

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of:

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FIRE AND SINKING OF THE *CONCEPTION*
WITH LOSS OF LIFE NEAR
SANTA CRUZ ISLAND, CALIFORNIA,
SEPTEMBER 2, 2019

Accident No.: DCA19MM047

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Interview of: TIMOTHY BROWN, Chief
U.S. Coast Guard
Office of Standards, Evaluation and Development

Via telephone

Tuesday,
February 11, 2020

APPEARANCES:

ADAM TUCKER, Investigator in Charge
National Transportation Safety Board

ANDREW EHLERS, Marine Accident Investigator
National Transportation Safety Board

MARCEL MUISE, Marine Accident Investigator
National Transportation Safety Board

JEFF BRAY,
U.S. Coast Guard Marine Board of Investigation

LT [REDACTED], Legal Counsel
U.S. Coast Guard

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I N T E R V I E W

(1:03 p.m.)

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3 MR. EHLERS: Okay, good afternoon. This is Drew Ehlers,
4 Marine Accident Investigator with the National Transportation
5 Safety Board. We're conducting an interview with Mr. Tim Brown,
6 Chief of Office of Standards and Development at Coast Guard
7 Headquarters.

8 Tim, did I get that correct?

9 MR. BROWN: Yes, Standards, Evaluation and Development.

10 MR. EHLERS: Okay, all right. Thank you very much. And as
11 we get started here, first, Tim, this is a recorded interview.
12 Are you okay with us recording this interview?

13 MR. BROWN: Yes, I am.

14 MR. EHLERS: Okay. What I'd like to do first is have
15 everyone on the line and then in the room there with you, Tim,
16 introduce themselves. We'll start out with Adam, if you want to
17 introduce yourself, then we'll go to Marcel and then, if there's
18 no one else on the phone, then folks in the room.

19 So, Adam?

20 MR. TUCKER: Sure, yep. My name is Adam Tucker, and I'm the
21 Investigator in Charge for the *Conception* accident with the
22 National Transportation Safety Board.

23 MR. MUISE: This is Marcel Muise, also with National
24 Transportation Safety Board. I'm on Survival Factors for this
25 incident.

1 MR. BRAY: This is Jeff Bray at Coast Guard Headquarters
2 sitting with Tim. I'm the deputy in the office of Maritime
3 International Law. I'm assigned to the Coast Guard wing Board of
4 Investigations looking into the *Conception* fire and loss of life.

5 LT [REDACTED]: Lieutenant [REDACTED], U.S. Coast Guard
6 counsel, legal representative for the witness.

7 MR. EHLERS: And just for the record, Tim, can you say and
8 spell your name and also say again your title.

9 MR. BROWN: Yes, my full name is Timothy Brown, T-i-m-o-t-h-y
10 B-r-o-w-n. I'm Chief of the Standards, Evaluation and Development
11 Office at Coast Guard Headquarters.

12 MR. EHLERS: Okay, thank you very much.

13 INTERVIEW OF TIMOTHY BROWN

14 BY MR. EHLERS:

15 Q. All right, Tim. Could you explain what your responsibilities
16 are in your position?

17 A. Absolutely. So I'm the chief of the office that has project
18 managers, economists, environmental specialists, technical writers
19 to facilitate the Headquarters development process for the Coast
20 Guard. So we sit on the program side of the house, on the
21 prevention side of the house. We have a paralegal office that
22 handles reg law. But basically we oversee the process of
23 developing regulations of the Headquarters as a whole for the
24 Coast Guard.

25 Q. Okay. And how long have you been in your position?

1 A. Coming up on 5 years in April.

2 Q. Okay. How big is your staff?

3 A. We have 42 serving in the military. We're augmented by a
4 flexible technical writer staff of contractors.

5 Q. Okay. And do you handle all the regulations that Coast Guard
6 has authority or cognizance over?

7 A. I handle all of the Headquarters regulations, so we do not
8 deal with field regulations. Those are routine, frequent
9 rulemakings that primarily address safety zones, branch
10 deviations, you know, things of that nature. Those are handled at
11 the local sector and district level. And I do not handle the
12 administrative regs to come out of National Pollution Funds Center
13 for certificates of financial responsibility. NPFC handles those
14 on their own.

