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NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 05-17

Subj: REPORTING AND INVESTIGATION OF MARINE CASUALTIES WHERE THE UNITED STATES IS A SUBSTANTIALLY INTERESTED STATE (SIS)

Ref: (a) *Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, MSC.255(84)*
(b) Title 46, United States Code, Chapter 61 – Reporting Marine Casualties
(c) Title 46, United States Code, Chapter 63 – Investigating Marine Casualties

1. PURPOSE. This circular publishes policy and guidance for the coordination and cooperation of marine casualty investigations with other substantially interested States (SISs) consistent with the generally recognized practices and procedures of international law described in references (a) and (b). This includes addressing the receipt of reports and the conduct of investigations into those marine casualties involving non-U.S. flagged vessels that occur outside of the navigable waters of the United States but fall within the U.S. Coast Guard’s authority as a SIS under references (a) and (b).
2. DISCLAIMER. This circular is not a substitute for applicable legal requirements, nor is itself a rule. It is not intended to nor does it impose legally-binding requirements on any party. It represents the Coast Guard’s deliberations on this topic in an effort to assist all parties in applying proper statutory and regulatory requirements, as well as generally recognized practices and procedures of international law.
3. ACTION.
 - a. Area, District, Sector Commanders, and Commanding Officers of units conducting marine casualty investigations should utilize the contents of this circular when conducting preliminary investigations and marine casualty investigations into incidents where other SISs may be involved.
 - b. States with the authority and responsibility to conduct marine casualty investigations under reference (b) and (c) and/or in accordance with their own laws and regulations are

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invited to use this circular to facilitate coordination and cooperation with the U.S. Coast Guard in the investigation of marine casualties as SISs.

- c. Owners, operators, charterers, masters, persons-in-charge, marine employers, marine industry personnel, agents, merchant mariners, and all other parties that might be involved in a U.S. Coast Guard marine casualty investigation may use this circular to facilitate their understanding of and involvement in marine casualty investigations conducted by the U.S. Coast Guard and other SISs.
4. DIRECTIVES AFFECTED. Navigation and Vessel Inspection Circular (NVIC) 5-98 is cancelled.
 5. DISCUSSION. Under the authority of References (b) and (c), the U.S. Coast Guard has prescribed regulations in 46 C.F.R. Part 4 on the immediate notification, reporting, and investigation of marine casualties. Regulations for marine casualties involving public vessels, found in 46 C.F.R. Subpart 4.40, are outside the scope of this circular. This circular addresses marine casualties as defined in 46 C.F.R. Subpart 4.03:
 - a. Any marine casualty or accident involving any vessel that occurs upon the navigable waters of the United States, its territories, or possessions;
 - b. Any marine casualty or accident involving a United States vessel wherever such casualty or accident occurs; or
 - c. Any marine casualty involving a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), that involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.
 6. There are marine casualties included in reference (b) not covered by 46 C.F.R. Part 4 regulations that the U.S. Coast Guard also has the authority and responsibility to ensure are investigated. These include the following:
 - a. Any marine casualty involving a United States citizen on a foreign passenger vessel operating south of 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line; or operating in the area south of 60 degrees south latitude (see Figure 1) that:
 - (1) Embarks or disembarks passengers in the United States; or
 - (2) Transports passengers traveling under any form of air and sea ticket package marketed in the United States.

