

Comment on Commercial Diving Operations-Reopening of Comment Period

Manifest

Submission Date: October 23, 2015

Submission To:

Docket Management Facility (M-30)
Attn: Desk Officer for Coast Guard, DHS
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
1200 New Jersey Avenue SE
Washington, D.C. 20590-0001

Submission By:

Public.Resource.Org
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United States

Docket Number: [USCG-1998-3786](#)

Docket RIN: [1625-AA21](#)

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1. Introduction and Statement of Purpose

This is a comment by Public.Resource.Org (“Public Resource”) on the Notice of Proposed Rulemaking (NPRM) on Commercial Diving Operations-Reopening of Comment Period ([80 FR 51173](#)). The original NPRM was published on February 19, 2015 ([80 FR 9152](#)). Public Resource submitted comment [USCG-1998-3786-0160](#) on May 7, 2015. We were joined in our comment by a number of certified divers including Buck Calabro, Grant W. Graves, David Helvarg, Joichi Ito, Aaron Turner, and Wendy Turner.

Public Resource and the co-signatory certified divers commented on one specific aspect of the rulemaking: The standards proposed for incorporation by reference were not adequately available during the NPRM comment period and, if the rule were enacted, the standards incorporated by reference would not be available to the public in the same manner as other portions of the Code of Federal Regulations and all other edicts of government are made available. Specifically, it is essential that citizens of the United States have the ability to freely read and speak the law and the materials proposed to be incorporated by reference would be under severe restrictions on access and use. Such action is illegal and arbitrary for federal regulation and would invalidate the proposed final rule.

The reopening of the comment served two purposes, according to the Coast Guard. First, it corrected some minor errors in the proposed rulemaking. Second, the Coast Guard provided additional information for citizens wishing to inspect the materials proposed for incorporation:

Second, we provided incorrect telephone and email contact information for those wishing to view material proposed for incorporation by reference on pages 9158 and 9159 of the NPRM. To make arrangements to view that material, please contact Mr. Ken Smith (see FOR FURTHER INFORMATION CONTACT).

We are submitting this supplementary comment because access to materials proposed to be incorporated by reference is still not adequately available, nor would the materials be adequately available to the affected parties if this rule were adopted. We did communicate with Mr. Smith to inquire about how to view these materials. Since those communications are pertinent to a public rulemaking, this information should be publicly displayed on the rulemaking docket and not simply as ex parte

communications with one individual. As such, those messages are appended as [Appendix A](#) to this comment.

2. Availability of the Materials

In Mr. Smith's initial email message (see [Appendix A.2](#)), he provided a series of URLs where some materials may be provided online and invited us to come to Washington, D.C. to view the additional materials. The materials proposed to be incorporated by reference can be put into 4 categories. We deal with each in turn.

2.1. The Two International Maritime Organization (IMO) Standards

The proposed rulemaking incorporates by reference two International Maritime Organization (IMO) standards:

1. IMO Resolution A.831(19), International Code of Safety for Diving Systems, 1995
2. IMO Resolution A.692(17), Guidelines and Specifications for Hyperbaric Evacuation Systems, 1991

The text of both of these documents are available online, but these resolutions are not specifications. They are modifications to another document, the Code of Safety for Diving Systems, the current version of which is the 1997 edition. The two IMO resolutions can only be read within the context of the Code of Safety for Diving Systems and are meaningless without that additional document, which is not incorporated by reference. That Code is available as an e-book or printed book from IMO or their commercial partners, but it has restrictions on use that are not appropriate or legal for U.S. federal regulations.

