

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability.

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(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review.

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(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security

disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists, except for the ultimate determination about whether you are disabled. See § 416.912(b)(6).

(ii) When administrative law judges consider findings of State agency medical or psychological consultants or other program physicians or psychologists, they will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the medical or psychological consultants', or other program physicians' or psychologists', medical specialty and expertise in our rules, the evidence reviewed by the consultants or other program physicians or psychologists, supporting explanations provided by the consultants or other program physicians or psychologists, and any other factors relevant to the weighing of the opinions. The administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to subpart P of part 404 of this chapter. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 97-059]

Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Coast Guard seeks comments from interested people,

groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets. It will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC) in determining how best to reduce the number of boaters who drown.

DATES: Comments must reach the Coast Guard on or before February 2, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G-LRA, 3406) [CGD 97-059], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-1477.

The Executive Secretary maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, (202) 267-0979. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1-800-368-5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgbloating.org/.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Most people who die in recreational boating accidents drown; but most of the victims would have survived if they had worn lifejackets. Through its Recreational Boating Safety Program, the Coast Guard tries to reduce the number of recreational boating accidents. Although recreational use of water has caused fewer and fewer deaths over the last 20 years, boating accidents still cause more deaths than any other transportation related activity except use of roads. Boating accidents caused over 800 deaths in 1995, over 600 of them through drowning. Although 68 victims drowned while wearing lifejackets, 561 victims drowned while not wearing them. Nobody knows how many of the 561 victims would have survived if they had worn lifejackets. There is evidence to suggest that factors other than drowning were the primary cause of death for most of the 68 victims who died wearing lifejackets. On the contrary, the

best way to minimize the number of deaths due to drowning is to maximize the number of boaters wearing lifejackets.

Each year the Coast Guard sponsors a national boating safety campaign based on educational methods aimed at encouraging boaters to wear lifejackets. Realistically, such nonregulatory methods of modifying behavior will not by themselves be fully successful. However, the Coast Guard knows from data on boating accidents that State efforts, based on regulatory methods aimed at waterskiing and operation of personal watercraft, have been extremely successful.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets (personal flotation devices, or PFDs). In particular, the Coast Guard encourages you to answer the specific questions about these requirements or incentives for wearing lifejackets, which it developed in consultation with members of NBSAC at the meeting in April 1997. The Coast Guard also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the National Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for wearing PFDs.

Please include your name and address, identify this notice [CGD 97-059], the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

A. Boating Activity of Commenter.

1. How much risk do you believe recreational boating involves?

2. Do you agree with the following statement: If I fell overboard, I would feel just as safe if someone threw me a lifering or a buoyant cushion (Type IV PFD) as I would feel if I have been wearing a standard jacket style (Type I, II, III, or V PFD)?

3. Would a requirement for wearing a PFD likely affect your participation in recreational boating, and how would it affect it?

4. Recreational boating varies widely depending on the interest of the

individual boater. Individuals may own, rent or be a passenger on a boat; the boat may be manual, sail, or motor powered; the reason for boating may be for relaxation, transportation, competition, or excitement. Please tell us something about your recreational boating activity, including how often you go boating, what type of boating activities you do, and the type of water on which you go boating.

5. Please tell us what type of PFD you carry when you go boating, whether or not you or other passengers wear a PFD, and the reason(s) for wearing or not wearing a PFD.

B. Mandatory wearing of PFDs.

1. Several States have imposed various requirements for wearing PFDs—by children, during waterskiing, aboard personal watercraft, and so on. What Federal requirements should the Coast Guard propose, if any, for wearing PFDs to ensure uniformity around the country? Should the Coast Guard propose Federal requirements only in those States with no requirements for children, while waterskiing, aboard a personal watercraft, or for any other appropriate category of boaters or boating activity?

2. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics in one or more categories of boaters, boating activities, or boating conditions?

3. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics involving one or more sizes or types of recreational vessels?

4. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics related to ages of the victims?

5. A survey of State boating laws conducted in 1996 by NASBLA, under a Coast Guard grant, revealed that 25 States imposed requirements for the wearing of PFDs by children under various ages (from under 13, down to under 6). What Federal requirements should the Coast Guard propose, if any, specifying an age below which children must wear PFDs during any activities or under any conditions?

6. Statistics for 1995 show that 476 (75%) of the 629 drowning victims were non-swimmers. What Federal requirements should the Coast Guard propose, if any, for non-swimmers to wear PFDs during any boating activities or under any boating conditions? How would boaters or law enforcement agencies determine who is a swimmer and who is a non-swimmer?

7. If you know of an instance where a person did not wear a PFD, but where that person or you later wished that person had worn one, please describe the instance.

8. If you know of instances where safety makes wearing PFDs unacceptable or undesirable, please describe them.

9. Are you aware of the intended uses and limitations of the various types (Type I, II, III, IV, V) of PFDs and kinds of PFD flotation (inherently buoyant, hybrid inflatable, fully inflatable) approved by the Coast Guard?

10. What Federal requirements should the Coast Guard propose, if any, that boaters engaged in any particular activities wear PFDs under any conditions?

11. Describe any other boating activities, conditions, or categories under which the Coast Guard should propose Federal requirements that all boaters, or specific groups of boaters, wear PFDs.

C. General.

1. What benefits (in terms of personal safety or in other terms) do you think would accrue from Federal requirements to wear PFDs? What costs (in terms of money, paperwork, inconvenience, or other terms) would accrue from such requirements? Would the costs outweigh the benefits?

2. Please describe any nonregulatory ways to reduce the number of deaths by drowning at lower costs or with less burden than Federal requirements would entail.

3. Is there any other information you feel may help the Coast Guard to reduce the number of deaths by drowning with the lowest costs to, or least burden on, the Coast Guard itself, the States, and, most of all, boaters?

The Coast Guard will summarize all comments it receives during the comment period in response to this notice, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in April, 1998. It will itself consider all relevant comments in the formulation of any regulatory and nonregulatory measures that may follow from this notice.

Dated: September 18, 1997.

Ernest R. Riutta,

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

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