

## SUBCHAPTER A—GENERAL

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#### Subpart 1.01—Delegation of Authority

AUTHORITY: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01-70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01-80 and 1.01-85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

##### § 1.01-1 District Commander.

Final authority for the performance within the confines of his district of the functions of the Coast Guard,

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which in general terms are maritime law enforcement, saving and protecting life and property, safeguarding navigation on the high seas and navigable waters of the United States, and readiness for military operations, is delegated to the District Commander by the Commandant. In turn delegations of final authority run from the District Commander to commanding officers of units under the District Commander for the performance of the functions of law enforcement, patrol of marine regattas and parades, and the saving of life and property which come within the scope of their activities.

[CGFR 48-72, 13 FR 9330, Dec. 31, 1948]

### § 1.01-20 Officer in Charge, Marine Inspection.

Final authority is vested in the Officer in Charge, Marine Inspection, for the performance, within the area of his jurisdiction, of the following functions: Inspection of vessels in order to determine that they comply with the applicable laws, rules, and regulations relating to safe construction, equipment, manning, and operation and that they are in a seaworthy condition for the services in which they are operated; shipyard and factory inspections; the investigation of marine casualties and accidents; the licensing, certificating, shipment and discharge of seamen; the investigating and initiating of action in cases of misconduct, negligence, or incompetence of merchant marine officers or seamen; and the enforcement of vessel inspection, navigation, and seamen's laws in general. Specific procedures for appealing the decisions of the Officer in Charge, Marine Inspection, or of his subordinates are set forth in 46 CFR parts 1 to 4.

[CGFR 48-72, 13 FR 9330, Dec. 31, 1948; as amended by USCG-1998-3799, 63 FR 35525, June 30, 1998]

### § 1.01-30 Captains of the Port.

Captains of the Port and their representatives enforce within their respective areas port safety and security and marine environmental protection regulations, including, without limitation, regulations for the protection and security of vessels, harbors, and waterfront facilities; anchorages; security

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zones; safety zones; regulated navigation areas; deepwater ports; water pollution; and ports and waterways safety.

[CGD-225, 59 FR 66484, Dec. 27, 1994]

### § 1.01-40 Delegation to the Vice Commandant.

The Commandant delegates to the Vice Commandant authority to take final agency action under 46 CFR part 5, Subparts I, J and K on each petition to reopen a hearing and on each appeal from a decision of an Administrative Law Judge, except on petition or appeal in a case in which an order of revocation has been issued. This delegation does not prevent the Vice Commandant from acting as Commandant, as prescribed in 14 U.S.C. 47(a), for all purposes of 46 CFR part 5.

[CGD 85-071, 51 FR 22805, June 23, 1986, as amended by CGD 97-023, 62 FR 33361, June 19, 1997]

### § 1.01-50 Delegation to District Commander, Seventeenth Coast Guard District.

The Commandant redelegates to the District Commander, Seventeenth Coast Guard District, the authority in 46 U.S.C. 3302(i)(1) to issue permits to certain vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska.

[USCG-1998-3799, 63 FR 35525, June 30, 1998]

### § 1.01-60 Delegations for issuance of bridge permits.

(a) The Commandant delegates to the Assistant Commandant for Operations, the authority to issue the following permits for the construction, reconstruction, or alteration of bridges across navigable waters of the United States:

(1) Those that require:

(i) An environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 et seq.) and all implementing regulations, orders, and instructions.

(ii) A determination under section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 1653).

(iii) Concurrence of the Department of Transportation under DOT Order

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5610.1C (Procedures for Considering Environmental Impacts).

(2) Those that require a Presidential permit and approval under the International Bridge Act of 1972 (33 U.S.C. 535).

(3) Those that require the amendment of an existing permit issued by the U.S. Army Corps of Engineers.

(4) Those that raise substantial unresolved controversy involving the public, or are objected to by Federal, State, or local government agencies.

(5) Those authorized by the Commandant upon the appeal of a district commander's decision denying a permit.

(b) The Commandant delegates to each Coast Guard District Commander, with the reservation that this authority shall not be further redelegated, the authority to issue all permits for the construction, reconstruction, or alteration of bridges across navigable waters of the United States other than those specified in paragraph (a) of this section.

[CGD 80-099, 46 FR 38353, July 27, 1981; 46 FR 42268, Aug. 20, 1981, as amended by CGD 88-052, 53 FR 25119, July 1, 1988; CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997]

### § 1.01-70 CERCLA delegations.

(a) For the purpose of this section, the definitions in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), apply. The Act, as amended, is referred to in this section as CERCLA.

(b) The Assistant Commandant for Marine Safety, Security and Environmental Protection (G-M) is delegated authority to take remedial action involving vessels under section 104 of CERCLA.

(c) Each Maintenance and Logistics Commander is delegated contract authority, consistent with each memorandum of understanding between the Coast Guard and the Environmental Protection Agency regarding CERCLA funding mechanisms, for the purpose of carrying out response actions pursuant to CERCLA sections 104(a), 104(b), 104(f), 104(g), 105(f), and 122.