Purchase of the e-book Code requires users to enter their name or IMO number (for shipboard use). Each page of the document is then stamped with a watermark and copyright notice. The copyright notice indicates "No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without permission in writing from the International Maritime Organization." The web site indicates that a user is allowed to print at most one copy of the PDF document. The PDF document is secured, and the following document restrictions have been imposed:

- Printing: Allowed (subject to the web site caution to only do this once)
- Changing the Document: Not Allowed
- Document Assembly: Not Allowed
- Content Copying: Not Allowed
- Content Copying for Accessibility: Not Allowed
- Page Extraction: Not Allowed
- Commenting: Not Allowed
- Filling of form fields: Not Allowed
- Signing: Not Allowed
- Creation of Template Pages: Not Allowed

A few of these restrictions are particularly insidious for a legally mandated safety code developed by governmental organizations. If “Content Copying” is not allowed, it means one cannot highlight a paragraph of text and paste it into another document. If a ship's captain wished to put out a one-page flier that quoted an essential paragraph of the Safety Code, the technical restrictions would prohibit this operation.

Likewise, “commenting” has been disabled on the document. If a ship's captain or a diving instructor wished to add commentary and annotations to highlight specific sections of the code or put them into perspective (“this is what happened to us in that Florida incident, let's all be especially careful to observe these precautions”), that would also be prohibited by the technical restrictions imposed on the document.

Finally, the document has “Content Copying for Accessibility” explicitly disabled. Copying for accessibility is employed specifically for those who are visually impaired so that a screen reader may read the text. This legally-binding document from a governmental organization, one which the Coast Guard is proposing to rely upon for crucial commercial diving safety standards, made an explicit decision to not allow visually-impaired users to access the document. This is totally inappropriate, and certainly violates the requirements of section 508 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. 794d](#)), which mandates that:

- i. individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and*
- ii. individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.*

2.2. The Three Federal Specifications

The proposed rulemaking incorporates three works of the federal government:

1. Federal Specification, BB-N-411C, Nitrogen Technical, 2000 (“Federal Specification BB-N-411C”)
2. Federal Specification, Oxygen, Technical, Gas and Liquid, BB-O-925a, 1961 (“Federal Specification BB-O-925a”)
3. U.S. Navy Diving Manual, 6th Edition, April 2008

To access the nitrogen specification, Mr. Smith provided a [URL to law.resource.org](http://law.resource.org), which is the system that Public Resource runs. As we pointed out in our initial comment, this Federal Specification which was published January 3, 1973, was cancelled on June 1, 2000 and was replaced then by Commercial Item Description A-A-59503. Not only does the government apparently not have a copy of this federal specification on a government computer, the specification has been cancelled.

To access the oxygen specification, Mr. Smith provided a [URL to everyspec.com](http://everyspec.com), a volunteer effort run by Mr. Jim Kern as a public service. Public Resource [also has a copy](#) for public viewing. This is a 1961 specification covering oxygen for industrial use. The document is only six pages long. Surely if the government feels this specification should become binding law, a copy could be made available on the government computer systems or could simply be written into the text of the proposed regulation instead of being incorporated by reference.

Finally, there is the U.S. Navy Diving Manual. In his message, Mr. Smith indicated that to inspect this document, we would have to travel to Washington, D.C. and inspect the

book in person. This is an important government document and should be available on government computer systems, irrespective of whether it is incorporated by reference into federal law.

2.3. The Two Consensus Standards Available For Online Viewing

In his message, Mr. Smith directed us to two of the standards that may be inspected on-line:

1. ADCI Standards: http://www.underwatermagazine.com/pdf/ADCI_CS_Rev6.1.pdf
2. ANSI/ACDE-01-2009: <http://www.acde.us/ansistd.pdf>

The Association of Diving Contractors International standard is available for online viewing. Unlike the IMO document, functions such as accessibility have not been disabled. This is how a document should be made available during a comment period for inspection. However, the document does contain a severe restriction on use should it become incorporated into federal law:

All rights reserved. No part of this book may be reproduced, stored in a retrieval system or transmitted in any form or by any means (electronic, mechanical, photocopying, microfilming, recording or otherwise) without written permission from the Association of Diving Contractors International, Inc.

