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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 183

[Docket No. USCG–2016–1012]

RIN 1625–AC37

### Recreational Boat Flotation Standards—Update of Outboard Engine Weight Test Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard finalizes, without change, an interim rule to update the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material. The engine weight table was last updated in 1984, and the Coast Guard Authorization Act of 2015 requires that the Coast Guard update the table to reflect a specific standard. Finalizing the interim rule will acknowledge the two public comments received, and contribute to public awareness of and certainty about the June 1, 2018, effective date.

**DATES:** This final rule is effective on June 1, 2018.

**ADDRESSES:** Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2016–1012 and are available using the Federal eRulemaking Portal. You can find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2016–1012 in the “Search” box, and then clicking “Search.”

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### I. Abbreviations

ABYC American Boat and Yacht Council  
 ABYC S–30 American Boat and Yacht Council S–30—Outboard Engines and Related Equipment Weights  
 CGAA Coast Guard Authorization Act of 2015 (Pub. L. 114–120, 130 Stat. 27; Feb. 8, 2016)  
 CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 E.O. Executive Order  
 FR Federal Register  
 FRFA Final Regulatory Flexibility Analysis  
 MIC Manufacturer Identification Code  
 NAICS North American Industry Classification System  
 NBSAC National Boating Safety Advisory Council  
 NMMA National Marine Manufacturers Association  
 OMB Office of Management and Budget  
 Pub. L. Public Law  
 RA Regulatory analysis  
 § Section symbol  
 SBA Small Business Administration  
 U.S.C. United States Code

### II. Basis and Purpose

Section 308 of the Coast Guard Authorization Act of 2015 (Pub. L. 114–120, 130 Stat. 27) (CGAA) requires the Coast Guard to issue regulations, not later than 180 days after enactment, updating Table 4 of subpart H in Title 33 of the Code of Federal Regulations (CFR) part 183 to reflect the American Boat and Yacht Council S–30—Outboard Engines and Related Equipment Weights (ABYC S–30) standard.

Additionally, 46 U.S.C. 4302(b), which provides authority for 33 CFR part 183, requires the effective date for rules issued under that provision be delayed at least 180 days after

publication, but not more than 2 years for cases involving major product design, retooling, or changes in the manufacturing process. Section 4302(b) also requires consultation with the National Boating Safety Advisory Council (NBSAC).<sup>1</sup> Because this rule amends regulations issued pursuant to section 4302, the 180-day delay is appropriate to provide manufacturers with time to adjust their operations to comply with the new standard. The Coast Guard has implemented that delay of effective date in this final rule.

### III. Regulatory History

On April 5, 2017, the Coast Guard published an interim rule with request for comments (82 FR 16512). We received two public comments on the interim rule. No public meeting was requested, and none was held.

### IV. Background

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat’s design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines have evolved over the years to the point that Table 4 no longer accurately represents the weights of outboard engines available on the market.

The American Boat and Yacht Council (ABYC) is a non-profit organization that develops voluntary safety standards for the design, construction, maintenance, and repair of recreational boats. Among the voluntary safety standards that ABYC develops and updates on a regular basis is S–30—Outboard Engines and Related Equipment Weights (ABYC S–30). This standard reflects the current state of marine outboard engine weights.

<sup>1</sup> The NBSAC recommended to the Coast Guard in 2000 that the weight table be updated (Resolution number 2000–66–05), and discussed the replacement of Table 4 with the ABYC standard at their April 2016 meeting.

V. Discussion of the Rule

This rulemaking adopts the current ABYC S–30 to replace Table 4 of subpart H in 33 CFR part 183. The current ABYC S–30 is dated July 2012, and was the standard in effect on the date of enactment of the CGAA.

In the CFR, Table 4 applies to monohull outboard boats that are less than 20 feet in length, which includes recreational vessels as well as some commercial fishing vessels. Table 4 is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels) and 46 CFR part 180 (small passenger vessels under 100 gross tons). Changing the figures in Table 4, as required by the CGAA, will require more flotation in each new boat, to support the weight of heavier engines.

The interim rule removed Table 4 and replaced it with a new section (section 183.75) in subpart E of part 183. That section contains the table of the ABYC S–30 standard and its corresponding footnotes. The Coast Guard made minor edits to the footnotes developed by ABYC to accommodate the location of the table in the CFR and to reflect the removal of Table 4. We also made conforming changes to several sections that referenced Table 4.

