The Coast Guard agrees in part and has limited the scope of the regulations pertaining to the qualifications for Fishing Vessel Safety Instructors.

Additionally, the Commercial Fishing Industry Vessel Advisory Committee has determined that a minimum of 8 hours of instruction is sufficient to fulfill the training requirement. Several comments indicated that an 18 hour minimum time frame would be a more appropriate requirement since the increased class time would allow a broader understanding of the ten contingencies and course content. However, the main concern is that the course be long enough to instill confidence, knowledge, and the belief that repetitive drills in the work place will save lives and enhance emergency preparedness.

Several comments also recommended that individual training certifications be renewed every 5 years so that trainers will be required to update materials and knowledge at periodic intervals. The Coast Guard agrees and has issued letters of acceptance for 5 year intervals only, ensuring that trainers update their materials and training in a timely manner.

In order to clarify confusion over the differences between Coast Guard "accepted" and Coast Guard "approved" training courses, the following applies to this Subchapter: "Accepted" means that the course has met the criteria established by the local cognizant Officer in Charge, Marine Inspection (OCMI), while "Approved" means it has met the criteria established by the Commandant. This rule allows the OCMI's to accept courses and instructors at the local level without having to submit the paperwork to the Commandant for approval. Also, any individual or training institution that utilizes the "Personal Survival and Emergency Drills Course", a national standard curriculum developed through a cooperative agreement for the U.S. Coast Guard by the New Jersey Marine Science Consortium, will meet the criteria established by the Commandant. This document can be ordered at cost through the United States Marine Safety Association (USMSA), 1900 Arch Street, Philadelphia, PA 19103-1498, (215) 564-3484, fax (215) 963-9785.

Although there is no current requirement that drills be logged, the Coast Guard encourages operators of commercial fishing industry vessels to log or document all drills and instruction carried out aboard their vessels.

Organizations are included in the definition of the term "Fishing Vessel Safety Instructor." The Coast Guard is aware that a large number of schools employ instructors to teach specific sections of the curriculum. The term "organization" has been added to the definition of Fishing Vessel Safety Instructor.

An organization providing training must ensure that all persons responsible for conducting the training collectively have the required qualifications. Instructors in an organization accepted under a collective arrangement and limited by their field of expertise (i.e., liferaft or firefighting professional) are authorized to conduct only the applicable portion of the curriculum that is related to their experience.

Several comments suggested that the rule require in-the-water practicum. Although survival training in-the-water is highly encouraged to demonstrate how to use survival equipment, the Coast Guard understands the potential financial and legal burden if incorporated in this rule.

Other comments suggested a required hands-on training session for the use of various safety equipment. However, given the wide variety and different types of safety equipment available and the expense to maintain and replace, a

requirement for hands-on training may prove too restrictive. Training programs must remain flexible and practical to minimize the resistance to training. The standards contained in these regulations are considered minimum standards. However, the Coast Guard encourage the fishing and training industry to promote hands-on training. Drills can be simple and cost-effective.

Several comments questioned whether the Fishing Vessel Drill Conductor or individuals in charge of the vessel should be the master. The Coast Guard has determined that the Fishing Vessel Drill Conductor is any individual that has been trained in the proper procedures as outlined in 28.270.

Several comments questioned whether a one-person operation should practice the repetitive and required safety drills. The Coast Guard has determined that because of the benefits derived from safety training, even one-person operations must be required to undergo training and drills. Someone other than the vessel operator is permitted to come aboard the vessel to discuss and undergo drills for the contingencies listed in the regulations.

#### Technical Corrections

In response to comments, the following technical corrections are being made to part 28. These technical clarifications are being made to improve regulatory consistency.

7. *Section 28.80(a)(2)*. The definition of injury found in part 4 of this chapter has been changed from "incapacitated for a period in excess of 72 hours", to "requires professional medical treatment and renders the individual unfit to perform his/her duties".

8. *Section 28.120(h)*. The provision of this section requiring vessels less than 10.97 meters (36 feet) in length to meet "positive flotation" is changed to read "flotation" only. The term "positive flotation" is not one of the two flotation standards referenced in 33 CFR 183.