The second document is an ANSI standard created by the Association of Commercial Diving Educators. The document is secured by technical means, but does allow printing and content copying for accessibility. The document, however, contains a severe restriction on use should it become incorporated into federal law:

All rights reserved.

No part of this publication may be reproduced in any form, in an electronic retrieval system or otherwise, without prior written permission of ACDE.

2.4. The Remaining Nine Standards

The NPRM proposes to incorporate by reference nine additional standards:

1. ASME PVHO-1-2012, Safety Standard for Pressure Vessels for Human Occupancy, 2012 (“ASME PVHO-1”)
2. ASME B31.1-2010, ASME Code for Pressure Piping, Power Piping, 2010 (“ASME B31.1”)
3. ASME National Board Inspection Code, NBBPVI, NB23-2011 (“ASME NBBPVI”)
4. ANSI/ISO 15618-1:2001, Qualification testing of welders for underwater welding—Part 1: Diver-welders for hyperbaric wet welding (“ANSI/ISO 15618”)
5. Publication G-4.1, Cleaning Equipment for Oxygen Service, 2009 (“Compressed Gas Association Publication G-4.1”)
6. Publication G-7, Compressed Air for Human Respiration, 6th Edition, 2008, (“Compressed Gas Association Publication G-7”)
7. Publication G-7.1, Commodity Specification for Air, 6th Edition, 2011, (Compressed Gas Association Publication G-7.1)
8. ISO 9001—2008, Quality Management Systems—Requirements
9. ISO 15618—2001, Qualification testing of welders for underwater welding—Part 1: Diver-welders for hyperbaric wet welding

The Coast Guard has proposed that these documents are available at the Coast Guard headquarters in Washington, D.C. As Mr. Smith explained in his email:

The Coast Guard is providing a reading room where you may view the materials proposed to be incorporated by reference. We may provide for viewing on a standalone workstation or in hardcopy, depending on the document. As I noted in my email earlier, you are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders.

We inquired if this would include the ability to copy relevant portions of documents and were informed that this would only be the case if permission was secured from the “copyright holders.”

We are located in California. A trip to Washington, D.C. for the sole purpose of inspecting a document proposed to be incorporated by reference into federal law is not reasonable. This is particularly the case for government employees who are stationed in other locations and are not able to take time off for a trip to Washington, yet wish to inform themselves about the proposed provisions of law.

3. Availability of Federal Records by FOIA

A trip to Washington to view documents at a dedicated workstation or in a reading room with print copies is very cumbersome. Under the Freedom of Information Act, citizens may request federal records from the government, which will provide them unless one of nine specific exemptions are met, in which case the documents may be withheld.

Public Resource submitted a [FOIA request on April 1, 2015](#) for a document that is already incorporated into federal law. This is the *American Bureau of Shipping Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995*, which is incorporated by reference in [46 CFR 114.600](#) and used in [46 CFR 116.300](#). This FOIA request was [rejected on July 15, 2015](#). Note that the request was not denied because it failed to meet one of the specific FOIA exemptions, it was simply rejected as not subject to FOIA because the Coast Guard maintains that:

Under the FOIA, Federal Register publications, including the daily Federal Register and the CFR are not subject to the request for records provisions of the law ... Additionally, the FOIA states technical standards that are “reasonable available to the class of person affected thereby [are] deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.”

The rejection continued by suggesting that the alternative available was to visit the Office of Operating and Environmental Standards in Washington, D.C. The rejection also suggested we visit Eagle.Org, a site run by the American Bureau of Shipping. While the

site does have [the 1997 edition](#) of the document, the 1995 document which is incorporated into law is not available anymore.