Finalizing the rule will acknowledge the public comments received, and contribute to public awareness of and certainty about the June 1, 2018, effective date.

VI. Discussion of Comments and Changes

The Coast Guard received two public comments in response to the interim

rule. One commenter was supportive of the changes made in the interim rule. The other comment stated that in addition to small boat flotation, other factors that contribute to boat safety should be considered. The Coast Guard agrees that other factors can contribute to boat safety. However, they are outside of the scope of this rulemaking, in which we are focused on the requirements of the CGAA and the ABYC S–30 standard. This final rule makes no changes to the interim rule.

VII. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the

cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). A regulatory analysis (RA) follows. This RA is unchanged from the RA included in the interim rule (82 FR 16512; April 5, 2017).

This RA provides an evaluation of the economic impacts associated with this final rule. The Coast Guard is issuing a final rule to implement section 308 of the CGAA. The CGAA mandates that the Coast Guard issue regulations to amend Table 4 of subpart H in 33 CFR part 183 to reflect the standards in ABYC S–30. Consequently, 100 percent of the costs of this rule are due to a Congressional mandate and the Coast Guard has no discretion to adopt a different standard that would lower the cost of this rule. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

Table 1 of this document provides a summary of the affected population, costs, and benefits of this rule.

TABLE 1—SUMMARY OF THE IMPACTS OF THE FINAL RULE

Category	Summary
Applicability .....	Update Table 4 of subpart H in 33 CFR part 183 with ABYC S–30.
Affected Population .....	1,427 manufacturers of monohull outboard boats of less than 20 feet in length.
Costs to Industry (\$, 7% discount rate) .....	10-year: \$6,624,488. Annualized: \$943,178.
Unquantified Benefits .....	Creates uniformity by aligning all boats to the same standard. Brings those boats not currently in compliance with ABYC S–30 to a higher level of safety than the standard currently in regulation.

Affected Population

This final rule adopts the current ABYC S–30 to replace Table 4 of subpart H in 33 CFR part 183. Table 4 applies to monohull outboard boats that are less than 20 feet in length, including recreational vessels and some commercial fishing vessels.

Table 4 is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels), and 46 CFR part 180 (small passenger vessels under 100 gross tons). Small passenger vessels are required to carry certain survival craft, depending on their route and construction, in order to have the capacity to evacuate a certain percentage of the number of people on board. These survival craft are generally life rafts or floats, which do not have engines and are not impacted by this final rule. However, small passenger

vessels could voluntarily carry a small boat that can be used to carry some of the passengers, thereby reducing the number of other survival craft they are required to carry (46 CFR 117.200(b) and 46 CFR 180.200(b)). Because this is a voluntary option available for these vessels, we do not include them in our analysis. However, we do note that if the uninspected vessels, small passenger vessels carrying more than 150 passengers, towing vessels, or small passenger vessels under 100 gross tons choose to carry a small boat on board that does not meet ABYC S-30 standard, they could be indirectly affected by this final rule. Because this final rule applies only to new boats manufactured after June 1, 2018, any small passenger vessels already carrying small boats subject to Table 4 of subpart H are not affected. If they choose to replace their small boat with a boat built after June 1, 2018, they may be indirectly affected if the manufacturer passes the costs of this final rule on to the consumers. We account for the direct costs to manufacturers in this analysis.

The final rule affects manufacturers that produce monohull outboard boats that are less than 20 feet in length and that are not currently building boats to ABYC S-30 standard. The Coast Guard used the list of active Manufacturer Identification Code (MIC) holders, as required by 33 CFR 181 subpart C, to determine the affected population. This list represents all recreational boat MICs that are currently active. We then removed any MICs that will not be affected by this rule from the list of manufacturers. This includes: (1) Manufacturers with multiple MICs; (2) MICs belonging to manufacturers that only build boats greater than 20 feet in length; (3) MICs belonging to manufacturers that do not build monohull outboard boats; and (4) MICs belonging to manufacturers that only produce boats exempted from this regulation by 33 CFR 183.201(b), including sailboats, canoes, kayaks, inflatable boats, submersibles, surface effect vessels, amphibious vessels, and raceboats. We found there are no more

than 1,519 affected manufacturers that produce monohull outboard boats that are less than 20 feet in length.

