

## RELEVANT STATUTES AND REGULATIONS:

### **46 U.S.C. Sec. 4310. Repair and replacement of defects**

**(a)** In this section, "associated equipment" includes only items or classes of associated equipment that the Secretary shall prescribe by regulation after deciding that the application of the requirements of this section to those items or classes of associated equipment is reasonable and in furtherance of this chapter.

**(b)** If a recreational vessel or associated equipment has left the place of manufacture and the recreational vessel manufacturer discovers or acquires information that the manufacturer decides, in the exercise of reasonable and prudent judgment, indicates that a recreational vessel or associated equipment subject to an applicable regulation prescribed under section [4302](#) of this title either fails to comply with the regulation, or contains a defect that creates a substantial risk of personal injury to the public, the manufacturer shall provide notification of the defect or failure of compliance as provided by subsections (c) and (d) of this section within a reasonable time after the manufacturer has discovered the defect.

**(c)**

**(1)** The notification required by subsection (b) of this section shall be given to the following persons in the following manner:

**(A)** by first class mail or by certified mail to the first purchaser for other than resale, except that the requirement for notification of the first purchaser shall be satisfied if the recreational vessel manufacturer exercises reasonable diligence in establishing and maintaining a list of those purchasers and their current addresses, and sends the required notice to each person on that list at the address appearing on the list.

**(B)** by first class mail or by certified mail to subsequent purchasers if known to the manufacturer.

**(C)** by first class mail or by certified mail or other more expeditious means to the dealers and distributors of the recreational vessels or associated equipment.

**(2)** The notification required by subsection (b) of this section is required to be given only for a defect or failure of compliance discovered by the recreational vessel manufacturer within a reasonable time after the manufacturer has discovered the defect or failure, except that the manufacturer's duty of notification under paragraph (1)(A) and (B) of this subsection applies only to a defect or failure of compliance discovered by the manufacturer within one of the following appropriate periods:

**(A)** if a recreational vessel or associated equipment required by regulation to have a date of certification affixed, 10 years from the date of certification.

**(B)** if a recreational vessel or associated equipment not required by regulation to have a date of certification affixed, 10 years from the date of manufacture.

**(d)** The notification required by subsection (b) of this section shall contain a clear description of the defect or failure to comply, an evaluation of the hazard reasonably related to the defect or failure, a statement of the measures to correct the defect or failure, and an undertaking by the recreational vessel manufacturer to take those measures only at the manufacturer's cost and expense.

**(e)** Each recreational vessel manufacturer shall provide the Secretary with a copy of all notices, bulletins, and other communications to dealers and distributors of that manufacturer, and to purchasers of recreational vessels or associated equipment of that manufacturer, about a defect related to safety in the recreational vessels or associated equipment, and any failure to comply with the regulation or order applicable to the recreational vessels or associated equipment. The Secretary may publish or otherwise disclose to the public information in the notices or other information the Secretary has that the Secretary considers will assist in carrying out this chapter. However, the Secretary may

disclose any information that contains or relates to a trade secret only if the Secretary decides that the information is necessary to carry out this chapter.

(f) If, through testing, inspection, investigation, or examination of reports, the Secretary decides that a recreational vessel or associated equipment to which this chapter applies contains a defect related to safety or fails to comply with an applicable regulation prescribed under this chapter and notification under this chapter is appropriate, the Secretary shall notify the recreational vessel manufacturer of the defect or failure. The notice shall contain the findings of the Secretary and shall include a synopsis of the information on which they are based. The manufacturer may then provide the notification required by this chapter to the persons designated in this chapter or dispute the Secretary's decision. If disputed, the Secretary shall provide the manufacturer with an opportunity to present views and establish that there is no such defect or failure. When the Secretary considers it to be in the public interest, the Secretary may publish notice of the proceeding in the Federal Register and provide interested persons, including the National Boating Safety Advisory Council, with an opportunity to comment. If, after presentation by the manufacturer, the Secretary decides that the recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation, the Secretary may direct the manufacturer to provide the notifications specified in this chapter.

(g) The Secretary may prescribe regulations to carry out this section, including the establishment of procedures that require dealers and distributors to assist manufacturers in obtaining information required by this section. A regulation prescribed under this subsection does not relieve a manufacturer of any obligation imposed by this section.

### 33 CFR PART 179 – Defect Notification

Sec.