9. *Section 28.225(3) (i) and (ii)*. The National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), which annually publishes the Tide and Tidal Current Predication Tables, is experiencing a shortage of funds to print and distribute these tables. Therefore, the wording for these two sections will be changed from tide and tidal current tables published by NOS, to tide and tidal current tables promulgated by NOS. Tide and current tables are being printed by the following companies from original NOS data files: International Marine Division, McGraw Hill Company, P.O. Box 545, Blacklick, OH 43004-0504 telephone No. 1-800-722-4726 and REED'S Nautical

Almanacs, Thomas Reed Publications, Inc., 13A Lewis Street, Boston, MA 02113, telephone No. 1-800-995-4995.

10. *Section 28.320(b)*. The unit of conversion to cubic meters was incorrect for this section. This section is changed to reflect 1200 cubic feet to equal 33.98 cubic meters and 6000 cubic feet to equal 169.92 cubic meters.

11. *Section 28.380(j)*. This section contains both a specific and general metric conversion of the unit of three feet. For consistency in this section, a hard conversion of three feet equals 0.9144 meters is used.

12. *Section 28.555 (c) and (d)*. As an oversight, a limiting factor was never placed in the formula for freeing ports as was intended. This section is changed to reflect the formula found in American Bureau of Shipping Rules for Steel Vessels under 61 meters (200 feet).

#### Metric (SI) Conversion

The interim rule has been revised to include metric units using the International System of Units (SI) for all measures with the exception of Nautical Miles (NM) and Knots. English units immediately follow the metric conversions in parenthesis throughout the regulations.

#### Regulatory Assessment

This interim rule is a non-significant regulatory action under 3(f) of Executive Order 12866 and is non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040), February 26, 1979). It has not been reviewed by the Office of Management and Budget under that Order. The Coast Guard has prepared a regulatory assessment and placed it in the rulemaking docket. The assessment may be inspected and copied at the address listed under **ADDRESSES**.

The Coast Guard estimates that the total discounted costs accrued by industry as a result of this rule will be \$9.8 million. The estimated benefits attributable to this rule are expected to total \$30.95 million annually, or a savings of 11 lives and 10 vessels. When the benefits are considered over ten years and discounted to 1996, the resultant cost-benefit ratio is \$25 of benefits for each dollar of cost.

The Coast Guard believes there are over 120,000 commercial fishing boats. An estimated 90-95 percent of the total number of commercial fishing industry vessels are independently owned. Commercial fishing vessels are predominantly operated and owned by small businesses. Therefore, virtually the entire domestic industry can be said to be composed of small businesses with

total annual revenues estimated to be over \$2.5 billion.

The general provisions of this rule, to include provisions pertaining to exemption letters and termination of unsafe operations, are estimated to provide a benefit to industry of approximately \$17.45 million.

The cost of these regulations is estimated to be minor with respect to commercial fishing vessels less than 10.97 meters (36 feet) in length. Vessels less than 10.97 meters (36 feet) in length will be exempted from survival craft requirements and incur no costs. However, if a vessel of this size engages in commercial fishing beyond 12 miles then it will be required to obtain a buoyant apparatus at an estimated cost of under \$500 with no annual recurring cost. An estimated 20,000 state numbered or documented commercial fishing vessels will be affected by this rule.

The criteria for training fishing vessel instructors is presently found in Navigation and Vessel Inspection Circular 7-93 dated August 24, 1993. To implement the training for fishing vessel instructors, it will cost \$25 if an entity (individual or organization) adopts the National Curriculum. To set up a program with visual aids, a program could be assembled for a start up cost of between \$1,500 and \$5,000. It is estimated that 1,000 entities will provide the training found in this section, and that 75 percent of these entities currently meet the requirements of the section.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard developed this rule in accordance with the March 29, 1996 amendments to the Regulatory Flexibility Act (enacted as Chapter 8 of Title 5, U.S. Code), incorporating several provisions intended to assist small entities. These provisions include allowing for the use of an existing national standard training curriculum to meet training requirements, exempting certain vessels from the regulations completely, and allowing for exemptions to be granted when good cause exists for an exemption.

