

NMA REPORT #R-223, Revision 5

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

## HOW MERCHANT MARINERS CAN ACCESS FEDERAL REGULATIONS IN THE FEDERAL REGISTER/CFR SYSTEM

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### INTRODUCTION

Although learning about Federal regulations takes time, effort, and concentration, each credentialed merchant mariner who expects to advance in the maritime industry cannot remain ignorant of the “rules of the game.” In the maritime industry, the more correct and up-to-date information you have the more valuable you will become. Consider this report as part of your “training” and an “investment” in your future regardless of who pays for it.

When you seek your first credential, you will be assaulted by laws, rules, policy, and guidance that compete for your attention. Let’s look at these four terms, laws, rules, policy, and guidance and explain the differences.

### THE DIFFERENCE BETWEEN LAWS, REGULATIONS, AND GUIDANCE

The United States is a Republic with three branches of government – the Legislative Branch, the Executive Branch, and the Judicial Branch.

#### The Legislative Branch – Congress and the United States Code (USC)

Congress consists of the U.S. Senate with two Senators from each of the 50 states and the House of Representatives with 435 members based upon the population of each state. Consequently, each mariner is represented by his state’s two Senators and one Representative from the Congressional District where the mariner establishes his or her permanent residence and votes.

A statute is an Act of a legislative body. Congress enacts laws or statutes<sup>(1)</sup> that are often quite broad and generalized...although they can be quite pointed, specific, and prescriptive if the need arises. [<sup>(1)</sup>State legislatures do the same but are beyond the scope of this report.]

In 1983 Congress began to enact Title 46 into positive law (aka “statutory law”). This updating process restates existing law, improves its organization, removes obsolete provisions and corrects technical errors. The process was undertaken by the House of Representatives, Office of Law Revision Counsel, and completely reorganized (i.e., “recodified”) Title 46 of the U.S. Code (46 USC) to update the status and to purge the laws that were obsolete or served no useful purpose.

Of the current 51 titles in the U.S. Code, the following titles were enacted into positive (statutory) law:<sup>(1)</sup> 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 41, 44, **46, 49**, and 51. At the same time this project purged laws that were obsolete or served no useful purpose. Title 46 and, to a lesser extent, Title 49, are of particular interest to merchant mariners.

When a title of the Code is enacted into positive law, the text of the title becomes legal evidence of the law. Titles that have not been enacted into positive law are only prima facie evidence that the law exists – in which case, the old Statutes at Large still govern. This is an ongoing project that will take years to complete. [<sup>(1)</sup>Note that Title 33 has not yet been enacted into “positive law.”]

One convenient way to access the U.S. Code on the internet is through the Cornell Legal Information Institute at: <http://www.law.cornell.edu/uscode/>.

#### The Executive Branch and the Code of Federal Regulations (CFR)

The President is the head of the **Executive Branch** than includes fifteen (15) **departments** and many independent government Agencies employing hundreds of thousands of government employees.

Merchant mariners will be most concerned with the

**Department of Homeland Security** with 170,000 employees that contains other agencies including its 40,000-member U.S. Coast Guard (USCG) and the Transportation Security Administration (TSA) that issues TWIC cards.

Of lesser concern to our limited-tonnage mariners is the **Department of Transportation** (DOT) and its Maritime Administration (MARAD) that supervises training at the U.S. Merchant Marine Academy and programs at five state operated maritime academies.

Also of concern to our mariners is the **Department of Labor** with its Occupational and Safety Administration (OSHA). OSHA controls working conditions on uninspected vessels on tugs, towboats, commercial fishing vessels, and over 17,000 uninspected barges.

The National Transportation Safety Board is an example of an independent federal agency that watches over air, rail, highway, and maritime transportation safety.

Congress gives the Coast Guard limited authority to create "rules and regulations" that must be based upon the authority contained in statutes enacted by Congress.<sup>(1)</sup> Within this Congressional "authority," Coast Guard rules and regulations are usually quite detailed and specific yet have the full force of law.

After Congress gives them the authority,<sup>(1)</sup> the Coast Guard is able to create rules and regulations with as much public input as possible. Any action that creates a new regulation must be announced formally in the Federal Register (FR). This modern system of informing the public about new or changed federal regulations started during the Administration of Franklin D. Roosevelt in 1935. It is a daily<sup>(2)</sup> printed publication that now appears on the internet at <http://www.gpo.gov/fdsys/search/home.action>. [<sup>(1)</sup>Beneath the Contents in each Part of the CFR, the "Authority" or statute (U.S. Code) that authorizes the regulation is always cited. <sup>(2)</sup>The Federal Register is printed and posted on the internet every day except weekends and Federal holidays. It is a monumental publication that (in 2011 alone) generated more than 82,000 pages of regulatory material.]

The Coast Guard just one of many government "agencies" that makes a sizeable contribution by their rulemaking activity and are integral parts of our extensive federal bureaucracy.

A **Notice of Proposed Rulemaking** (NPRM) in the Federal Register may receive considerable public scrutiny including, on occasion, convening one or more public meetings, before it is published as an "**Interim Rule**" or a "**Final Rule**" in the Federal Register (FR). Once a rule reaches the Interim or Final Rule stage, it becomes part of the Code of Federal Regulations and can be enforced as law with appropriate penalties. Unfortunately, the "**rulemaking**" process is neither seen, appreciated, nor understood by most mariners even though they are welcome to participate and express their views on matters that concern them. Those that choose to do so can find their comments entered on the rulemaking docket – an electronic file that contains all public comments.