Some of these 1,519 monohull manufacturers are currently in compliance with ABYC S-30 standard, and therefore will not incur additional costs because of this rule. The National Marine Manufacturers Association (NMMA) requires its members to build boats to the ABYC standard.<sup>2</sup> These NMMA builders produce about 85 percent of the recreational boats built each year.<sup>3</sup> We found 92 monohull manufacturers that are currently NMMA members and therefore we assume they are in compliance. We assume the remaining 1,427 monohull manufacturers are not compliant with the current voluntary standard and will be affected by this rule.

#### Costs to Industry

This final rule adopts the current ABYC S-30, to replace Table 4 of subpart H. This change will increase costs to 1,427 monohull manufacturers that are assumed to be not in compliance. The increase in the weight table figures will require an additional 1 to 2 cubic feet of flotation to be added to each boat manufactured after the effective date of June 1, 2018. We estimate the foam for the additional flotation will cost an average of \$10 per boat.<sup>4</sup> Some manufacturers may need to make minor adjustments such as enclosing an aft seat and adding foam under the seat to accommodate the

<sup>2</sup> See Michael Vatalaro, *What "NMMA-Certified" Really Means*, BoatUS, Feb. 2014, <http://www.boatus.com/magazine/2014/february/what-nmma-certified-means.asp>.

<sup>3</sup> *Id.*

<sup>4</sup> The \$10 estimate is based on 2 LB Density Urethane Foam estimates from US Composites (<http://www.uscomposites.com/foam.html>) and conversations with manufacturers. Foam prices vary based on the size of the kits. The cost of kits range from a 2 cubic foot kit cost of \$22.50 (\$11.25 per cubic foot) to \$264 for a 40 cubic foot kit (\$6.60 per cubic foot). Conversations with manufacturers confirmed \$10 is a reasonable average estimate for adding 1 to 2 cubic feet of additional flotation, that takes into account the varying costs based on the size of kits purchased and that manufacturers may pay less than the listed prices based on their purchasing agreements with the suppliers.

additional foam in the boats. Therefore, Coast Guard uses an estimate of \$50 per boat to account for the foam and any minor adjustments that may be necessary.<sup>5</sup> Manufacturers could incur costs related to determining where to put the additional flotation on a vessel, but we believe redesign costs would not be needed as the additional flotation material is minimal and the placement of the material is fairly standard. The manufacturers are already required to add flotation to boats, so there will be no costs for new equipment, facilities, or retrofitting of facilities.

To estimate the total cost to industry, we then estimated the total number of outboard boats less than 20 feet in length manufactured per year by the monohull manufacturers that are not in compliance. The Coast Guard used data from the NMMA's 2015 Recreational Boating Statistical Abstract<sup>6</sup> to estimate the total affected outboard boats. The NMMA breaks down outboard boat sales by two hull materials: Fiberglass and aluminum. The NMMA estimates that in 2015, 51,300 fiberglass outboard boats and 104,500 aluminum outboard boats were sold. Of these boats sold, 42.7 percent of the fiberglass outboard boats and 60.4 percent of the aluminum outboard boats were less than 20 feet in length. Multiplying the percentage market share of boats less than 20 feet by the total sales of boats by material, we found there were 21,905 fiberglass boats and 63,118 aluminum outboard boats less than 20 feet sold in 2015 (see Table 2).

<sup>5</sup> Based on discussions with manufacturers, the additional \$40 estimate is to cover the cost of enclosing a rear seat to add flotation foam under it or to add small chambers, especially on open aluminum boats, to accommodate the additional flotation foam.

<sup>6</sup> A summary of the NMMA abstract is available at <https://www.nmma.org/statistics/publications/statistical-abstract>. The full report is available for purchase through NMMA. The Coast Guard used data from Powerboat Sales Trends, Table 1: Outboard boats: Estimated sales by hull market; Table 2: Fiberglass outboard boats: Estimated market share by length; and Table 3: Aluminum outboard boats: Estimated market share by length.

