

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88-079a]

RIN 2115-AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations for U.S. Commercial Fishing Industry Vessels on topics that were separated from the final rules, published in the *Federal Register* on August 14, 1991 (56 FR 40364). These topics generated the most public concern and were separated from the Final Rules in order for them to be adequately addressed. These topics include: stability for fishing vessels less than 79 feet in length; requirements for survival craft on fishing vessels carrying less than four individuals on board, operating within 12 miles of the Coastline and outside the Boundary Line; and administration of exemptions authorized by 46 U.S.C. 4506 in relationship to high vessel density and limited duration fisheries.

Additionally, these proposed regulations address four other topics, two of which were specifically mentioned in the preamble to the Final Rule as topics that would be addressed in this supplemental rulemaking. The additional topics addressed are: the Aleutian Trade Act; acceptance criteria for instructors and course curricula; termination of unsafe operations; and stability for Load Line assignment.

These proposed regulations are intended to improve the overall safety of commercial fishing industry vessels.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 88-079a), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477 for further information.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. A copy of

the material listed in "Incorporation by Reference" of this preamble is available for inspection at Room 1308 U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tim Skuby, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2307.

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 name and address, identify this rulemaking (CGD 88-079a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Public Hearings

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Tim Skuby, Office of Marine Safety, Security and Environmental Protection and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose*Commercial Fishing Industry Vessel Safety Act of 1988*

On September 9, 1988, title 46 United States Code (U.S.C.), was amended in chapter 45 (Uninspected Commercial Fishing Industry Vessels, Sections 4501 through 4508) by the Commercial Fishing Industry Vessel Safety Act of 1988, Public Law 100-424 ("the Act"). This chapter, as amended, is applicable to all U.S. uninspected commercial fishing vessels, fish processing vessels, and fish tender vessels. Fish processing vessels of more than 5,000 gross tons and fish

tender vessels of more than 500 gross tons are not affected, since they are subject to inspection under 46 U.S.C. 3301(11) and (12). Also, it does not apply to vessels engaged solely in sport fishing that are subject to inspection under 46 U.S.C. 3301(8) as small passenger vessels and are regulated under 46 CFR subchapter T, or to vessels carrying 6 or less passengers which operate as uninspected passenger vessels regulated under 46 CFR subchapter C. Vessels that alternate between commercial and sport fishing must comply with the requirements for the service in which are engaged.

The Act requires the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures. The Act also requires the reporting of casualties to commercial fishing industry vessels by insurers, reporting of injuries by seamen on board commercial fishing industry vessels, and collection of casualty information by the Secretary.

The Act calls for regulations concerning the following equipment:

1. *For all vessels. The regulations developed for this class of vessels should concern:*

- (a) Fire extinguishing equipment.
- (b) Life preservers.
- (c) Backfire flame arrestors for gasoline engines.
- (d) Ventilation of enclosed spaces.
- (e) Visual distress signals.
- (f) Buoyant apparatus.
- (g) Alerting and locating equipment, including emergency position indicating radio beacons (EPIRBs).
- (h) Placards informing seamen of the duty to report injuries.

2. *For vessels which are documented and operate beyond the Boundary Lines described in 46 CFR part 7 or are documented and operated with more than 16 individuals on board. The regulations developed for this class of vessels should also concern:*

- (a) Alerting and locating equipment including EPIRBs.
- (b) Lifeboats or liferafts.
- (c) An immersion suit for each individual on board.
- (d) Radio communication equipment.
- (e) Navigation equipment including compasses, radar reflectors, nautical charts, and anchors.
- (f) First aid equipment.
- (g) Any other equipment required to minimize the risk of injury.

3. *For vessels which are built after, or which undergo a major conversion completed after, the effective date of the regulations and operate with more than 16 individuals on board. The regulations*

developed for this class of vessels should also concern:

- (a) Navigation equipment, including radars and fathometers.
- (b) Life saving equipment, immersion suits, signaling devices, bilge alarms, bilge pumps, life rails, and grab rails.
- (c) Fire protection and firefighting equipment.
- (d) Use and installation of insulation material.
- (e) Storage of flammable and combustible material.
- (f) Fuel, ventilation, and electrical equipment.

The Act also addresses a major operational problem encountered by commercial fishing industry vessels by requiring regulations for operational stability. The Act states that those regulations are to apply to all vessels which are built, or which are substantially altered in a manner that affects operational stability, after December 31, 1989.

The Act requires that in the regulations the Coast Guard—

- (1) Consider the specialized nature and economics of the operations and the character, design, and construction of commercial fishing industry vessels; and
- (2) Not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulations.

Concern for the size and complexity of fish processing vessels is recognized by the Act. All fish processing vessels are to be examined at least once every two years to ensure compliance with the regulations developed in response to the Act. Further, fish processing vessels which are built after, or which undergo a major conversion completed after, July 27, 1990, must meet the survey requirements of, and be classed by, the American Bureau of Shipping or another similarly qualified organization accepted by the Coast Guard for that purpose.

Advance Notice of Proposed Rulemaking

An Advance Notice of Proposed Rulemaking (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 that ANPRM nearly 200 comment letters were received. Each of the comment letters was considered in developing the Notice of Proposed Rulemaking (NPRM).

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking (NPRM) was published in the *Federal*

Register on April 19, 1990 (55 FR 14924), addressing proposed requirements for uninspected fishing, fish processing, and fish tender vessels. In response to that NPRM, nearly 500 comment letters were received. Due to the numerous comment letters and the comments presented at the public hearings concerning application of the proposed requirements to fishing vessels less than 79 feet (24 meters) in length, a notice of intent to publish a Supplemental Notice of Proposed Rulemaking (SNPRM) appeared in the *Federal Register* on August 30, 1990 (55 FR 35694). Each of the comment letters was considered in developing the Final Rules that were published in the *Federal Register* on August 14, 1991 (56 FR 40364) and this SNPRM.

The Aleutian Trade Act of 1990

On November 16, 1990, the President signed Pub. L. 101-595, The Aleutian Trade Act of 1990 ("the ATA"). The ATA provides for continued cargo service to remote communities in Alaska while ensuring increased safety standards for fish tender vessels operating in the Aleutian trade. "Aleutian trade" is defined as the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153° West longitude and east of 172° East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).

In general terms, a fish tender vessel may be engaged in carrying cargo. If the service is only to remote places that do not receive regular cargo vessel service, then these vessels need only meet the applicable requirements imposed under the CFVSA (46 U.S.C. 4502 (a) & (b)) and need not meet any inspection, construction, manning, or loadline requirements. If a fish tender vessel carrying cargo competes with a weekly cargo vessel service in the Aleutian Trade, it must meet the safety standards in 46 U.S.C. 4502 (a), (b), and (c) in addition to the applicable inspection, manning, and loadline requirements.

The ATA also provided for a transition period for certain fish tender vessels already in, or committed to, service in the Aleutian trade. These "qualified vessels" are those engaged in the Aleutian trade which entered the Aleutian trade before September 8, 1990, or were purchased before September 8, 1990 to be used in the Aleutian trade and enter into such service before June 1, 1992. Further, these vessels must not have undergone a major conversion. A detailed explanation of the ATA and its

relationship to other marine safety laws and regulations follows. The Coast Guard has identified a firm number of "qualified vessels" that are affected by the transition period.

The ATA amends certain provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. The amendments require fish tender vessels in the Aleutian trade to be subject to the provisions of 46 U.S.C. 4502(b), the same as documented fishing industry vessels which operate beyond the Boundary Lines or which operate with more than 16 individuals on board. It is unlikely that this amendment will affect any "qualified vessel" currently in the Aleutian Trade. They are documented vessels that necessarily cross the Boundary Lines defined in 46 CFR part 7 during each voyage and are already subject to 46 U.S.C. 4502(b).

The ATA also amends 46 U.S.C. 4502(c) to treat fish tender vessels in the Aleutian trade in a similar manner as vessels which are built or complete a major conversion after December 31, 1988, and which operate with more than 16 individuals on board. These vessels may be required to meet additional safety standards. The regulations developed in response to 46 U.S.C. 4502(c) are contained in 46 CFR part 28, subpart D. Inasmuch as 46 U.S.C. 4502(c) continues to state that the Secretary *may* (emphasis added) prescribe regulations, the Coast Guard's position is that Congress intended for the Coast Guard to decide whether these standards are appropriate for fish tender vessels in the Aleutian trade.

It should be noted that a conflict exists concerning 46 U.S.C. 4502(e)(2), which states that the Secretary may not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation. One interpretation is that since the ATA did not amend 46 U.S.C. 4502(e), this section should not apply to the "qualified vessels".

Another interpretation is that it was Congress' intent to upgrade the safety of all fish tender vessels operating in the Aleutian trade to a level equivalent to vessels carrying cargo for hire in the Aleutians. Thus, under this interpretation, the intent of the ATA was to require all new and existing fish tender vessels engaged in the Aleutian trade to meet the safety standards under 46 U.S.C. 4502(c). This interpretation further supposes that since Congress provided a delayed implementation period, until January 1, 1993, for the "qualified vessels", that it was clearly their intent to require these vessels to

make alterations and modifications in order to comply with the regulations. This is the Coast Guard's position.