The danger for working mariners is that the people who do participate in the rulemaking process, such as industry trade associations, corporate office staffs, etc. can influence the regulations from the outset to fit their needs and goals edging out attention to the needs of our mariners who also ultimately will be governed by the regulations. In the "workboat" sector of the marine industry comprised of

approximately 126,000 credentialed merchant mariners, company officials and trade associations have had an overwhelming influence on developing new regulations in comparison with working mariners. Nevertheless, the National Mariners Association has worked hard and with some success since 1999 to make our "limited tonnage" working mariners' unique position on many issues known and respected. Maritime unions representing most "upper-level" mariners have been very effective in working with both the Coast Guard and with Congress to protect the interests of their mariners. They also provided extensive assistance and guidance to our Association.

As you will see, most Coast Guard regulations are concentrated in two "Titles" – Titles 33 and 46 with some related DOT regulations in Title 49. Within each "Title" the numerous "Parts" or subdivisions are arranged in easy-to-follow numerical order. If you can read a "Table of Contents" and pick your way through an alphabetically-arranged index you can probably find your way through the CFR without too much trouble. However, the wrong time to learn how to do this is an attempt to search blindly for a regulation in the middle of an examination for a credential or upgrade endorsement.

Many people in the marine industry complain that the regulations in the CFR are "hard to understand" or "must have been written by a lawyer." While the U.S. Code is the domain of the Judiciary, lawyers and legal scholars, the CFR is meant to be a working document that should be equally clear to a credentialed mariner as well as to enforcement personnel like inspectors and investigators. However, inspectors and investigators are trained in the CFR while many "hawsepipers" never receive comparable training. The purpose of this report is to level the playing field.

We discovered in checking their "readability level," that many sections of the CFR were written beyond the 12<sup>th</sup> grade reading level. This helps explain why many of our mariners have problems understanding some regulations.

As taxpayers, we share the blame for allowing our government to write regulations that may not be "user friendly." In the late 1990s, a Presidential Executive Order required government lawyers to use "plain language" in all future regulations. Using precise language is necessary for the Coast Guard and other federal agencies to perform their functions as a regulatory agencies.

Treat the CFR as a set of reference books like an encyclopedia or dictionary. It is not designed for rapid or casual reading. One of its greatest shortcomings is that it seldom explains the "WHY" behind its regulations. The rules are there in black and white, but an explanation of the thinking behind them is not included. Americans are a curious people. They want to know "WHY"!

Finding out WHY a regulation exists, why it was written as it is takes more work. At this point, we want to inject the thought that it is much more important to follow any established rule than to "understand" why it exists. Penalties are established for not following rules and regulations. For those who remain curious, especially about regulations that may not make sense, the reasoning behind new or changed rules is published as a preamble (i.e., an introduction) to each regulatory project when it first appears in the Federal Register as a Proposed Rule. However, to save space and not to drag out already settled issues, this

introductory material is omitted when the "Final Rule" is reprinted in the Code of Federal Regulation.

### What the Hell is a CFR?

Most mariners ask this question as they enter a career in the marine industry. Unfortunately, many "old-timers" will give you a blank stare if you ask them. Some mariners may know enough about the CFR abbreviation to correctly identify it as the "**Code of Federal Regulations**" that the Coast Guard uses as their rulebook on how to play the game.

If you do not pay attention to these rules, you are likely to learn them the hard way. Hopefully, this report will help you to steer clear of learning the rules by "*trial and error*" because the sad fact is that the "error" comes first followed by the "trial" because these regulations do have teeth – as we will show you! "Trials" are conducted by Administrative Law Judges....but that's a whole other story best told separately.<sup>(1)</sup> [<sup>(1)</sup>NMA Report #R-204.]

Old-timers remember the "good old days" many years ago when they could visit any local Coast Guard Marine Safety Office to ask a simple question and leave staggering under a load of multi-colored booklets covering just about any regulatory subject under the sun. With each question a mariner asked, a smiling Coast Guardsman or federal civilian employee would offer them a booklet and say that everything lay between the two covers. And they thanked the Coast Guard for their interest and generosity – especially their generosity. For few mariners questioned such small gifts from the federal government.

By 1980 reformers began to trim the printing budget and stopped handing out these "freebies." Nevertheless, the latest version of this generosity is still dispensed free of charge over the internet – except that mariners pay for the paper, the printer, and the time to sort through the paper castles and find answers to their questions.

For its part, the Coast Guard simply "*assumed*" mariners (and the general public) could read and understand all these regulations – at least until the Coast Guard's 1973 "Newman Report"<sup>(1)</sup> put this assumption in question. The Coast Guard learned the hard way that reading and understanding Federal regulations was a problem for many limited-tonnage mariners. This slowed the agency down for several years, but as a result of the constant rotation of federal employees, they conveniently forgot the lesson within a few years. With the recent and needless complexities of STCW, the Coast Guard needs to re-learn some basic lessons from the 1970s. [<sup>(1)</sup>Refer to NMA Report #R-428-A.]

Buying your own copy of one or more volume of the CFR will give your pocketbook a hefty exercise in paying one of the hidden costs of government rulemaking – although this may no longer be necessary since the latest corrected and updated version of the CFR is now available free of charge over the internet at: <http://www.ecfr.gov/>

This is the "new" electronic CFR (ECFR) website that is updated daily by the Government Printing office (GPO). The availability and easy access to this website makes access to the CFR much more convenient for mariners as well as for vessel owners. The ECFR takes away much of the financial pain of buying printed publications that go out of date every year. In effect, you can "print your own" copy of as much of the CFR as you need or simply read it off your computer screen.

Knowing the "rules" of the game as well as how to engage in the "*appeal*" process<sup>(1)</sup> has an added benefit of discouraging Coast Guard officials from screwing you by committing arbitrary and capricious acts. [<sup>(1)</sup>Refer to NMA Report #R-436.]