TABLE 2—TOTAL SALES AND MARKET SHARE OF OUTBOARD BOATS BY MATERIAL TYPE

Outboard boat by material	Estimated total sales	Percentage market share outboard boats less than 20 feet	Total outboard boats less than 20 feet sold in 2015
Fiberglass .....	51,300	42.7	21,905
Aluminum .....	104,500	60.4	63,118
Total .....	155,800	.....	85,023

The total 85,023 outboard boats less than 20 feet that were sold in 2015 were produced by a mix of manufacturers that are already in compliance with the ABYC S-30 standard and manufacturers that are not in compliance and will be impacted by this rule. The NMMA estimates that around 85 percent of the boats sold in the United States are already in compliance with the ABYC S-30 standard. Therefore, the Coast Guard estimates 15 percent of the total outboard boats less than 20 feet sold were produced by manufacturers not in compliance with the ABYC standard. These 12,753 boats (15 percent of the 85,023 outboard boats less than 20 feet, rounded) will require \$50 of additional flotation materials to align with the new standard.

To estimate the affected outboard boats over the 10-year period of analysis, we used NMMA data to forecast future boat building production.<sup>7</sup> The NMMA anticipates annual production will rise through at least 2018 before leveling off into at least early 2019. The NMMA does not have estimates for production past 2019. Since the NMMA anticipates production will plateau once it reaches the levels of production estimated in 2019, the Coast Guard assumes production will hold at

2019 levels. Production could decrease or increase, resulting in higher or lower industry costs, but for the purposes of this analysis we assume production remains constant past 2019. Table 3 shows our baseline affected population, the forecasted percentage increases over the previous year estimated by NMMA, and the resulting number of affected outboard boats.<sup>8</sup>

TABLE 3—FORECASTED AFFECTED OUTBOARD BOATS

Year	Forecasted percentage increase over previous year	Affected outboard boats manufactured annually
2015 .....	.....	12,753
2016 .....	11.6	14,232
2017 .....	15.2	16,402
2018 .....	9.2	17,916
2019 .....	6.1	19,009
2020+ .....	0.0	19,009

As this final rule will be effective June 1, 2018, any outboard boats manufactured after this date will need to be in compliance with ABYC S-30 standard. The Coast Guard anticipates most manufacturers will begin making the necessary changes at the beginning of 2018. All manufacturers will be in compliance by June 1, 2018 of Year 1,

which corresponds with the 2018 estimated affected outboard boats in Table 3. We estimate there will be 17,916 affected outboard boats in Year 1 and 19,009 affected outboard boats in Years 2 through 10. Table 4 summarizes the estimated affected population of outboard boats that we used to estimate the 10-year costs of this final rule.

TABLE 4—TEN-YEAR PROJECTION OF AFFECTED OUTBOARD BOATS

Year	Affected outboard boats
1 .....	17,916
2 .....	19,009
3 .....	19,009
4 .....	19,009
5 .....	19,009
6 .....	19,009
7 .....	19,009
8 .....	19,009
9 .....	19,009
10 .....	19,009

We then multiplied the projected number of affected outboard boats each year in Table 4 by the estimated cost per boat of \$50. Table 5 shows the total costs of this final rule on an undiscounted basis, and discounted at 7 and 3 percent.

TABLE 5—TOTAL COSTS OF FINAL RULE

Year	Total undiscounted costs	Total, discounted	
		7%	3%
1 .....	\$895,800	\$837,196	\$869,709
2 .....	950,450	830,160	895,890
3 .....	950,450	775,850	869,796
4 .....	950,450	725,094	844,463
5 .....	950,450	677,658	819,867
6 .....	950,450	633,325	795,987
7 .....	950,450	591,892	772,803
8 .....	950,450	553,171	750,294
9 .....	950,450	516,982	728,441
10 .....	950,450	483,161	707,224

<sup>7</sup> Production forecasts are internal NMMA estimates that were provided to the Coast Guard on 9/7/2016.

<sup>8</sup> Forecasted percentages for 2016 and 2019 were given in NMMA data. Forecasted percentages for years 2017 and 2018 were calculated from NMMA's forecasted annual production index. For 2017, the affected outboard boats manufactured annually are

calculated as  $[1 + ((170.1 - 147.6)/147.6)] * 14,232 = 16,402$ , rounded. For 2018, the affected outboard boats manufactured annually are calculated as  $[1 + ((185.8 - 170.1)/170.1)] * 16,402$ , rounded.