15 Q. Okay. So if I could throw out a couple examples to make sure
16 I understand correctly. So if somebody wanted to establish, say,
17 a precautionary zone in a navigation area, that would not be under
18 your office's purview; is that correct?

19 A. Correct.

20 Q. Okay. But regulations for construction, outfitting of a
21 vessel, would that fall under your office's purview?

22 A. Yes.

23 Q. Okay.

24 A. I will caveat the first part of your question. If it's a
25 traffic separation scheme, or something that's actually

1 implemented through an IMO instrument, then it requires domestic
2 regulations. We do handle those --

3 A. I see.

4 Q. -- if a local unit's establishing an anchorage or
5 establishing a safety zone for fireworks or something along those
6 lines, those are handled at the local level.

7 Q. Okay. I got it. Is it -- is your office's purview limited
8 to regulations or is there other instruments as far as, I don't
9 know, rulemaking that you can use?

10 A. Regulations and rulemaking, in that sense, are used as
11 interchangeable terms. So regulation, a rulemaking, those are
12 fairly interchangeable. From time to time, we do provide economic
13 analysis of larger policy documents, so if a NVIC has some kind of
14 unique aspect to it or broader application -- very rarely though,
15 but from time to time, we do look at those as well.

16 Q. Okay. All right. Thanks. Do you mind giving us a little
17 bit of your background, prior to taking this position, your
18 background and experience?

19 A. Sure. So I'm a Coast Guard Academy grad. I sailed for 5
20 years as a deck officer on buoy tenders at the Great Lakes and
21 Alaska. I came to work as a civil service employee, Coast Guard
22 Headquarters, in 2009. I was in the Office of Commercial Vessel
23 Compliance and then the Office of Operating and Environmental
24 Standards, participating in rulemaking but from, again, the
25 program side. Primarily, environmental regs when I was in those

1 two offices.

2 Q. Okay. All right. Do you mind walking us through the
3 rulemaking process. So if there's going to be a change to a
4 regulation, how does that work? How is that, first of all,
5 initiated, and then what's the process once a rule change is
6 happening? What's the process for that?

7 And please provide as much detail as you can if you don't
8 mind, because again, we're pretty -- we're novices at the
9 rulemaking game.

10 A. Sure. So I think at its basis it's important to understand
11 that rulemaking is a legal process. It's defined by the
12 Administrative Procedures Act, which has been around since the
13 mid-40s. There are many layers of legislation and Executive
14 Branch policy that directs how any Executive Branch Agency does
15 rulemaking. So at its core, the Administrative Procedures Act, or
16 APA, establishes a general process, requires public notice and
17 comments. There are laws that require environmental evaluation,
18 that set up some special treatment for small businesses.

19 And then on the Executive Orders side, starting in early 90s,
20 1993, there's been a series of Executive Orders that talk about
21 how we have to balance the need for regulation and the objectives
22 of regulation with the cumulative economic impact of regulation on
23 the public and on the industry. So at different levels there's
24 about a dozen Executive Orders and guidance that further explains
25 how to actually implement those Executive Orders that really guide

1 that overall rulemaking process.

2 All of the Coast Guard's regulations, whether its safety,
3 environmental stewardship, and of course security, are subject to
4 APA and are subject to that review. In terms of the Coast Guard,
5 we have two Commandant Instructions that talk about our reg
6 development process. They are Commandant Instruction M16703.2 and
7 M16703.1 M16703.1 is Headquarters Rank Development Process;
8 M16703.2 talks about our Marine Safety and Security Council, which
9 is a flagged, Senior Executive level, decision-making body that
10 guides our entire reg process.

11 Those are all the available -- and I can send you guys a list
12 of all the law guidance Executive Orders that kind of governs regs
13 if you'd like. Generally, at Coast Guard Headquarters we receive
14 direction to do a rulemaking either through an IMO instrument,
15 through legislation, or because Program Officers identified a
16 specific need for rulemaking. The Program Office then presents
17 their proposal for rulemaking to MSSC, again MSSC is that flagged,
18 SES Executive body that governs rulemaking and the Coast Guard --
19 if they take on the rulemaking, they assign a project team, which
20 consists of a reg law attorney, an economist, an environmental
21 specialist, any number of subject matter experts, you know,
22 engineers, ship operators, facility operators.