### "Guidance" Publications

#### Navigation & Vessel Inspection Circulars (NVIC)

A NVIC is a Coast Guard paper that provides detailed guidance about the enforcement or compliance with a certain Federal marine safety regulations and marine safety programs. While NVIC's are non-directive, meaning that they do not have the force of law, they are important "tools" that are supposed to assist vessel owners as well as mariners to comply with the law or assist the public in a some other way. They are meant to be "helpful" but both the Coast Guard itself as well as members of the public occasionally have to be reminded that non-compliance with a NVIC is not a violation of the law. Nevertheless, non-compliance with a NVIC may be an indication that there is non-compliance with a law, a regulation, an important safety consideration, or a policy.

NVIC's are used *internally* by the Coast Guard to ensure that inspections and other regulatory actions conducted by their field personnel are adequate, complete and consistent. Likewise, mariners, the marine industry and the general public use NVICs as means of determining how the Coast Guard plans to enforce certain regulations or conduct various marine safety programs. NVIC's are issued by the Assistant Commandant for Marine Safety, Security and Environmental Protection and address any of a wide variety of subjects, including vessel construction features; mariner training and licensing requirements; inspection methods and testing techniques; safety and security procedures; requirements for certain Coast Guard regulatory processes; manning requirements; equipment approval methods; and special hazards.

NVICs are numbered consecutively by year, e.g., NVIC 7-02 would be the seventh NVIC issued in 2002. The "zero" NVIC, numbered 00, is always the index of NVIC's in force or still current at the beginning of the calendar year. Thus, NVIC 00-99 would be a list of all NVIC's that were not cancelled before Jan. 1, 1999. A listing of current NVICs is available at: <http://www.uscg.mil/hq/cg5/nvic>

### Guidance Publications

#### The Coast Guard Marine Safety Manual (MSM)

The MSM is published by the Directives and Publications Division (CG-612) under the Coast Guard Directives System.

The Coast Guard has approximately 40,000 personnel, some of whom are directly involved in the Coast Guard's Marine Safety Mission. A number of volumes covering thousands of pages explain exactly how the Coast Guard expects its personnel to perform certain tasks and functions. These books are valuable both to their own personnel as well as members of the public in outlining how Coast Guard programs are supposed to operate. These documents also help to answer the important question, WHY"? These books include:

- Marine Safety Manual, Vol. 1 – Administration and Management
- Marine Safety Manual, Vol. 2 – Materiel Inspection

- (e.g., vessel equipment inspection)
- Marine Safety Manual, Vol. 3 – Marine Industry Personnel (e.g., all credentialing programs)
  - Marine Safety Manual, Vol. 4 – Technical Planning and Programming
  - Marine Safety Manual, Vol. 5 – Investigations and Enforcement
  - Marine Safety Manual, Vol. 6 – Ports and Waterways Activities

The applicable website is:

[http://uscg.mil/directives/listing\\_cim.asp?id=16000-16999](http://uscg.mil/directives/listing_cim.asp?id=16000-16999)

## REGULATIONS THAT GOVERN RULEMAKING

Our government operates according to formal rules developed over many years and appear in printed form.

The Federal rulemaking process is best described in Title 33, Code of Federal Regulations, Subpart 1.05 that we present below with some explanatory comments.

### Title 33: Navigation and Navigable Waters Part 1 – General Provisions Subpart 1.05 – Rulemaking

#### Subpart 1.05—Rulemaking

[AUTHORITY: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.]

*[NMA Comment: “Authority” tells you what law/statute in the U.S. Code (U.S.C.) gives the Coast Guard its authority to promulgate (i.e., write and enforce) the regulation.]*

[SOURCE: CGD 95-057, 60 FR 34148, June 30, 1995, unless otherwise noted.]

*[NMA Comment: “Source” tells you the Coast Guard Docket (CGD) or (USCG) where you this information appeared in the Federal Register (FR) and may help you to locate it on the internet. In this example, the entire “Subpart 1.05 dates from the June 30, 1995 Federal Register although you will find changes occur in individual sections (§) that display a later dates.]*

#### § 1.05-1 Delegation of rulemaking authority.

*[NMA Comment: This is “section” (§) 1.05-1. This section is cited as “33 CFR §1.05-1”]*

(a) The Secretary of Homeland Security is empowered by various statutes to issue regulations regarding the functions, powers and duties of the Coast Guard.

(b) The Secretary of Homeland Security has delegated much of this authority to the Commandant, U.S. Coast Guard, including authority to issue regulations regarding the functions of the Coast Guard and the authority to redelegate and authorize successive redelegations of that authority within the Coast Guard. *[Vocabulary: Delegate = transfer power or authority to accomplish a task,]*

(c) The Commandant has reserved the authority to issue any rules and regulations determined to be significant under Executive Order 12866, Regulatory Planning and Review.

(d) The Commandant has redelegated the authority to

develop and issue those regulations necessary to implement laws, treaties and Executive Orders to the Assistant Commandant for Marine Safety, Security and Stewardship (CG-5). The Commandant further redelegates this same authority to the Director, National Pollution Fund Center (Director, NPFC) for those regulations within the Director, NPFC area of responsibility.

*[NMA Comment: An Executive Order is issued by the President, not Congress. E.O 12866 defines the meaning of the term “significant regulation.”]*

(1) The Assistant Commandant for Marine Safety, Security, and Stewardship may further reassign the delegated authority of this paragraph to:

(i) Any Director within the CG-5 Directorate as appropriate; or

*[NMA Comment: This Assistant Commandant controls the Coast Guard’s entire “Marine Safety” mission – the only mission that generally concerns our merchant mariners.]*

(ii) Any other Assistant Commandant as appropriate.

*[NMA Comment: The Coast Guard has a number of Deputy Commandants and Assistant Commandants – all Admirals.]*

(2) The authority redelegated in paragraph (d) of this section is limited to those regulations determined to be non-significant within the meaning of Executive Order 12866.

(e)(1) The Commandant has redelegated to the Coast Guard District Commanders, with the reservation that this authority must not be further redelegated except as specified in paragraph (i) below, the authority to issue regulations pertaining to the following:

(i) Anchorage grounds and special anchorage areas.

