

No part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States. 46 U.S.C. §6308.



USCG Regulations Development Program

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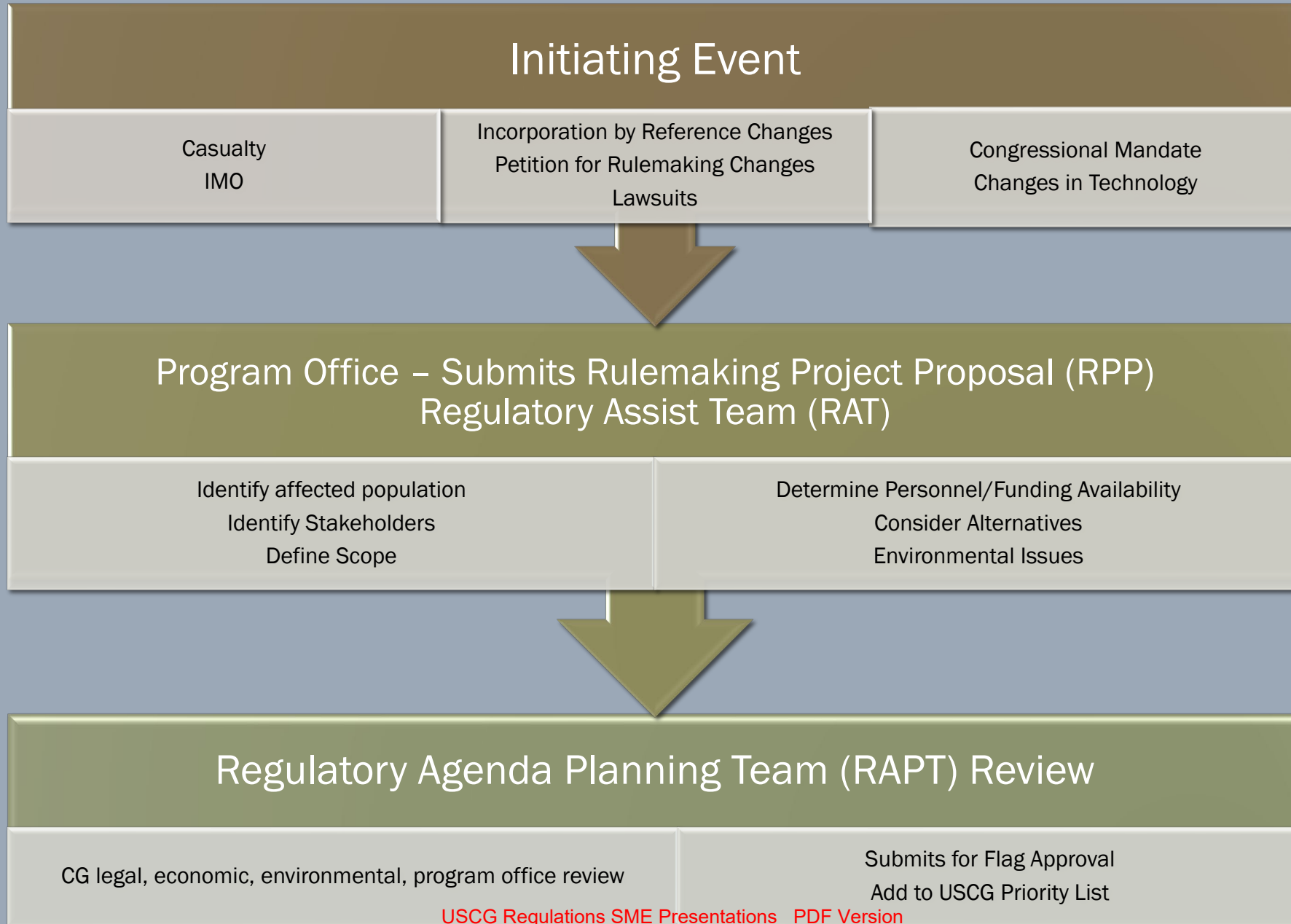
The process is set by law, regulation and executive policy and designed to facilitate regulation & policy developed...