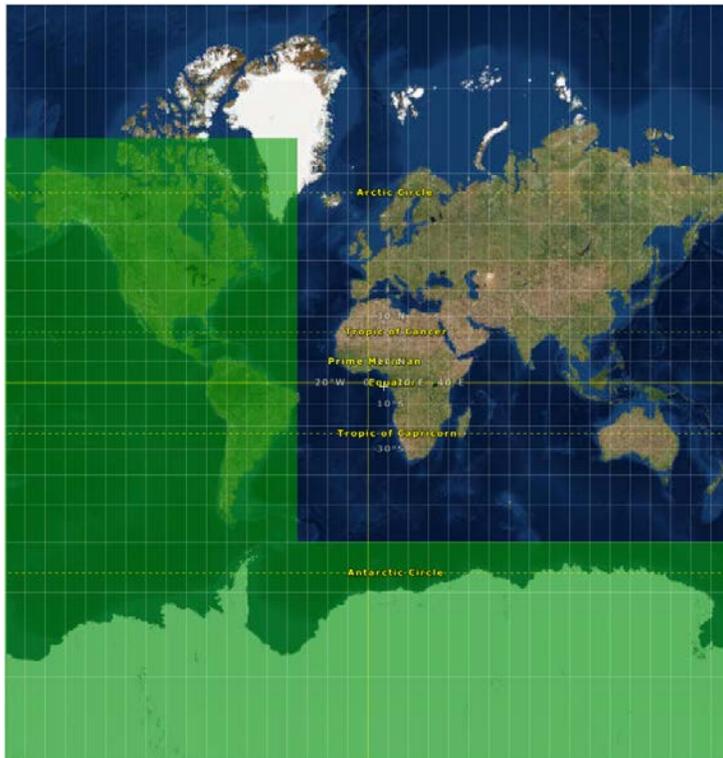


Figure 1. Operating area (shaded green) subject to marine casualty reporting under 46 USC 6101(f)(1) for a marine casualty involving a U.S. citizen on a foreign passenger vessel.

For the purpose of this policy, a marine casualty is considered to involve a United States citizen if the casualty results in the citizen's death or serious injury, or he or she has gone missing. It also includes casualties where the citizen was at risk of injury or death as a result of the casualty and/or action that was taken either out of necessity or as a precaution to protect the citizen from harm (e.g. a U.S. citizen has to be evacuated from a foreign vessel).

- b. In addition to the U.S. Coast Guard's statutory and regulatory marine casualty investigation requirements and in accordance with generally recognized practices and procedures of international law, the Coast Guard may investigate any marine casualty where the United States is a SIS as defined in Reference (a). Depending on the circumstances this could include marine casualties involving a foreign vessel outside of waters subject to the jurisdiction of the United States.
7. For any marine casualty, whether it falls under the criteria in paragraph 5 or 6, there may be one or more other SISs (e.g., flag States, coastal States) that have a responsibility and authority to conduct a marine casualty investigation. It is the Coast Guard's position that it is in the best interest of maritime safety and all parties involved that, whenever possible, SISs work jointly and cooperatively to the greatest extent practicable when investigating marine casualties.

8. STATUS OF THE CODE OF THE INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES FOR A SAFETY INVESTIGATION INTO A MARINE CASUALTY OR MARINE INCIDENT (Code). On May 16, 2008, amendments made to the Chapter XI-1 to the International Convention on the Safety of Life at Sea (the Convention) made part I and II of the Code mandatory under the Convention. The United States is not signatory to the Code as it was determined that certain provisions of the Code do not directly promote maritime safety and conflict with important aspects of U.S. domestic law and practice. As a result, those amendments did not enter into force for the United States. Instead, under its authority in references (b) and (c), the U.S. Coast Guard applies those provisions of the Code that are consistent with generally recognized practices and procedures of international law.
9. DEFINITIONS. For the purposes of this policy and any associated tactics, techniques, or procedures, the following definitions apply:
- a. An *agent* means any person, natural or legal, engaged on behalf of the owner, charterer or operator of a ship, or the owner of the cargo, in providing shipping services, including managing arrangements for the ship being the subject of a marine safety investigation.
 - b. A *causal factor* means actions, omissions, or conditions, without which:
 - (1) The marine casualty would not have occurred; or
 - (2) Adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious;
 - (3) Another action, omission, or condition, associated with an outcome in paragraphs (1) or (2), would probably not have occurred.
 - c. *Coastal State* means a State in whose territory, including its territorial sea, a marine casualty occurs.
 - d. *Flag State* means a State whose flag a ship is entitled to fly.
 - e. With respect to the United States, *high seas* means the high seas as defined by Title 33, Code of Federal Regulations, § 2.32(d).
 - f. *Interested party* means an organization, or individual, who, as determined by the marine safety investigating State(s), has significant interests, rights, or legitimate expectations with respect to the outcome of a marine casualty investigation. For U.S. Coast Guard investigations, any organization or person designated a *party in interest* under the provisions of reference (c) is considered to be an interested party.
 - g. *International Safety Management (ISM) Code* means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the IMO by resolution A.741(18), as amended.