TABLE 5—TOTAL COSTS OF FINAL RULE—Continued

Year	Total undiscounted costs	Total, discounted	
		7%	3%
Total .....	9,449,850	6,624,488	8,054,473
Annualized .....	.....	943,178	944,230

The total 10-year undiscounted cost of this final rule is \$9,449,850. The total 10-year discounted cost of this final rule is \$6,624,488 and the annualized cost is \$943,178, both discounted at 7 percent. The manufacturers of outboard boats less than 20 feet in length not in compliance with ABYC S–30 standard will bear these costs. However, it is possible that manufacturers may pass these costs onto the recreational boat owners by incorporating the additional costs of this final rule into the sales price. The sale price of the affected boats can range from \$3,000 through \$50,000. If we use an average of \$26,500 per boat, the \$50 average cost per boat represents 0.2 percent of the sales price. However, 85 percent of the boats sold in the United States are already in compliance and include this cost of flotation in the sales prices.

#### Benefits

This rule does not provide any quantitative benefits. However, it does have qualitative benefits. This rule creates uniformity by aligning all boats to the same standard. The ABYC S–30 provides a higher level of safety than that provided by the standard currently in the regulation. Requiring all boats less than 20 feet in length that currently do not meet ABYC S–30 standard weights to comply with that standard will improve the buoyancy of these boats, and therefore, improve their operational safety.

#### B. Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard prepared this Final Regulatory Flexibility Analysis (FRFA) that examines the impacts of the final rule on small entities (5 U.S.C. 601 *et seq.*). We recognize that a FRFA is not required for a final rule that was not preceded by a general notice of proposed rulemaking. We are including an analysis of the final rule requirements on small entities for informational purposes.

A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small

Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

A FRFA addresses the following:

- (1) A statement of the need for, and objectives of, the rule;
- (2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the interim final rule as a result of such comments;
- (3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the interim final rule, and a detailed statement of any change made to the interim final rule in the final rule as a result of the comments;
- (4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. A statement of the need for, and objectives of, the rule.

Section 308 of the CGAA requires the Coast Guard to issue regulations updating Table 4 of subpart H in Title

33 CFR part 183 to reflect the ABYC S–30 standard.

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat's design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines has evolved over the years to the point where Table 4 no longer accurately represents the weights of outboard engines available on the market. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the interim final rule as a result of the comments.

The Coast Guard did not receive any comments on the initial regulatory flexibility analysis.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the interim final rule, and a detailed statement of any change made to the interim final rule in the final rule as a result of the comments.

The Coast Guard did not receive any comments from the Small Business Administration's (SBA) Office of Advocacy regarding the impact that the interim final rule would have on small entities.

4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This final rule affects manufacturers that produce monohull outboard boats that are less than 20 feet in length that are not currently building boats to ABYC S-30 standard.

Based on Coast Guard's list of active MIC holders, we estimate this final rule will affect 1,427 U.S. companies. We researched the number of employees and revenue of these companies using proprietary and public business databases.<sup>9</sup> We then measured company size data using the SBA's business size standards to assess how many companies in this industry may be small entities.<sup>10</sup> The SBA provides business size standards for all sectors of the

North American Industry Classification System (NAICS).<sup>11</sup>

Using a random sample of companies out of the total population of 1,427 affected U.S. companies, we researched 749 companies and found company-specific revenue and employment information and data on 388 of them.<sup>12</sup> We assumed that the remaining 361 companies (for which the revenue and employment information was unavailable) are small entities for the purpose of this analysis. Of the 388 companies for which revenue and employment information was available, we found three entities that exceeded the small entity thresholds for their relevant NAICS code. The remaining

385 companies are small entities as defined by the SBA thresholds. Adding these small entities to the companies without revenue and employment information, we estimate a total of 746 of the companies are small entities. Using the results of this random sample, we calculated the fraction of small entities by dividing the total small entities by the sample size. Therefore, we estimate that 99.6 percent of all monohull companies not currently building to ABYC S-30 standard fall below the threshold for small businesses. Table 6 summarizes the findings of our small entity threshold analysis.

