

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)



PAST

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



FUTURE

FBSA changed recreational boating for the better



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



Bob, Deep Water Man / 1963

Robert McCloskey © / Used with Permission Robert McCloskey Estate / Maine Arts Publishing / maineartspublishing.com / RM-MMP1



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

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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*)

YEA 81 NAY 13

Passage of H.R. 6395,
the National Defense Authorization Act,
notwithstanding the President's Veto



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): .

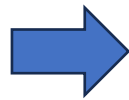
“A manufacturer, distributor or dealer that installs propulsion machinery and associated starting control on a covered recreational vessel shall equip such vessel with an engine cut-off switch and engine cut-off switch link **that meet American Boat and Yacht Council Standard A-33...**”

- 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*



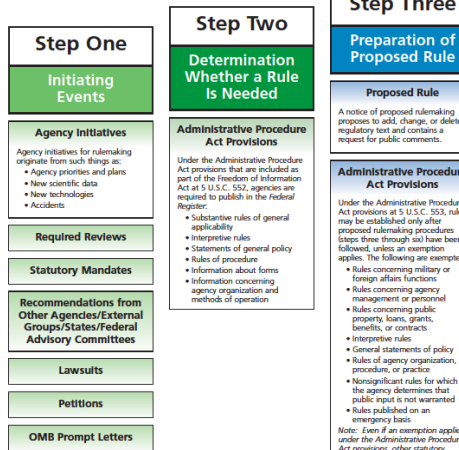
Regulatory Review

- The Office of Boating Safety (CG-BSX) is actively reviewing its existing regulations
- CG-BSX has published a series of 5-year 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



Using The Reg Map

The Reg Map is based on general requirements. In 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 proposed rule and a final rule.

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

- promulgate a final rule omitting steps three through six, or
- 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 receives adverse comments within the period specified by the agency.

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