

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 16-82  
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Subj: Appeal of Coast Guard Commercial Vessel Decisions and Actions


1. PURPOSE. The purpose of this Circular is to inform the marine industry of the regulations concerning the appeal of Coast Guard decisions and actions made under Title 46 of the Code of Federal Regulations (46 CFR) which involve commercial vessel plan review, inspection, manning and operations.
2. BACKGROUND.
  - a. Members of the marine industry have requested wider dissemination of the process and time involved for appealing a Coast Guard official's decision and of the fact that no stigma attaches to anyone who appeals. Coast Guard regulations involving plan review, inspection, manning and operation of commercial vessels contained in 46 CFR are as binding on the Coast Guard as they are on the public. The Coast Guard may not arbitrarily exempt vessels from or alter the regulations. The regulations, however, provide for equivalents and for the appeal of a decision of a Coast Guard official. The main thrust of this Circular is to draw attention to those regulations.
3. DISCUSSION.
  - a. An EXEMPTION is the determination that a regulation may be set aside for a particular vessel or situation. The provisions for exemptions in 46 CFR are generally limited to the exemption provisions found in the load line regulations. 46 CFR 42.03-30 and 46 CFR 45.15 explain the circumstances and procedures for obtaining load line exemptions. Unless specifically provided for in regulation, Coast Guard officials may not exempt a vessel from compliance with an applicable regulation.
  - b. An EQUIVALENT is the determination that permits substituting an alternative approach which is as effective in accomplishing the purpose of a regulation as the approach specified by the regulation. The purpose of the equivalents provisions is to provide flexibility when new technology produces equipment or systems not considered at the time the regulation was drafted. The equivalents provisions also provide flexibility when a particular vessel configuration makes compliance with the letter of a regulation unreasonable or impracticable, but the vessel meets the overall level of required safety. The essence of the equivalents provisions is that an equivalent requires "something for something;" that is, a substitution. This can be contrasted with the essence of an exemption which is "something for nothing;" that is, merely setting aside the requirement with no substitution of an alternate measure. 46 CFR 30.15-1, 42.03-20, 50.20-30, 90.15-1 and 153.10 are some examples of the equivalents provisions found throughout Coast Guard regulations. The applicable area of the regulations dealing with the subject of concern should be checked for details on processing and evaluating an equivalence request.
  - c. Officers in Charge, Marine Inspection (OCMIs) under their respective District Commanders are the Coast Guard officials who have responsibility for the enforcement and administration of Coast Guard regulations. An APPEAL provides a means to obtain

review by higher Coast Guard authority of their decisions and should be used when an aggrieved party questions the application of a Coast Guard regulation. 46 CFR 2.01-70 describes the form the appeal of an OCMI's decision must take and to whom the appeal should be submitted. Appealing the decision of a Coast Guard official is not regarded as an attack on the competence or judgment of the official. In most cases an appeal merely reflects a differing point of view on a technical issue.

- d. In some cases the Coast Guard accepts plan review and inspection functions performed by the American Bureau of Shipping (ABS) in lieu of a separate action by the Coast Guard. A party aggrieved by a decision or action of the ABS must distinguish matters concerned with classification from matters concerned with Coast Guard regulation. Remedy of a classification matter is a concern only between the ABS and the aggrieved party. An ABS determination involving a Coast Guard regulation matter, however, may be referred to an OCMI. As previously noted, an OCMI's decision may be appealed as set forth in 46 CFR 2.01-70. (Note: Appeals of decisions made by the ABS when acting as a load line assigning authority are covered by the provisions of 46 CFR 42.07-75. Adjustments of tonnage assigned by the ABS when acting as an admeasurement authority are covered by the provisions of 46 CFR 69.05-9.)
- e. Plan review and other actions in many cases are conducted by Merchant Marine Field Technical Branches (mmts) assigned to the staff of District Commanders. Since an action by an mmt is a decision of the District Commander, an adverse decision by an mmt which can not be resolved at the district level may be appealed to the Commandant (G-MTH), as set forth in 46 CFR 2.01-70(a) and 46 CFR 2.01-70(b)(2).

4. ACTION.

- a. A person appealing a decision or action of a Coast Guard official concerning the items discussed in this Circular must follow the procedures set out in 46 CFR 2.01-70.
- b. Coast Guard staff receiving the appeal from an OCMI decision will contact the cognizant OCMI for relevant background material if that information has not been forwarded with the appeal. Therefore, in order to aid timely processing and reduce mailing delays, an OCMI should forward complete and accurate information reflecting the differing views if he knows that an appeal from his decision has been initiated.
- c. An appeal from a Coast Guard decision more often than not occurs when time is important. A delay in a decision will either have adverse economic consequences for the aggrieved party or will render the question moot because of the need to proceed with a project. Accordingly, Coast Guard staff receiving properly submitted appeals are charged with providing timely decisions transmitted by a communications means appropriate to the situation. If circumstances prevent rendering a timely decision, an interim answer should be sent which outlines the reasons why the decision is delayed and which provides an estimated decision date.

  
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