TABLE 6—NUMBER OF COMPANIES AND SMALL ENTITIES RESEARCHED

Category	Number of companies
(a) Sample Size .....	749
(b) Without Revenue or Employment Data .....	361
(c) With Revenue or Employee Data .....	388
(d) Exceeded Small Entity Threshold .....	3
(e) Below the Small Business Threshold .....	385
Total Small Entities, (b) + (e) .....	746
Total, (a) .....	749
Fraction Small Entities .....	99.6%

Our analysis of the available company information revealed 64 primary NAICS codes. Table 7 displays the NAICS codes of the small entities found in our sample.

TABLE 7—NAICS CODES OF IDENTIFIED SMALL ENTITIES

Title	NAICS code	Count of companies	SBA size standard type	SBA size threshold
Boat Building .....	336612	151	Employees .....	1,000
Boat Dealers .....	441222	56	Revenue .....	\$32,500,000
Other Personal and Household Goods Repair and Maintenance .....	811490	32	Revenue .....	\$7,500,000
Marinas .....	713930	28	Revenue .....	\$7,500,000
All Other Support Services .....	561990	14	Revenue .....	\$11,000,000
Mineral Wool Manufacturing .....	327993	11	Employees .....	1,500
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance .....	811310	8	Revenue .....	\$7,500,000
All Other Miscellaneous Manufacturing .....	339999	5	Employees .....	500
Fabricated Structural Metal Manufacturing .....	332312	4	Employees .....	500
New Single-family Housing Construction (Except For-Sale Builders) .....	236115	3	Revenue .....	\$36,500,000
All Other Plastics Product Manufacturing .....	326199	3	Employees .....	750
Sporting and Recreational Goods and Supplies Merchant Wholesalers .....	423910	3	Employees .....	100
Other Miscellaneous Durable Goods Merchant Wholesalers .....	423990	3	Employees .....	100
Other Building Material Dealers .....	444190	3	Revenue .....	\$20,500,000
Engineering Services .....	541330	3	Revenue .....	\$15,000,000
All Other Business Support Services .....	561499	3	Revenue .....	\$15,000,000
Site Preparation Contractors .....	238910	2	Revenue .....	\$15,000,000
Sheet Metal Work Manufacturing .....	332322	2	Employees .....	500
Special Die and Tool, Die Set, Jig and Fixture Manufacturing .....	333514	2	Employees .....	500
Travel Trailer and Camper Manufacturing .....	336214	2	Employees .....	1,000
Wholesale Trade Agents and Brokers .....	425120	2	Employees .....	100
All Other Miscellaneous Store Retailers (except Tobacco Stores) .....	453998	2	Revenue .....	\$7,500,000
Museums .....	712110	2	Revenue .....	\$27,500,000
Hunting and Trapping .....	114210	1	Revenue .....	\$5,500,000
Water Supply and Irrigation Systems .....	221310	1	Revenue .....	\$27,500,000

<sup>9</sup>Data sources: ReferenceUSA ([www.referenceusa.gov](http://www.referenceusa.gov)) and Manta ([www.manta.com](http://www.manta.com)).

<sup>10</sup>"Small entities" include small businesses that meet the Small Business Administration size standard for small business concerns at 13 CFR 121.201, small governmental jurisdictions with a

population of less than 50,000, and small organizations that are independently owned not-for-profit enterprises and which are not dominant in their field. See 5 U.S.C. 601(3)–(5).

<sup>11</sup>SBA size standards are matched to NAICS, effective February 26, 2016. See *Contracting: Table of Small Business Size Standards*, <https://www.sba.gov/content/small-business-size-standards>.

<sup>12</sup>Using a 95 percent confidence level, a sample size of 385 companies is sufficient. Our research started with a random sample of 749 companies that yielded 388 entities for which requisite information was found.