The Coast Guard is proposing to apply the provisions of the existing standards in 46 CFR part 28, subpart D, to fish tender vessels in the Aleutian trade. Under this delayed implementation provision it is clear that the "qualified vessels" would not be subject to the regulations of 46 CFR part 28, subpart D until at least January 1, 1993. It should also be noted that a fish tender vessel which is not one of the "qualified vessels" would have to comply with subpart D, as proposed in this rulemaking, at the time of entering the Aleutian trade, or on the effective date of the final rule, if later.

In order for these vessels to comply with the requirements in 46 CFR part 28, subpart D, possible retrofits would be required in the following areas: Launching of survival craft (§ 28.310); Fire pumps, fire mains, fire hydrants, and fire hoses (§ 28.315); Fixed gas fire extinguishing systems (§ 28.320); Fire detection systems (§ 28.325); Galley hood and other fire protection equipment (§ 28.330); Fuel systems (§ 28.335); Main source of electrical power (§ 28.355); Wiring methods and materials (§ 28.370); Emergency source of electrical power (§ 28.375); General structural fire protection (§ 28.380); Embarkation stations (§ 28.395); and Deck rails, lifelines, storm rails, and hand grabs (§ 28.410). Since final rules will probably not be published until shortly before, or even after January 1, 1993, and are expected to impact the "qualified vessels", the Coast Guard is proposing a delayed implementation date. Comments are solicited on whether a one year implementation delay period will permit required retrofits without imposing undue operating constraints and economic hardship. The Coast Guard also requests that specific comments be provided regarding the impact these requirements, as currently written, will have on the industry.

Additionally, the ATA amended certain inspection provisions, load line provisions, and the manning provisions of 46 U.S.C. chapters 33, 51, 73, 81, and 87.

Inspections

Fish tender vessels engaged in the Aleutian trade are also subject to the amended provisions of 46 U.S.C. 4502(f), which requires that they be examined at least once every 2 years for compliance with 46 U.S.C. chapter 45, which includes the rules contained in 46 CFR subchapter C and those proposed here.

With respect to the inspection provisions, 46 U.S.C. 3302(c) was amended by exempting fishing, fish processing, and fish tender vessels of not more than 500 gross tons from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if, when the vessel transports cargo to or from Alaska, that place does not receive weekly common carrier service by water from a place in the United States; or the cargo is of a type not accepted by that common carrier service; or in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

A "qualified vessel" is exempt from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if the vessel is not more than 500 gross tons, has an incline test performed by a marine surveyor, and has written stability instructions posted on board. These provisions are effective May 16, 1991.

Loadlines

With respect to the load line provisions, a fish tender vessel of not more than 500 gross tons, engaged in the Aleutian trade, is not subject to 46 U.S.C. chapter 51 if it was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 12, 1980; or was converted for use as a fish tender vessel before January 1, 1983; and is not on a foreign voyage; or is engaged in the Aleutian trade and did not have a load line assigned at any time prior to June 1, 1992.

The requirements in 46 U.S.C. chapter 51 (Loadlines) do not apply to a fish tender vessel engaged in the Aleutian trade until January 1, 2003, if the vessel has not undergone a major conversion and it operated in that trade before September 8, 1990 or was purchased to be used in that trade before June 1, 1992, and it has not had a load line assigned at any time before November 16, 1990.

Manning and Crew Requirements

With respect to the manning provisions, 46 U.S.C. 8104 has been amended to require fish tender vessels that are not more than 500 gross tons and engaged in the Aleutian trade to have the licensed individuals and crew members, when at sea, divided into at least 3 watches. However, if a fish tender vessel of not more than 500 gross tons is one of the "qualified vessels", then the licensed individuals and crew members must, when at sea, be divided into at least 2 watches. These provisions were effective November 16, 1991.

Additionally, the ATA amends 46 U.S.C. 8702 to require fish tender vessels engaged in the Aleutian trade to comply with the crew requirements set out in § 8702, but allowing the percentage of the deck crew, who are required to have merchant mariners' documents endorsed for a rating of at least able seaman, to be reduced from 65 to 50 percent. These provisions were effective November 16, 1991.

Lastly, the ATA amends 46 U.S.C. chapter 73 to allow acceptance of service used by an individual to qualify for an endorsement as an able seaman—fishing industry, as qualifying service toward an endorsement either as an able seaman—unlimited; able seaman—special; or if the service is on board a vessel of at least 100 gross tons, able seaman—limited.

Units of Measure

It is recognized that English units of measure are still the preferred unit used in this country; however, in keeping with the trend to convert to international units, they are also used in this rulemaking. The exception to this is the use of nautical mile, which is universally used in the maritime industry.

Discussion of Comments and Proposed Regulations

Subpart A—General Provisions

Section 28.40 Incorporation by Reference

This section proposes the addition of an industry standard to be incorporated by reference. The corresponding section where this standard would be referenced as the governing requirement is listed. In the interest of keeping the regulations as uncomplicated as possible, the number of standards incorporated by reference has been minimized. Instead, performance type standards have been used extensively.

In July, 1991, the American Society for Testing and Materials (ASTM) published ASTM F-1321-90, "Standard Guide for Conducting A Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel." The Coast Guard proposes to incorporate this standard into this rule and it will supersede Navigation and Vessel Inspection Circular No. 15-81 and supplement the information in §§ 28.535 and 170.185.

Section 28.50 Definition of Terms Used in This Part

This section has been amended to include the definitions of "Aleutian trade" and "Especially hazardous

condition". This SNPRM proposes revised regulations as a result of the ATA and a new § 28.65, which addresses termination of unsafe operations. These terms are included here for clarity purposes.

The definitions for "Coast Guard Boarding Officer" and "District Commander" would also be added to this section. The definitions appear in 33 CFR 177.03 and 46 CFR 1.01-05(b) respectively, however, rather than reference another part of the regulations, it is proposed that the definitions be included here for clarity and convenience for both industry and Coast Guard enforcement officials.

Section 28.60 Exemption Letter

This section contains proposed regulations concerning exemptions authorized under 46 U.S.C. 4506. There is a general exemption at 46 U.S.C. 4506(b) for all commercial fishing industry vessels that are less than 36 feet (11 meters) in length that do not operate beyond the Boundary Lines. This exemption permits a commercial fishing industry vessel less than 36 feet (11 meters) in length to operate inside the Boundary Lines without lifeboats or liferafts. This exemption has already been incorporated into § 28.120(h). The Act provides for exemptions at 46 U.S.C. 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 did provide for exemptions, the intent was not to dilute the Act's safety equipment and operating provisions. The Coast Guard recognizes that there may be some cases where exemptions are warranted, however, these will be the exceptions.

The Coast Guard's position is that due to the specific nature of each fishery, the official best able to handle specific exemption requests under 46 U.S.C. 4506 is the Coast Guard District Commander. The District Commander is familiar with the commercial fishing industry and local conditions within the District, and is in the best position to evaluate requests for exemptions and determine if the safety of the vessel and those on board will be adversely affected by granting the exemption. In the interim period, until these regulations become final, all exemption requests should be submitted in writing to the District Commanders. The requests will be reviewed by the District Commanders and forwarded with a recommendation to Commandant (G-MVI-4) who will then make a final decision on whether to grant or not grant the exemption request.

Exemption requests from specific vessel requirements would be required to be submitted in writing to the District Commander. If granted, the exemption would be accompanied by a letter specifying the terms under which the exemption is granted. This letter would be required to be maintained on the vessel for the term of the exemption.

Exemptions for a class of vessels would also be required to be submitted in writing to the District Commander. If the District Commander grants the exemption it would be for a limited time period and be accompanied by a letter specifying the terms under which the exemption is granted. This letter will be required to be maintained on each vessel in the class exempted.

Section 28.65 Termination of Unsafe Operations

This section proposes criteria for the termination of unsafe operations under 46 U.S.C. 4505. Section 4505 of the Act states that an official authorized to enforce 46 U.S.C. Chapter 45, may direct the individual in charge of a commercial fishing industry vessel to immediately take reasonable steps necessary for the safety of the individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes creates an especially hazardous condition.

It is the obligation of the owner and the master or individual in charge of the vessel to ensure that the vessel is properly maintained, equipped, and operated at all times. While at sea, the master or individual in charge of the vessel has the responsibility to operate the vessel within the limits of its stability and environmental capabilities. When an enforcement official determines that a hazardous condition exists, the official may direct the master or individual in charge of the vessel to return the vessel to a mooring until the hazardous condition is corrected. Other possible options include, but are not limited to, the following:

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

The Coast Guard realizes that the termination of a commercial operation may have a serious economic impact such as loss of income to the owner and the employees. However, the safety of individuals on board must be the highest priority. Decisions such as these will

consider the effects that an operation may have on the safety of the individuals on board. When an operation is considered to be life threatening or to have the possibility of leading to a serious injury, cessation of that operation is warranted.

Subpart B—Requirements for All Vessels

Section 28.120 Survival Craft

Existing Section 28.120(b) exempts a vessel with less than four individuals on board which operates within 12 miles of the coastline from the requirement for survival craft. That exemption was placed in the final rule on an interim basis as discussed in the preamble to that rule. The Coast Guard's intent, in regard to that exemption, was to reduce the initial economic costs for those vessels. It was not the Coast Guard's intent to infer that the total of one, two, or three lives was less important than four or more lives. For this reason, the Coast Guard has decided that the number of individuals on board be eliminated as a limiting criteria. Therefore, the Coast Guard is proposing to remove the exemption in § 28.120(b) and to modify the survival craft tables. The proposed change would require an inflatable buoyant apparatus for a documented vessel 36 feet (11 meters) or more in length or an undocumented vessel 36 feet (11 meters) or more in length with more than 16 individuals on board, operating within 12 miles of the coastline, cold water. A buoyant apparatus would be required for a documented vessel less than 36 feet (11 meters) in length or an undocumented vessel less than 36 feet (11 meters) in length with more than 16 individuals on board, operating within 12 miles of the coastline, cold water. For an undocumented vessel with 16 individuals or fewer on board, regardless of size, operating within 12 miles of the coastline, cold water, a buoyant apparatus would be required. The proposed breakpoint of 36 feet (11 meters) is consistent with the established breakpoint for vessels operating inside the Boundary Line, cold waters; or Lakes, Bays Sounds, cold water; or Rivers, cold water.