The economic impact of these regulations on commercial fishing

industry vessels 10.97 meters (36 feet) or more in length may be more significant depending upon the safety equipment already on board these vessels. A vessel 10.97 meters (36 feet) or more in length operating within 12 miles of the coastline will incur a capital cost estimated to be between \$400 and \$500 with no annual recurring cost. The cost is the same for part-time and seasonal operators as it is for full-time operators. Therefore, this rule will not have a significant economic impact on small entities.

#### Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This rule contains collection-of-information requirements in the following sections: § 28.60, § 28.80, § 28.90 and § 28.275. The following particulars apply:

*DOT No:* 2115.

*OMB Control No:* 2115-0582.

*Administration:* U.S. Coast Guard.

*Title:* Commercial Fishing Industry Vessel Regulations.

*Need for Information:* The requirement for letters of exemption is to provide documentation to boarding officers and to ensure that the master knows that the vessel is exempt from a particular regulation. The course curricula and letters of acceptance for instructors are required to ensure that course content of instructor training is within the Coast Guard's guidelines.

*Proposed Use of Information:* To verify compliance with the regulations and to enhance the safe operation of fishing vessels.

*Frequency of Response:* On Occasion.

*Burden Estimate:* 12,530 hours per year.

*Respondents:* 18,225 Fishing Vessel Operators, Trainers and Instructors.

*Form(s):* Not applicable.

*Average Burden Hours Per*

*Respondent:* .7 Hours per respondent.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act for sections § 28.60, § 28.80, § 28.90, and § 28.275, however, OMB approval has not been finalized. Individuals and organizations may

submit comments by December 5, 1996 on the information collection requirements in this interim rule and should direct them to the Executive Secretary, Marine Safety Council as indicated under **ADDRESSES** and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 10235, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for DOT. The Coast Guard will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection requirements.

#### Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule established additional safety standards for commercial fishing industry vessels. The authority to regulate the safety of commercial fishing vessels in all navigable waters is committed to the Coast Guard by statute. Furthermore, since commercial fishing vessels tend to move from port to port in the national marketplace, safety standards for commercial fishing vessels should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends to preempt State action addressing the same subject matter.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. These rules are expected to have no significant effect on the environment. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

#### List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends Chapter I, Title 46, Code of Federal Regulations, part 28 as follows:

#### **PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS**

1. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

2. Section 28.50 is amended by adding the following definitions in alphabetical order to read as follows:

#### **§ 28.50 Definition of terms used in this part.**

\* \* \* \* \*

*Alcohol concentration* means either grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

\* \* \* \* \*

*Auxiliary Craft* means a vessel that is carried onboard a commercial fishing vessel and is normally used to support fishing operations.

\* \* \* \* \*

*Buoyant Apparatus* means a buoyant apparatus approved by the Commandant.

*Coastal Service Pack* means equipment provided in liferafts approved by the Commandant for coastal service.

\* \* \* \* \*

*Coast Guard Boarding Officer* means a commissioned, warrant, or petty officer of the Coast Guard having authority to board any vessel under the Act of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).

\* \* \* \* \*

*Coastline* means the Territorial Sea Baseline as defined in 33 CFR 2.05-10.

\* \* \* \* \*

*District Commander* means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a district.

*Equipment Packs* means equipment provided in liferafts approved by the Commandant.

*Especially hazardous condition* means a condition which may be life threatening or lead to serious injury if continued.

\* \* \* \* \*

*Fishing Vessel Drill Conductor* means an individual who meets the training requirements of 46 CFR 28.270(c) for conducting drills and providing instruction once a month to each individual on board those vessels to which Subpart C of this section applies.

*Fishing Vessel Safety Instructor* means an individual or organization that has been accepted by the local Officer-in-Charge, Marine Inspection to train Fishing Vessel Drill Conductors to conduct drills and provide instruction on those vessels to which subpart C of this part applies.