TABLE 7—NAICS CODES OF IDENTIFIED SMALL ENTITIES—Continued

Title	NAICS code	Count of companies	SBA size standard type	SBA size threshold
Commercial and Institutional Building Construction .....	236220	1	Revenue .....	\$36,500,000
Other Heavy and Civil Engineering Construction .....	237990	1	Revenue .....	\$36,500,000
Plumbing, Heating, and Air-Conditioning Contractors .....	238220	1	Revenue .....	\$15,000,000
All Other Specialty Trade Contractors .....	238990	1	Revenue .....	\$15,000,000
Fabric Coating Mills .....	313320	1	Employees .....	1,000
Other Millwork (including Flooring) .....	321918	1	Employees .....	500
Plastics Material and Resin Manufacturing .....	325211	1	Employees .....	1,250
Fertilizer (Mixing Only) Manufacturing .....	325314	1	Employees .....	500
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing .....	327999	1	Employees .....	500
Alumina Refining and Primary Aluminum Production .....	331313	1	Employees .....	1,000
Aluminum Sheet, Plate and Foil Manufacturing .....	331315	1	Employees .....	1,250
Other Aluminum Rolling, Drawing, and Extruding .....	331318	1	Employees .....	750
Plate Work Manufacturing .....	332313	1	Employees .....	750
Farm Machinery and Equipment Manufacturing .....	333111	1	Employees .....	1,250
Overhead Traveling Crane, Hoist and Monorail System Manufacturing .....	333923	1	Employees .....	1,250
All Other Miscellaneous General Purpose Machinery Manufacturing .....	333999	1	Employees .....	500
Other Communications Equipment Manufacturing .....	334290	1	Employees .....	750
Truck Trailer Manufacturing .....	336212	1	Employees .....	1,000
Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing .....	336330	1	Employees .....	1,000
Ship Building and Repairing .....	336611	1	Employees .....	1,250
All Other Transportation Equipment Manufacturing .....	336999	1	Employees .....	1,000
Sporting and Athletic Goods Manufacturing .....	339920	1	Employees .....	750
Hobby, Toy and Game Stores .....	451120	1	Revenue .....	\$27,500,000
Scenic and Sightseeing Transportation, Water .....	487210	1	Revenue .....	\$7,500,000
Navigational Services to Shipping .....	488330	1	Revenue .....	\$38,500,000
Miscellaneous Intermediation .....	523910	1	Revenue .....	\$38,500,000
Recreational Goods Rental .....	532292	1	Revenue .....	\$7,500,000
Landscape Architectural Services .....	541320	1	Revenue .....	\$7,500,000
Industrial Design Services .....	541420	1	Revenue .....	\$7,500,000
Graphic Design Services .....	541430	1	Revenue .....	\$7,500,000
Administrative Management and General Management Consulting Services .....	541611	1	Revenue .....	\$15,000,000
Other Management Consulting Services .....	541618	1	Revenue .....	\$15,000,000
All Other Professional, Scientific and Technical Services .....	541990	1	Revenue .....	\$15,000,000
Landscaping Services .....	561730	1	Revenue .....	\$7,500,000
All Other Miscellaneous Schools and Instruction .....	611699	1	Revenue .....	\$11,000,000
Emergency and Other Relief Services .....	624230	1	Revenue .....	\$32,500,000
Fitness and Recreational Sports Centers .....	713940	1	Revenue .....	\$7,500,000
RV (Recreational Vehicle) Parks and Campgrounds .....	721211	1	Revenue .....	\$7,500,000
Civic and Social Organizations .....	813410	1	Revenue .....	\$7,500,000

*Revenue Impacts of the Final Rule.* To determine the impacts of the final rule on small monohull manufacturers, we used information on revenues or employee size as available on business directory Web sites.<sup>13</sup>

As discussed in the “Cost to Industry” section of the RA, we estimate that there are 17,916 outboard boats less than 20 feet produced by manufacturers annually that will require additional flotation materials to align with this

final rule in Year 1. Coast Guard does not have information on the market share of the small entity manufacturers and the number of boats they produce each year. Therefore, we assume each manufacturer consistently produces the same number of boats each year and that each manufacturer has the same market share. With 1,427 affected U.S. companies, this is an average of about 13 outboard boats per manufacturer

(rounded). In Years 2 through 10, the Coast Guard estimates there are 19,009 outboard boats affected, at an average of about 13 outboard boats per manufacturer (19,009 boats divided by 1,427 manufacturers, rounded). At an estimated cost of \$50 per outboard boat, the average total cost per manufacturer is \$650 in Years 1 through 10. Table 8 summarizes the average costs per manufacturer of the final rule by year.