The Coast Guard recognizes that the initial economic costs that would be incurred by eliminating the exemption for these vessels in their entirety could result in a cost as high as \$4,500 (the estimated cost of an inflatable liferaft). This is a substantial cost to be incurred by these vessels. Therefore, by proposing a more lenient equipment standard, the Coast Guard is addressing

the significant economic issue identified in the Regulatory Evaluation for the Commercial Fishing Industry Vessel Final Rule (CGD 88-079), while still increasing the safety of the industry. The additional cost for these vessels is estimated to be between \$500 and \$1,400, the estimated cost of a buoyant apparatus and an inflatable buoyant apparatus, respectively.

In addition to removing the above mentioned exemption and modifying the survival craft tables, the Coast Guard proposes another change to the survival craft tables. This change would require commercial fishing industry vessels less than 36 feet (11 meters) in length which operate inside the Boundary Line in cold waters to be required to have at least a buoyant apparatus on board.

Section 46 U.S.C. 4506(b) exempts commercial fishing industry vessels that are less than 36 feet (11 meters) in length and that do not operate beyond the Boundary Lines from 46 U.S.C. 4502(b)(2), which concerns lifeboat and liferaft requirements. The Coast Guard's position is that while these commercial fishing industry vessels are exempt from carrying lifeboats and liferafts, this exemption does not preclude the Coast Guard from requiring some type of survival craft on these commercial fishing industry vessels. Under the authority of 46 USC 4502(a)(6), this section gives the Coast Guard authority to require a buoyant apparatus on any commercial fishing industry vessel.

Several comment letters stated that most of the commercial fishing industry vessels less than 36 feet (11 meters) in length operate approximately 3-4 miles offshore. However, operations inside the Boundary Line can be as far offshore as 12 miles. The Coast Guard's position is that every commercial fishing industry vessel operating in cold water should carry a survival craft. The intent of requiring survival craft is to extend the survival time of individuals who would otherwise be in the water. The Coast Guard's position is that, at a minimum, a buoyant apparatus is necessary on this class of vessel. This is consistent with the cost of the survival craft and the space necessary for storage.

Several comment letters also suggested that individuals operating "day boats" be exempted from any requirement to carry survival craft. "Day boats" traditionally operate during daylight hours only, in groups, in fair weather, and normally inside the Boundary Line. Operating under these parameters, if a commercial fishing industry vessel capsizes for instance, one of the other vessels in the group will provide assistance. They rely on each other and argue that survival craft are

not a necessity. The Coast Guard disagrees.

Day boat operations may be relatively safe under ideal conditions. However, if weather conditions worsen, the advantage of day boat operations, such as the proximity of other vessels, may be lost. For this reason, operation of a vessel in cold water without a survival craft on board is considered to be an unnecessary risk.

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals on Board, or for Fish Tender Vessels Engaged in the Aleutian Trade

Section 28.200 Applicability

This section describes the revised applicability proposed for this subpart. This section implements 46 U.S.C. 4502(b) of the Act as amended by the ATA. The requirements of this subpart would be in addition to the requirements in 46 CFR part 28, subparts A and B. The requirements would apply to all documented vessels that operate beyond the Boundary Lines; all documented vessels that operate with more than 16 individuals on board; and all fish tender vessels engaged in the Aleutian trade. The Boundary Lines are described in 46 CFR part 7, and the rules for documenting vessels are contained in 46 CFR subchapter G. "Aleutian trade" is defined in 46 CFR 28.50.

Section 28.275 Acceptance Criteria for Instructors and Course Curricula

Section 28.270 requires the master or individual in charge of a commercial fishing industry vessel to ensure that drills are conducted and instruction is given to each individual on board at least once a month and that each individual knows how to respond to certain contingencies. Subparagraph (c) of that section states that no individual may conduct the drills or provide the instruction unless that individual has been "trained in the proper procedures for conducting the activity."

In the preamble to the Final Rule (56 FR 40364, August 14, 1991) the Coast Guard recognized a need to establish standards and procedures for accepting instructors as qualified to conduct drills and perform instruction as required by § 28.270. The Coast Guard is now proposing a procedure for the acceptance of such instructors and curricula which is intended to be administratively efficient and flexible, but effective in ensuring that the Coast Guard accepted instructors, in fact, meet minimum standards of qualification, and

the curricula are evaluated for content and consistency.

The Coast Guard proposes to authorize the Officer in Charge, Marine Inspection (OCMI), in whose zone the training and instruction will take place, to issue a letter stating that the addressee is accepted as qualified under § 28.270(c) to conduct the drills and perform the instruction required by § 28.270(a), if the individual submits a written request and provides valid documents establishing the following facts to the OCMI's satisfaction. The individual:

1. Is licensed for operation of inspected vessels of 100 gross tons or more; or

2. Has at least one year (360 days) of underway, seagoing experience as a seaman on a U.S. documented commercial fishing industry vessel within five years prior to submitting the request, has not been denied a Coast Guard license or had a license suspended or revoked, and also meets one of the following criteria:

(a) Has been employed for at least one academic year as an instructor of seamanship, survival at sea, or other maritime safety related subject in a Coast Guard approved training course;

(b) Is certified as an instructor by the Coast Guard Auxiliary;

(c) Is certified as an instructor by the American Red Cross, American Heart Association, or the National Association of Underwater Instructors;

(d) Is certified as a firefighter with special training or unique experience in shipboard firefighting; or

(e) Is certified as a police officer with special training or experience in marine law enforcement; and

3. Has provided to the satisfaction of the OCMI, a detailed course summary outlining the curriculum of contingencies of § 28.270(a) required to be demonstrated, and the methods of instruction to be utilized.

An individual who is not able to qualify as an instructor under the above criteria would be permitted to request Coast Guard acceptance on the basis of documentation which establishes to the OCMI's satisfaction that the individual has received recent, specialized, professional training or experience which relate directly to the contingencies listed in § 28.270(a).

The Coast Guard would issue a letter of acceptance to any qualified individual. Each OCMI would maintain a list of accepted instructors in their zone. Letters of acceptance would be valid for a period of five years. Coast Guard accepted instructors would be permitted to issue documents which

confirm that individuals have received the required instruction.

With regard to the cost impact of establishing a voluntary acceptance program, the Coast Guard anticipates that the cost to qualified individuals will be minimal, involving only the submission of a few documents. The cost to crewmembers of commercial fishing industry vessels who depend upon the services of Coast Guard accepted instructors will vary depending on the instructional methods employed in any particular training program. The Coast Guard anticipates that the number of Coast Guard accepted instructors will be high enough to encourage healthy competition and a wide variety of reasonably priced instructional opportunities.

The Coast Guard invites comments from the public and the industry particularly with respect to the following issues:

(a) Is the proposed list of criteria sufficiently clear and objective to ensure that administration of the program will be fair, efficient, and effective?

(b) Should any other organizations be explicitly recognized as certifying individuals as instructors under item B.3 above?

(c) Should the letter of acceptance be valid only for a limited period, subject to renewal?

Subpart D—Additional Requirements for Certain Vessels

Section 28.300 Applicability

This section describes the revised applicability proposed for this subpart. This section implements 46 U.S.C. 4502(c) of the Act as amended by the ATA. The requirements of this subpart would be in addition to the requirements of 46 CFR part 28, subparts A, B, and C. This subpart would apply to certain vessels as described in paragraphs (a) through (c).

Paragraph (a) includes each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction, or which undergoes a major conversion completed, on or after September 15, 1991 and that operates with more than 16 individuals on board.

Paragraph (b) includes existing fish tender vessels engaged in the Aleutian trade that do not fall into the category described in paragraph (c).

Paragraph (c) provides an exception to the applicability proposed for this subpart in conjunction with the phase-in period for vessels in the Aleutian trade. Paragraph (c) addresses fish tender vessels engaged in the Aleutian trade that:

1. (a) Operated in the Aleutian trade before September 8, 1990; or
(b) Were purchased before September 8, 1990, to be used in the Aleutian trade and enter into the Aleutian trade before June 1, 1992; and

2. Have not undergone a major conversion. These vessels will be exempt from the requirements of this subpart until one year after the effective date of the final rule.

The ATA, in conjunction with 46 U.S.C. 4502(e) of the Act, provides discretion to the Coast Guard in determining which standards in 46 U.S.C. 4502(c) should be applicable to fish tender vessels engaged in the Aleutian trade. The intent of the ATA is to improve the safety of fish tender vessels in the Aleutian trade, but still allow continued cargo service to outlying places in Alaska. Therefore, the Coast Guard has determined that all fish tender vessels engaged in the Aleutian trade should comply with this subpart in its entirety.