\* \* \* \* \*

*Inflatable Buoyant Apparatus* means an inflatable buoyant apparatus approved by the Commandant.

*Inflatable Liferaft* means an inflatable liferaft that is approved by the Commandant.

\* \* \* \* \*

*Lifeboat* means a lifeboat approved by the Commandant.

*Liferaft* means a liferaft approved by the Commandant.

\* \* \* \* \*

4. Section 28.60 is added to read as follows:

**§ 28.60 Exemption Letter.**

(a) *Specific exemption.* A commercial fishing industry vessel may be exempted from certain requirements of this part upon written request if Commandant (G-MOC) determines:

(1) Good cause exists for granting an exemption; and

(2) The safety of the vessel and those on board will not be adversely affected.

(b) *Class exemption.* The Commandant (G-MOC) may issue an exemption applicable to a class or fleet of vessels. Such an exemption will be in writing and will specify the terms under which the exemption is granted.

(c) *Exemption procedure.* Requests for exemptions must be sent to the cognizant Coast Guard District Office for review. The District will forward the exemption letter, along with a District endorsement recommending a desired course of action to Commandant (G-MOC), who will then make all final determinations. Upon making a final decision, Commandant (G-MOC) will forward the decision to the cognizant District Office for distribution to the party or parties requesting the exemption.

(d) *Exemption letter.* Exemption letters, or suitable copies, describing the terms under which the exemption is granted shall be maintained at all times on board each vessel to which any exemption applies.

(e) *Right of appeal.* Any person directly affected by a decision or action taken under this part may appeal in accordance with § 1.03 of this chapter.

(f) *Rescinding an exemption letter.* Exemptions granted may be rescinded by Commandant (G-MOC) if it is subsequently determined that the safety of the vessel and those onboard is adversely affected.

5. Section 28.65 is added to read as follows:

**§ 28.65 Termination of unsafe operations.**

(a) A Coast Guard Boarding Officer may direct the master or individual in charge of a vessel, with the concurrence of the District Commander, or staff authorized by the District Commander, to immediately take reasonable steps necessary for the safety of individuals

on board the vessel if the Boarding Officer observes the vessel being operated in an unsafe manner and determines that an especially hazardous condition exists. This may include directing the master or individual in charge of the vessel to return the vessel to a mooring and remain there until the situation creating the especially hazardous condition is corrected or other specific action is taken.

(b) Hazardous conditions include, but are not limited to, operation with—

(1) An insufficient number of lifesaving equipment on board, to include serviceable Personal Flotation Devices (PFDs), serviceable immersion suits, or adequate survival craft capacity.

(2) An inoperable Emergency Position Indicating Radio Beacon (EPIRB) or radio communication equipment when required by regulation. There should be at least one operable means of communicating distress. When both are required, then at least one must be in operable condition to avoid termination of the voyage;

(3) Inadequate firefighting equipment on board;

(4) Excessive volatile fuel (gasoline or solvents) or volatile fuel vapors in bilges;

(5) Instability resulting from overloading, improper loading or lack of freeboard;

(6) Inoperable bilge system;

(7) Intoxication of the master or individual in charge of a commercial fishing vessel. An individual is intoxicated when he/she is operating a commercial fishing vessel and has an alcohol concentration of .04 percent, or the intoxicant's effect on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation;

(8) A lack of adequate operable navigation lights during periods of reduced visibility;

(9) Watertight closures missing or inoperable;

(10) Flooding or uncontrolled leakage in any space; or

(11) An expired endorsed Load Line Certificate, when required.

(c) A Coast Guard Boarding Officer may direct the individual in charge of a fish processing vessel that does not have on board a Load Line Certificate issued by the American Bureau of Shipping or a similarly qualified organization to return the vessel to a mooring and to remain there until the vessel obtains such a certificate.

6. In 28.80, paragraph (a)(2) and paragraph (d)(1) are revised to read as follows:

(a) \* \* \*

(2) An injury that requires professional medical treatment (treatment beyond first aid) and that renders the individual unfit to perform his or her routine duties.