As part of the present rulemaking, Public Resource submitted a second [FOIA request on September 10, 2015](#). In that request, we asked for copies of 5 documents that are proposed to be incorporated by reference in the present rulemaking. We also requested expedited treatment given the short period allowed for comments to be submitted on the present rulemaking. After several phone calls and email messages, we were able to get the Coast Guard to acknowledge receipt of the FOIA request and assign us a tracking number of 2015-CGFO-03084. However, repeated phone calls to CG-INV at 202-372-1284 have gone unanswered. FOIA requires in the normal course of business that requests are answered in 20 days, and that deadline was October 8. We requested expedited treatment because there is a substantial due process question about our ability to properly answer the present Notice of Proposed Rulemaking if we are unable to examine the materials proposed to be incorporated by reference.

It is clear in the case of both FOIA requests that these are federal records. The suggestion that citizens must travel to Washington, D.C. to exercise their rights to comment on proposed rulemakings or to access federal records that are subject to FOIA is simply not realistic and flies contrary to long-standing public policy.

4. Conclusion

An informed citizenry is the key to our democracy and citizens have the rights to read and speak the law and to comment on proposed laws. It is a requirement under [5 USC 552\(a\)](#) and [1 CFR 51](#) that materials incorporated by reference must be available to the public. The materials proposed for incorporation by the U.S. Coast Guard are not available during the rulemaking and will not be available to the public if the final rule is adopted.

Respectfully submitted,

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Appendix A: Ex Parte Communications With the Coast Guard

A.1. Message to the Coast Guard on August 24, 2015 at 08:46:04 -0700

To: "Smith, Ken" <Ken.A.Smith@uscg.mil>

From: "Carl Malamud" <carl@media.org>

Date: Mon, 24 Aug 2015 08:46:04 -0700

Subject: Docket USCG-1998-3786

Message-Id: <E8811884-B628-44DC-AE42-E6598B5E06EF@media.org>

Dear Mr. Smith -

I am writing in regards to the August 24, 2015 notice in the Federal Register reopening the comment period for "Commercial Diving Operations":

<https://www.federalregister.gov/articles/2015/08/24/2015-20825/commercial-diving-operations-reopening-of-comment-period>

I am responding to your invitation for instructions to make arrangements to view the material that has been proposed to be incorporated by reference. Could you please let me know:

1. Is this an online facility for the inspection of the materials or will I need to travel to a U.S. Coast Guard location? If so, where?
2. I will need to make copies of some of the materials. Does the U.S. Coast Guard provide photocopy facilities (and if so, what is the charge)? If there are no photocopy facilities, may I bring a scanner in with me?

As the comment period is only 60 days, I would appreciate your soonest reply.

Thanks very much!

Carl Malamud

Public.Resource.Org

A.2. Message from the Coast Guard on August 26, 2015 at 04:24:25 -0700

From: "Smith, Ken" <Ken.A.Smith@uscg.mil>

To: Carl Malamud <carl@media.org>

Subject: RE: Docket USCG-1998-3786

Date: Wed, 26 Aug 2015 11:24:25 +0000

Message-ID: <AA6C1B62304D634AA21AD491222DD4356056D8CE@EMO-EXCH-1101.main.ads.uscg.mil>

In-Reply-To: <265F21D7-7D92-4341-A6D5-BD52E248DBCE@media.org>

Mr. Malamud,

Thank you for your email and sorry for the delay. You may visit Coast Guard Headquarters in Washington, DC, to view these standards in person. As an alternative, we may be able to make some of the standards available to view at your local Coast Guard District Office; please let me know which documents you are interested in, and where you are located.

When viewing the materials, you may take notes to assist you in developing comments on the proposed rule. You may not take the materials out of the building, and we do not provide photocopy facilities. We do not prohibit your carrying a handheld scanner, but we follow the NARA provision on copyrighted materials at 36 CFR 1254.62 ("You are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of the Copyright Act (Title 17, United States Code)").

The following standards are available to read for free online: the ADCI Standards, IMO Resolutions A.831(19) and A.692(17), ANSI/ACDE-01-2009, and Federal Specifications BB-N-411C and BB-O-925A. Because they are available for free online, we do not plan to provide them in our reading room unless you specifically request them.