"Aleutian trade" is contingent upon the existence of weekly common carrier service by water. If there is no such service, service provided by fish tender vessels exclusively is not considered Aleutian trade service. Therefore, a fish tender vessel that is currently serving a place in Alaska west of 152 West longitude and east of 172 East longitude where weekly common carrier service does not exist is not in the "Aleutian trade". However, it should be noted that if weekly common carrier service by water is established to such a place, then a fish tender vessel providing this service would be in the "Aleutian trade" and must comply with this section or discontinue its service to that place.

The proposal to make subpart D applicable to the Aleutian trade may have significant impact on the safety of these vessels. They may also impose a significant cost for existing vessels depending upon whether the vessel continues in the Aleutian trade or discontinues service to places which have weekly common carrier service by water. The Coast Guard requests specific economic information from owners of vessels which may be affected by these proposed requirements.

Subpart E—Stability

Approximately 70% of deaths involving commercial fishing industry vessels are related to poor or inadequate stability. The Act recognized the hazards of improper design or operation as they relate to stability. It requires stability regulations for commercial fishing industry vessels which are built, or the physical

characteristics of which are substantially altered in a manner that affects the fishing vessel's stability, after December 31, 1989.

An examination of search and rescue records and vessel casualty data for 1987 and 1988 reveals that the majority of stability related cases can be attributed to insufficient intact stability in waves, unintentional flooding of the vessel, or operational loading errors. An intact stability and flooding standard would help prevent capsizing or sinking in most of these cases.

Casualty data for the years 1982 to 1987 shows that stability related casualty rates are independent of vessel length or vessel hull material. The data also shows that stability related casualties are independent of the geographic area of operation.

The Coast Guard received approximately 50 comment letters dealing with the stability of commercial fishing industry vessels in response to the NPRM. The majority of them expressed the opinion that the proposed regulations in the NPRM were too stringent for commercial fishing industry vessels less than 79 feet (24 meters) in length. However, it appeared that these opinions dealt primarily with the effect of the proposed requirements on existing designs which undergo a substantial alteration. The Coast Guard's position is that the operational stability of smaller commercial fishing industry vessels is clearly of major concern and must be addressed.

Existing commercial fishing industry vessels were specifically excluded from the Act unless they were substantially altered. Since the majority of commercial fishing industry vessels are less than 79 feet (24 meters) in length, and because of the concern expressed about the appropriateness of the stability regulations proposed in the NPRM for these smaller vessels, the Coast Guard is readdressing operational stability for commercial fishing industry vessels less than 79 feet (24 meters) in length in this SNPRM. The intent of these proposed requirements remains unchanged, to provide the industry with standards to be considered in designing new commercial fishing industry vessels. This should result in new designs and new methods of operation. These new methods of operation should increase the attention paid to stability in all loading conditions and should help to reduce the rate of casualties attributable to stability-related problems.

Section 28.500 Applicability

This section describes the revised applicability proposed for this subpart.

It has been revised to take into account fish tender vessels engaged in the Aleutian trade, which are less than 500 Gross Tons (GT) and to include vessels less than 79 feet (24 meters) in length. Vessels less than 79 feet (24 meters) in length have been divided into two groups: those greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length and those 50 feet (15.2 meters) in length and less.

The ATA was not addressed in the final rules establishing 46 CFR part 28 published in the *Federal Register* on August 14, 1991 (FR 40364); however, the preamble to those rules mentioned that the ATA would be addressed in this SNPRM. Under the ATA a fish tender vessel engaged in the Aleutian trade is exempt from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if it is less than 500 GT, has an inclining test performed by a marine surveyor, and has written stability instructions on board the vessel. The preamble to the final rules recommended the requirements in 46 CFR part 28, subpart E as appropriate standards pending promulgation of regulations which address vessels in the ATA. In this SNPRM, the Coast Guard is proposing these requirements as the appropriate regulations by revising this section to include fish tender vessels engaged in the Aleutian trade.

As previously stated, several comment letters responding to the NPRM suggested that those proposed rules were too stringent for commercial fishing industry vessels less than 79 feet (24 meters) in length. Of particular concern were the proposed requirements dealing with intact righting energy, water on deck, and severe wind and roll. An ad hoc group calling themselves Naval Architects for Fishing Vessel Safety (NAFVS) pointed out that these requirements were developed for vessels greater than 79 feet (24 meters) in length, and that when applying some of these criteria to the vessels less than 79 feet (24 meters) in length, the result was redundancy and not necessarily increased safety. For example, if a small vessel complies with the intact righting energy criteria, it more than likely already complies with the severe wind and roll criteria. Therefore, they argue that it is redundant to require the vessel to comply with both criteria since safety is not enhanced. Additionally, the NAFVS suggested that the intact righting energy criteria only be required for commercial fishing industry vessels greater than 45 feet (13.7 meters) in length, because there is no evidence that these criteria is appropriate for vessels

smaller than 45 feet (13.7 meters) in length. The Coast Guard partially agrees with these opinions.

The criteria proposed in the NPRM were developed for vessels greater than 79 feet (24 meters) in length, however, that does not necessarily mean that they are not appropriate for vessels less than 79 feet (24 meters) in length. Other countries such as the United Kingdom (UK) have required vessels as small as 40 feet (12 meters) in length to comply with the same intact righting energy criteria as proposed in the NPRM. The Coast Guard's position on this issue is that there is not enough information available to support or refute an extension of these criteria to all vessels less than 79 feet (24 meters) in length. Therefore, the Coast Guard has decided not to impose the same intact righting energy criteria as proposed in the NPRM. The regulations proposed in this SNPRM reflect the Coast Guard's new position that these regulations should take into account the size of the vessels, their operation, and the expected cause of many of the casualties classified as stability related.

Casualty data reveals that stability related casualties that resulted in loss of life or loss of the vessel, in many instances, resulted from human error. This was particularly true for vessels less than 50 feet (15.2 meters) in length. Human error includes overloading the vessel at sea (i.e. overfilling the fish holds), improper loading of topside weights, or not maintaining the watertight integrity of the vessel at all times. The master or individual in charge of the vessel must be aware of how changing weights affects stability. If they were aware, the incidence of capsizing and sinking would decrease. This approach, of concentrating on the master or the individual in charge of the vessel and how the vessel is operated, will not be economically burdensome and the mandatory measures will not be very intrusive. However, if in due course an improvement in safety does not result, then more stringent requirements will be considered in the future.

Based upon the casualty review previously mentioned and the comment letters, in particular those of the NAFVS, the Coast Guard proposes that vessels less than 79 feet (24 meters) in length be broken down into two groups with varied requirements. A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length would be required to comply with the requirements of subpart E except §§ 28.565 (water on deck) and 28.575 (severe wind and roll). This will be addressed further in the discussion of

those sections. A vessel 50 feet (15.2 meters) in length or less would be excluded from the majority of this subpart, provided it:

1. Has stability instructions developed by a qualified individual which comply with § 28.530;
2. Has a letter of attestation signed by the owner and the master or individual in charge of the vessel which complies with § 28.505; and
3. Complies with the alternative subdivision requirement of § 28.525.

Due to the casualty data available and the argument made by the NAFVS, that the stability requirements are not applicable to all vessels less than 79 feet in length, the Coast Guard is proposing a breakpoint of 50 feet (15.2 meters). While the international community has been using 40 feet (12 meters) as their breakpoint, the Coast Guard's position, which is based on the stability related casualty data available, is that 50 feet (15.2 meters) is the more appropriate breakpoint for the U.S. commercial fishing industry.

Section 28.505 Vessel Owner's Responsibility

This section proposes additional responsibilities for the owner of a vessel subject to this subpart by requiring a letter of attestation. The Coast Guard's position in both the final rules and this SNPRM is not to require third party involvement in stability analysis (i.e. only the owner and the designer). The responsibility for ensuring compliance with the stability requirements is the owner's. To reinforce this and to promote designers, masters or individuals in charge of vessels, working cooperatively with vessel owners, a letter of attestation signed by both the owner and the master or individual in charge of the vessel, is proposed.

The intent of requiring this letter of attestation is twofold. First it would ensure that the stability instructions are accepted by the owner and easily understood by the master or individual in charge of the vessel. Secondly, it would ensure that the stability instructions are familiar to the master or individual in charge of the vessel. Stability instructions, no matter how accurate or appropriate are of no benefit if they are not used properly. This letter of attestation should promote use of the stability guidance provided. The letter of attestation would be maintained by the owner and be made available upon request. It would be required to be updated whenever a change in the vessel's ownership occurs, the master or individual in charge changes, or the

vessel is codified. A sample letter is provided.

It is important to note that the letter of attestation must be signed by both the owner and the master or individual in charge of the vessel. If the owner and the master or individual in charge of the vessel is the same person, the letter must still be signed in both places, because the two parts of the letter state two different things. The Coast Guard's position is that this will help ensure that the owner accepts the guidance provided by the qualified individual as appropriate for the vessel. It will also help ensure that the master or individual in charge of the vessel, the individual who actually uses the guidance, knows the guidance exists and understands the guidance provided and its importance to the safety of the vessel and the individuals on board. The letter of attestation should also promote communication among the qualified individual, the vessel owner, and the master or individual in charge of the vessel. The qualified individual may have the technical training and experience in stability, but the master or individual in charge of the vessel is more familiar with vessel operations. Therefore, in order to come up with appropriate stability instructions, both individuals should provide input.