(d) Each district commander is delegated authority as follows:

(1) Authority, pursuant to CERCLA section 106(a), to determine an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, and to secure such relief as may be necessary to abate such danger or threat through the United States attorney of the district in which the threat occurs.

(2) Authority, pursuant to section 109 of CERCLA, to assess penalties relating to violations of sections 103 (a) and (b) pertaining to notification requirements, section 108 pertaining to financial responsibility for release of hazardous substances from vessels, and section 122 pertaining to administrative orders and consent decrees.

(3) Authority, pursuant to section 108 of CERCLA, to deny entry to any port or place in the United States or to the navigable waters of the United States and detain at any port or place in the United States any vessel subject to section 108(a) of CERCLA that, upon request, does not provide evidence of financial responsibility.

(e) Subject to the provisions of Executive Order 12580, and paragraph (g) of this section, each Coast Guard official, predesignated as an On-Scene Coordinator, is delegated authority as follows:

(1) Authority, pursuant to CERCLA sections 104(a), 104(b), 104(c) and consistent with the National Contingency Plan, to remove or arrange for the removal of releases and threatened releases of hazardous substances, and of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

(2) Authority, pursuant to CERCLA section 104(i)(11), to take such steps as may be necessary to reduce exposure that presents a significant risk to human health, and to eliminate or substantially mitigate that significant risk to human health.

(3) Authority, pursuant to CERCLA section 106(a), to issue orders to protect the public health and welfare and the environment whenever that official determines that a release or threatened release of a hazardous substance from a

facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

(4) Authority, pursuant to CERCLA section 104(e), except section 104(e)(7)(C), to enter establishments or other places where hazardous substances are or have been generated, stored, treated, disposed of, or transported from to inspect and obtain records, reports, samples and information in support of the response functions delegated in paragraphs (d), (e)(1), (e)(2), and (e)(3) of this section.

(5) Authority, pursuant to CERCLA section 122, to enter into an agreement with any person (including the owner or operator of the vessel or facility from which a release or substantial threat of release emanates, or any other potential responsible person), to perform any response action, provided that such action will be done properly by such person.

(f) Except for the authority granted in paragraphs (d)(1) and (e)(1) of this section, each Coast Guard official to whom authority is granted in this section may redelegate and authorize successive redelegations of that authority. The authority granted in paragraph (e)(3) of this section may only be re-delegated to commissioned officers.

(g) The response authority described in paragraph (e)(1) of this section does not include authority to—

(1) Summarily remove or destroy a vessel; or

(2) Take any other action that constitutes intervention under CERCLA, the Intervention on the High Seas Act (33 U.S.C. 1471 *et. seq.*), or other applicable laws. “Intervention” means any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel’s owner or operator.

[CGD 88-051, 53 FR 30259, Aug. 11, 1988, as amended by CGD 91-225, 59 FR 66484, Dec. 27, 1994; CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997; USCG-2002-12471, 67 FR 41331, June 18, 2002; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003]

**§ 1.01-80 FWPCA and OPA 90 delegations.**

(a) This section delegates authority to implement provisions of section 311 of the Federal Water Pollution Control

Act (FWPCA), as amended [33 U.S.C. 1321] and provisions of the Oil Pollution Act of 1990 (OPA 90). The definitions in subsection (a) of section 311 of the FWPCA and section 1001 of OPA 90 [33 U.S.C. 2701] apply.

(b) The Assistant Commandant for Marine Safety, Security and Environmental Protection, is delegated authority to require the owner or operator of a facility to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as may be required to carry out the objectives of section 311 of the FWPCA [33 U.S.C. 1321].

(c) Each District and Area Commander is delegated authority within the Commander’s assigned district or area to—

(1) Deny entry to any place in the United States or to the navigable waters of the United States, and to detain at any place in the United States, any vessel subject to section 1016 of OPA 90 [33 U.S.C. 2716] that, upon request, does not provide evidence of financial responsibility;

(2) Seize and, through the Chief Counsel, seek forfeiture to the United States of any vessel subject to the requirements of section 1016 of OPA 90 [33 U.S.C. 2716] that is found in the navigable waters of the United States without the necessary evidence of financial responsibility;

(3) Assess any class I civil penalty under subsection (b) of section 311 of the FWPCA [33 U.S.C. 1321], in accordance with the procedures in subpart 1.07 of this chapter;

(4) Assess any civil penalty under section 4303 of OPA 90 [33 U.S.C. 2716a] in accordance with the procedures in subpart 1.07 of this chapter;

(5) Board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, except for public vessels; with or without warrant, arrest any person who, in the Commander’s presence or view, violates a provision of section 311 of the FWPCA [33 U.S.C. 1321] or any regulation issued thereunder; and execute any warrant or other process issued by an officer or court of competent jurisdiction, as prescribed in

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section 311(m)(1) of the FWPCA [33 U.S.C. 1321(m)(1)];

