



NMA REPORT #R-223, Revision 4

DATE: August 4, 2008

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

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

UNDERSTANDING AND USING FEDERAL REGULATIONS THE FEDERAL REGISTER/CFR SYSTEM

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[**Publication History:** Original edition Dec. 13, 1999; Rev.1- Mar. 1, 2000; Rev.2 – Feb. 7, 2005; Rev. 3 – Jan. 10, 200; Rev.4 – Aug.4, 2009.]

INTRODUCTION

Although learning about Federal regulations takes time, effort, and concentration, mariners are expected to learn the rules of the game so they can advance in the marine industry. In this industry, the more correct information you have the more valuable you become. Every mariner should consider "training" as an "investment" in his/her future regardless of who pays for it.

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 this abbreviation to correctly identify it as the "**Code of Federal Regulations**" that the Coast Guard uses as their rules of 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." Usually the "error" comes first followed by the "trial" because ***these regulations do have teeth*** ó as we will show you!

Old-timers remember the "good old days" many years ago when you could visit any local Coast Guard 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 you asked, a smiling Coast Guardsman or federal civilian employee would offer you a booklet and tell you everything you wanted to know lay between the two covers. And you thanked the Coast Guard for their interest and generosity ó especially his generosity. For few mariners questioned such small gifts from the federal government. However, by 1980 reformers began to trim the printing budget and stopped handing out these "freebies."

For its part, the Coast Guard simply "assumed" mariners (and the general public) could read and understand all these regulations ó at least until the Coast Guard's 1973 "Newman Report"⁽¹⁾ put this assumption in question for several years. [⁽¹⁾Refer to NMA Report #R-428-A.]

Buying your own copy of a volume in the **Code of Federal Regulations** (hereinafter "CFR") will give your

pocketbook a hefty exercise in paying one of the hidden costs of government rulemaking. However, the CFR is now available free of charge over the internet at:

<http://ecfr.gpoaccess.gov/>

This is the new electronic CFR (ecfr) website that is frequently updated by the Government Printing office (gpo). The availability and easy access to this website takes access to the CFR much more convenient for mariners as well as vessel owners and takes away much of the financial pain of buying printed publications. 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⁽¹⁾ has an added benefit of discouraging Coast Guard officials from screwing you by committing arbitrary and capricious acts. [⁽¹⁾Refer to *National Mariners Association Report #R-436, Rev.3, The Coast Guard Appeals Process.*]

RULEMAKING TERMINOLOGY

Our government operates according to written rules (i.e., federal regulations) that were developed over the past 74 years and since 1935 appear in printed form.

The 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

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) where you this information appeared in the Federal Register (FR) and may help you to locate it on the internet. The entire "Subpart 1.05 dates from the June 30, 1995 Federal Register although you will find changes occur in individual sections (§) at later dates.]*

§1.05-1 Delegation of rulemaking authority. *[NMA Comment: This is "section" (§) 1.05-1. It is abbreviated 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 re-delegate and authorize successive re-delegations 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. *[NMA Comment: An Executive Order is issued by the President, not Congress. E.O 12866 defines a "significant regulation."]*

(d) The Commandant has re-delegated 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 re-delegates this same authority to the Director, National Pollution Fund Center (Director, NPFC) for those regulations within the Director, NPFC area of responsibility.

(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 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. We believe the Coast Guard is top-heavy with officers – too many chiefs and too few Indians.]*

(2) The authority re-delegated 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 re-delegated to Coast Guard District Commanders, with the reservation that this authority shall not be further re-delegated, 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.
 - (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 re-delegated to Coast Guard Captains of the Port, with the reservation that this authority shall not be further re-delegated, the authority to establish safety and security zones and special local regulations.
 - (g) The Commandant has re-delegated to Coast Guard District Commanders, Captains of the Port, the Assistant Commandant for Operations, 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.
- [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] [NMA Comment: As you can see, this particular section was revised in some way by notices in the Federal Register on a number of occasions, the latest being June 18, 2008 in Volume 73 of the Federal Register starting on page 35001.]*

§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.**⁽¹⁾ 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 Second Street SW., Washington, DC 20593. 0001.

(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 safety, health, and welfare – most of which they have ignored. This attitude forced us to bypass Coast Guard officials and take our case to Congress. Approximately two-dozen NMA Reports support efforts we have made to solve mariner problems the Coast Guard could not or would not handle.]**

§1.05-25 Public docket. [**Comment:** A docket is a paper or electronic file in which data may be deposited. Each docket is numbered.]

(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 fairly recent – 1995]

- (a) A direct final rule may be issued to allow non-controversial 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. [Comment: This type of rulemaking is even more rare!]