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- h. *A marine casualty or accident* means an occurrence resulting in event(s) caused by or involving a vessel, but not limited to those listed in 46 CFR 4.03-1(b). See paragraphs 5 and 6.
- i. *Marine casualty investigation* means an investigation or inquiry:
 - (1) Conducted under the auspices of the IMO with the objective of preventing marine casualties in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary; or
 - (2) Conducted under Title 46, United States Code, Chapter 63.
- j. *A marine safety investigation report*, means a report that contains:
 - (1) A summary outlining the basic facts of the marine casualty and stating whether any deaths, injuries, or pollution occurred as a result;
 - (2) The identity of the flag State, owner, operators, the company as identified in the safety management certificate, and the classification society.
 - (3) Where relevant the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other personnel matters;
 - (4) A narrative detailing the circumstances of the marine casualty;
 - (5) Analysis and comment on the causal factors including any mechanical, human and organizational factors;
 - (6) A discussion of the marine safety investigations findings, including identification of safety issues, and the marine safety investigation's conclusions; and
 - (7) Where appropriate, recommendations with a view to preventing future marine casualties.
 - (8) When prepared by the U.S. Coast Guard, the Report of Investigation created in accordance with 46 C.F.R. §§ 4.07-10 or 46 CFR 4.09-20 is considered a marine safety investigation report.
- k. *Marine safety investigation Authority* means an Authority in a State, responsible for conducting investigations in accordance with the generally recognized practices and procedures of international law.
- l. *Marine safety investigating State(s)* means the flag State or, where relevant, the State or States that take the responsibility for the conduct of a marine safety investigation as mutually agreed in accordance with the generally recognized practices and procedures of international law.

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- m. *Material damage* in relation to a marine casualty means:
- (1) Damage that:
 - (a) significantly affects the structural integrity, performance, or operational characteristics of marine infrastructure or a ship; and
 - (b) requires major repair or replacement of a major component or components; or
 - (2) Destruction of the marine infrastructure or ship.
- n. A *seafarer* means any person who is employed or engaged or works in any capacity on board a ship.
- o. A *serious injury* means an injury which is sustained by a person resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered.
- p. *Severe damage to the environment* means damage to the environment which, as evaluated by the State(s) affected, or the flag State, as appropriate, produces a major deleterious effect upon the environment.
- q. *Substantially interested State (SIS)* means a State:
- (1) Which is the flag State of a ship involved in a marine casualty;
 - (2) Which is the coastal State involved in a marine casualty;
 - (3) Whose environment was severely or significantly damaged by a marine casualty (including the environment of its waters and territories recognized under international law);
 - (4) Where the consequences of a marine casualty caused, or threatened serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction;
 - (5) Where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries;
 - (6) That has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation; or
 - (7) That for some other reason establishes an interest that is considered significant by the marine safety investigating State(s).

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- r. *Territorial Sea* means the territorial sea as defined in Title 33, C.F.R. § 2.22.
- s. *A very serious marine casualty* means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.

10. NOTIFICATION OF MARINE CASUALTIES.

- a. **When required by 46 CFR Subpart 4.05:** The owner, agent, master, operator, or person in charge of any vessel involved in a marine casualty is to provide immediate notice and submit a written report to the Coast Guard. If, during its preliminary investigation the Coast Guard determines the incident is a *very serious marine casualty*, it will determine whether there are any other States that meet the criteria as a SIS. If there are, the Officer in Charge, Marine Inspection (OCMI), will inform Commandant (CG-INV), which will notify the appropriate Contact Points for Casualty Investigation for each SIS.
- b. **When not required by 46 CFR Subpart 4.05:**
 - (1) Upon receiving a report of an incident that meets the criteria in reference (b), the flag State of a foreign vessel involved in the incident is expected to notify the U.S. Coast Guard's IMO Contact Point for Casualty Investigation as soon as is reasonably practicable. The contact points are:

U.S. Coast Guard Office of Investigations and Analysis (CG-INV)
Email: HQS-PF-flr-CG-INV@USCG.MIL

Mr. Timothy Farley
Office of Investigations and Analysis
Commandant (CG-INV)
2703 Martin Luther King Jr. Avenue SE STOP 7581
Washington, DC 20593-7581
United States
Tel: 202-372-1031
Email: Timothy.J.Farley@uscg.mil