- well (with maximum net benefits)
- in compliance (with statutes, mandates, etc.)
- if needed (analyze and consider no action alternatives)

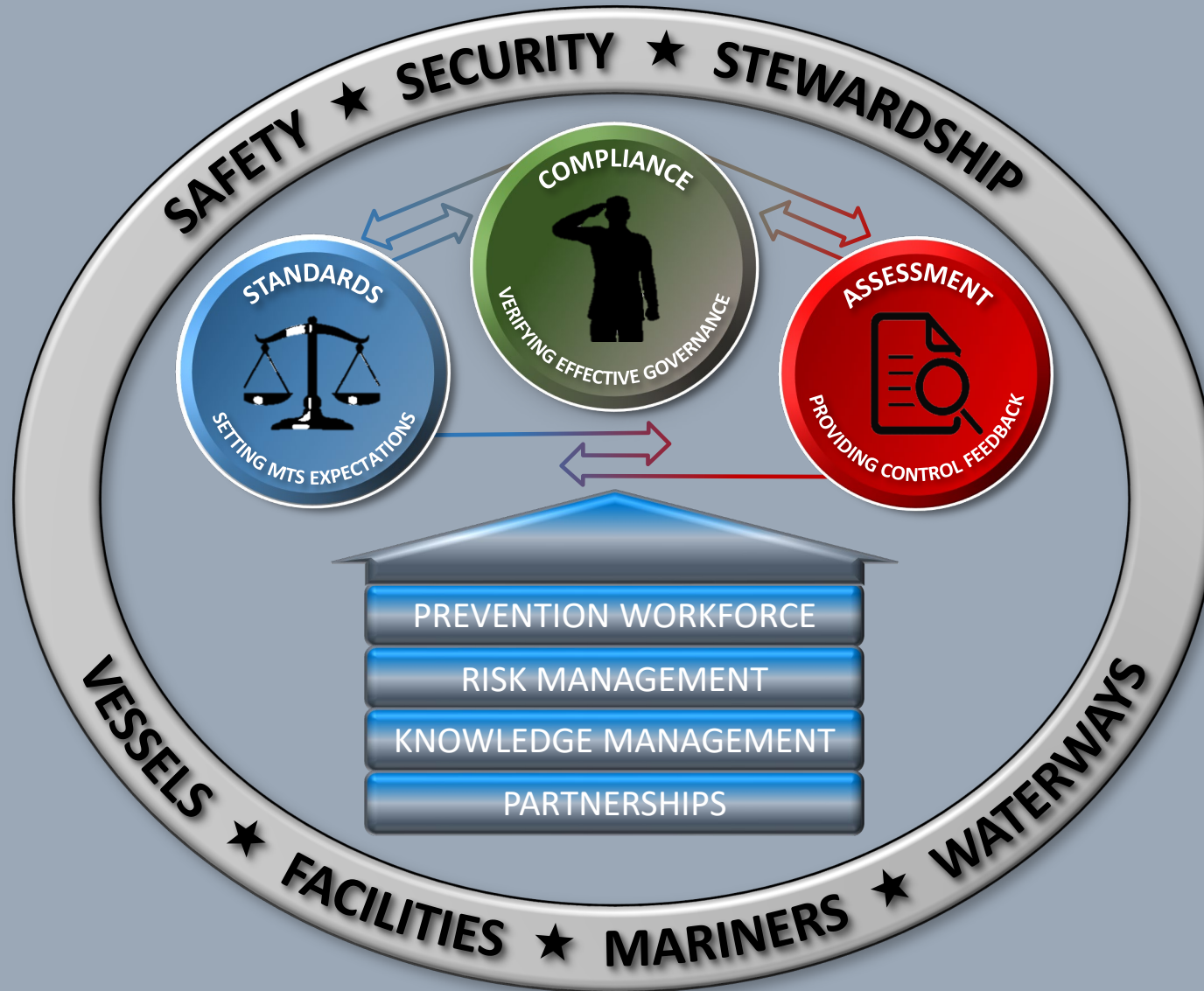
INTRODUCTION

Initiate Project

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Economic Analysis

- Statutes & Mandates
- Baselines & Change Matrix
- Affected Population
- Costs and Benefits

- Alternatives

- Small Entity Analysis
- Responses to Public Comment
- Information Collection Burdens

Environmental Review

- NEPA
 - Other Major Environmental Laws

DHS & USCG NEPA Procedures

- All NEPA documentation recorded and produced in the DHS DSS

OUTLINE

Statute/Mandate	Objectives
Executive Orders 12866 and 13563 (& OMB Circular A4)	Costs<Benefits; Best Data; Transparency; Reproducibility*
- Administrative Procedure Act	Public Participation (Notice and Comment); Process → Considered solution to the problem
- Regulatory Flexibility Act	Accommodation for Small Entities
- Paperwork Reduction Act	Account for USG Information Gathering Burden on the Public