Section 28.520 Alternative Simplified Stability Test for Small Vessels

This section proposes a simplified stability test to evaluate the intact stability of a commercial fishing industry vessel in lieu of the more complicated stability test and stability calculations in §§ 28.525 through 28.545 and §§ 28.565 through 28.575. This simplified stability test could be used by owners of vessels less than 79 feet (24 meters) in length, if the angle of downflooding exceeds 40 degrees. A vessel which met the proposed requirements for a simplified stability test would be exempt from the subdivision requirements of § 28.580, if compliance with the alternative subdivision requirements in § 28.525 were demonstrated.

As stated in the preamble to the NPRM, the Committee and the Coast Guard District Fishing Vessel Safety Coordinators have stressed the importance of providing a simple method of evaluating stability for small commercial fishing industry vessels. Several comment letters suggested that, for vessels less than 79 feet (24 meters) in length which do not carry deck loads, IMO resolution A.207, the Roll Period Test, is an appropriate simple method of evaluating stability. The comment letters also pointed out that Navigation

and Vessel Inspection Circular (NVIC) 3-76, Stability of Fishing Vessels, addresses the use of the roll period test. However, they did not note that NVIC 3-76 did not endorse the use of the roll period test for commercial fishing industry vessels less than 79 feet (24 meters) in length.

In NVIC 5-86, Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels, the Coast Guard declined to endorse the use of this roll period test for four specific reasons. These are:

1. The roll period is only indicative of the fishing vessel's initial upright metacentric height (GM) and not the full range of stability nor the area under the righting arm curve. These and other important stability characteristics such as the maximum righting arm (the angle at which the maximum righting arm occurs) are important factors in stability evaluation.

2. The data used to develop the nomogram shown in IMO Resolution A/ES.IV/168 was taken from European fishing vessels and coastal freighters. The Coast Guard is not convinced that the roll coefficients recommended are appropriate for U.S. fishing vessels considering the variety of fisheries and the diversity of hull forms and arrangements.

3. A roll test may not be used by the operator to evaluate the fishing vessel's stability while underway by operators who do not fully understand the limitations of measuring the roll period to evaluate stability. Measuring the roll period in still water is a case of free oscillation where the measured roll period is the fishing vessel's natural roll period. This may or may not be the case when the fishing vessel rolls in a seaway. If waves of a constant period act upon the fishing vessel for a significantly long period of time, the measured roll period will be that of the waves. If waves of a constant period are not experienced, the measured roll period may be the natural roll period of the fishing vessel, or, more likely, a combination of the fishing vessel's natural period of roll and the period of the seaway. This combination puts additional forces on the vessel and could provide the master or individual in charge of the vessel with inaccurate information which could lead to severe problems.

4. Finally, the Coast Guard is concerned that the roll coefficients do not accurately account for the changes in the roll gyradius as the fishing vessel operates between full load and burned out (10% capacity of consumables, i.e., fuel and water tanks) conditions. A

significant change in the roll gyradius means that the actual GM may be much different than that indicated from measuring the roll period and calculating the GM based in the equations given. While this test could be done at different loading conditions, this would make the test very time consuming. Additionally, the results may not be accurate enough to determine the true stability of the vessel which may lead to a false sense of security on the part of the master or individual in charge of the vessel.

Since 1975, the UK has required a modified version of this roll period test, on a pass/fail basis, as an alternative to the IMO Intact Stability criteria. While the UK endorses this type of test, it requires that the test be repeated every four years on those commercial fishing industry vessels that have passed a previous roll period test. Additionally, the UK has come to appreciate the limitations of the roll period test in that it only measures the initial GM, in calm water, and then only in a full load departure condition which may or may not be the worse operating condition.

Based on the experiences of the UK and the reasons listed above, the Coast Guard has decided not to adopt the roll period test as an alternative method of evaluating a commercial fishing industry vessel's stability. However, the Coast Guard is still interested in providing a simple method of evaluating the stability of a vessel and invites interested parties to submit comments on this subject.

Several comment letters expressed the opinion that a downflooding angle greater than 40 degrees in all load conditions was very difficult to determine from mere observation, and therefore, would require an extensive amount of calculations. This in turn would defeat the whole purpose of using the simplified test. They suggested that a simple way to determine the downflooding angle be developed. Additionally, they expressed the opinion that while this simplified stability test was adequate for passenger vessels, it was inappropriate for commercial fishing industry vessels because they tend to operate with far less freeboard than passenger vessels. The Coast Guard disagrees with the argument that this test is not appropriate for commercial fishing industry vessels. While the simplified stability test was developed for passenger vessels, the Coast Guard's position is that it is an adequate alternative for commercial fishing industry vessels. It may be of limited use for existing commercial fishing industry vessels, however, this test along with the stability regulations

in general, is intended to promote new fishing vessel designs with larger freeboards.

Several comment letters expressed the opinion that this section be reserved for future study. The Coast Guard disagrees. The Coast Guard's position is that this simplified stability test is a satisfactory alternative. However, the Coast Guard is always interested in suggestions to improve safety. Interested parties are invited to continue to conduct research and attempt to develop other methods to simplify stability evaluations.

The Coast Guard is actively pursuing the development and use of advanced methods for evaluating small vessel stability, particularly for commercial fishing industry vessels. Advanced criteria which are based on dynamic motions in extreme seas (a non-linear boundary condition problem) able to predict a level of protection against capsizing given a particular hull form and sea state condition would be very useful. The research being conducted throughout the U.S. and in other countries is still mainly in the theoretical stage. However, a greater level of effort and coordination is being provided by the Coast Guard, which in time, will lead to practical solutions. The Coast Guard's position is that with the growth of computer technology and the need to develop a criteria usable by the majority of naval architects and fishing vessel designers, alternative approaches to evaluating the stability of commercial fishing industry vessels will be available in the future.

Section 28.525 Alternative Subdivision

This section proposes regulations pertaining to alternate subdivision requirements on vessels less than 79 feet (24 meters) in length. This section, when used in conjunction with the simplified stability test for commercial fishing industry vessels less than 79 feet (24 meters) in length in § 28.520, would allow evaluation of the stability of the majority of commercial fishing industry vessels without a stability test and detailed stability calculations.

Thirteen comment letters expressed the opinion that the proposed alternative subdivision for vessels less than 79 feet (24 meters) in length contained in the NPRM was too restrictive and would result in bulkhead spacing of 2-3 feet (0.6-0.9 meters) because of the lower freeboards typical of commercial fishing industry vessels. The comment letters recommended placing watertight bulkheads at each end of the engineroom, the lazarette, and fish holds. The comment letters indicated that this would be more than

satisfactory and less restrictive. The Coast Guard agrees and has adopted these recommendations.

The NPRM proposed a bulkhead spacing similar to that on small passenger vessels. This criterion requires bulkheads to be more closely spaced as freeboard (a measure of reserve buoyancy) is reduced. Since the freeboard on commercial fishing industry vessels less than 79 feet (24 meters) in length is typically much smaller than the freeboard on small passenger vessels of similar size, the bulkhead spacing is less. This would not allow sufficient space to install an engine or steering gear, stow fishing gear and related equipment, nor provide for a workable internal arrangement.

Review of casualty data shows that unintentional flooding of commercial fishing industry vessels is a serious problem and many vessel losses and fatalities can be prevented if there are watertight compartments which limit unintentional flooding. Therefore, the Coast Guard proposes requiring watertight bulkheads around the engineroom, the lazarette, the fish holds, and any other space with a non-watertight closure on the main deck. In addition, this section proposes that compliance with §§ 28.250 and 28.255 be required for all vessels. This would ensure that these compartments could be de-watered if they are unintentionally flooded. In line with keeping these spaces watertight, sluice valves would be prohibited from being installed in the watertight bulkheads. A sluice valve is a valve that is attached at the bottom of a bulkhead with no connecting piping and used for allowing liquid to flow from one compartment into an adjoining one. Sluice valves are difficult to maintain watertight over long periods of time and represent a degradation of bulkhead's watertight integrity.

This section also proposes that a statement be included on the stability instructions for operating personnel, stating that the watertight bulkheads will be maintained watertight at all times. This will help operating personnel to understand the importance of maintaining watertight integrity and act as a reminder to ensure the bulkheads are not compromised.

Section 28.565 Water on Deck

This section proposes to revise the applicability of this section to exclude all commercial fishing industry vessels less than 79 feet (24 meters) in length. There were several comment letters submitted in response to the NPRM that suggested that the water on deck requirement was a redundant

requirement if a vessel meets the proposed intact stability criteria and has adequate freeing ports. Also, the comment letters suggested that this requirement was not appropriate to vessels less than 79 feet (24 meters) in length and should not be required for these vessels. The Coast Guard agrees and proposes to require compliance with this requirement only for vessels over 79 feet (24 meters) in length.

The adverse effects of water on deck has been a concern to the Coast Guard for some time. Water on deck is a result of decks being swamped from heavy seas and the water not draining quickly enough through the freeing ports in the bulwarks. This can detrimentally affect the stability of a commercial fishing industry vessel by adding to the displacement of the vessel, raising its vertical center of gravity (VCG), creating additional free surface, and increasing the rolling acceleration and the roll angle. As a result, water on deck has been a contributing factor to many capsizings and sinkings on vessels less than 79 feet (24 meters) in length. However, it cannot be determined if it was a major factor in these casualties. Review of the casualty data indicates that in most of the capsizings and sinkings, the vessels were not in compliance with the intact righting energy criteria as recommended in NVIC 5-86 and now being proposed as required criteria in this SNPRM. If these vessels were in compliance with the recommended intact righting energy criteria, the additional water on deck may not have caused the vessels to capsize and sink. Therefore, the Coast Guard's position is that, at this time, requiring the commercial fishing industry vessels less than 79 feet (24 meters) in length to meet both the proposed intact righting energy criteria and the water on deck criteria is unnecessary. Meeting the proposed intact righting energy criteria along with the use of the required stability information developed by the "qualified individual" should be sufficient.

