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LEGAL CONSIDERATIONS

Where do all these laws come from and how are regulations created?

"Congress is divided into civilized, half civilized, and savage." (Attributed to a book, English as it is Taught, by Caroline B. Le Row; answers by students to questions posed by teachers and later used by Mark Twain)

Statutes & Regulations

Disclaimer: *I am not an attorney. This is not legal advice. Only a lawyer can give you legal advice. All of the following is based on my own experience and education. It is very general in nature. Many laws concerning running a business vary from state to state. It is your responsibility to find out what the laws are in your state or city. Any errors or omissions on my part do not relieve you from your obligation to operate your business legally. Where possible I have put links to web sites that contain information about the subject. However, you should consult an attorney for specific details of the laws applicable where your business is located. What is said here applies only to the USA. If you are in another country you need to talk to someone who knows the laws in your country.*

I was listening to NPR radio the other day, and they were discussing IRS regulations, and it occurred to me that even the commentator didn't have a good understanding of the difference between Federal Statutes, and Federal Regulations. There is a major difference in how they are created. Federal Statutes, commonly referred to as The United States Code, are created by Congress, Federal Regulations are created by the Executive Branch under direction of Congress.

If you ask your friends and neighbors, you will probably find that most people have no idea how laws are created other than that Congress passes them and the President signs them. Which is

about as close as most Americans get to understanding the legislative process. In the case of the boating laws in this country I have heard so many outright falsehoods, and answered so many questions about, not only what is the law, but why, that I thought it would be good to present a discussion on how all of this comes about.

How a law begins:

It all starts with an idea. Someone, it can be anyone, a citizen, a politician, a group of people, the President, whoever, forms an idea that there ought to be a law about something. This idea is then proposed to either a Representative or a Senator, or both. After much research to see if this is already covered, or has been already addressed in some way, or if it even rises to the level of Federal Jurisdiction, then a proposed bill is drafted. A Representative or Senator has to be the sponsor, preferably getting more sponsors if possible, and at best one sponsor that is on the committee that handles that subject. No sponsors, no bill. These bills are usually given a name, such as the Federal Boat Safety Act. The more sponsors the better. Each committee has a docket, that is, a schedule. A date is scheduled on the docket for discussion. It is then introduced to the members of the committee.

The House and Senate have many committees. Each one handles a different subject. The best known are the Ways and Means committees of the House and Senate that handle appropriations. The committee then considers it, makes any necessary changes and the committee votes on whether or not to move it to the floor of the House or Senate for debate. A bill can die in committee, or upon objection by even one member be held in committee forever. It can be moved out of committee by a forced floor vote but this is rarely done.

Once it reaches the floor of the House or Senate, and it is often introduced to both houses at the same time, it is then debated, more changes made, amendments added, and eventually voted on. It can also be included in a bill that is already on the floor as an amendment. It can also die on the floor or be kept on the docket for very long periods of time, never reaching debate, or a vote. If it is included as an amendment to an existing bill, and that bill dies, it may have to go through the whole process over again to be introduced as a separate bill. If both houses pass it, then a joint committee is formed of members of both houses and the differences between the House version and the Senate version are corrected and the final bill voted

on. If passed again by both houses it goes to the President who can; sign it, veto it, or pocket veto, which simply means take no action on it whatsoever, and it dies. If the president vetos it and there is enough support, Congress can override the veto by a 2/3rds vote of both houses, but that is rarely done.

How the bill becomes a Statute:

If the President signs it, The Act becomes a Statute, or law. The Statute then becomes part of the **United States Code**. It is re-codified, that is, assigned a Title number and Chapter number in the US Code based on the subject matter, and divided into subchapters and sections. For instance, The Federal Boat Safety Act of 1971, has been re-codified as Title 46 - Shipping - United States Code, Chapter 43 - Recreational Vessels. Under that are sections each starting with the number of the Chapter. This statute runs from section 4301 to 4311.

Acts, or Statutes, rarely spell out the details of what Congress wants done. They give the intent of Congress, assign the responsibility for implementation and enforcement to a specific branch of government, and make provisions for penalties. If money is needed, a separate appropriations bill has to be passed. If no appropriations are passed, no action can be taken to implement the Statute.