Alternate:
Mr. David Deaver
Office of Investigations and Analysis, Investigations Division
Commandant (CG-INV-1)
2703 Martin Luther King Jr. Avenue SE STOP 7581
Washington, DC 20593-7581
United States
Tel: 202-527-2316
Email: David.W.Deaver@uscg.mil

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- (2) Upon receiving a report of an incident that meets the criteria in paragraph 6 of this circular from a source other than the flag State of the vessel involved, the U.S. Coast Guard will notify the flag, as well as any other SIS, initially through email or telephonic contact, followed up by a signed correspondence by CG-INV as soon as is reasonably practicable.
 - (3) OCMI's receiving such reports should forward the report to Commandant (CG-INV) via the chain of command, which will notify the appropriate flag State/SIS contact points.
- c. The owner, agent, master, operator, or person in charge of a foreign vessel involved in an incident that meets the criteria in paragraph 6 of this circular is encouraged to voluntarily provide immediate notice of the marine casualty to the nearest U.S. Coast Guard Sector Office, Marine Inspection Office, or Coast Guard Group Office. If the party is unsure which Coast Guard Office to provide notice to, they may provide notice to the U.S. Coast Guard's Contact Point for Casualty Investigation listed in paragraph 11.b.(1).
- d. Content of a Notification. A notification made in accordance with paragraphs 11.b. or 11.c. above shall contain as much of the following information as is readily available:
- (1) The name of the ship and its flag State
 - (2) The IMO ship identification number
 - (3) The nature of the marine casualty
 - (4) The location of the marine casualty
 - (5) The time and date of the marine casualty
 - (6) The number of any seriously injured or killed persons;
 - (7) The consequences of the marine casualty to individuals, property, and the environment; and
 - (8) The identification of any other ship involved.

11. COAST GUARD REQUIREMENT TO INVESTIGATE.

- a. The Commandant or District Commander upon receipt of information of a marine casualty described in paragraph 6 of this circular will conduct a marine casualty investigation as may be necessary that is thorough and timely and produces findings and, when appropriate recommendations, to improve safety. Contingent upon the level of cooperation/participation between SISs, the marine safety investigation may be:
- (1) Conducted under the auspices of the IMO with the objective of preventing marine casualties in the future. The investigation includes the collection and analysis of

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evidence, the identification of causal factors and the making of safety recommendations as necessary; or

(2) Conducted under reference (c) and regulations prescribed under it.

- b. A U.S. Coast Guard marine casualty investigation is to be initiated without delay after it has been determined that the incident falls under its investigative jurisdiction. The investigation will not be delayed due to a failure or delay in communications or coordination from the flag State or other SIS.

12. DETERMINATION OF SIS ROLES IN MARINE CASUALTY INVESTIGATIONS.

- a. Commandant (CG-INV) will consult with all other SISs and, based on the following policy, seek to determine the role of each SIS and the level of cooperation as soon as practicable after becoming aware of the incident. Once an agreement has been reached, further coordination and cooperation will be implemented by the U.S. Coast Guard unit conducting the marine casualty investigation.
- b. Marine Casualties involving U.S.-Flagged Vessels or Foreign Vessels Subject to 46 CFR Part 4.
- (1) The U.S. Coast Guard will assume the role of a marine safety investigating State for any marine casualty described in paragraph 5 and will conduct its investigation in accordance with the requirements in 46 CFR Part 4. After notifying the flag State and any other SISs of a very serious marine casualty in accordance with paragraph 11.a. or otherwise being contacted by them regarding any other marine casualty, the U.S. Coast Guard will consult and seek agreement with them, as appropriate, to determine whether they will:
- (a) work jointly with the U.S. Coast Guard's investigation as a co-marine safety investigating State,
 - (b) participate in the U.S. Coast Guard's investigation as a SIS,
 - (c) conduct a separate, parallel investigation, or
 - (d) not be conducting an investigation.
- c. Marine Casualties Involving Foreign Vessels Not Subject to 46 CFR Part 4.
- (1) For any marine casualty described in paragraph 6 of this circular where the flag State of the vessel involved has determined to:
- (a) assume the role of a marine safety investigating State,
 - (b) conduct a marine casualty investigation under the auspices of the IMO, and
 - (c) allow the U.S. Coast Guard to fully participate as a SIS,