STATUTES AND MANDATES

Topic	Regulatory Language	Impact
Section 137.100 Purpose	This part sets out the applicability for subchapter 137.100. It describes the requirements for obtaining and renewing a Certificate of Inspection (COI).	No Cost - Descriptive Requirement
Section 137.135 - Reports and Documentation for TSMS Inspection Option	Owners and operators choosing the TSMS option must submit to the Coast Guard a report detailing each annual survey (described in 137.210) of a towing vessel. The owner or operator incurs this reporting cost when a survey is completed. The costs in this section are associated with the time it takes to complete the forms and send them to the Coast Guard.	Cost. Impact for all vessels complying with the TMS option must submit to the OCMI an annual report documenting TSMS surveys.
Section 137.202 - Documenting compliance for the TSMS Option	All owners or managing operators of more than one towing vessel required to have a Certificate of Inspection (COI) by this subchapter must ensure that each vessel under their ownership/control is issued a valid Certificate of Inspection (COI) according to the noted schedule.	No Cost. Descriptive. This section provides more detail on the survey report, which is monetized in § 137.135. It also presents the external and internal options for the survey program under the TSMS option. These programs are discussed and monetized in §§ 137.205 and 137.210.
Section 137.302 - Documenting compliance for the CG inspection option	All vessels must undergo a drydock and internal structural examination. Drydocks are scheduled and performed after a vessel receives its initial COI at the specified intervals.	Cost. Coast Guard inspection option vessels must be made available to the Coast Guard for the inspection.
Section 137.3.05 - Documenting compliance for the TSMS option.	All vessels must undergo a drydock and internal structural examination. Drydocks are scheduled and performed after a vessel receives its initial COI at the specified intervals.	Cost. Internal and external drydock programs, combined fresh water and saltwater vessels
Section 137.330 - Scope of drydock examination.	This regulation applies to all towing vessels covered by this subchapter. The drydock examination must be conducted while the vessel is hauled out of the water or placed in a drydock or slipway.	No Cost. Descriptive. These sections provide further details on the drydocking costs in § 137.300. The details are incorporated in the costs, affected populations, and compliance schedules presented there.

BASELINES/CHANGE MATRIX

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- Affected population is the number and type of entities that may be impacted by the rulemaking
- Applicability section of rulemaking is a starting point
- Economists work with CG-REG-1 program analyst to extract available data, typically from MISLE
- If not covered by MISLE, economist will check other sources for estimate
- USCG program office verifies data from economists for reasonableness
- USCG program office may be asked for help if data not readily available

AFFECTED POPULATION

- Cost is the burden, in \$'s and time, for complying with the regulation
- Cost includes both cost to industry and cost to government (that is, Coast Guard resources)
- Industry and government costs will also be required for the Collection of Information package (\$ and time burden)
- Economists will identify costs for individual activities in the baseline/change matrix from available sources (commercial prices for equipment, existing training courses, similar documentation activities, etc.)
- USCG program office may be asked for help if data not readily available

COSTS

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- Benefits are the reason why we are proposing a regulation. If the benefits are not sufficient, the regulation isn't justified.
- Benefits can be: Monetized (\$ value of: # of lives saved, # injuries prevented, labor hours precluded)
- Quantified, but not monetized (# of acres of wetlands saved from oil spill)
- Qualitative (description of beneficial impact)
- Economist will describe how each item in baseline/change matrix is expected to produce a benefit (“functional benefit”)
- USCG program office may be asked for help to articulate why and how particular requirement is beneficial.

BENEFITS

- Alternatives analysis compares proposed approach with other approaches Examples of alternatives include delayed effective date, tailored compliance regimes for complexity of operation (vessel route/service, passenger count, cargo hazard, etc).
- At a minimum, need to consider “No action”, more strict and less strict alternative
- A thorough Alternatives analysis can strengthen and support case for proposal
- USCG program office will be asked for help in articulating viable alternatives and reviewing assessment

ALTERNATIVES

- Regulatory Flexibility Act (RFA) aims to level the playing field for small entities, providing implementation flexibility.
- Small Business Administration has standards for a “small entity”.
- Steps: (i) determine whether RFA applies, (ii) conduct a threshold analysis to determine the whether there will be a significant economic impact on a substantial number of small entities, (iii) discuss the impacts and explore alternatives and mitigation measures, both at NPRM and FR.

SMALL ENTITY ANALYSIS

- Public comments may be received on ANPRMs, NPRMs and IRs
- Economists will take primary lead in responding to comments regarding costs, small entity impacts, etc.
- USCG program office may assist in providing information and analysis related to program requirements in the rulemaking

RESPONSES TO PUBLIC COMMENTS

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Docket / Document (USCG-2006-24412-0001) / Comment

PUBLIC SUBMISSION

Buffalo Marine Service, Inc.