(ii) The designation of lightering zones.

(iii) The operation of drawbridges.

(iv) The establishment of Regulated Navigation Areas.

(v) The establishment of safety and security zones.

(vi) The establishment of special local regulations.

(vii) The establishment of inland waterways navigation regulations.

(2) This delegation does not extend to those matters specified in paragraph (c) of this section or rules and regulations which have been shown to raise substantial issues or to generate controversy.

(f) Except for those matters specified in paragraph (c) of this section, the Commandant has redelegated to Coast Guard Captains of the Port, with the reservation that this authority must not be further redelegated, the authority to establish safety and security zones.

(g) The Commandant has redelegated to Coast Guard District Commanders, Captains of the Port, the Deputy Commandant for Operations (CG-DCO), and the Assistant Commandant for Marine Safety, Security and Stewardship, the authority to make the certification required by section 605(b) of the Regulatory Flexibility Act (Sec. 605(b), Pub. L. 96-354, 94 Stat. 1168 (5 U.S.C. 605)) for rules that they issue.

(h) The Chief, Office of Regulations and Administrative Law (CG-0943), has authority to develop and issue those regulations necessary to implement all technical, organizational, and conforming amendments and corrections to rules, regulations, and notices.

(i) The Commandant has redelegated to the Coast Guard District Commanders the authority to redelegate in writing to the Captains of the Port (COTP), with the reservation that this authority must not be further

re delegated, the authority to issue such special local regulations as the COTP deems necessary to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas and marine parades.

(j) The Commandant has re delegated to Coast Guard District Commanders the authority to re delegate in writing to the Coast Guard District Bridge Programs Chief, with the reservation that this authority must not be further re delegated, the authority to issue temporary deviations from drawbridge operating regulations as the District Bridge Programs Chief deems necessary.

*[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003; USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008; USCG-2009-0416, 74 FR 27437, June 10, 2009; USCG-2010-0351, 75 FR 36277, June 25, 2010; USCG-2012-0306, 77 FR 37309, June 21, 2012]*

*[NMA Comment: As you can see, this particular section was revised a number of times by notices in the Federal Register. The latest date recorded here is June 21, 2012 in Volume 77 of the Federal Register starting on page 37309. Go back to that date on that page and you will determine the nature of that particular change. This is how you can trace the reasons WHY the changes to that particular section (§) were made. This is the entire "paper trail" for this section. You can make electronic searches back to Jan. 1, 1994.]*

#### **§ 1.05-5 Marine Safety and Security Council.**

The Marine Safety and Security Council, composed of senior Coast Guard officials, acts as policy advisor to the Commandant and is the focal point of the Coast Guard regulatory system. The Marine Safety and Security Council provides oversight, review, and guidance for all Coast Guard regulatory activity.

*[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003]*

#### **§ 1.05-10 Regulatory process overview.**

(a) Most rules of local applicability are issued by District Commanders and Captains of the Port, while rules of wider applicability are issued by senior Coast Guard officials at Coast Guard Headquarters, For both significant rulemaking (defined by Executive Order 12866, Regulatory Planning and Review) and non-significant rulemaking, other than those areas delegated to District Commanders and Captains of the Port, the regulatory process begins when an office chief with program responsibilities identifies a possible need for a new regulation or for changes to an existing regulation. The need may arise due to statutory changes, or be based on internal review or public input. Early public involvement is strongly encouraged.

(b) After a tentative significant regulatory approach is developed, a significant regulatory project proposal is submitted to the Marine Safety and Security Council for approval. The proposal describes the scope of the proposed regulation, alternatives considered, and potential cost and benefits, including possible environmental impacts. All significant regulatory projects require Marine Safety and Security Council approval.

(c) Significant rulemaking documents must also be

approved by the Commandant of the Coast Guard.

(d) If the project is approved, the necessary documents are drafted, including documents to be published in the FEDERAL REGISTER. These may include regulatory evaluations, environmental analyses, requests for comments, announcements of public meetings, notices of proposed rulemakings, and final rules.

*[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-14505, 68 FR 9534, Feb. 28, 2003; USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008]*

#### **§ 1.05-15 Public participation.**

The Coast Guard considers public participation essential to effective rulemaking, and encourages the public to participate in its rulemaking process. Coast Guard policy is to provide opportunities for public participation early in potential rulemaking projects. Generally, the Coast Guard will solicit public input by publishing a notice of public meeting or request for comments in the FEDERAL REGISTER. Advance Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, Supplemental Notices of Proposed Rulemaking, and Interim Rules will usually provide 90 days, or more if possible, after publication for submission of comments. This time period is intended to allow interested persons the opportunity to participate in the rulemaking process through the submission of written data and views. However, certain cases and circumstances may make it necessary to provide a shorter comment period. Public meetings may also be held to provide an opportunity for oral presentations. The Coast Guard will consider the comments received and, in subsequent rulemaking documents, will incorporate a concise general statement of the comments received and identify changes from a proposed rule based on the comments.

#### **§ 1.05-20 Petitions for rulemaking.**

(a) Any member of the public may petition the Coast Guard to undertake a rulemaking action. There is no prescribed form for a petition for rulemaking, but the document should provide some supporting information as to why the petitioner believes the proposed rulemaking is necessary and the document should clearly indicate that it is a petition for rulemaking. Petitions should be addressed to the Executive Secretary, Marine Safety and Security Council (CG-0943), United States Coast Guard Headquarters, 2100 2nd St. SW., Stop 7121, Washington, DC 20593-7121.

(b) The petitioner will be notified of the Coast Guard's decision whether to initiate a rulemaking or not. If the Coast Guard decides not to pursue a rulemaking, the petitioner will be notified of the reasons why. If the Coast Guard decides to initiate rulemaking, it will follow the procedure outlined in this subpart. The Coast Guard may publish a notice acknowledging receipt of a petition for rulemaking in the FEDERAL REGISTER .