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the U.S. Coast Guard will normally participate in the marine casualty investigation under the rules, requirements and procedures of the marine safety investigating State. *However, the Coast Guard reserves the right to conduct a separate and parallel marine casualty investigation if deemed necessary.*

- (2) For any marine casualty described in paragraph 6 of this circular where the flag State of the vessel involved has determined to:
 - (a) assume the role of a marine safety investigating State,
 - (b) conduct a marine casualty investigation, but
 - (c) not allow the U.S. Coast Guard to participate as a SIS,

the U.S. Coast Guard will assume the role of a marine safety investigating State and will, insofar as practicable, conduct a separate, parallel marine casualty investigation in accordance with the requirements in 46 CFR Part 4.

- (3) For any marine casualty described in paragraph 6 of this circular where the flag State of the vessel involved has determined it will not conduct a marine casualty investigation or requests the U.S. Coast Guard investigate on their behalf, the U.S. Coast Guard may assume the role of a marine safety investigating State and will, insofar as practicable, conduct its investigation in accordance with the requirements in 46 CFR Part 4.
- (4) For marine casualties or incidents outside the jurisdiction of the United States and not otherwise described, upon request of any marine safety investigation Authority or State, the U.S. Coast Guard will make every attempt to support their investigation. This includes efforts such as the collection and transmittal of evidence in suspected cases of suicide or missing mariners.

13. COOPERATION AND COORDINATION BETWEEN SIS INVESTIGATORS.

- a. **When the U.S. Coast Guard is the Lead Marine Investigating Authority for the United States:** To the extent practical, designated investigators for SISs participating in the marine casualty investigation are:
 - (1) Invited to participate in the on-scene investigation. Investigators that cannot attend the on-scene investigation should be provided an opportunity to provide advice regarding what locations and materials are examined as well as what physical evidence is collected.
 - (2) Provided an opportunity to identify and request witnesses to be interviewed and to participate and ask questions during witness interviews. Investigators that cannot attend the interviews should be provided an opportunity to provide advice on the topics/questions to be addressed during the interview.

- (3) Provided an opportunity to submit or to request the collection of evidence.
 - (4) Provided the opportunity to participate and consult on the determination of the facts surrounding the casualty, on the conduct and assessment of any analysis, on the identification and classification of causal factors, the development of safety recommendations and in maritime hearings.
- b. **When the National Transportation Safety Board (NTSB) is the Lead Marine Safety Investigating Authority for the United States:** For marine casualties described in paragraph 5 where the NTSB is the Lead Marine Safety Investigating Authority for the United States, the on-scene investigation, calling and questioning of witnesses, submission and requests for evidence, and the determination of facts will be performed under NTSB rules/procedures with the Coast Guard participating in accordance with the joint NTSB-USCG regulations and memorandum of understanding. The participation of the flag State of any foreign-flagged vessel involved, as well as any other SIS, in the on-scene investigation, calling and questioning of witnesses, submission and requests for evidence, and the determination of facts will be based on the NTSB's rules/procedures. Cooperation and coordination between SISs on subsequent investigative efforts, including the conduct of analysis, identification of causal factors, and development of safety recommendations will continue between the Coast Guard and other SISs in accordance with the policy in paragraph 11.a. above, independent of the NTSB.
- c. **When Another State is the Lead Marine Investigating State:** To the extent practical, Coast Guard Investigating Officers designated to represent the United States as a SIS in a marine casualty investigation with another State as the lead marine investigating State should be granted the same level of access and participation as described in paragraphs 14.a.(1) through 14.a.(4).

14. RELATIONSHIP TO ENFORCEMENT.

- a. The primary purpose of the coordination and cooperation between the Coast Guard and other SISs described in this circular is to determine the causes of marine casualties and to identify steps that may be taken to prevent future occurrences. At the same time, the Coast Guard has a responsibility under U.S. law to determine if there is evidence of civil or criminal violations of U.S. law or regulations and to refer such findings for appropriate enforcement action.
- b. To the furthest extent practicable, determinations of possible civil or criminal violations of U.S. law or regulations will be made by the Coast Guard, independently of the marine casualty investigation conducted with other SISs. In those instances where a determination is made that there is evidence of a civil or criminal violation, all effort will be made to avoid having such determinations adversely impact the marine casualty investigation.