The links below will take to locations where the documents may be viewed.

- ADCI Standards: http://www.underwatermagazine.com/pdf/ADCI_CS_Rev6.1.pdf
- IMO Resolution A.831(19): <http://www.thediversassociation.com/index.php/files/file/50-imo-diving-systems-code-of-safety-for-diving-systems-1995/>
- IMO Resolution A.692(17): <http://imo.udhb.gov.tr/dosyam/EKLER/A.692-17.pdf>

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- ANSI/ACDE-01-2009: <http://www.acde.us/ansistd.pdf>
- Federal Specification BB-N-411C: https://law.resource.org/pub/us/cfr/ibr/003/fedspec/BB-N-411C_NOTICE-1.pdf
- Federal Specification BB-O-925A: http://everyspec.com/FED_SPECS/B/BB-O-925A_11420/

Please let me know what date(s) you plan to be here so that I can make arrangements for you. In order to enter and pass through security at the Coast Guard Headquarters building you must provide the following information at least 3 business days in advance of your arrival for you and everyone in your party: first and last name, date of birth, social security number for US citizens or passport number for foreign nationals, email, cell phone numbers, and whether you will need a parking pass. Visitors who are foreign nationals may require more time to process. You may provide this information to me by phone or password-protected email attachment if you prefer.

Very Respectfully,

Ken Smith
Asst. Division Chief & General Engineer
Commandant (CG-OES-2)
Office of Vessel and Facility Operating Standards
U.S. Coast Guard - Stop 7509
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7509
PH: 202-372-1413

<http://www.uscg.mil/hq/cg5/cg522/cg5222/>

A.3. Message to the Coast Guard on August 26, 2015 at 08:21:41 -0700

To: "Smith, Ken" <Ken.A.Smith@uscg.mil>

From: Carl Malamud <carl@media.org>

In-Reply-To: <AA6C1B62304D634AA21AD491222DD4356056D8CE@EMO-EXCH-1101.main.ads.uscg.mil>

Date: Wed, 26 Aug 2015 08:21:41 -0700

Subject: Re: Docket USCG-1998-3786

Message-Id: <3524F13F-DF36-4F6E-82CE-F4B0012F6088@media.org>

Dear Commandant Smith -

Thanks for your note!

Does this mean that if I bring a handheld scanner with me, the Coast Guard will allow me to make copies of the incorporated materials?

Best regards,

Carl Malamud

A.4. Message from the Coast Guard on August 26, 2015 at 11:02:31 -0700

From: "Smith, Ken" <Ken.A.Smith@uscg.mil>

To: Carl Malamud <carl@media.org>

Subject: RE: Docket USCG-1998-3786

Date: Wed, 26 Aug 2015 18:02:31 +0000

Message-ID: <AA6C1B62304D634AA21AD491222DD4356056DBD3@EMO-EXCH-1101.main.ads.uscg.mil>

In-Reply-To: <3524F13F-DF36-4F6E-82CE-F4B0012F6088@media.org>

Dear Mr. Malamud,

Please call me Ken or Mr. Smith if you prefer. The Coast Guard is providing a reading room where you may view the materials proposed to be incorporated by reference. We may provide for viewing on a standalone workstation or in hardcopy, depending on the document. As I noted in my email earlier, you are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders.

V/r

Ken

A.5. Phone call to the Coast Guard on August 26, 2015 at 11:28:03 -0700

To: 12023721413 (Mr. Ken Smith)

From: 17078277290 (Carl Malamud)

Date: Wed, 26 Aug 2015 11:28:03 -0700

Duration: 00:04:23

A.6. Message to the Coast Guard on August 26, 2015 at 11:33:50 -0700

From: Carl Malamud <carl@media.org>

In-Reply-To: <AA6C1B62304D634AA21AD491222DD4356056DBD3@EMO-EXCH-1101.main.ads.uscg.mil>

Date: Wed, 26 Aug 2015 11:33:50 -0700

Subject: RE: Docket USCG-1998-3786

Message-Id: <25E77C0B-7563-4EB8-8192-EE20C261BA69@media.org>

To: "Smith, Ken" <Ken.A.Smith@uscg.mil>

Dear Mr. Smith -

It was nice talking to you. Thanks for confirming on my question that you would want the permission granted ahead of time before the Coast Guard would permit the copying.