23 We draw from the program offices and a project manager, who
24 then develop the actual reg text, do the environmental analysis
25 under NETHA (ph.), do the economic analysis under all the other

1 laws and guidance that I mentioned, and then, dependent upon the
2 subject matter and the urgency for rulemaking, prepare a Notice of
3 Proposed Rulemaking, an Advanced Notice of Proposed Rulemaking,
4 which is generally an ANPRM where we're asking questions to the
5 public if we feel like we have a gap in our knowledge to prepare a
6 Notice of Proposed Rulemaking, or in exceptional circumstances, an
7 Interim or Direct Final Rule, where the rule has immediate effect.

8 Generally, the rulemaking process is Notice of Proposed
9 Rulemaking followed by a Final Rule. We take into account public
10 comments. When we prepare the Final Rule, really the public can
11 comment in the docket so everyone can see what's happening, any
12 aspect of the rule or the underlying analysis. Some rules -- all
13 rules are reviewed by DHS as -- you know, Coast Guard is a
14 component of DHS.

15 Q. Um-hmm.

16 A. Some rules are also reviewed by the Office of Management and
17 Budget and the Executive Office of the White House. So that's
18 kind of the broad picture of how we do rulemaking.

19 Q. Okay. All right. You mentioned a public comment for most --
20 for rulemaking, excuse me. Is -- how much weight is the public
21 comment given, and how are those comments adjudicated? Do you
22 have to respond to each comment, or how is that handled?

23 A. Yes, they're given quite a bit of weight. We do have to
24 respond to every comment, although if multiple commenters have
25 addressed the same issue, we'll group those together. So if we

1 get a comment that's twenty pages, which we do quite frequently,
2 we'll essentially group together like comments from commenters and
3 then address those together. So we're not necessarily responding
4 to a commenter, but we do have to respond to every comment.

5 Q. I see. And then, is there ever a case where maybe the
6 comments are -- essentially the rulemaking goes against what the
7 public comments may say for whatever reason, safety or whatever,
8 or financial reasons, et cetera?

9 A. Yes. Yeah, there's quite a few Final Rules where we will
10 have received -- the MSU will receive comments from the public
11 where we disagree with the comments, and then we say so in the
12 preamble to the Final Rule.

13 Q. I see.

14 A. So in the Federal Register, there's all that language before
15 we actually get to the right text explaining how we got to that
16 policy decision. So in that event it's really, fairly clearly
17 laid out when we disagree with a commenter.

18 Q. I see. And who has the final authority on a Final Rule? Is
19 it a Commandant, or is it -- how does that work? Or, well, if you
20 can explain maybe.

21 A. Yeah, so those are -- that process is laid out in our -- the
22 Commandant Instruction 16703.1 on Headquarters Rank Development.
23 There are essentially, under Executive Order 12866, two different
24 classifications of rules. One is a significant rulemaking, which
25 is economic impact over 100 million dollars per year. Or any rule

1 that's designated by OMB has having novel legal or policy impacts,
2 interagency disputes, things like that become significant
3 rulemakings. In that case, the Commandant is the signature
4 authority for those rules.

5 All other rulemakings, which are not significant, would be
6 the Assistant Commandant, either a one or two star level, at Coast
7 Guard he is the signature authority for non-significant rules. In
8 the past, they may have had the Director level at the SES level,
9 but as of right now, everything's at the Assistant Commandant
10 level.

11 Q. I see. Does a non-significant rule change or ruling, does
12 that still require a public comment like a significant rule
13 change?

14 A. Yes.

15 Q. Okay. All right. And maybe you can't answer this, but how
16 long does a significant rule change take?

17 A. For non-significant or significant rules, they both can take
18 years. Depends on the subject matter, depends on complexity of
19 the analysis, depends on a lot of factors. But you can look in
20 what they call the Unified Agenda of Regulatory Actions,
21 maintained by OMB. If you look on there, their webpage, you can
22 see a wide variety, a wide range of timelines.

23 Q. Okay. So I want to ask a couple questions specifically
24 regarding CFR 46 Subchapter T, and I realize you're not in the
25 Program Office, so if any of the questions I ask obviously aren't

1 in your lane or you don't have knowledge of, please say so.