How does the new Statute generate Regulations:

The details are left up to the Executive Branch, usually to a particular agency under a specific Secretary. In the case of the Boat Safety Act, it was assigned to the Coast Guard but is worded this way, "The Secretary may prescribe regulations....." So technically, the responsibility is to the Secretary of the Department, but the actual implementation of the law is left to the agency, in this case the Coast Guard.

This is where the regulatory process begins. In Title 46 USC 4302 - Regulations, it says:

- (a) The Secretary may prescribe regulations--
 - (1) establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards, with each standard--
 - (A) meeting the need for recreational vessel safety; and
 - (B) being stated, insofar as practicable, in terms of performance;

And more. See US Code. Title 46 Chapter 43 - Recreational Vessels

So, the agency, in this case the Coast Guard, must figure out what regulations are needed to carry out the intent of Congress. It not only directs them to prescribe regulations, it says they must be the minimum, they must meet the need for safety and must be in terms of performance. It goes on to say that the Coast Guard must look at relevant information such as research, statistics, studies, etc., to establish that there is a need for the regulation, and that it can't be retroactive, in other words, not make someone spend a lot of money to bring an old boat up to the new standard. After all of that, they have to submit the proposed regulation to The National Boating Safety Advisory Council. This committee is made up of people from the industry, from the boating community, and other boating related activities, and are appointed by the President. It is not an oversight committee. Its purpose is to advise the Coast Guard. The Coast Guard doesn't have to accept their advice, but generally does.

After all of this, it does not just become a regulation. First the Coast Guard must publish it as an Advanced Notice of Proposed Rule Making. In other words, they must publish a notice that they want to make a rule, and here is the rule, and why. Then they must take public comment. The comment period can be anything from 90 to 180 days, and occasionally longer. All comments received must be considered and responded to. They can also hold public hearings if they feel there is a necessity to get direct comments. These are held all over the country.

Then if they feel it is still a go, they publish a Notice of Proposed Rule Making, usually incorporating the changes made because of the comments. Many proposed regulations have never gotten beyond this point simply because the public was vehemently opposed to it. But again, there is another public comment period.

Finally, the Notice of Final Rule Making is published with the text of the final rule. A date is published for when the rule will go into effect, usually no less than 180 days in the future, but often a year or more. At this point it becomes part of a separate body of laws called the **Code of Federal Regulations**. For the regulations [click on this link](#)

How are regulations enforced:

As far as enforcement goes, provisions are made in the original Statute for handling penalties. Most of these are what are called administrative penalties for handling administrative infractions, that is minor violations, and they never go to court. They are handled by the Coast Guard. A hearing officer is assigned and the hearing officer reviews the case and assigns a penalty, or they can dismiss it, or issue a warning. You are notified by the agency of a violation and the possible fine. You have the right to present your case to the hearing officer, or to just pay the fine. (This is pretty much the same as getting a parking ticket in your local community.) You also have the right to have an attorney represent you. There are rights of appeal as well.

However, if the violation is serious enough, a misdemeanor such as negligence, or a felony, such as Gross Negligence involving fatalities, it can rise to the level of the Federal District Attorneys who will, if they feel it is necessary, prosecute it in Federal Court. This very rarely happens in boating cases. Most are handled by hearing officers.

To recap: Congress passes an Act, which becomes a Statute in the United States Code. This Statute tells the agency what Congress wants them to do. The Coast Guard, acting under the authority of the Statute, writes regulations, which then become part of the Code of Federal Regulations. The Code of Federal Regulations are then a group of laws you and I must abide by. This process is the same for the EPA, IRS, FAA DEA, FCC or any other regulatory agency. So when people talk about tax codes, they are talking about Federal regulations. When they talk about boating laws, they are talking about Federal Regulations, but all of these regulations come from authority given to the agency by Congress when they pass an act.

Just a note to confuse the issue: There are some laws in the US Code that apply directly to you and me. That is, they pass a specific law, make an agency responsible for enforcing it, and that's it. There are no implementing regulations. But in general, they are the exception.

How to comment on proposed regulations

<http://www.regulations.gov/#!home>