Maritime Law Association Recreational Boating Committee

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Office of Maritime & International Law

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Boating Safety History

- Federal Boating Safety Act of 1971 was enacted by Pub L. 92-75
- A response and realization there was need for greater national uniformity in recreational boating safety
- Coast Guard preserved existing State regulations until Federal Regulations were promulgated (36 Fed Reg. 15764)
- Coast Guard issued the FBSA regulations in 1972 (37 Fed Reg. 15777)
- FBSA was codified to chapter 43 of title 46, United States Code in 1982 (this does not affect regulations)





The 1960's

More people boating than ever before and more boating-related accidents and fatalities

Joining The Cause in 1972

The Act motivated other organizations to get involved and meet to make safe boating a year-round mission.

August 10, 1971

President Richard Nixon signed the Federal Boat Safety Act (FBSA)

1972 to 1975

Recreational boating fatality rate dropped greatly and was 12% lower than it was in 1971.

PRESENT

Fifty Years Later

The Federal Boat Safety Act is still just as important.

Because of The FBSA, **Today...**

Recreational boating accidents are at historic lows

The boating industry is one of the most cooperative industries

Organizations have common guidelines and standards for boat safety











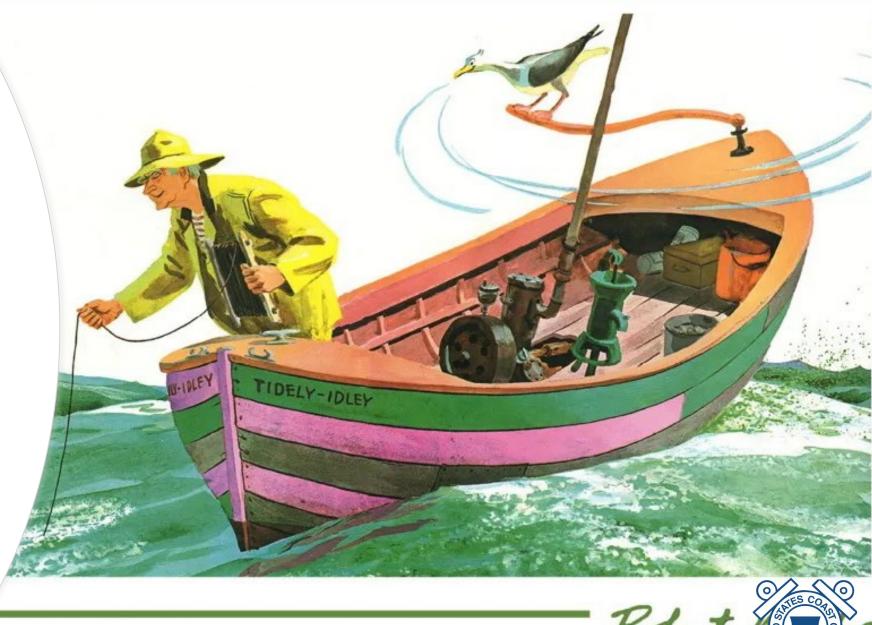


Regulatory Status Quo

- Since 1972 relatively few regulatory updates
- (some in 1980s, 90s, early 2000s)
- Electrical Systems (33 CFR Subpart I)
- Fuel Systems (33 CFR Subpart J)

applies to "all boats that have gasoline engines, except outboard engines, for electrical generation, mechanical power, or propulsion"

- 33 CFR 183.401; 183.501
- Does not contemplate all electric power or propulsion.
- Does not apply to outboard engines



Changing Technology and Market Demands

- Decarbonization for the Recreational Marine Industry
 - "Ricardo Report" issued in November 2023 and commissioned by International Council of Marine Industry Associations
 - Outlined issues and options for new lower/no emission technology on a craft-by-craft basis
 - Electrification/Hydrogen/Alternative
 Fuels/Hybrid all on the table
- Remote and Autonomous Vessel Technology –
 has been mainly focused on commercial operators,
 but opportunity for recreational industry