- (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.

THE RULEMAKING PROCESS

The rulemaking process within our federal government grinds on relentlessly throughout the year ó five days a week, eight hours a day with time off at full pay for all approved federal holidays. Notices, **Proposed Rules**, **Interim Rules**, **Supplemental Rules** and **Final Rules** (as described above) appear daily in the **Federal Register (FR)**. The **Federal Register** is a monumental publication that (in 2008 alone) generated more than 80,000 pages of small print on 8½ x 11 newsprint for that year.

The **Federal Register** is the "daily newspaper" of most of the "Executive Branch" agencies in our Federal government. It is assembled by the National Archives and Records Administration and published and distributed by the U.S. Government Printing Office (GPO). Since 1995, the Federal Register has also been on the internet at:

<http://ecfr.gpoaccess.gov/>

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 and expensive federal bureaucracy. Our government consists of three separate and equal "**branches**":

- The **Executive Branch** headed by the President (the ðChief Executive) and 15 named cabinet-level Departments including the Department of Homeland Security, a huge new agency created in 2003 with 170,000 employees including about 40,000 who work for the Coast Guard. There are also a number of other independent agencies such as the NTSB within the Executive Branch. Executive Branch agencies record their business in the Federal Register.
- The **Legislative Branch** (i.e., Congress including the Senate and the House of Representatives).
- The **Judicial Branch** (i.e., the federal court system)

Every new and changed "Final Rule" published in the Federal Register is blended with existing regulations in a series of books (ðVolumesö) 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 ðelectronicö CFR. Sometimes having the latest information can be important because every change in the regulations has an ðeffective dateö stated in a Federal Register article that announces the change.

You can obtain information on the price, availability, and order any printed CFR volume⁽¹⁾ 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. ^[⁽¹⁾The term "volume" applies only to printed material.]

TITLES, SUBCHAPTERS, AND PARTS

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 these CFR volumes in the exam room where 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.⁽¹⁾ 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 .can be useful as an emergency supply of toilet paper. ^[⁽¹⁾Additional exam questions are based on other nautical publications prepared by various agencies of the federal government using excerpts from the Coast Pilot, Light List, Tide Tables and Tidal Current Tables.]

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. For example, you would select Title 46 CFR Parts 24 through 28 to find the regulations for Uninspected Vessels in "Subchapter C." You would find that Title 46 Parts 175 through 185 refer to the regulations of "Subchapter T" for Small Passenger Vessels less than 100 gross tons such as crewboats. You would refer to Title 46 Parts 125 through 134 for Offshore Supply Vessels and 46 CFR Parts 107 through 109 for Mobile Offshore Drilling Units.

As a licensed 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 are "boarded" or "examined" but not "inspected" ó a rather cute play on words ó at least until such time as the Coast Guard promulgates the new inspection regulations first ordered by Congress in 2004.

We suggest that every mariner make an effort to learn what the rules are in order to prepare 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.
 - 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:
 - 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. These are the primary regulations that refer to obtaining, upgrading, and renewing credentials.
- 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 OSV's.
- 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 and Arrangements. 46 CFR Part 199

REGULATIONS ON NAVIGATION AND NAVIGABLE WATERS

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 you may need to consult are divided into two volumes as indicated below.

Most Coast Guard rules are concentrated in two "titles" of the Code of Federal Regulations, Titles 33 and 46. Complete drug testing regulations, however, appear in 49 CFR Part 40 and date back to 1989 and were re-written in 2000 when the Coast Guard was part of the U.S. Department of Transportation. These regulations apply to all modes of transportation not just to the marine industry.

Within each title the individual parts and subchapters are arranged in easy-to-follow numerical order. If you have the ability to 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 ó 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 - Anchorages. 33 CFR Parts 109 and 110.
- Subchapter J - Bridges. 33 CFR Parts 114 to 118.
- Subchapter K - Security of 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.
- Subchapter W, 46 CFR Part 199, regulates Lifesaving Appliances for certain inspected vessels (mostly large ships).

TITLE 49 CFR – DEPARTMENT OF TRANSPORTATION REGULATIONS

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

Important regulations relating to drug testing appear in 49 CFR Part 40, Procedures for transportation workplace drug and alcohol testing programs.

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 ó 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 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 ó general requirements for shipments and packagings.

49 CFR Part 176, Carriage by vessels.

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 confusion between regulations in 46 CFR Parts 150 and 154 and 33 CFR Parts 150-158

Each volume in the CFR undergoes editorial revision each year. Title 33 closes for editorial revision on July 1st while Titles 46 and 49 close on October 1st. 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 can avoid this problem by accessing the "Electronic" CFR 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 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." Since some Subchapters contain no "Index," the Table of Contents may be your only guide to finding a particular regulation. However, when a Subchapter contains an Index, you will 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 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.