I'm based in California, my associate is in Washington, D.C., we'll let you know if we decide to come out and examine the standards in person.

Thanks again for your help!

Best regards,

Carl Malamud

A.7. Message to the Coast Guard on October 17, 2015 at 08:56:08 -0700

From: "Flood, Thelma R CIV" <Thelma.R.Flood@uscg.mil>

To: Carl Malamud <carl@media.org>,
"Brewer, Gaston CIV" <Gaston.Brewer@uscg.mil>

CC: HQS-SMB-FOIA <EFOIA@uscg.mil>

Subject: RE: FOIA number 2015-CGFO-03084

Date: Sat, 17 Oct 2015 15:56:08 +0000

Message-ID: <4431B22C652C0744AB30FA48AEAA8DA655B96D21@EMO-EXCH-1102.main.ads.uscg.mil>

In-Reply-To: <E2EA8871-3810-4371-B6EF-03692E420316@media.org>

Good morning,

I do apologize, I just returned from vacation. Your request has been received and assigned to Mr. Ken Smith with the Office of Operating & Environmental Standards. Please contact Mr. Smith at 202 372-1413 for a status update.

v/r

Thelma Flood
CG-DCO Directorate FOIA Coordinator
United States Coast Guard Headquarters
2703 Martin Luther King Jr. Avenue
STOP 7501
Washington, DC 20593-7501
Tele: 202 372-1284

-----Original Message-----

From: Carl Malamud [mailto:carl@media.org]

Sent: Friday, October 16, 2015 4:27 PM

To: Flood, Thelma R CIV; Brewer, Gaston CIV

Cc: HQS-SMB-FOIA

Subject: FOIA number 2015-CGFO-03084

Dear Ms. Flood and Mr. Brewer -

I've left Ms. Flood a few messages but have not heard back. I really need a status report on FOIA number 2015-CGFO-03084.

We asked for expedited treatment as this FOIA request is relevant to a Notice of Proposed Rulemaking that closes on October 23. This is significantly past the 20-day response time required for ordinary FOIA requests, and you have not responded to our request for expedited treatment nor have you answered our frequent requests for status reports.

Please let me know if you anticipate answering either the request itself or our request for expedited treatment. This is important as the docket will close next week for comments.

Best regards,

Carl Malamud

A.8. Message to the Coast Guard on October 18, 2015 at 12:21:18 -0700

From: "Smith, Ken" <Ken.A.Smith@uscg.mil>
To: Carl Malamud <carl@media.org>
Subject: RE: FOIA number 2015-CGFO-03084
Date: Sun, 18 Oct 2015 19:21:18 +0000
Message-ID: <AA6C1B62304D634AA21AD491222DD43560598FE7@EMO-EXCH-1101.main.ads.uscg.mil>
In-Reply-To: <3CEBD569-EC1D-48B2-9FC5-F9905C0850D1@media.org>

Mr. Malamud,

Your FOIA request was originally assigned to me, but was reassigned to the Office of Standard Evaluation and Development (CG-REG). I understand you should receive a response shortly.

V/r Ken

-----Original Message----- From: Carl Malamud [mailto:carl@media.org]
Sent: Saturday, October 17, 2015 12:01 PM
To: Smith, Ken
Subject: Fwd: FOIA number 2015-CGFO-03084

Dear Mr. Smith -

I understand you have been assigned my FOIA request 2015-CGFO-03084. As you know, the Commercial Diving NPRM (Docket No. USCG-1998-3786) will be closing the comment period on October 23, 2015. We had requested expedited treatment on the FOIA request.