Section 28.570 Intact Righting Energy

Several comment letters suggested that the proposed intact righting energy criteria were too stringent for small commercial fishing industry vessels and therefore, the criteria be reduced. The Coast Guard partially agrees.

The intact righting energy criteria were developed for vessels greater than 79 feet (24 meters) in length. To extend the requirement to comply with the proposed criteria to all vessels less than 79 feet (24 meters) in length would not be in the best interests of the industry,

especialy in light of the fact that this industry has been unregulated for so long. The Coast Guard's position is that some of the vessels less than 79 feet (24 meters) in length can be designed to meet this criteria and it would enhance the safety of the vessel.

Countries in the international community, such as the UK, have required vessels down to 40 feet (12 meters) in length to comply with the same criteria as proposed here. In fact, the UK is in the process of extending this criteria to all fishing vessels regardless of size. However, this has not yet taken place and no data is available to evaluate what affect this will have on the safety of these smaller vessels. The Coast Guard's position is that the commercial fishing industry vessels less than 79 feet (24 meters) in length be broken down into two groups, those vessels greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length, and those vessels 50 feet (15.2 meters) in length and less.

The applicability of this section for these two proposed groups of vessels is addressed in § 28.500. No changes to the criteria have been made. Interested parties are invited to continue to conduct research and attempt to develop a better understanding of the relevance of the intact righting energy criteria for these vessels.

Section 28.575 Severe Wind and Roll

This section proposes revised applicability to exclude all commercial fishing industry vessels less than 79 feet (24 meters) in length. Several comment letters suggested that this section was not appropriate for vessels less than 79 feet (24 meters) in length. The comment letters raised the question of whether severe wind and roll has played a major role in the capsizing of vessels less than 79 feet (24 meters) in length. While severe wind and roll may have contributed, they suggest that it was not the major factor. The comment letters suggest that the profile of a commercial fishing industry vessel less than 79 feet (24 meters) in length is so small, that a severe wind would not play a significant factor. The Coast Guard partially agrees.

The Coast Guard's position is that since the Coast Guard is proposing that all commercial fishing industry vessels less than 79 feet (24 meters) in length must meet the intact righting energy criteria and have the stability instructions developed by the "qualified individual", that requiring these vessels to meet the criteria in this section would be unnecessary. Therefore, vessels less than 79 feet (24 meters) in length would not be required to meet the severe wind criteria.

Section 28.600 Stability for Load Line Assignment

This section proposes regulations related to stability requirements for all commercial fishing industry vessels that operate with a Load Line Certificate. In the past, any commercial fishing industry vessel that was required to have a load line had to demonstrate adequate stability. The criteria by which an owner demonstrated adequate stability was developed by various policy decisions. The Coast Guard's position is that such criteria should be the subject of rulemaking to permit comment by the public. Therefore, the Coast Guard proposes that each vessel must conduct a stability test in accordance with § 28.535. Following the stability test, additional stability criteria must be met. Two sets of stability criteria are proposed and either may be applied. In either case, commercial fishing industry vessels will not be required to meet damage stability.

Casualty statistics reviewed by the Coast Guard do not support a requirement for damage stability. The loss of a commercial fishing industry vessel due to collision damage is rare. A majority of the stability related losses have been attributed to a loss of watertight integrity due to inadequate closures or improper maintenance of closures. The Coast Guard's position is that the stability evaluation associated with the assignment of a load line and the annual survey required to maintain a Load Line Certificate, could prevent such casualties.

In addition to the annual survey conducted by the load line assigning authority, stability information would be required for the master or individual in charge of the vessel. Stability information would be required to comply with § 28.580. This section also addresses issuance of Load Line Certificates to vessels not required to obtain such certificates. These vessels would be required to meet the same stability requirements as vessels required to obtain a Load Line Certificate.

This section proposes to extend this alternative to vessels less than 79 feet (24 meters) in length. Currently only vessels 79 feet (24 meters) or more in length are eligible for Load Line Certificates. The Coast Guard's position is that by allowing a commercial fishing industry vessel the option of obtaining and maintaining a load line, the safety of that vessel should be enhanced. It should be noted that vessels less than 79 feet (24 meters) in length are eligible for only limited domestic service Load Line Certificates. The certificates are not

recognized under the International Load Line Convention.

The existing load line regulations, 46 CFR subchapter E, were developed for vessels greater than 79 feet (24 meters) in length. The purpose of the load line regulations is to:

1. Establish the load line marks which when placed on the vessel indicate the maximum amidships draft to which the vessel can be lawfully submerged;

2. Set forth the minimum requirements for load line marks, annual surveys relating to the Load Line Certificates, the issuing of the Load Line Certificates, and the carriage of the certificates on board; and

3. Establish the rules and regulations for the enforcement of load line requirements.

Because the load line regulations, 46 CFR subchapter E, were developed for larger vessels, slight modifications to the regulations are being proposed for the vessels less than 79 feet (24 meters) in length. In particular, the proposed modifications deal with the minimum tabular freeboard to be used from Table 42.20-15(b)(1) and calculation of the minimum bow height. Both proposed modifications are tied to using a length of 80 feet (24.3 meters) as the minimum. Table 42.20-15(b)(1) establishes the tabular freeboard. This value is then adjusted depending on various design features which affects stability such as position of deck line, depth, and similar factors. The Coast Guard's position is that any proposal should allow naval architects the same flexibility to take advantage of design features that enhance stability provided for vessels greater than 79 feet (24 meters) in length by the existing load line regulations. However, the Coast Guard also recognizes that smaller vessels are more susceptible to factors which reduce stability, such as the dynamic effects of a seaway and water on deck. The Coast Guard's position is that commercial fishing industry vessels less than 79 feet (24 meters) in length should be required to use a tabular freeboard equal to that of a vessel 80 feet (24.3 meters) in length and then apply all freeboard corrections, deductions, and other calculations using the actual vessel length.

As for the minimum bow height requirement, the Coast Guard noted a similar trend. As the vessel got smaller the minimum bow height did too. The Coast Guard's position is that the minimum bow height for a vessel of 80 feet (24.3 meters) in length, is 51 inches (1.3 meters) and should not be reduced on a vessel less than 79 feet (24 meters) in length. Consequently, the Coast Guard proposes that the minimum bow

height for vessels less than 79 feet (24 meters) in length should be determined assuming the vessel to be 80 feet (24.3 meters) in length.

All other calculations are to be performed using the actual vessel length. This approach will allow commercial fishing industry vessel designers to take advantage of design features which improve stability while ensuring adequate freeboard assignments which will maintain or increase the safety of commercial fishing industry vessels.

These proposed regulations will not affect the current regulatory project dealing with the load line regulations (CGD 86-013). The current project deals only with required load lines and will not address the issue of voluntary load lines.

Subpart F—Fish Processing Vessel and Fish Tender Vessels Engaged in the Aleutian Trade

Section 28.700 Applicability

This section proposes revised applicability of this subpart to include fish tender vessels in the Aleutian trade as required by the ATA. Fish tender vessels engaged in the Aleutian trade are subject to inspection under the provisions of 46 U.S.C. 3301(1), (6), or (7) except those that:

1. Are not more than 500 gross tons;
2. Have an incline test performed by a marine surveyor; and
3. Have written stability instructions posted on board the vessel.

Section 28.720 Survey and Classification

This section proposes to exclude fish tender vessels engaged in the Aleutian trade from being required to be classed. The ATA only required that fish tender vessels engaged in the Aleutian trade be examined once every two years for compliance with the regulations of this subchapter, it did not require the classing of these vessels.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "ADDRESSES."

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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). An estimated 90-95 percent of the total number of commercial fishing industry vessels are independently owned. Even investor and company owned fishing vessels are predominantly associated with small businesses. Therefore, virtually the entire industry can be said to be composed of small businesses. Although the cost of the regulations is estimated to be minor when compared to the total annual revenues of the domestic industry of over \$2.5 billion, compliance costs fall disproportionately on a number of individual classes of fishing vessels.

The cost of these proposed regulations is estimated to be minor with respect to commercial fishing vessels less than 36 feet (11 meters) in length operating inside the Boundary Lines in cold water. The economic impact of these regulations on commercial fishing industry vessels with less than 4 individuals on board and that operate beyond the Boundary Line may be significant. Examples of vessels that fall into this category are combination vessels, vessels that use a wide variety of gear types such as troll lines, still lines, pot hauling gear, long lines, oyster tongs, and dredges. The economic impact on these vessels will depend upon the safety equipment already on board these vessels.

A documented 36-foot vessel with less than four individuals on board operating beyond the Boundary Line could incur capital costs estimated to be \$1,400 and annual costs estimated to be \$320. While this may be a significant amount to invest in a fishing vessel worth \$10,000 to \$20,000, this is substantially less than the \$4,500 it would have cost if the current survival craft tables remained unchanged.

Part-time and seasonal operators represent a significant proportion of many fisheries. The cost of complying with the regulations is the same for part-time and seasonal operators as it is for full-time operators. Therefore, these regulations may lead some part-time and seasonal operators to discontinue commercial fishing activities.