(c) Any petition for rulemaking and any reply to the petition will be kept in a public docket open for inspection.

*[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008]*

*[NMA Comment: Our Association petitioned the Coast Guard on a number of issues affecting mariner safety,*

*health, and welfare – many of which they ignored. Their attitude forced us to move beyond Coast Guard officials and take our case to Congress. Several dozen NMA Reports (with “Congress” in their titles) supported efforts we made to solve mariner problems the Coast Guard could not or would not handle.]*

#### **§ 1.05-25 Public docket.**

*[NMA Comment: A docket is a paper or electronic file in which data may be deposited. Each Coast Guard docket is numbered and can be opened and explored by computer. Go to <http://regulations.gov> and enter the docket number as taken from the CFR.]*

(a) A public docket is maintained electronically for each petition for rulemaking and each Coast Guard rulemaking project and notice published in the FEDERAL REGISTER. Each docket contains copies of every rulemaking document published for the project, public comments received, summaries of public meetings or hearings, regulatory assessments, and other publicly-available information. Members of the public may inspect the public docket and copy any documents in the docket. Public dockets for Coast Guard rulemakings are available electronically at <http://www.regulations.gov>. To access a rulemaking, enter the docket number associated with rulemaking in the “Search” box and click “Go >>.” These documents are also kept at a Docket Management Facility maintained by the Department of Transportation, West Building, room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) The public dockets for Coast Guard rulemaking activity initiated by Coast Guard District Commanders are available for public inspection at the appropriate Coast Guard District office or online at <http://www.regulations.gov>. Paragraph (a) of this section describes how to access and view these documents.

(c) The public dockets for Coast Guard rulemaking activity initiated by Captains of the Port are available for inspection at the appropriate Captains of the Port Office or online at <http://www.regulations.gov>. Paragraph (a) of this section describes how to access and view these documents. *[USCG-2008-0179, 73 FR 35001, June 19, 2008]*

#### **§ 1.05-30 Advance notice of proposed rulemaking (ANPRM).**

An advance notice of proposed rulemaking may be used to alert the affected public about a new regulatory project, or when the Coast Guard needs more information about what form proposed regulations should take, the actual need for a regulation, the cost of a proposal, or any other information. The ANPRM may solicit general information or ask the public to respond to specific questions.

#### **§ 1.05-35 Notice of proposed rulemaking (NPRM).**

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, an NPRM is generally published in the FEDERAL REGISTER for Coast Guard rulemakings. The NPRM normally contains a preamble statement in sufficient detail to explain the proposal, its background, basis, and purpose, and the various issues involved. It also contains a discussion of any comments received in response to prior notices, a citation of legal authority for the rule, and the text

of the proposed rule.

#### **§ 1.05-40 Supplemental notice of proposed rulemaking (SNPRM).**

An SNPRM may be issued if a proposed rule has been substantially changed from the original notice of proposed rulemaking. The supplemental notice advises the public of the revised proposal and provides an opportunity for additional comment. To give the public a reasonable opportunity to become reacquainted with a rulemaking, a supplemental notice may also be issued if considerable time has elapsed since publication of a notice of proposed rulemaking. An SNPRM contains the same type of information generally included in an NPRM.

#### **§ 1.05-45 Interim rule.**

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

(b) An interim rule will be published in the FEDERAL REGISTER with an effective date that will generally be at least 30 days after the date of publication. After the effective date, an interim rule is enforceable and is codified in the next annual revision of the appropriate title of the Code of Federal Regulations.

#### **§ 1.05-50 Final rule.**

In some instances, a final rule may be issued without prior notice and comment. When notice and comment procedures have been used, and after all comments received have been considered, a final rule is issued. A final rule document contains a preamble that discusses comments received, responses to comments and changes made from the proposed or interim rule, a citation of legal authority, and the text of the rule.

*[NMA Comment: The Final Rule is enforceable on its “effective date” and has the force of law.]*

#### **§ 1.05-55 Direct final rule. [NMA Comment: A Direct Final Rule is relatively rare and was introduced in 1995]**

(a) A direct final rule may be issued to allow noncontroversial rules that are unlikely to result in adverse public comment to become effective more quickly.

(b) A direct final rule will be published in the FEDERAL REGISTER with an effective date that is generally at least 90 days after the date of publication.

(c) The public will usually be given at least 60 days from the date of publication in which to submit comments or notice of intent to submit comments.

(d) If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, the Coast Guard will publish a notice in the FEDERAL REGISTER to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives a written adverse

comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the FEDERAL REGISTER to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

(f) A comment is considered adverse if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. [CGD 94-105, 60 FR 49224, Sept. 22, 1995]

**§ 1.05-60 Negotiated rulemaking.** [NMA Comment: This type of rulemaking is even more rare than a Direct Final Rule!]

(a) The Coast Guard may establish a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) when it is in the public interest.

(b) Generally, the Coast Guard will consider negotiated rulemaking when:

(1) There is a need for a rule;

(2) There are a limited number of representatives for identifiable parties affected by the rule;

(3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;

(4) There is a likelihood of a committee consensus in a fixed time period;

(5) The negotiated rulemaking process will not unreasonably delay the rule;