\* \* \* \* \*

(d) \* \* \*

(1) Marine Index Bureau, Inc., 67 Scotch Road, Ewing, NJ, 08628-2504.

\* \* \* \* \*

7. Section 28.120 is revised to read as follows:

**§ 28.120 Survival craft.**

(a) Except as provided in paragraphs (b) through (h) of this section and 28.305, each vessel must carry the survival craft specified in Table 28.120(a), Table 28.120(b), or Table 28.120(c), as appropriate for the vessel, in an aggregate capacity to accommodate the total number of individuals on board.

(b) The requirements of this section do not apply to vessels less than 10.97 meters (36 feet) in length with 3 or fewer individuals on board which operate within 12 miles of the coastline.

(c) A buoyant apparatus may be substituted instead of the requirements in this section for vessels 10.97 meters (36 feet) or more in length with 3 or fewer individuals on board which operate within 12 miles of the coastline.

(d) Each survival craft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements of this section provided the survival craft is—

(1) Of the same type as required in Tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type; and

(2) Maintained in good and serviceable condition.

(e) Each inflatable liferaft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements for an approved inflatable liferaft, provided the existing liferaft is—

(1) Maintained in good and serviceable condition as required by Table 28.140; and

(2) Equipped with the equipment pack required by Tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type. Where no equipment pack is specified in Tables 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is the minimum required.

(f) A lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 199 of this chapter.

(g) The capacity of an auxiliary craft carried on board a vessel that is integral to and necessary for normal fishing

operations will satisfy the requirements of this section for survival craft, except for an inflatable liferaft, provided the craft is readily accessible during an emergency and is capable of safely holding all individuals on board the

vessel. If the auxiliary craft is equipped with a Coast Guard required capacity plate, the boat must not be loaded so as to exceed the rated capacity.

(h) A vessel less than 10.97 meters (36 feet) in length that meets the flotation provisions of 33 CFR part 183 is exempt

from the requirement for survival craft in paragraph (a) of this section for operation on—

- (1) Any waters within 12 miles of the coastline.
- (2) Rivers.

TABLE 28.120(a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline .....	All .....	Inflatable liferaft with SOLAS A pack.
Between 20–50 miles of coastline, <i>cold</i> waters .....	All .....	Inflatable liferaft with SOLAS B pack.
Between 20–50 miles of coastline, <i>warm</i> waters .....	All .....	Inflatable liferaft.
Beyond Boundary Line, between 12–20 miles of coastline, <i>cold</i> waters.	All .....	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	10.97 meters (36 feet) or more in length.	Inflatable buoyant apparatus. See note 2.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Beyond Boundary Line, within 20 miles of coastline, <i>warm</i> waters.	All .....	Life float.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or Rivers, <i>cold</i> waters.	10.97 meters (36 feet) or more in length.	Inflatable buoyant apparatus.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or Rivers, <i>cold</i> waters.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Inside Boundary Line, <i>warm</i> waters; or Lakes, bays, sounds, <i>warm</i> waters; or Rivers, <i>warm</i> waters.	All .....	None.
Great Lakes, <i>cold</i> waters .....	10.97 meters (36 feet) or more in length.	Inflatable buoyant apparatus. See note 2.
Great Lakes, <i>cold</i> waters .....	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Great Lakes, beyond 3 miles of coastline, <i>warm</i> waters .....	All .....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, <i>warm</i> waters .....	All .....	None.