2 Subchapter T was the -- is the regulation that governed the
3 *Conception*, so that's obviously why we have the interest in that
4 regarding small passenger vessels. The last major revision, I
5 would assume would be considered a last significant rule change,
6 was in 1996. Are you familiar -- has there been any initiative to
7 update the Subchapter T rules since 1996 that you're aware of?

8 A. Again, I've only been in the office since the spring of 2015,
9 so I'm not sure if there has been at all. It's currently not
10 listed as a rulemaking on our Unified Agenda.

11 Q. Oh, okay. Is there a regular review process for regulations
12 that Coast Guard has purview over? In other words, let me restate
13 my question, maybe it'll make it a little bit clearer. Is there
14 any, any guidance as far as every 10 years a certain section of
15 the regulations has to be reviewed just to see if a change is
16 necessary?

17 A. There are overarching Executive Branch requirements that
18 every Federal Agency, every Regulatory Agency, review their entire
19 suite of regulations. Most recently outlined in Executive Order
20 13563, and we've complied with those. So not necessarily on a
21 certain cycle, but every time we're directed to, we go back and
22 look at our entire suite of regs.

23 Q. I see. So would Subchapter T have been part of one of those
24 regular reviews?

25 A. I don't think I can speak to whether that was specifically

1 included, but that mandate was so we look at our entire set of
2 regulations.

3 Q. Okay. Is the output of that review, is that -- are those
4 public documents or is there a public-facing -- is there any
5 documentation of that review, do you know?

6 A. I'm not sure.

7 Q. Okay. And what I'm getting at is if there was a look at the
8 Subchapter T, if there was any kind of documentation of what was
9 looked at and what, if anything, was considered. But if you're
10 not sure then that's okay.

11 MR. EHLERS: I think that's all I have for now, Tim. I
12 appreciate your answers. I'll pass it over then to Adam.

13 MR. TUCKER: Hi, Tim. This is Adam Tucker. Thank you again
14 for speaking with us. Only a few follow-ups here.

15 BY MR. TUCKER:

16 Q. Just curious, of course you know the reason why we're having
17 this conversation right now, that's because of the *Conception*.
18 Just to go back on what Drew was asking, since the *Conception*
19 accident, has there been any mandate for your office to go back
20 and look at the regs, specifically Subchapter T?

21 A. So my office really handles process and then we handle the
22 economic analysis that underlies rulemaking. So we would not --
23 my job wouldn't lead that retrospective. That would come from
24 either, depending upon the requirement, the Engineering or
25 Operations, you know, CVC or Design and Engineering Standards here

1 at Headquarters would go back and look at the specific technical
2 requirements.

3 Q. Okay. And then to that point, has there been anything
4 submitted in the -- to the Project Management side for, I believe
5 you called it an NPRM or the proposed NPRM?

6 A. Right, so -- yeah, NPRM is Notice of Proposed Rulemaking. We
7 have not published an NPRM addressing any of the -- addressing
8 anything relating to Subchapter T. If we did, those would be in
9 the Unified Agenda maintained by OMB.

10 Q. And you said maintained by who?

11 A. Office of Management and Budget.

12 Q. Oh, OMB. Okay. Sorry. And I believe Drew asked about this,
13 but -- and I know you've only been there for 5 years, but when was
14 the -- do you have any knowledge of when the last project
15 undertaking, if I'm using the correct words, related to Subchapter
16 T has been handled by your office? Any NPRMs at all during your
17 tenure there?

18 A. I mean, we have handled some small regulations that do have
19 impact on small passenger vessels, but we have not revised the reg
20 text for Subchapter T since the last update in the 90s.

21 Q. Okay. And when you say some small -- do you have any
22 knowledge of that, off the top of your head, what those would be?

23 A. I would have to look for very specific detail, but in
24 general, sometimes we'll update, you know, whole series
25 requirements -- if a reference we incorporate in our regulations

1 is updated, that would not necessarily be a full rewrite of T. It
2 may impact the very small piece of carriage requirements or
3 something along those lines. But I would have to do research and
4 figure out if we actually -- if any of those touched Subchapter T
5 at all.

6 Q. Okay. The other question I have is, and I believe you have
7 an understanding of the nature of the business that we're in, but
8 just curious, when the NTSB makes a recommendation, quite often
9 that goes to the Coast Guard. How does that make it to your desk?
10 Because ultimately, if I'm understanding correctly, that'll be
11 taken by a team within the Coast Guard's CVC or Design or -- and
12 it'll be packaged and given to you guys for Project Management,
13 and then from there -- am I correct? Or can you walk me through
14 that?