Stability is also an area that may adversely impact small fishing vessel owners, which are all believed to qualify as small entities. The cost of stability tests alone can be from \$1,000 to \$5,000 per fishing vessel. Since most commercial fishing industry vessels are custom built and would be required to have a stability test of some form, the economic burden could be relatively high. However, since the majority of the

commercial fishing industry vessels are less than 50 feet (15.2 meters) in length, the capital cost is estimated to be \$1,925 per vessel since the Coast Guard is proposing to eliminate stability tests on these vessels. For those vessels greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length, the total capital cost could be from \$3,575 to \$18,213.

If you feel that your business qualifies as a small entity and would suffer significant, negative, economic impact, please submit a comment explaining why your business qualifies as a small entity and to what degree the proposed regulations would economically affect your business. Cost data submitted will be thoroughly evaluated before publication of the final rule.

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 which 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 proposal contains collection of information requirements in the following sections: 28.60, 28.275, and 28.505.

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB Control No: XXXX.

Administration: U.S. Coast Guard.
Title: Commercial Fishing Industry Vessel Regulations.

Need for Information: This information collection requirement is needed to (1) ensure that stability calculations are conducted, stability instructions that are understandable and usable are provided, and that the master or individual in charge of the vessel knows about the instructions and attests that they will be used; (2) ensure that the training required by 46 CFR 28.270 is conducted by qualified instructors who use courses that meet the minimum standards as determined by the Coast Guard; (3) provide documentation to the boarding officers that the required training has been conducted by a qualified individual; and (4) provide documentation to the boarding officer that indicates that certain regulations

have been exempted for the boarded vessel.

Frequency: On occasion.

Burden Estimate: 1,989.5 hours annually.

Respondents: 7,555 annually.

Form(s): None.

Average Burden Hours per Respondent: 0.25 hours (15 minutes).

For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20503, (202) 395-7340.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rulemaking establishes additional safety standards for commercial fishing industry vessels. The authority to regulate concerning 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, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed 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, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Stability.

In consideration of the foregoing, the Coast Guard proposes to amend 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 U.S.C. app. 1804; 49 CFR 1.46.

2. Paragraph (b) of § 28.40 is amended by adding in alphabetical order the following entry to read as follows:

§ 28.40 Incorporation by reference.

* * * * *

American Society for Testing and Materials (ASTM) 1916 Race St., Philadelphia, PA 19103.

F-1321-90—Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel—28.535.

* * * * *

3. 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.

* * * * *

Aleutian trade means the transportation of cargo, including fishery related products, for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees West longitude and east of 172 degrees East longitude if that place receives weekly common carrier service by water, to or from a place in the United States, except a place in Alaska.

Note: Since a place is in the Aleutian trade only if weekly common carrier service by water to that place exists, changes in weekly common carrier service will affect a place's status with respect to the Aleutian trade.

* * * * *

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).

* * * * *

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

* * * * *

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

* * * * *

4. A new § 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 the District Commander 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) When an exemption is granted to a commercial fishing industry vessel by the District Commander, a letter describing the exemption will be issued by the District Commander and must be maintained on board the vessel for the term of the exemption.

(c) *Class exemption.* The District Commander may issue an exemption applicable to a class of vessels for limited time periods. Such an exemption will be in writing and will specify the terms under which the class exemption is granted. These class exemptions must be maintained on board each vessel to which the exemption applies.

5. A new § 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 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) Especially hazardous conditions include but are not limited to, operation with:

(1) Insufficient lifesaving equipment on board including but not limited to:

(i) An insufficient number of serviceable PFDs or immersion suits on board; and

(ii) An insufficient number of complement of serviceable survival craft for the number of persons on board.

(2) No operable Emergency Position Indicating Radio Beacon, if required, or without operable communication equipment, if required. When both are required, then at least one must be operable.

(3) Insufficient firefighting equipment on board.

(4) Excessive gasoline liquid or vapors in any space.

- (5) Instability resulting from overloading or improper loading.
 - (6) Inoperable bilge system.
 - (7) Intoxication of the master or individual in charge of the vessel, as defined in 33 CFR 95.020.
 - (8) A total lack of operable navigation lights during periods of reduced visibility.
 - (9) Required watertight closures missing or inoperable.
 - (10) Flooding or uncontrolled leakage in any space.
 - (11) Failure to have a currently 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. Section 28.120 is amended by revising paragraph (a), removing paragraph (b), redesignating and republishing paragraphs (c) through (h) as paragraphs (b) through (g) respectively, and revising tables 28.120(a), (b), and (c) to read as follows:

§ 28.120 Survival craft.

(a) Except as provided in paragraphs (c) through (g) of this section, 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 persons on board.
- (b) Except as provided by § 28.305, compliance dates for the requirements for the number and type of survival craft in Tables 28.120(a), 28.120(b), and 28.120(c) are:
- (1) For a documented vessel that operates in the North Pacific Area, September 1, 1992;
 - (2) For a documented vessel that operates in the Great Lakes or in the Atlantic Ocean north and east of a line drawn at a bearing 150° true from Watch Hill Light, Rhode Island, September 1, 1993;
 - (3) For each other documented vessel, September 1, 1994; and
 - (4) For each other vessel, September 1, 1995.
- (c) 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.
- (d) 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 maintained in good and

- serviceable condition as required by Table 28.140, and it is 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 Table 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is the minimum required.
- (e) An approved lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 94 of this chapter.
- (f) The capacity of an auxiliary craft carried on board a vessel which 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.
- (g) A vessel less than 36 feet in length which meets the positive flotation provisions of 33 CFR part 183 is exempt from the requirement for survival craft in paragraph (a) of this section for operation on the following waters:
- (1) Within 12 miles of the coastline, any waters; and
 - (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, cold waters.....	All	Inflatable liferaft with SOLAS B pack.
Between 20–50 miles of coastline, warm waters.....	All	Inflatable liferaft.
Beyond Boundary Line, between 12–20 miles of coastline, cold waters.....	All	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters.....	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.....	All	None.
Great Lakes, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters.....	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters.....	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A 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.

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 cold waters.....	All	Inflatable buoyant apparatus.
Beyond Boundary Line, within 12 miles of coastline, cold waters.....	36 feet (11 meters) or more in length.....	Buoyant apparatus.

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

Area	Vessel type	Survival craft required
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters.....	All.....	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold water.	36 feet (11 meters) or more in length.....	Buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All.....	None.
Great Lakes, cold waters.....	All.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline warm waters.....	All.....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline warm waters.....	All.....	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A 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.

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.
Between 20-50 miles of coastline, cold waters.....	All.....	Inflatable liferaft with SOLAS B pack.
Between 20-50 miles of coastline, warm waters.....	All.....	Inflatable liferaft.
Beyond Boundary Line, between 12-20 miles of coastline, cold waters.	All.....	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters.....	All.....	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters..	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All.....	None.
Great Lakes, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters.....	All.....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters.....	All.....	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A 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.

7. The heading of subpart C is revised to read as follows:

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board, or for Fish Tender Vessels Engaged in the Aleutian Trade

8. Section 28.200 is revised to read as follows:

§ 28.200 Applicability.

Each documented commercial fishing industry vessel that operates beyond the Boundary Line or that operates with more than 16 individuals on board or is a fish tender vessel engaged in the Aleutian trade, must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part.

9. A new § 28.275 is added to read as follows:

§ 28.275 Acceptance criteria for instructors and course curricula.

(a) Except as provided in paragraph (b) of this section, an individual who is trained in the proper procedures for

conducting the drills and performing the instruction required by § 28.270(a) shall submit a written request and the following documentation to the cognizant OCMI:

(1) A valid license for the operation of an inspected vessel of 100 gross tons or more; or

(2) Proof that the individual;

(i) Has at least one year (360 days) of underway, seagoing experience as a seaman on a U.S. documented commercial fishing industry vessel within five years of the written request;

(ii) Has submitted a statement that the individual has never been denied a Coast Guard license or had a license suspended or revoked;

(iii) Has submitted a detailed course summary outlining the curriculum of the contingencies required in § 28.270(a), and the methods of instruction to be utilized; and

(iv) Meets one of the following criteria:

(A) Has been employed for at least one academic year as an instructor of seamanship, survival at sea, or other maritime safety related U.S. Coast Guard approved training course;

(B) Is certified as an instructor by the Coast Guard Auxiliary;

(C) Is certified as an instructor by the American Red Cross, American Heart Association, or the National Association of Underwater Instructors;

(D) Is certified as a firefighter with special training or unique experience in shipboard firefighting; or

(E) Is certified as a police officer with special training or experience in marine law enforcement.

(b) An individual who can not qualify as an instructor under paragraph (a) of this section, may request Coast Guard acceptance based on documentation which establishes, to the cognizant OCMI's satisfaction, that the individual has received recent, specialized, professional training or experience which relates directly to the contingencies listed in § 28.270(a).

(c) Each OCMI shall:

(1) Issue a letter of acceptance to any qualified individual; and

(2) Maintain a list of accepted instructors in their zone.

(d) Letters of acceptance shall be valid for a period of five years.

(e) Coast Guard accepted instructors may issue documents to individuals confirming that they received the required instruction.

10. The heading of subpart D is revised to read as follows:

Subpart D—Additional Requirements for Certain Vessels

11. Section 28.300 is revised to read as follows:

§ 28.300 Applicability and general requirements.