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Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46. Source: CGD 72-55R, 37 FR15776, Aug. 4, 1972, unless otherwise noted.

#### **Sec. 179.01 Purpose.**

This part prescribes rules to implement 46 U.S.C. 4310, governing the notification of defects in boats and associated equipment.

CGD 93-055, 61 FR 13926, Mar. 28, 1996]

#### **Sec. 179.03 Definitions.**

Associated equipment means the following equipment as shipped, transferred, or sold from the place of manufacture and includes all attached parts and accessories:

- (1) An inboard engine.
- (2) An outboard engine.
- (3) A stern drive unit.
- (4) An inflatable personal flotation device approved under 46 CFR 160.076.

Boat means any vessel—

- (1) Manufactured or used primarily for noncommercial use;
- (2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C. Manufacturer means any person engaged in—

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

[CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.05 Manufacturer discovered defects.**

Each manufacturer who is required to furnish a notice of a defect or failure to comply with a standard or regulation under 46 U.S.C. 4310(b), shall furnish that notice within 30 days after the manufacturer discovers or acquires information of the defect or failure to comply.

[CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.07 Notice given by "more expeditious means".**

Each manufacturer who gives notice by more expeditious means as provided for in 46 U.S.C. 4310(c)(1)(C), must give such notice in writing.

[CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.09 Contents of notification.** Each notice required under 46 U.S.C. 4310(b) must include the following additional information: (a) The name and address of the manufacturer. (b) Identifying classifications including the make, model year, if appropriate, the inclusive dates (month and year) of the manufacture, or serial numbers and any other data necessary to describe the boats or associated equipment that may be affected.

[CGD 72-55R, 37 FR 15776, Aug. 4, 1972, as amended by CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.11 Defects determined by the Commandant.** A manufacturer who is informed by the Commandant under 46 U.S.C. 4310(f) that a boat or associated equipment contains a defect relating to safety or failure to comply with a standard or regulation issued under the authority of 46 U.S.C. 4302, shall within 30 days of receipt of the information—

- (a) Furnish the notification described in 46 U.S.C. 4310(d) to the persons designated in 46 U.S.C. 4310(c), or
- (b) Provide information to the Commandant by certified mail stating why the manufacturer believes there is no defect relating to safety or failure of compliance.

[CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.13 Initial report to the Commandant.**

(a) When a manufacturer gives a notification required under 46 U.S.C. 4310, the manufacturer shall concurrently send to the Commandant by certified mail—

- (1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c);
- (2) The manufacturer's best estimate of the total number of boats or items of associated equipment potentially affected by the defect or failure to comply with a standard or regulation prescribed under 46 U.S.C. 4302; and
- (3) If discovered or determined by the manufacturer, a chronology of all principal events upon which the determination is based.

(b) A manufacturer may submit an item required by paragraph (a) of this section that is not available at the time of submission to the Commandant when it becomes available if the manufacturer explains why it was not submitted within the time required and estimates when it will become available.

[CGD 72-55R, 37 FR 15776, Aug. 4, 1972, as amended by CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.15 Follow-up report.**

(a) Each manufacturer who makes an initial report required by Sec. 179.13 shall submit a follow-up report to the Commandant by certified mail within 60 days after the initial report. The follow-up report must contain at least the following information:

- (1) A positive identification of the initial report;
- (2) The number of units in which the defect was discovered as of the date of the follow-up report;
- (3) The number of units in which corrective action has been completed as of the date of the follow-up report;
- (4) The number of first purchasers not notified because of an out-of-date name or address, or both; and

- (5) An updating of the information required by Sec. 179.13.
- (b) Each manufacturer shall submit any additional follow-up reports requested by the Commandant.

**Sec. 179.17 Penalties.** Each manufacturer who fails to comply with a provision of 46 U.S.C. 4310 or the regulations in this part, is subject to the penalties as prescribed in 46 U.S.C. 4311.

[CGD 93-055, 61 FR 13926, Mar. 28, 1996]

**Sec. 179.19 Address of the Commandant.**

(a) Each report and communication sent to the Coast Guard and required by this part concerning boats and associated equipment other than inflatable personal flotation devices, must be submitted to Commandant (G-OPB-3), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001.

(b) Each report and communication sent to the Coast Guard and required by this part concerning inflatable personal flotation devices, must be submitted to Commandant (G-MSE-4), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001.