(6) The Coast Guard has resources to do negotiated rulemaking; and

(7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

**UNDERSTANDING THE RULEMAKING PROCESS**

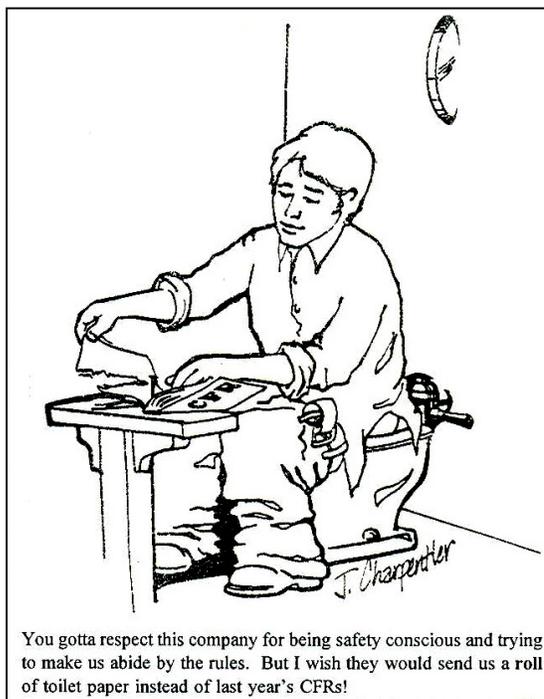
Every new and changed "Final Rule" published in the Federal Register is blended with existing regulations in a series of books ("Volumes") known as the Code of Federal Regulations (CFR). Once every year, the U.S. Government Printing Office re-publishes the entire CFR in updated form. Consequently, the latest annual edition of the printed CFR is a fairly good source if you need fairly recent information on Coast Guard regulations. Needless to say, the Coast Guard has an inside track to the very latest regulations because they generate them. For mariners, the very latest information is now available on the internet in the "electronic" CFR. Sometimes having the latest information can be important because every change in the regulations has an "effective date" stated in a Federal Register article that announces the change.

You can obtain information on the price, availability, and order any printed CFR volume<sup>(1)</sup> by calling Marine

Education Textbooks (MET) at (985) 879-3866 or by FAX at (985) 879-3911. MET keeps track of the regulations that affect the maritime industry because it regularly accesses them on the internet for editorial purposes. Printed volumes of Titles 33, 46 and 49 CFR contain most of the regulations you will encounter while preparing for a Coast Guard inspection or a license exam. [<sup>(1)</sup>The term "volume" applies only to printed material.]

**REGULATORY TERMINOLOGY**

Listed below are the "Subchapters" and "Parts" of Title 46 CFR that contain Coast Guard "shipping regulations." At present the printed "shipping regulations" comprise seven separate volumes. *You should be able to find all of the following CFR volumes in the exam room since you will not be able to access the internet.* You will want to know how to use them as reference tools for most license exams. In fact, the late Captain Clem McCann of the Alaska Vo-Tech School determined that approximately one out of every six Coast Guard exam questions were based on regulations taken directly from the CFR. You may find one or more of these CFR volumes on board any inspected vessel although seldom on uninspected vessels. They are easy to recognize by the broad vertical stripe on the cover and that can be useful as an emergency supply of toilet paper.



**How to Use the CFR**

When you open a CFR volume, you can see from its Table of Contents that it may contain one or several "Subchapters." Each "Subchapter" is further broken down into "Parts." These two words are important to remember.

Select the volume you need by referring, by number, to the "Title" and the "Parts" it contains. *Examples:* Select Title 46 CFR Parts 24 through 28 to find the regulations for Uninspected Vessels in "Subchapter C." Select Title 46 Parts 175 - 185 to find regulations pertaining to Small

Passenger Vessels less than 100 gross tons such as crewboats. Select Title 46, Subchapter L Parts 125 – 134 for Offshore Supply Vessel inspection regulations. Select 46 CFR Parts 107 – through 109 for Mobile Offshore Drilling Units (MODU).

As a credentialed mariner, it may make sense to have your own copy of the "regs" (i.e., regulations) the Coast Guard inspector uses when he inspects or boards your vessel. Uninspected towing vessels may be "boarded" or "examined" but not "inspected" – a rather cute play on words – at least until such time as the Coast Guard finally promulgates the new inspection regulations first ordered by Congress in 2004. In the meantime, the Coast Guard is conducting a "Bridging Program" to bridge the gap between existing regulations and *proposed* regulations (that we mention below) in a new Subchapter M that are not enforceable and may not be enforceable for years to come. Yet, it is surprising how many different regulations the Coast Guard currently enforces on uninspected towing vessels.<sup>(1)</sup> [<sup>(1)</sup>Available in a free booklet titled U.S. Coast Guard Requirements for Uninspected Towing Vessels, Change 1, March 2009.]

We suggest that every mariner make an effort to learn what the rules are so you can be ready for any announced or unannounced Coast Guard visit in order to keep on the right side of the law. Understanding and complying with the regulations means an inspector or boarding officer will only have to visit your boat once. You will be happy, and he will be happy if he finds that everything is in good order. The best surprise in this business is no surprise at all!

## TITLE 46 CFR – "SHIPPING" REGULATIONS

Shipping regulations consist of seven (7) volumes. Each volume contains the following Subchapters that are broken down into "Parts" as follows:

**46 CFR Parts 1 to 40** - contains four subchapters.

- Subchapter A, Procedures Applicable to the Public, contains Parts 1-9. Of particular concern to mariners are....

Part 4 Marine Casualties and Investigations

Part 5 Marine Investigation Regulations-Personnel Actions (including suspension and revocation procedures).

- Subchapter B, Merchant Marine Officers and Seamen, contains 46 CFR Parts 10 to 16 including the primary regulations that refer to obtaining, upgrading, and renewing credentials:

Part 10 Merchant Mariner Credentials.

Part 11 Requirements for Officer Endorsements.

Part 12 Requirements for Rating Endorsements

Part 13 Certification of Tankermen.

Part 14 Shipment of Merchant Seamen.

Part 15 Manning Requirements.

Part 16 Chemical Testing (i.e., drug testing).

- Subchapter C, Uninspected Vessels, contains 46 CFR Parts 24 to 28. These regulations govern uninspected vessels of all types including tugs, towboats, commercial fishing vessels and uninspected passenger vessels carrying fewer than six passengers for hire.

Part 27 Towing Vessels

Part 28 Requirements for Commercial Fishing Industry Vessels.