THE DIFFERENCE BETWEEN LAWS AND REGULATIONS

Congress makes laws or statutes that are usually quite broad and generalized...although they can be quite pointed, specific, and direct if the need arises. In 2006 Congress completed re-codification of Title 46 of the United States Code (46 U.S. Code) in positive law and updated and purged laws that were obsolete or served no useful purpose. You can access the U.S. Code on the internet at:

<http://ecfr.gpoaccess.gov/>

Congress gives the Coast Guard limited authority to create "rules and regulations" and those rules must be based upon these laws.⁽¹⁾ Coast Guard rules and regulations are usually quite detailed and specific yet have the full force of law. The Coast Guard creates these rules and regulations with as much public input as possible. A proposed rule announced in a **Notice of Proposed Rulemaking** (NPRM) in the Federal Register may receive considerable public scrutiny before it is published as an Interim Rule or a "Final Rule" in the Federal Register (FR). [⁽¹⁾*In each Part of the CFR the "Authority" or statute (U.S. Code) that allows the regulation is always cited.*]

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. The danger for working mariners is that the people who do participate in the rulemaking process, trade associations, corporate office staff, etc. can influence the regulations from the outset to fit their needs and goals giving only minimal attention to the needs of our mariners who also are governed by the regulations. In the "workboat" sector of the marine industry, company officials and trade associations have had an overwhelming influence on making regulations compared to working mariners. Our Association is working hard to make the mariners' unique position on many issues known and respected.

As you can 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.

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." We discovered in checking their "readability level," that many were written beyond the 12th 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. Nevertheless, using precise language is necessary for the Coast Guard to perform the functions required of a regulatory agency.

The CFR is really a set of reference books like an encyclopedia or dictionary and is not designed for rapid or casual reading. One of its shortcomings is that it does not explain the "WHY" behind the rules. The rules are there in black and white, but an explanation of the thinking behind them is not included.⁽¹⁾ Americans are a curious people and want to know "WHY"! [⁽¹⁾*The reasoning behind new or changed rules is published as a Preamble to each regulatory project when it appears in the Federal Register as a Proposed Rule. However, this introductory material is omitted when the "Final Rule" is reprinted in the Code of Federal Regulations.*]

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 about \$350 and these volumes go out of date each year. The cost of subscribing to the paper edition of the Federal Register is now \$939 per year. Consequently, keeping abreast of Federal regulations and rulemaking projects is easier and cheaper if you use a computer. There are a number of Executive Branch Resources on the website including the Federal Register (on-line since 1995) 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 within a day or two of whatever today's date is.

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-2004-19977 is the rulemaking project for the new towing vessel inspection regulations. The docket (e.g., a paper or an electronic file) contains every document regarding the rulemaking including every comment from members of the public; and they are all available to the

public to view on line.

When you enter these websites, you should 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, it would be very helpful if you knew the Docket # so you can input it at the start. ***We encourage trade magazines to include the Docket # of all rulemaking projects.*** Use this website:

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

OTHER COAST GUARD PUBLICATIONS MISTAKEN FOR REGULATIONS

Navigation and Vessel Inspection Circulars (NVIC)

Background Information A Navigation and Vessel Inspection Circular (NVIC) provides detailed ***guidance*** about the enforcement or compliance with a certain Federal marine safety regulations and Coast Guard marine safety programs. While NVIC's are non-directive, meaning that ***they do not have the force of law***, they are important "tools" for complying with the law. Non-compliance with a NVIC is not a violation of the law in and of itself, however non-compliance with a NVIC may be an indication that there is non-compliance with a law, a regulation 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 will 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 have not been cancelled before January 1, 1999.

A listing of current NVICs is available at:

<http://www.uscg.mil/hq/cg5/nvic>

Coast Guard Marine Safety Manual

The Coast Guard ***Marine Safety Manual*** 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 certain functions to be performed. These books include:

Marine Safety Manual, Vol. 1 ó Administration and Management

Marine Safety Manual, Vol. 2 ó Materiel Inspection

Marine Safety Manual, Vol. 3 ó Marine Industry Personnel

Marine Safety Manual, Vol. 4 ó Technical Planning and Programming

Marine Safety Manual, Vol. 5 ó Investigations and Enforcement

Marine Safety Manual, Vol. 6 ó Ports and Waterways Activities

The applicable website is:

http://uscg.mil/directives/listing_cim.asp?id=16000-16999