This section, in addition to the requirements of subparts A, B, and C of this part, applies to the following vessels:

(a) Each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction, or which undergoes a major conversion completed, on or after September 15, 1991, and that operates with more than 16 individuals on board.

(b) Each fish tender vessel engaged in the Aleutian trade except for those described in paragraph (c) of this section.

(c) On [one year after the effective date of the final rule.], each fish tender vessel engaged in the Aleutian trade that has not undergone a major conversion and:

(1) Was operated in the Aleutian trade before September 8, 1990; or

(2) Was purchased to be used in the Aleutian trade before September 8, 1990, and enters into service in the Aleutian trade before June 1, 1992.

12. Section 28.500 is revised to read as follows:

§ 28.500 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to each commercial fishing industry vessel that is not required to be issued a load line under subchapter E of this chapter and that—

(1) Has its keel laid or is at a similar stage of construction or undergoes a major conversion started on or after September 15, 1991;

(2) Undergoes alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel; or

(3) Has been substantially altered on or after September 15, 1991.

(b) A fish tender vessel in the Aleutian trade, must comply with §§ 28.530 and 28.535.

(c) For a vessel less than 50 feet (15.2 meters) in length, compliance with §§ 28.505, 28.525, and 28.530 may be

substituted for compliance with the remainder of this subpart.

(d) Prior to a vessel being assigned a Load Line Certificate, compliance with § 28.600 must be demonstrated.

13. Section 28.505 is amended by adding new paragraphs (c) and (d) to read as follows:

*** § 28.505 Vessel owner's responsibility.**

* * * * *

(c) A letter of attestation must be signed by the owner and the master or individual in charge of the vessel prior to operation of the vessel. The letter of attestation must be maintained by the owner of the vessel and made available upon request. The letter of attestation must indicate at least that:

(1) The stability test and calculations required by this subpart have been performed to the owner's satisfaction by a qualified individual and have been accepted by the owner.

(2) The stability instructions required by § 28.530 have been developed in consultation with and accepted by the owner and that they are in a format that is understandable to the owner and the master or individual in charge of the vessel.

(3) The stability instructions required by § 28.530 will be followed by the master or individual in charge of the vessel.

(d) A sample letter of attestation is provided as follows:

[Sample]

Letter of Attestation

For: F/V

(Vessel Name)

O.N. _____

I am the owner of the F/V _____ and I certify that this vessel as currently configured has been inclined (if applicable), has stability instructions for operating personnel that have been developed in consultation with an individual I consider qualified, and the instructions have been discussed with the master or individual in charge of the vessel. The stability instructions are on board the vessel and are in a format that permits the master or individual in charge of the vessel to readily ascertain the stability of the vessel in any loading condition. In making this determination, I have been guided by the recommendations of _____ (my qualified individual), and the stability requirements in 46 CFR part 28 subpart E.

I further certify that I have provided the necessary training to ensure that the master or individual in charge of the vessel has the qualifications to properly use the stability information and that the instructions will be followed. I will not permit any alterations to be made to the F/V _____ which will affect the stability, without first consulting with a qualified individual and

recertifying the adequacy of the stability information provided to the master or individual in charge of the vessel.

(Date)

Fishing Vessel's Owner Signature

I am the master or individual in charge of the subject fishing vessel. I have been provided stability instructions by the owner. I understand the instructions and will follow the instructions in their entirety.

(Date)

Master or Individual in Charge of Fishing Vessel Signature

14. Section 28.520 is revised to read as follows:

§ 28.520 Alternate simplified stability test for small vessels.

(a) A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length which has a downflooding angle of not less than 40 degrees at the deepest operating draft may comply with this section in lieu of the requirements of §§ 28.535 through 28.545 and §§ 28.565 through 28.575.

(b) Each vessel must be in the following condition when the test described in paragraph (c) of this section is performed:

(1) Construction of the vessel must be complete in all respects.

(2) Permanent ballast, if to be installed on the vessel, must be solid and on board in its final position.

(3) Each fuel and water tank must be approximately three-fourths full.

(4) Each fish hold must be approximately three-fourths full of water. If fish or fish products are stowed in a manner that prevents shifting, the fish hold may be fitted with a solid weight equal to that of the water when the fish hold is three-fourths full, arranged in a manner to approximate the same longitudinal and vertical centers of gravity as if water were used.

(5) The weight of personnel, fishing equipment, and the maximum load of fish to be carried on deck must be on board and distributed so as to provide normal operating trim and to simulate the vertical center of gravity causing the least stable condition that is likely to occur in service.

(6) Each non-return closure on a weather deck drain must be kept open during the test.

(c) Each vessel must not exceed the limitation in paragraph (d) of this section, when subject to the following heeling moment:

$M=(P)(A)(H)$, where—

M =wind heel moment, in foot-lbs;

P =wind pressure equal to—

15.0 lbs/square foot (73.0 kilograms/square meter) except for operation on protected waters;

7.5 lbs/square foot (36.6 kilograms/square meter) for operation on protected waters;

A =Area, in square feet (square meters) of the projected lateral surface of the vessel above the waterline; and

H =Height, in feet (meters), of the center of area (A) above the waterline.

(d) A vessel must not exceed the following limits of heel after the heeling moment of paragraph (c) of this section is imposed:

(1) On a flush deck or well deck vessel, no more than one-half of the freeboard measured to the top of the weather deck at the side of the vessel may be immersed, except that on a well deck vessel with scuppers operating on protected waters, the full freeboard may be immersed if the full freeboard is not more than one-fourth of the distance from the waterline to the gunwale.

(2) On an open boat, no more than one-fourth of the freeboard may be immersed.

(3) The angle of heel must not exceed 14 degrees, in any case.

(e) The heel must be measured at—

(1) The point of minimum freeboard; or

(2) At a point three-fourths of the vessels' length from the bow if the point of minimum freeboard is aft of this point.

15. Section 28.525 is revised to read as follows:

§ 28.525 Alternative subdivision.

(a) A vessel 50 feet (15.2 meters) in length or less must comply with this section.

(b) A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length may comply with this section in lieu of meeting the requirements of § 28.580.

(c) Watertight bulkheads must be maintained around the engine room, the lazarette, the fish holds, and each other space with a non-watertight closure on the main deck.

(d) Each vessel regardless of length must comply with §§ 28.250 and 28.255. Sluice valves are prohibited in bulkheads required by paragraph (c) of this section to be watertight.

(e) A statement must be included on the stability instructions required by § 28.530, stating that watertight bulkheads must not be compromised.

16. Section 28.565 is amended by revising paragraph (a) to read as follows:

§ 28.565 Water on deck.

(a) Except for a vessel less than 79 feet (24 meters) in length, each vessel with bulwarks must comply with the requirements of this section.

17. Section 28.575 is amended by revising paragraph (a) to read as follows:

§ 28.575 Severe wind and roll.

(a) Except for a vessel less than 79 feet (24 meters) in length, each vessel must meet paragraphs (f) and (g) of this section when subjected to the gust wind heeling arm and the angle of roll to windward as specified in this section.

18. Section 28.600 is revised to read as follows:

§ 28.600 Stability for load line assignment.

(a) Prior to issuance of a Load Line Certificate in accordance with the provisions of 46 CFR Subchapter E, whether such certificate is required or not, a vessel must comply with—

(1) The requirements of this section; and

(2) The requirements of 46 CFR Subchapter E.

(b) Each vessel must be inclined in accordance with § 28.535, and comply with the requirements of—

(1) Sections 170.170 and 170.173 of part 170 and subparts B and E of part 173, if involved in lifting and towing respectively; or

(2) Sections 28.545, 28.570, 28.575, and subpart E of part 173, if involved in towing.

(c) Except as provided in paragraph (d) of this section, when applying § 28.570 each vessel must have positive righting arms to an angle of heel of at least 60 degrees.

(d) A vessel need not comply with paragraph (c) of this section provided that:

(1) Each hatch in the watertight/ weathertight envelope, such as the live tank hatch, is normally kept closed at sea and is only opened intermittently,

under the direct control of the master or individual in charge of the vessel; or

Flooding through these hatches does not result in progressive flooding to other below deck spaces on the vessel.

(e) In each case of loading, a space accessed by such a hatch is assumed to be flooded full or flooded to the level having the most detrimental effect on stability, when free surface effects are considered, whichever is the worst case.

(f) Except for a full tank of seawater, permanent ballast must be of the solid, fixed type.

(g) For a vessel less than 79 feet (24 meters) in length, 46 CFR Subchapter E is modified as follows:

(1) The minimum tabular freeboard of 8 inches must be used from Table 42.20-15(b)(1).

(2) The minimum bow height must be calculated as if the vessel is 80 feet (24.3 meters) in length.

(3) All other freeboard corrections, deductions, and other calculations must be based on the actual vessel length.

19. The heading of subpart F is revised to read as follows:

Subpart F—Fish Processing Vessel and Fish Tender Vessels Engaged in the Aleutian Trade

20. Section 28.700 is revised to read as follows:

§ 28.700 Applicability.

Each fish processing vessel or fish tender vessel engaged in the Aleutian trade, which is not subject to inspection under the provisions of another subchapter of this chapter must meet the requirements of this subpart.

21. Section 28.720 is amended by revising paragraph (a) to read as follows:

§ 28.720 Survey and classification.

(a) Except for a fish tender vessel engaged in the Aleutian trade, each vessel which is built after or which undergoes a major conversion completed after July 27, 1990, must be classed by the ABS, or a similarly qualified organization.

Dated: October 19, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

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