- Subchapter D, Tank Vessels, contains 46 CFR Parts 30 to 40.

**46 CFR Parts 41 to 69** contains three subchapters.

- Subchapter E - Load Lines - 46 CFR Parts 42 to 46. Inspected vessels over 79 feet that are required to have load lines may be required to carry a copy of this book on board.
- Subchapter F - Marine Engineering - 46 CFR Parts 50 to 64 contain many regulations governing engineering equipment and installations that are outside the regulations that apply to a given class of vessels like T-Boats and OSVs.
- Subchapter G - Documentation and Measurement of Vessels - 46 CFR Parts 67 to 69.

**46 CFR Parts 70 to 89** contains Subchapter H only. This subchapter deals with Passenger Vessels greater than 100 gross tons.

**46 CFR Parts 90 to 139**, contains five subchapters.

- Subchapter I, Cargo and Miscellaneous Vessels, consists of 46 CFR Parts 90 to 106. Most OSVs previously were regulated by this subchapter but are now regulated under Subchapter L, 46 CFR Parts 126-134.
- Subchapter I-A, Mobile Offshore Drilling Units, includes 46 CFR Parts 107 to 109.
- Subchapter J, Electrical Engineering Regulations, contains 46 CFR Parts 110 to 113.
- Subchapter K, Small Passenger Vessels Carrying More Than 150 Passengers or With Overnight Accommodations for more than 49 Passengers, contains Parts 114 to 122.
- Subchapter L, Offshore Supply Vessels, contains Parts 125 to 134.

**46 CFR Parts 140 to 155** contains two subchapters.

- Subchapter N, Dangerous Cargoes, contains 46 CFR Parts 146 to 149.
- Subchapter O, Certain Bulk Dangerous Cargoes, contains 46 CFR Parts 150 to 154a. It is unfortunate that 46 CFR "Subchapter O" is often confused with 33 CFR "Subchapter O." It is a situation that the Coast Guard should have remedied years ago!

**46 CFR Parts 156 to 165** contains only one subchapter.

- Subchapter Q - Equipment, Construction, and Materials: Specifications and Approval is in 46 CFR Parts 159 to 165.

**46 CFR Parts 166 to 199** contains five subchapters.

- Subchapter R - Nautical Schools - 46 CFR Parts 166 to 168.
- Subchapter S - Subdivision and Stability - 46 CFR Parts 170 to 174.
- Subchapter T - Small Passenger Vessels (Less than 100 Gross Tons) - 46 CFR Parts 175 to 187.
- Subchapter U - Oceanographic Research Vessels - 46 CFR Parts 188 to 196.
- Subchapter V - Marine Occupational Safety and Health Standards - 46 CFR Part 197. Benzene regulations.

- Subchapter W - Lifesaving Appliances & Arrangements, 46 CFR Part 199. This subchapter regulates lifesaving appliances for many types of inspected vessels, mostly large ships and vessels in international service, but increasingly applies to lifesaving equipment found on smaller vessels.

**PROPOSED TOWING VESSEL REGULATIONS**  
*[A Proposed New Subchapter M]*

*[NMA Comment: These are “proposed” regulations that do not yet exist in the CFR. Proposed regulations always appear in the Federal Register but never appear in the CFR! For complete information about this proposed rulemaking go to this Coast Guard Docket: USCG-2006-24412 at <http://www.regulations.gov>]*

**Subchapter M--Towing Vessels**

- Part 136--Certification
- Part 137--Vessel Compliance
- Part 138--Towing Safety Management Systems (TSMS)
- Part 139--Third-Party Organizations
- Part 140--Operations
- Part 141--Lifesaving
- Part 142--Fire Protection
- Part 143--Machinery & Electrical Systems & Equipment
- Part 144--Construction & Arrangement

**TITLE 33 CFR --“NAVIGATION AND NAVIGABLE WATERS” REGULATIONS**

The list below contains the nineteen CFR subchapters in Title 33 CFR that deal with "Navigation and Navigable Waters." The portions of Title 33 that our mariners may need to consult are divided into two volumes:

- Parts 1 thru 124 inclusive, and
- Parts 125 thru 200 inclusive.

Within title 33 the individual “Parts” are often referred to more often than subchapters. If you can read a Table of Contents and pick your way through an alphabetically-arranged index you can probably find your way through the CFR without too much trouble. Although most subchapters have an index, regrettably some still do not! *If an Index exists, it is generally at the end of its subchapter rather than at the end of the bound volume* that may contain a number of different subchapters. In recent years, the Coast Guard has done a better job of keeping the index current and up-to-date as the regulations contained in each Subchapter change.

**33 CFR Parts 1-124.** (Volume 1)

- Subchapter A - General, 33 CFR Parts 1 to 26.
- Subchapter B - Military Personnel, 33 CFR Parts 40 to 54.
- Subchapter C - Aids to Navigation, 33 CFR Parts 60 to 76.
- Subchapter D - International Navigation Rules, 33 CFR Parts 80 to 82.
- Subchapter E - Inland Navigation Rules, 33 CFR Parts 84 to 90.
- Subchapter F - Vessel Operating Regulations, 33 CFR Part 95. Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.
- Subchapter G - Regattas and Marine Parades, 33 CFR

- Part 100.
- Subchapter H – Maritime Security.
  - Part 101 Maritime Security: General.
  - Part 103 Maritime Security: Area Maritime Security.
  - Part 104 Maritime Security: Vessels.
  - Part 105 Maritime Security: Facilities.
  - Part 106 Maritime Security: Outer Continental Shelf (OCS) Facilities.
- Subchapter I - Anchorage, 33 CFR Parts 109 and 110.
- Subchapter J - Bridges, 33 CFR Parts 114 to 118.
- Subchapter K - Security of Passenger Vessels.