Posted by the Coast Guard on Dec 12, 2011

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Comment ID
USCG-2006-24412-0220

Tracking Number
B0773aa

Comment Details Submitter Info

Received Date
Dec 9, 2011

December 8, 2011
Docket Management Facility (MC-30)
U. S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Docket No. USCG-2006-24412, In
of Towing Vessels

Dear Sir/Madam;

Buffalo Marine Service, Inc. is a privately owned Texas Towboat and Barge company. Buffalo business for 73 years primarily in bunker transportation on the upper Texas Gulf Coast and in Mobile/Pascagoula areas for major and independent oil companies. Buffalo owns 28 barges and towboats, and charters 3 towboats and one barge. Buffalo employees approximately 125 people licensed boat crews and shore side support personnel. Buffalo delivers approximately 60% of

In view of the Coast Guard's interest in reducing unnecessary costs to the industry it is only right for me to point out that the proposed regulation requirement for independent redundant means of propulsion, steering and related controls for towing vessels moving tanks barges would be virtually cost prohibitive and goes well beyond current industry standards or practices. The Coast Guard's own casualty statistics do not support a requirement like this. None of our 15 towboats meet the proposed requirements for independent redundant systems. Buffalo's towboats move only tank barges and none of the pollution incidents that we have experienced were caused by nor contributed to by any of the proposed independent redundant systems. We estimate that to comply with the proposed independent redundant system requirement it would cost an average in excess of \$225,000 per vessel or \$3.375 million fleet wide. Only two of the equipment failures, both less than \$5,000, might have been minimized by independent redundant systems.

In the interest of minimizing unnecessary costs and eliminating requirements that are NOT supported by risk or casualty occurrence the proposed requirement for complete retrofitting of electrical systems must be eliminated. To be cost effective the Coast Guard should focus on eliminating existing unsafe practices and conditions found on existing vessels not condemning the systems of the industry as a whole. Buffalo has had only one fire related to electrical systems and it was caused not by the system per se but a fluorescent fixture that was not suitable for the movement and vibrations found on board boats. The proposed rule would require substantial changes to the electrical systems on board at a cost estimated to exceed \$150,000 just for one boat. This definitely not supported by casualty data. I have to

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say that I am in total agreement with the Towing Safety Advisory Committee's recommendation on Electrical System Requirements for Existing Towing Vessels (Part 143).

The Coast Guard should accept the American Waterways Operators Responsible Carrier Program (RCP) as a TSMS as well as the ISM Code and noted in the proposed regulations. The RCP is the most widely used safety management system in the United States towing industry and has measurably improved the safety performance of companies that use it. Buffalo's TSMS is based on the "boiler plate" of the RCP and has served the company very well as noted above in reducing equipment, personnel and environmental incidents.

RESPONSES TO PUBLIC COMMENTS

Quality Risks

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- USCG formulates a substandard rule, regulation does not achieve goals within estimate cost

Legal Risks

- Reporting and Record-keeping requirements would not be enforceable (PRA), jeopardizing program objectives
- USCG could be sued by small entities for not taking into consideration the impacts of small business (RFA)
- USCG could be sued for promulgating a regulation that is arbitrary and capricious (APA)

RISKS FOR NON-COMPLIANCE

- Environmental review procedures are prescribed by DHS and USCG
 - environmental review required for all major actions (may incorporate other environmental law requirements)
- Alternatives: USCG program office may be asked for help to provide justification for the preferred alternative, especially when it isn't the most environmentally protective option

ENVIRONMENTAL ANALYSIS & REVIEW

- Affected Environment: USCG program office may be asked to assist developing consultation or coordination materials required to address mandates under other environmental laws that fall under the NEPA umbrella (for example help identify natural resources, affected species, critical habitats, historic resources, mitigation opportunities, and possible impacts to health and safety)

ENVIRONMENTAL ANALYSIS & REVIEW

[Unfunded Mandates Reform Act of 1995](#)

[A Guide to the Rulemaking Process](#)

[RegInfo Dashboard](#)

[A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act](#)

[DHS Information Collection Program MD Number 142-01 \(7/31/2007\)](#)

ADDITIONAL RESOURCES

[Implementation of the National Environmental Policy Act \(dhs.gov\)](#)

[DHS Instruction Manual 023-01-001-01, Rev 01](#)

[CI 5090.1 USCG Environmental Planning Policy](#)

[Environmental Planning Implementing Procedures for CI 5090.1](#)

ADDITIONAL RESOURCES