I was hoping you could tell me if you anticipate answering my FOIA request before the comment period closes and, if so, when I might expect the answer as it is relevant to the comment we are considering submitting.

Thanks in advance for your assistance in this matter.

Best regards,

Carl Malamud

A.9. Message to the Coast Guard on October 18, 2015 at 15:57:00 -0700

From: Carl Malamud <carl@media.org>

To: "Smith, Ken" <Ken.A.Smith@uscg.mil>

Subject: Re: FOIA number 2015-CGFO-03084

In-Reply-To: <AA6C1B62304D634AA21AD491222DD43560598FE7@EMO-EXCH-1101.main.ads.uscg.mil>

Date: Sun, 18 Oct 2015 15:57:00 -0700

Message-Id: <6C0721B7-C2CE-4E85-94A2-48F36F6E808D@media.org>

Mr. Smith -

Thanks much for your note. It would be really great to be able to read some of those 9 documents. They are definitely integral to the proposed rule, it is hard to imagine understanding the commercial diving regulations without looking at the ASME, ISO, and CGA components.

Your comment period closes on Friday. Do you think you'll be able to get us the documents to review before then?

Best regards,

Carl

> On Oct 18, 2015, at 12:21 PM, Smith, Ken <Ken.A.Smith@uscg.mil> wrote:

>

> Mr. Malamud,

>

> Your FOIA request was originally assigned to me, but was reassigned to the Office of Standard Evaluation and Development (CG-REG). I understand you should receive a response shortly.

>

> V/r Ken

>

A.10. Message to the Coast Guard on October 21, 2015 at 11:50:39 -0700

From: "Flood, Thelma R CIV" <Thelma.R.Flood@uscg.mil>
To: Carl Malamud <carl@media.org>
CC: "Brewer, Gaston CIV" <Gaston.Brewer@uscg.mil>, HQS-SMB-FOIA <EFOIA@uscg.mil>
Subject: RE: FOIA number 2015-CGFO-03084
Date: Wed, 21 Oct 2015 16:50:39 +0000
Message-ID: <4431B22C652C0744AB30FA48AEAA8DA655B9754D@EMO-EXCH-1102.main.ads.uscg.mil>
In-Reply-To: <AAE9D15A-7BBD-46B4-9D05-A6A4B584614B@media.org>

Good morning,

It was explained that the documents in which you are requesting was in the possession of Mr. Ken Smith in CG-OES and therefore, your request was sent to that office for processing. I will make note that your request was transferred to another office for processing.

You may contact Mr. Rodney Richardson in CG-REG at (202) 372-1086 for an update on the status of your request.

v/r

Thelma Flood
CG-DCO Directorate FOIA Coordinator
United States Coast Guard Headquarters
2703 Martin Luther King Jr. Avenue SE
STOP 7501
Washington, DC 20593-7501
Tele: 202 372-1284

-----Original Message-----

From: Carl Malamud [mailto:carl@media.org]
Sent: Wednesday, October 21, 2015 12:22 PM
To: Flood, Thelma R CIV
Cc: Brewer, Gaston CIV; HQS-SMB-FOIA
Subject: Re: FOIA number 2015-CGFO-03084

Dear Ms. Flood and Mr. Brewer -

Mr. Smith informed me that he had passed the FOIA request to another group, Office of Standard Evaluation and Development (CG-REG).

Our comment on the Commercial Diving standard is due this Friday, October 23, and the purpose of our FOIA request was to be able to comment adequately on this Notice of Proposed Rulemaking. This is why we asked for expedited treatment. Even if expedited treatment is not granted, the Coast Guard is past the 20 day period required by law for a response.

Will you be furnishing me with a response in time for me to prepare my comment for the rulemaking docket?