TABLE 8—FINAL RULE AVERAGE COSTS PER MANUFACTURER

Year(s)	Affected outboard boats	Manufacturers not in compliance	Average outboard boats produced by manufacturer	Cost per outboard boats	Average cost per manufacturer
1 .....	17,916	1,427	13	\$50	\$650
2–10 .....	19,009	1,427	13	50	650

Next, we compared the average cost per manufacturer to the revenue of the manufacturers in our sample. As shown in Table 6, we found revenue or company data for 385 small entities. We

found revenue information for 371 of these small entities, and we were only able to find employee data for 14 entities. Therefore, we could not compare the cost per manufacturer to

the revenues for the 14 entities with only employee data. Table 9 summarizes the results. In Years 1 through 10, 94.6 percent of the affected manufacturers will incur a cost of 1

<sup>13</sup> As indicated by either the revenue or employee data for businesses, we use ReferenceUSA

([www.referenceusa.gov.com](http://www.referenceusa.gov.com)) and Manta ([www.manta.com](http://www.manta.com)).

percent or less of revenue in any given year, while 0.3 percent will incur a cost

impact of greater than 10 percent of revenue.

TABLE 9—FINAL RULE REVENUE IMPACTS

Impact range	Number of affected manufacturers	Percent of affected manufacturers
0% < Impact ≤ 1% .....	352	94.9
1% < Impact ≤ 3% .....	17	4.6
3% < Impact ≤ 5% .....	1	0.3
5% < Impact ≤ 10% .....	0	0
≥ 10% .....	1	0.3
Total .....	371	100

5. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

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

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule implements section 308 of CGAA. The CGAA mandates the update of Table 4 in 33 CFR part 183. As such, the Coast Guard has no discretion to offer alternatives that minimize the impact on small entities while accomplishing the stated objective of the statute. To ease implementation of this requirement, the Coast Guard is delaying the effective date until June 1, 2018, so that the new requirements will apply only to boat manufacturers who build boats after that date.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### C. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### D. Collection of Information

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

#### E. Federalism

A rule has implications for federalism under Executive Order 13132 (“Federalism”), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under E.O. 13132 and have determined that it is consistent with the fundamental federalism principles and requirements described in Executive Order 13132. Our analysis is explained below.

Congress directed the Coast Guard to “establish minimum safety standards for recreational vessels” (46 U.S.C. 4302). This rulemaking revises regulations issued pursuant to that statute and Congress has expressly limited States from regulating in this field, as specified in 46 U.S.C. 4306. Under 46 U.S.C. 4306, “a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated or equipment performance or other safety standard . . . that is not identical to a regulation prescribed under” 46 U.S.C. 4302. As a result, States or local governments are expressly prohibited from regulating within this category unless the regulation is identical to regulation prescribed under 46 U.S.C. 4302 or an exemption is granted under 46 U.S.C. 4305. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).



#### H. Civil Justice Reform

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

#### I. Protection of Children

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

#### J. Indian Tribal Governments

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

#### K. Energy Effects

We have analyzed this rule under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses a voluntary consensus standard: The current ABYC S–30.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID,

which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(d) and (e) of the Instruction and under section 6(a) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, July 23, 2002). This final rule involves the safe loading capacity and required amount of flotation material for certain recreational boats, which concerns equipping of vessels, as well as equipment and vessel operation safety standards. This rule supports the Coast Guard’s maritime safety mission. A Record of Environmental Consideration (REC) supporting this determination is available in the docket as discussed in the ADDRESSES section of this rule.

#### List of Subjects in 33 CFR Part 183

Marine safety.

■ For the reasons discussed in the preamble, the interim rule amending 33 CFR part 183 that was published at 82 FR 16512 on April 5, 2017, is adopted as a final rule without change.

Dated: October 23, 2017.

**Jennifer F. Williams,**  
Captain, U.S. Coast Guard, Director of  
Inspections and Compliance.

[FR Doc. 2017–23384 Filed 10–26–17; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 180

[EPA–HQ–OPP–2016–0348; FRL–9968–40]

#### **Bacillus amyloliquefaciens Strain F727; Exemption From the Requirement of a Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus amyloliquefaciens* strain F727 in or on all food commodities when used in accordance with label directions and good agricultural practices. Marrone Bio Innovations submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an

exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus amyloliquefaciens* strain F727 under FFDCA.

**DATES:** This regulation is effective October 27, 2017. Objections and requests for hearings must be received on or before December 26, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0348, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).