NOTE: 1. The hierarchy of survival craft in descending order is lifeboat, liferaft with SOLAS A pack, inflatable liferaft with SOLAS A pack, liferaft with SOLAS B pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

2. If a vessel carries 3 or fewer individuals within 12 miles of the coastline, see § 28.120 (b) and (c) for carriage substitution.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 20 miles of coastline .....	All .....	Inflatable buoyant apparatus.
Beyond Boundary Line, between 12–20 miles of coastline, <i>cold</i> waters.	All .....	Inflatable buoyant apparatus.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	10.97 meters (36 feet) or more in length.	Buoyant apparatus.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Beyond Boundary Line, within 20 miles of coastline, <i>warm</i> waters.	All .....	Life float.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or rivers, <i>cold</i> water.	10.97 meters (36 feet) or more in length.	Buoyant apparatus.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or Rivers, <i>cold</i> water.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Inside Boundary Line, <i>warm</i> waters; or Lakes, bays, sounds, <i>warm</i> waters; or Rivers, <i>warm</i> waters.	All .....	None.
Great Lakes, <i>cold</i> waters .....	All .....	Buoyant apparatus. See note 2.
Great Lakes, beyond 3 miles of coastline <i>warm</i> waters .....	All .....	Buoyant apparatus. See note 2.
Great Lakes, within 3 miles of coastline <i>warm</i> waters .....	All .....	None.

NOTE: 1. The hierarchy of survival craft in descending order is lifeboat, liferaft with SOLAS A pack, inflatable liferaft with SOLAS A pack, liferaft with SOLAS B pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

2. If a vessel carries 3 or fewer individuals within 12 miles of the coastline, see § 28.120 (b) and (c) for carriage substitution.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline .....	All .....	Inflatable liferaft with Solas A pack.

TABLE 28.120(C).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD—  
Continued

Area	Vessel type	Survival craft required
Between 20–50 miles of coastline, <i>cold</i> waters .....	All .....	Inflatable liferaft with SOLAS B pack.
Between 20–50 miles of coastline, <i>warm</i> waters .....	All .....	Inflatable liferaft.
Beyond Boundary Line, between 12–20 miles of coastline, <i>cold</i> waters.	All .....	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	10.97 meters (36 feet) or more in length.	Inflatable bouyant apparatus. See note 2.
Beyond Boundary Line, within 12 miles of coastline, <i>cold</i> waters.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Beyond Boundary Line, within 20 miles of coastline, <i>warm</i> waters.	All .....	Life float.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or Rivers, <i>cold</i> waters.	10.97 meters (36 feet) or more in length.	Inflatable buoyant apparatus. See Note 2.
Inside Boundary Line, <i>cold</i> waters; or Lakes, bays, sounds, <i>cold</i> waters; or Rivers, <i>cold</i> waters.	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See Note 2.
Inside Boundary Line, <i>warm</i> waters; or Lakes, bays, sounds, <i>warm</i> waters; or Rivers, <i>warm</i> waters.	All .....	None.
Great Lakes, <i>cold</i> waters .....	10.97 meters (36 feet) or more in length.	Inflatable buoyant apparatus. See note 2.
Great Lakes, <i>cold</i> waters .....	Less than 10.97 meters (36 feet) in length.	Buoyant apparatus. See note 2.
Great Lakes, beyond 3 miles of coastline <i>warm</i> waters .....	All .....	Buoyant apparatus. See note 2.
Great Lakes, within 3 miles of coastline <i>warm</i> waters .....	All .....	None.

NOTE: 1. The hierarchy of survival craft in descending order is lifeboat, liferaft with SOLAS A pack, Inflatable liferaft with SOLAS A pack, liferaft with SOLAS B pack, Inflatable liferaft with SOLAS B pack, Inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

2. If a vessel carries 3 or fewer individuals within 12 miles of the coastline, see §28.120 (b) and (c) for carriage substitution.

8. In § 28.225, paragraphs (a)(3)(i) and (a)(3)(ii) are revised to read as follows:

**§ 28.225 Navigational information.**

- (a) \* \* \*
- (b) \* \* \*

(i) Tide tables promulgated by the National Ocean Service; and  
(ii) Tidal current tables promulgated by the National Ocean Service, or river current publication issued by the U.S. Corps of Engineers or a river authority.

9. In section 28.270, paragraph (c) is revised to read as follows:

**§ 28.270 Instructions, drills, and safety orientation.**

\* \* \* \* \*

(c) *Training.* No individual may conduct the drills or provide the instructions required by this section unless that individual has been trained in the proper procedures for conducting the activity. An individual licensed for operation of inspected vessels of 100 gross tons or more will need to comply with the requirements in § 28.275.