Pathways to Propulsion Decarbonisation for the Recreational Marine Industry

Synopsis Report

Report Authors

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Report Contributors

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New Technology

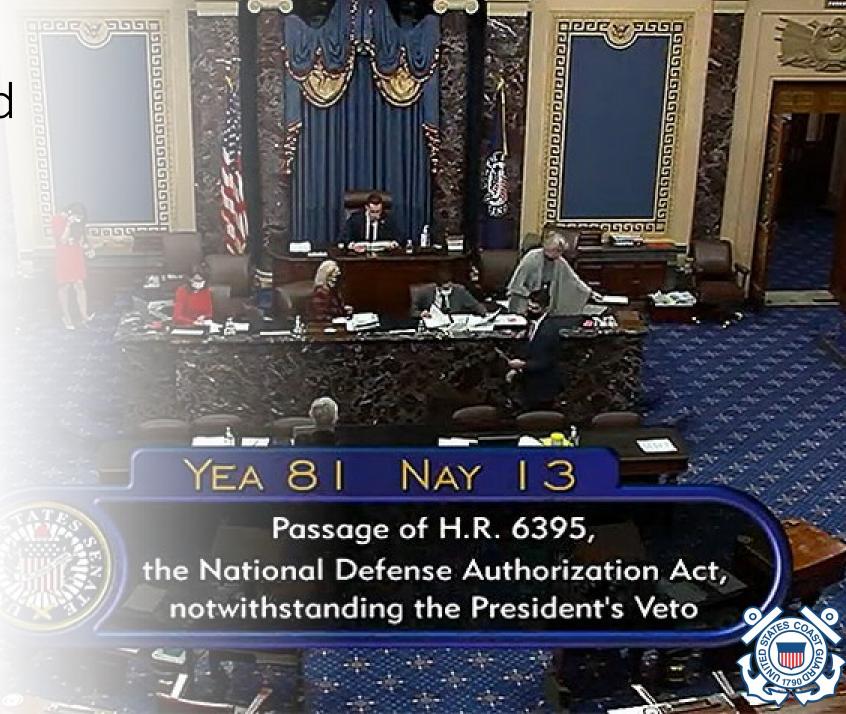
- New Technology presents other challenges to regulatory status quo as well
- The existing regulations do not address new forms of fuel/power or propulsion
 - For example, with the exception of incorporation by reference, 33 CFR 183 subpart J – Fuel Systems has not been updated since 2000
 - Most of 33 CFR 183 only contemplates gasoline engines and fuel
 - Regulation on batteries last updated 1983
- Shoreside infrastructure (charging/alternative fuel refueling) do not yet exist → so neither do regulations



Exemptions and Equivalents

- 46 U.S.C. 4305
 - Exemptions.- If the Secretary considers that recreational vessel safety will not be adversely affected, the Secretary may issue an exemption for this chapter or a regulation prescribed under this chapter (in original FBSA)
 - Equivalents.-The Secretary may accept a substitution for associated equipment performance or other safety standards for a recreational vessel if the substitution provides an equivalent level of safety

(Enacted 3 years ago: Sec. 8318 of FY 2021 NDAA, Pub L. 116-283)



USCG Collaboration with American Boat & Yacht Council

American Boat & Yacht Council

• Develops Technical Standards for Boat Design, Construction, Repair & Maintenance

E.g. 46 U.S.C. 4312 (a): .

"A manufacturer, distributor or dealer that installs propulsion machinery and associated starting control on a covered recreational vessel shall equip such vessel with an engine cut-off switch and engine cut-off switch link that:meet American Boat and Yacht Council Standard A-33..."