15 A. No, that's a correct understanding. The Program Office that
16 owns the subject matter that we are addressing on the regulation
17 is really the one that's looking at NTSB safety recommendations,
18 the outcome of Coast Guard investigations, other changes in the
19 industry that might necessitate a reg change.

20 If it's appropriate in a preamble to a Final Rule or an NPRM,
21 we will reference an NTSB safety recommendation in support of the
22 change that we're making, so certainly those are a factor that we
23 consider and give weight to in the reg process.

24 Q. Okay. So currently is there -- again, I use the word
25 pipeline a lot I guess, but is there anything in the pipeline

1 related to change to regs either with NTSB recommendations or
2 findings from Coast Guard investigations?

3 A. I would have to take a look at the specific language that's
4 in development, but certainly rules we've done in the recent past,
5 inspection towing vessels, things along those lines, have
6 referenced NTSB recommendations and Coast Guard -- final action on
7 Coast Guard investigations.

8 MR. TUCKER: Okay. Let's see. Give me a second to catch up
9 on my notes here. I'm going to have another couple of questions
10 for you, but for now that's all I have.

11 Thank you very much, and I'll hand it over to Marcel.

12 MR. MUISE: Good afternoon, Tim, again. Marcel Muise, NTSB.
13 I just have one follow-up.

14 BY MR. MUISE:

15 Q. I'm looking at what I think is the OMB's Unified Agenda that
16 you mentioned. There's about a dozen Coast Guard items on there.
17 Does that make sense?

18 A. Yes.

19 Q. Is there another one somewhere of proposed projects that
20 haven't made it on this list? What happens before, before it gets
21 to this point?

22 A. On OMB's page, there are two separate lists. One is the
23 active list of projects. Those are projects we intend to take the
24 next regulatory step within the next 12 months. There's another
25 list posted on OMB's page that's called the Long Term Actions

1 list. Those are things we're still actively working on, but the
2 next step, which pretty much is a publication of some regulatory
3 document, is greater than -- we estimate it to be greater than 12
4 months away.

5 There are always projects that we are considering in terms of
6 the Coast Guard. We don't publish that list because those are all
7 really pre -- I mean, we haven't made the explicit decision to
8 publish those projects and we have not done the analysis to
9 support moving those projects forward.

10 Q. Okay. Once the project is -- the decision's made at the
11 Coast Guard, does DHS or OMB or -- step in and say, all right,
12 this is more important or more appropriate for this, or we're not
13 ready to proceed with that? I mean, or is what's at these Coast
14 Guard Headquarters pretty much a done deal?

15 A. So if you look at Executive Order 12866 and a lot of the
16 other associated guidance, it does give -- it gives the White
17 House and it gives the Department -- you know, we're a component
18 of DHS. It gives them some latitude to make sure that, really
19 that the rule is supportable and defensible and all of the
20 requirements that are in underlying legislation guidance.

21 So when we do pass up a rulemaking, there is a -- you know,
22 quite often our path in that process where we work with both of
23 those entities to make sure that we explain the need for the
24 regulation, that we have done all of our due diligence to support
25 it from an economic, environmental policy standpoint.

1 MR. MUISE: Okay. Thank you for that. That's all I have for
2 you. Jeff, I'll pass it to you.

3 MR. BRAY: I think I'm actually -- I'm good. I don't have
4 any questions. Thanks.

5 MR. MUISE: Okay. Andrew?

6 MR. EHLERS: Yeah. I have no further questions, so I'll
7 again pass it to Adam for any further questions.

8 MR. TUCKER: Sorry, I couldn't find the mute button. Yes, I
9 just had one follow-up here, Tim.

10 BY MR. TUCKER:

11 Q. I was of the understanding that there was a 2010 Coast Guard
12 mandate, or -- and again, I'm probably using the wrong language
13 here when I say mandate, but there was I guess something in the
14 pipeline -- again, wrong language -- for SMS, Safety Management
15 Systems, on vessels under Subchapter T regulations.

16 Do you have any awareness of that? If that ever came to
17 fruition, if it was taken as a project, and where it is today.