\* \* \* \* \*

10. Section 28.275 is added to read as follows:

**§ 28.275 Acceptance criteria for instructors and course curricula.**

(a) A Fishing Vessel Safety Instructor shall submit a detailed course curriculum that relates directly to the contingencies listed in § 28.270(a), or a

letter certifying the use of the “Personal Survival and Emergency Drills Course,” a national standard curriculum, to the cognizant OCMI. This document can be ordered through the United States Marine Safety Association (USMSA), 1900 Arch Street, Philadelphia, PA 19103–1498. For the criteria of Fishing Vessel Safety Instructor, the following documentation shall be provided to the cognizant OCMI:

(1) Proof of at least 1 year of experience in a marine related field and experience that relates directly to the contingencies listed in § 28.270(a) including—

- (i) Experience as an instructor; or
- (ii) Training received in instructional methods; or

(2) A valid merchant mariner’s license issued by the Coast Guard authorizing service as a master of inspected vessels of 100 gross tons or more, or master of uninspected fishing industry vessels and proof of experience that relates directly to the contingencies listed in 46 CFR 28.270(a) including—

- (i) Experience as an instructor; or
- (ii) Training received in instructional methods.

(b) Each OCMI will issue a letter of acceptance to all qualified individuals and will maintain a list of accepted instructors in his/her zone.

(c) Letters of acceptance shall be valid for a period of 5 years.

(d) Fishing Vessel Safety Instructors or the organization providing training shall issue documents to Fishing Vessel Drill Conductors upon successful completion of all required training.

11. Section 28.320 paragraph (b) is revised to read as follows:

**§ 28.320 Fixed gas fire extinguishing systems.**

\* \* \* \* \*

(b) *System types and alternatives.*

(1) A pre-engineered fixed gas fire extinguishing system may be installed only in a normally unoccupied machinery space, paint locker, or space containing flammable liquid stores that has a gross volume of not more than 33.98 cubic meters (1200 cubic feet).

(2) A fixed gas fire extinguishing system that is capable of automatic discharge upon heat detection may be installed only in a normally unoccupied space with a gross volume of not more than 169.92 cubic meters (6000 cubic feet).

(3) A space with a gross volume exceeding 169.92 cubic meters (6000 cubic feet) must be fitted with a manually actuated and alarmed fixed gas fire extinguishing system.

12. In § 28.380, paragraph (j) is revised to read as follows:

**§ 28.380 General structural fire protection.**

\* \* \* \* \*

(j) *Cooking areas.* Vertical or horizontal surfaces within 0.9144



meters (3 feet) of cooking appliances must be composed of noncombustible material or covered by noncombustible material. Curtains, draperies, or free hanging fabrics are not permitted within 0.9144 meters (3 feet) of cooking appliances.

13. In § 28.555, paragraphs (c) and (d) are revised to read as follows:

**§ 28.555 Freeing ports.**

\* \* \* \* \*

(c) Except as provided by paragraphs (d) through (h) of this section, the

aggregate clear area of freeing ports on each side of the vessel must not be less than 0.71 plus 0.035 times the length of the bulwark, in meters, for area in square meters, or 7.6 plus 0.115 times the length of the bulwark, in feet, for the area in square feet. The length of bulwark need not exceed 0.7 times the overall length of the vessel.

(d) Except as provided in paragraphs (e) through (h) of this section, for bulwarks which exceed 20.11 meters (66 feet) in length, the aggregate clear area of freeing ports on each side of the

vessel must not be less than 0.07 times the length of the bulwark, in meters, for an area in square meters (0.23 times the length of the bulwark in feet, for an area in square feet). The length of the bulwark need not exceed 0.7 times the overall length of the vessel.

\* \* \* \* \*  
Dated: October 16, 1995.

J.C. Card,  
*Rear Admiral, U.S. Coast Guard Chief, Marine Safety and Environmental Protection.*  
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