- Close partnership with Coast Guard Headquarters policy makers & engineering staff – the Office of Boating Safety (CG-BSX)
- The 46 USC 4305(b) equivalency authority may be leveraged if ABYC (or other) standards are relevant and acceptable



Regulatory Review

- The Office of Boating Safety (CG-BSX) is actively reviewing its existing regulations
- CG-BSX has published a series of 5year strategic plans
 - Current strategic plan goes from 2022-2026
 - Sees emerging tech as an opportunity for improved safety
- Note that Federal Rulemaking can be a very long process



One GAO study found the average time from initiation to final publication was over 4 years

The Reg Map

Informal Rulemaking

Step Two **Step One** Whether a Rule Is Needed Administrative Procedur Agency initiatives for rulemak originate from such things as: • Agency priorities and plar New scientific data Substantive rules of general applicability Interpretive rules Statements of general policy Rules of procedur Information about forms Advisory Committees

Using The Reg Map

OMB Prompt Letters

The Reg Map is based on general requirements. n some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under othe statutory authority, an agency may:

- promulgate a final rule omitting steps three
- promulgate an interim final rule omitting steps three through six, but providing a comment period and a final rule after step nine.

Also, if an agency determines that a rule likely would not generate adverse comment, the agency may promulgate a direct final rule, omitting steps three through six, but with a duty to withdraw the rule if the agency receive adverse comments within the period specified



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Step Three

proposes to add, change, or delete regulatory text and contains a request for public comments.

Under the Administrative Procedu

Rules concerning military or foreign affairs functions

Proposed Rule

Inder the Administrative Procedu Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal

- - Rules concerning agency management or personne
 - Rules of agency organization, procedure, or practice
 - Nonsignificant rules for which the agency determines that public input is not warranted
 - Rules published on an require that proposed ru procedures be followed.

Optional Supplementary Procedures to Help

Negotiated Rulemaking

Rulemaking Act (5 U.S.C. 561-570

Publication of **Proposed Rule**

Proposed Rule OMB Review Under

oes the rulemaking process include a proposed rule? -> If ye Does the rule include any Federal mandate that may result in the expenditure (direct costs minus direct savings) by Stat local, and thibal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually)?

ations and imposes substantial unreimbursed direc ompliance costs on State and local governments?

is the rule a discretionary rule that has tribal

direct compliance costs on Indian tribal govern Does the rule have tribal implications and

Is the rulemaking a proposed regulatory action that has takings implications (other than

regulating private property for the protection of public health and safety)?

s the rulemaking action a "significant energy action"? -> If yes

Step Four

OMB Review of

Executive Order 12866

Step Five

Regulatory Planning and Review (E.O. 12866)

Public Comments

Rights (E.O. 12630)

Actions Concerning Regulations That Significantly Affect

Act provisions of 5 U.S.C. 553 ar Administrative Procedure

As required by Public Law No. 107-34

Step Six

the holding of a public hearing is

Specific Analyses for Steps Three and Seven

Step Eight Step Seven

Rule, or Direct Final Rule

OMB Review Under

OMB reviews only those rulemakin actions determined to be "significant." A final rule adds, changes, deletes or affirms regulatory text.

Final Rule.

Interim Final

Rule, or Direct

Final Rule

Final Rule

the subsequent tinal rule may ma changes to the text of the interim final rule.

A direct final rule adds, change

Direct Final Rule

ndependent agencies are exempt rom OMB review.

Rule, or Direc Final Rule

(5 U.S.C. 801-808)

s, interim final rules, and dire final rules, along with supporting information, to both houses of

Step Nine

Action by Congress and the Preside could have an impact on the rule.

Act Provisions

Under the Administrative Procedur Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, inte im final rules, and direct final rules in the Federal Register.

(44 U.S.C. 1501-1511)

The Federal Register Act at 44 U.S.C. 1510 (implemented at 1 8.1) requires rules that have gene applicability and legal effect to be published in the Code of Federal

Civil Justice Reform

(63 FR 31885)

with the Federal Register regulation (1 CFR). Additional guidance and

Rules Under

The Unified Regulatory Agenda published in the Federal Register the spring and fall of each year.

he Regulatory Plan provide ctions that the agency is planni

Regulatory Flexibility

Agency regulatory flexibility agenda are published as part of the Unified Regulatory Agenda in the spring and fall of each year.