18 A. Yes, there is a 2010 requirement for Safety Management
19 Systems on passenger vessels. I believe the requirement actually
20 applies to not just T-boats, vessels inspected under Subchapter T,
21 but also to K and H that are not already covered by the ISM code.
22 The Coast Guard has not published, to my knowledge, an NPRM, and
23 as far as I know, that is also not on our Unified Agenda entry.

24 Q. Okay. And again, when you say Unified Agenda entry, that's
25 the entry into OMB; is that correct?

1 A. Correct. That's at reginfo.gov.

2 Q. Any knowledge as to why it has not been published or where it
3 currently is?

4 A. Like all of our rulemaking projects, they're -- we really on
5 the program offices to present their project with reg text and
6 kind of develop that process. You know, we do have a
7 congressional mandate. I think if you look at Coast Guard's
8 responses to open safety regs, we've discussed some internal
9 analysis that we've been doing to look at what an SMS for those
10 vessels would look like, what the impact on the industry would be,
11 and how to move that forward. So I think that -- as far as I
12 know, from my perspective, that's as far as we've advanced.

13 Q. Okay. And you specifically mentioned the program office and
14 the regulatory text in development, so that's not under your
15 purview. So what office would be, or has been, managing that?

16 A. That would be an operating requirement, so that's the Office
17 of Operation and Environmental Standards, CG-OES.

18 Q. Sorry, I'm just writing a note. And that's C-G-O-E-S. So,
19 Coast Guard Office of Environmental -- no, Operating and
20 Environmental Standards. Okay, got it.

21 Okay, so it comes from there. All right. And so that was
22 specific to SMS. Anything else that's been kind of in -- at the
23 office level, at the program office level that we -- from the
24 2010, or was it just SMS?

25 A. I don't know off the top of my head for 2010, but there are

1 other congressional mandates that we're still developing.

2 Q. Okay.

3 A. And as I said, the rulemaking process can go on for a -- on a
4 timescale of years.

5 Q. Okay. So curiosity here, what happens if -- this is a
6 curiosity question, but what happens if Coast Guard or NTSB comes
7 across something that is just -- really warrants an urgent safety
8 recommendation and an urgent change to regulations where we don't
9 really have that whole, you know, process of years? What happens
10 there? And are there any examples of where that's happened in the
11 past?

12 A. The process essentially is still governed by the
13 Administrative Procedures Act, and all of the guidance still
14 applies. So some of the Maritime Transportation Security Act
15 initiatives after 2001 -- again, predating my time in the office,
16 but those were more compressed timelines. But they all required
17 essentially the same level of reasoned analysis and support across
18 the board for whatever those regulatory requirements are.

19 Q. Okay. And just going back, you mentioned early with the DHS
20 component, you mentioned they look at if its supportable and --
21 did you say defensible?

22 A. Yes, for -- they're essentially looking to make sure that the
23 requirement, how we've written it up, is legally sufficient, that
24 it meets the requirements of the Administrative Procedures Act and
25 all the other guidance so that it's supportable, defensible, that

1 it -- you know, we have done, as a DHS component, done our due
2 diligence and done the appropriate analysis.

3 Q. Okay. All right, and my last question that I have for you
4 before turning it over to Marcel is, is there anything that I, or
5 we, have not asked you that you feel may be relevant and important
6 in sharing with us related to this -- the *Conception* accident that
7 we're currently working on?

8 A. No, I don't think so.

9 MR. TUCKER: All right. Well, thank you again, and I
10 appreciate it. Over to you, Marcel.

11 MR. MUISE: I just have one follow-up.

12 BY MR. MUISE:

13 Q. Can you comment, Tim, on how things are incorporated by
14 reference into the CFRs? And I'll use smoke detectors as an
15 example, because of the UL standard. But those standards get
16 complicated by whatever organization promulgates them. How does
17 that affect your regulations? Like a review always outgoing of
18 those standards that are already incorporated?

19 A. Yes. So we do participate in the standards bodies. UL is
20 not really the best example of that, but ASGM, AMC, ISO, there is
21 long guidance that encourages Federal Agencies to adopt consensus
22 standards whenever possible in lieu of developing their own
23 standards. But when we adopt a standard, we are adopting that
24 very specific standard in addition.