Best regards,

Carl Malamud

A.11. Phone call to the Coast Guard on October 21, 2015 at 09:51:02 -0700

To: 12023721413 (Mr. Rodney Richardson)

From: 17078277290 (Carl Malamud)

Date: Wed, 21 Oct 2015 09:51:02 -0700

Duration: 00:01:03

Note: Left Messsage

A.12. Phone call to the Coast Guard on October 22, 2015 at 08:57:34 -0700

To: 12023721413 (Mr. Rodney Richardson)

From: 17078277290 (Carl Malamud)

Date: Thu, 22 Oct 2015 08:57:34 -0700

Duration: 00:00:35

Note: Left Messsage

A.13. Phone call to the Coast Guard on October 23, 2015 at 08:10:52 -0700

To: 12023721413 (Mr. Rodney Richardson)

From: 17078277290 (Carl Malamud)

Date: Fri, 23 Oct 2015 08:10:52 -0700

Duration: 00:11:59

Note: Spoke with Mr. Richardson

A.14. Message to the Coast Guard on October 23, 2015 at 08:34:20 -0700

To: "Flood, Thelma R CIV" <Thelma.R.Flood@uscg.mil>
From: Carl Malamud <carl@media.org>
In-Reply-To: <4431B22C652C0744AB30FA48AEAA8DA655B9754D@EMO-EXCH-1102.main.ads.uscg.mil>
Date: Fri, 23 Oct 2015 08:34:20 -0700
Cc: "Brewer, Gaston CIV" <Gaston.Brewer@uscg.mil>, HQS-SMB-FOIA <EFOIA@uscg.mil>, "Smith, Ken" <Ken.A.Smith@uscg.mil>, "Richardson, Rodney CIV" <Rodney.Richardson@uscg.mil>
Subject: Re: FOIA number 2015-CGFO-03084
Message-Id: <19F022F8-D1EA-4483-B7FD-4B0A7428B26F@media.org>

Dear Ms. Flood and Mr. Brewer -

I was able to reach Mr. Richardson today. It appears that not only was my request for expedited treatment ignored by the FOIA office, but processing on the request has not even begun. As I've stated repeatedly in my correspondence to you, October 23 (today) is the final date for comments on the Coast Guard Notice of Proposed Rulemaking 2015-CGFO-03084. I was very clear in my original submission to your office on September 10 that I was requesting expedited treatment. I've repeated that request in correspondence with your office through the month of September and October.

Because the Coast Guard has failed to process this FOIA request in a timely fashion, and because the Coast Guard simply ignored the request for expedited treatment, I am in the unfortunate position of having to comment on your rulemaking docket without the documents I requested or the benefit of a response to the FOIA request. This substantially affects my due process rights in the rulemaking procedure and is contrary to the Freedom of Information Act (5 USC 552) and the U.S. Coast FOIA regulations in 6 CFR Part 5 as well as the Coast Guard FOIA and Privacy Act Manual (COMDTINST M5260.3) and External Affairs Manual (COMDTINST M5700.13).

While I realize it would not be possible to process my FOIA request today, I do expect an answer in the near future which either grants my request or specifies on the allowed exemptions to FOIA for denial of the request.

Sincerely yours,

Carl Malamud

Comment on Commercial Diving Operations-Reopening of Comment Period

- > On Oct 21, 2015, at 9:50 AM, Flood, Thelma R CIV <Thelma.R.Flood@uscg.mil> wrote:
- >
- > Good morning,
- >
- > It was explained that the documents in which you are requesting was in the possession of Mr. Ken Smith in CG-OES and therefore, your request was sent to that office for processing. I will make note that your request was transferred to another office for processing.
- >
- > You may contact Mr. Rodney Richardson in CG-REG at (202) 372-1086 for an update on the status of your request.
- >
- > v/r
- >
- > Thelma Flood
- > CG-DCO Directorate FOIA Coordinator
- > United States Coast Guard Headquarters
- > 2703 Martin Luther King Jr. Avenue SE
- > STOP 7501
- > Washington, DC 20593-7501
- > Tele: 202 372-1284