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- c. As a rule, the Coast Guard does not get involved in the determination of possible civil or criminal violations of the laws or regulations of other States. As with U.S. enforcement actions, it is expected that any other SIS considering enforcement action make an effort to avoid having such action adversely impact the marine casualty investigation.

15. MARINE SAFETY INVESTIGATION REPORTS.

- a. When marine safety investigating reports are solely prepared by the Coast Guard:
 - (1) Participating SISs will:
 - (a) Be provided a copy of the draft report for review so long as they guarantee not to circulate, nor cause to circulate, publish or give access to the draft report, or any part thereof, without the express consent of the Coast Guard.
 - (b) Be provided a minimum of 30 days to review and submit comments on the draft report. More than 30 days may be provided if mutually agreed to between SISs. If no comments are received within the review period agreed to between SISs, the Coast Guard will proceed to finalize the report.
 - (2) All comments received will be considered and addressed in the final report. Comments that are accepted will be implemented into the body of the report. Comments that are rejected will be appended to the report with an explanation as to why they were rejected.
 - (3) Participating SISs will be provided a copy of the final report before it is released to the public.
- b. When marine safety investigating reports are solely prepared by another marine safety investigating State:
 - (1) The Coast Guard will request an opportunity to review the draft report and submit comments.
 - (2) The Coast Guard shall request to be provided with a copy of the final report before it is published or otherwise made available to the public.
 - (3) The marine safety investigating State final report may be adopted by the Coast Guard as its report of investigation required by 46 USC §6305. The Coast Guard may append the final report with endorsement(s) in accordance with 46 CFR Subpart 4.07 and associated documentation and reporting procedures.
- c. When both the marine safety investigating State and the Coast Guard generate their own independent reports:
 - (1) The marine safety investigating State shall be afforded all rights afforded under 16 (a) of this publication.

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- (2) The Coast Guard shall incorporate the marine safety investigating States report in the corresponding MISLE case or activity.
- (3) There are no requirements or expectations that the two independently produced investigative reports shall be aligned.

16. SAFEGUARDING SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION AND OTHER SENSITIVE INFORMATION. The conduct of casualty or accident investigations invariably involves the collection and handling of sensitive personally identifiable information and other sensitive information. The need to safeguard this information has to be balanced with the Coast Guard's legal requirements under the Freedom of Information Act (FOIA) and other Federal regulations to make information available to the public during and upon completion of the investigation. To the greatest extent practicable, information collected by the Coast Guard will be shared with other SISs participating in the investigation. In those instances where it is determined the Coast Guard is prohibited from providing particular information to another SIS, all effort will be made to avoid adversely impacting the ability of the SIS to participate in the investigation. Generally, once the investigation is closed, the report of the investigation and associated records may be subject to release under FOIA. The determination regarding what information is ultimately released will be determined by the Coast Guard, taking into consideration the requirements in the following Federal statutes, other applicable statutes and regulations, as well as any associated Department of Homeland Security (DHS) and Coast Guard policies.

- a. Privacy Act of 1974 (5 USC §552a)
- b. Health Insurance Portability and Accountability Act (HIPAA) (Public Law 104-191)
- c. Freedom of Information Act (FOIA) (5 USC §552)
- d. Reports of Investigation (46 USC §6305(b))

17. CHANGES. This circular is available on the HOMEPORT Internet website at <http://homeport.uscg.mil> (select the Investigations link under Missions tab on the left side of the page). The Coast Guard will issue and post time-sensitive amendments as an urgent change message on this website. Interested parties may suggest improvements to this circular by corresponding with the Office of Investigations & Casualty Analysis (CG-INV), using the address and phone number provided at the head of this circular.

18. COAST GUARD MISSION MANAGEMENT SYSTEM (MMS) CONSIDERATIONS.

This circular does not change the Coast Guard's MMS procedures for Coast Guard Investigations (MPS-PR-INV-01). However, it does amplify process improvement guidance for workflows contained within the MMS.

19. ENVIRONMENTAL IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this circular and have been determined to be not applicable.

J.P. NADEAU
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Assistant Commandant for Prevention Policy