25 So when there is an update, we're required to -- if we're

1 going to adopt a new standard to essentially give it the same
2 rulemaking process as any other standard to adopt a new standard,
3 including analysis of what the changes are between those two
4 different versions, what the difference in cost might be.

5 So that kind of outlines, you know -- it is the same
6 rulemaking process to adopt a standard regardless of where the
7 standard comes from, including public notice of comment, economic
8 analysis -- everything that goes with the regular rulemaking also
9 goes with consensus standards. And then they do not update to the
10 newest standard automatically.

11 Q. Okay. All right. So if I'm (indiscernible) to install UL
12 217 detectors, that has to meet the standard from 1998, which is
13 VAMT --

14 A. (Indiscernible) from a --

15 Q. -- from a --

16 A. I'm sorry.

17 Q. Go ahead. I'm sorry.

18 A. From a rulemaking standard, the -- we have to adopt a
19 specific year. To (indiscernible) upon the requirement, the
20 Program Office may be able to use equivalencies to consider what
21 the new standard looks like and approve a different kind of
22 installation. But that would be -- Design and Engineering
23 standards does that, or the field does that analysis.

24 Q. Okay. So there are no standards that have just tacit
25 acceptance, blanket like (indiscernible) does. Is that right?

1 A. Correct.

2 MR. MUISE: Okay. Thank you, Tim. That's all I have.
3 Thanks for your time today.

4 MR. BROWN: Absolutely.

5 MR. BRAY: This is Jeff. Can I just ask one question?

6 BY MR. BRAY:

7 Q. You mentioned the direct Final Rule, interim Final Rule. Can
8 you explain the difference between doing the complete rulemaking
9 process versus interim Final Rule or direct Final Rule?

10 A. Yes.

11 Q. What's the basis for doing that?

12 A. So for a direct Final Rule, or for an interim Final Rule, the
13 rule's effective upon publication of the initial rulemaking
14 documents, so there's not a proposed rule. That has to be
15 supported by good cause under Administrative Procedures Act. And
16 those documents, because they are effective, you know, within the
17 effective date of that initial publication, are not at the outset
18 subject to notice of comment. Now, comment can be received on
19 those, and then those rules can be amended later on.

20 So for very fast moving requirements, if good cause can be
21 established under APA, which could be an urgent need, they can go
22 through a shorter process that doesn't necessarily at the outset
23 follow the same track as notice of comment, NPRM, Final Rule,
24 rulemaking, but still requires all the analysis up front.

25 Q. Okay. So I was working on a (indiscernible) that HHS pushed

1 through an update to their regulation in about 5 days, which is
2 the fastest I've ever seen to get additional information from --
3 so I'm assuming they would've had to explain good cause and
4 probably have the White House backing as well because it was 5
5 days, but obviously not taking any comments or anything. They
6 just had to lay out what their -- the basis for that was?

7 A. Yes, and I'm -- I would have to see that rule. Not being
8 able to see the subject matter -- but yeah, that is the general
9 process. I mean, I'm not an attorney; we do have a separate
10 office for (indiscernible) law. With the Coast Guard, what they
11 really are making sure we're meeting all those legal requirements.
12 But yes, in general that is the APA process for direct Final
13 Rules, or interim Final Rules.

14 MR. BRAY: Okay. Thank you.

15 MR. EHLERS: And this is Drew. I have nothing further.
16 Adam, anything else?

17 MR. TUCKER: Nope, all good from my side. Tim, again, a big
18 thank you for your time and speaking with us.

19 MR. BROWN: You're welcome.

20 MR. EHLERS: Okay, and it's now 1343 and we'll stop the
21 recording.

22 (Whereupon, at 1:43 p.m., the interview was concluded.)
23
24
25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD


IN THE MATTER OF: FIRE AND SINKING OF THE CONCEPTION
WITH LOSS OF LIFE NEAR
SANTA CRUZ ISLAND, CALIFORNIA
SEPTEMBER 2, 2019
Interview of Timothy Brown

ACCIDENT NO.: DCA19MM047

PLACE: Via telephone

DATE: January 11, 2020

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been transcribed
to the best of my skill and ability.


Autumn Weslow
Transcriber

Errata

Interview of Mr. Timothy Brown

Page & Line

Correction

Page 20, line 4:

“really” to “rely”