**33 CFR Parts 124-199.** (Volume 2)

- Subchapter L - Waterfront Facilities, 33 CFR Parts 125 to 128.
- Subchapter M - Marine Pollution Financial Responsibility and Compensation, 33 CFR Parts 130 to 138.
- Subchapter N - Outer Continental Shelf Activities, 33 CFR Parts 140 to 147.
- Subchapter NN - Deepwater Ports, 33 CFR Parts 148 to 150.
- Subchapter O - Pollution, 33 CFR Parts 151 to 159.
- Subchapter P - Ports and Waterways Safety, 33 CFR Parts 160 to 167.
- Subchapters Q & R - Reserved.
- Subchapter S - Boating Safety, 33 CFR Parts 173 to 183.

**TITLE 49 CFR – DEPARTMENT OF TRANSPORTATION (DOT) REGULATIONS**

The Coast Guard now operates under the Department of Homeland Security (DHS) although it operated under the Department of Transportation (DOT) from 1967-2003.

Important regulations relating to drug testing procedures appear in 49 CFR Part 40. This set of drug testing regulations dates back to 1989 when the Coast Guard was part of the DOT. The drug testing regulations apply to all modes of transportation not just to the marine industry. Please note, however, that merchant mariners will find alcohol abuse regulations in 33 CFR Part 95.

DOT Hazardous Materials Regulations deal with the shipment of hazardous materials in "packages" (i.e., small containers less than 110 gallons) rather than in bulk. These regulations appear in two volumes – 49 CFR Parts 100-177 and 49 CFR 178-199. The parts are most likely to concern mariners seeking upper-level licenses are:

- 49 CFR Part 40, Procedures for Transportation Workplace Drug...Testing Programs.
- 49 CFR Part 171, General information, regulations, and definitions.
- 49 CFR Part 172, Hazardous Materials Tables, special provisions, and hazardous materials communications, emergency response information, and training requirements.
- 49 CFR Part 173, Shippers – general requirements for shipments and packagings.
- 49 CFR Part 176, Carriage by vessels.

**POINTERS ON USING THE CFR**

Here are a few points to keep in mind as you plow into the CFR:

- The Title, *for example* "Title 46," appears as a large number on the cover of each volume.
- Some mariners tend to confuse the regulations contained in Title 33 with those in Title 46. You may find some reason for this confusion between regulations particularly in 46 CFR Parts 150 – 154 and 33 CFR Parts 150 – 158
- Each *printed* volume in the CFR undergoes editorial revision each year. Title 33 closes for editorial revision on July 1<sup>st</sup>. while Titles 46 and 49 close on Oct. 1<sup>st</sup>. each year. This means that any new "Final Rules" published after the editorial closing date will not be printed in the CFR for at least another full year. For example, a Final Rule published in the Federal Register on July 2, 2008 will not appear *in print* until after the next revision date that is July 1, 2009. Printing may add several months to its availability. However, you avoid this problem when you access the "Electronic CFR" (ECFR) on the internet.
- Proposed rules are *never* printed in the CFR. They only appear in the Federal Register.
- The "Section" number of the regulation and the "Edition Date" of the volume appear on the top of each *printed* CFR page.
- Each bound volume within the CFR is arranged in numerical order by "Part" and "Section" to allow easy access and identification of regulations by number.
- Each "Part" contains a Table of Contents that lists each "Subpart" (if any) and "Section" within in that "Part." Until all Subchapters contain an "Index," the Table of Contents may be your only guide to finding a particular regulation. Those Subchapter with an Index place find it at the *end* of its subchapter rather than at the end of the volume.
- In certain cases, where there is an Index for a particular Subchapter, the Coast Guard may fail to update that Index by listing changes in the regulations. Updating the Index is the Coast Guard's responsibility. We get upset when they fall down on the job year after year so that mariners cannot locate pertinent information easily.
- Each page in the CFR is numbered. However, these numbers change from year to year with the CFR editorial work. Never use the CFR's page number for reference purposes.
- The terms "authority," "purpose," and "application" that appear in the opening pages of most "Parts" or "Subchapters" are very important words because they give you an idea of who or what the regulations apply to.

## REGULATIONS AND RULEMAKING IN THE COMPUTER AGE

If you were to buy a copy of each of the CFRs mentioned above, the total cost would be hundreds of dollars and most of these volumes go out of date each year. The cost of subscribing to the paper edition of the Federal Register is now \$929 per year and \$1300.60 overseas.

Consequently, keeping abreast of Federal regulations and rulemaking projects is easier and cheaper if you use a computer. You can buy a computer for less than it costs for

a year's paper subscription to the Federal Register.

There are a number of "Executive Branch Resources" on the website including the Federal Register (on-line since 1994) and the Code of Federal Regulations (on line since 1997) at the GPO Access website.

On a computer, you can "browse" or look up a particular regulatory citation. Most helpful is the recent development of the Electronic Code of Federal Regulations. On this site, the government updates the CFR to the date shown on the top of the page you retrieve. This is the *very latest information* and should be accurate within several days of publication.

### Docket Numbers

Each Coast Guard rulemaking project is identified by a **docket number** with the letters USCG followed by the year the docket was opened followed by 5 digits. For example: USCG-2006-24412 is the rulemaking project for the new towing vessel inspection regulations. The "docket" (e.g., an electronic file) contains every document regarding the rulemaking including every comment from members of the public. All these documents are available to the public to view on line.

When you enter these websites, it helps to know what you are looking for. In the CFR, you need to have a general knowledge of which Title, Subchapter, and Part you are looking for. The foregoing list should be enough to get started with. If you hear about some rulemaking project (such as the one on towing vessel inspection mentioned above), it is very helpful to know the "Docket #" so you can input it at the start. We ask our readers to encourage trade magazines to include the Docket # of all rulemaking projects they touch upon. Use the following website to examine any rulemaking in progress or to answer any questions as to WHY a particular regulation exists:

<http://www.regulations.gov/>