(6) Enter and inspect any facility in the coastal zone at reasonable times; have access to and copy any records; take samples; inspect monitoring equipment required by section 311(m)(2)(A) of the FWPCA [33 U.S.C. 1321(m)(2)(A)]; with or without warrant, arrest any person who, in the Commander's presence or view, violates a provision of section 311 of the FWPCA [33 U.S.C. 1321] or any regulation issued thereunder; and execute any warrant or other process issued by an officer or court of competent jurisdiction, as prescribed in section 311(m)(2) of the FWPCA [33 U.S.C. 1321(m)(2)(A)]; and

(7) Determine for purposes of section 311(b)(12) of the FWPCA [33 U.S.C. 1321(b)(12)]—

(i) Whether reasonable cause exists to believe that an owner, operator, or person in charge may be subject to a civil penalty under section 311(b) of the FWPCA [33 U.S.C. 1321(b)]; and

(ii) Whether a filed bond or other surety is satisfactory.

(d) Each Coast Guard official predesignated as the On-Scene Coordinator by the applicable Regional Contingency Plan is delegated authority pursuant to section 311(c) of the FWPCA [33 U.S.C. 1321(c)], subject to paragraph (e) of this section, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, to ensure the effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance by—

(1) Removing or arranging for the removal of a discharge and mitigating or preventing an imminent and substantial threat of a discharge at any time;

(2) Directing or monitoring all Federal, State, and private actions to remove a discharge, including issuance of orders;

(3) Determining, pursuant to section 311(c) of the FWPCA [33 U.S.C. 1321(c)], whether a discharge or a substantial threat of a discharge of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or

welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States); and, if it is, directing all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threatened discharge;

(4) Determining, pursuant to section 311(e) of the FWPCA [33 U.S.C. 1321(e)], that there may be an imminent and substantial threat to the public health and welfare of the United States, and, if there is, may—

(i) Determine an imminent and substantial threat as a basis for recommending referral for judicial relief; or

(ii) Act pursuant to section 311(e)(1)(B) of the FWPCA [33 U.S.C. 1321(e)(1)(B)], including the issuance of orders; and

(5) Acting to mitigate the damage to the public health or welfare caused by a discharge of oil or a hazardous substance.

(e) The authority described in paragraph (d) of this section does not include the authority to—

(1) Remove or destroy a vessel; or

(2) Take any other action that constitutes intervention under the Intervention on the High Seas Act [33 U.S.C. 1471, *et seq.*] or other applicable laws. For purposes of this section, "intervention" means any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel's owner or operator.

[CGD 91-225, 59 FR 66484, Dec. 27, 1994, as amended by CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997; USCG-2002-12471, 67 FR 41331, June 18, 2002]

### § 1.01-85 Redlegation.

Except as provided in §1.01-80(e)(1) and (2), each Coast Guard officer to whom authority is granted in §1.01-80 may redelegate and authorize successive redelegations of that authority within the command under the officer's jurisdiction, or to members of the officer's staff.

[CGD 91-225, 59 FR 66485, Dec. 27, 1994]

### § 1.01-90 Commissioned, warrant, and petty officers.

Any commissioned, warrant, or petty officer of the United States Coast

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Guard may be authorized to carry out the functions delegated to superior officials under §§ 1.01-1, 1.01-20, 1.01-30, 1.01-70, and 1.07-80, or redelegated under § 1.01-85, within the jurisdiction of the cognizant official. They will do so under the supervision and general direction of that official.

[CGD 91-225, 59 FR 66485, Dec. 27, 1994]

### Subpart 1.05—Rulemaking

**AUTHORITY:** 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.

**SOURCE:** CGD 95-057, 60 FR 34148, June 30, 1995, unless otherwise noted.

#### § 1.05-1 Delegation of rulemaking authority.

(a) The Secretary of Homeland Security is empowered by various statutes to issue regulations regarding the functions, powers and duties of the Coast Guard.

(b) The Secretary of Homeland Security has delegated much of this authority to the Commandant, U.S. Coast Guard, including authority to issue regulations regarding the functions of the Coast Guard and the authority to redelegate and authorize successive redelegations of that authority within the Coast Guard.

(c) The Commandant has reserved the authority to issue any rules and regulations determined to be significant under Executive Order 12866, Regulatory Planning and Review.

(d) The Commandant has redelegated to the various office chiefs at U.S. Coast Guard Headquarters, with the reservation that this authority shall not be further redelegated, the authority to develop and issue regulations necessary to implement laws, treaties, or Executive Orders associated with their assigned programs; issue amendments to existing regulations as necessary; and submit regulatory proposals for Marine Safety and Security Council consideration.

(e)(1) The Commandant has redelegated to Coast Guard District Commanders, with the reservation that this authority shall not be further redele-

gated, the authority to issue regulations pertaining to the following:

(i) Anchorage grounds and special anchorage areas.

(ii) The designation of lightering zones.

(iii) The operation of drawbridges.

(iv) The establishment of Regulated Navigation Areas.

(v) The establishment of safety and security zones.

(vi) The establishment of special local regulations.

(2) This delegation does not extend to those matters specified in paragraph (c) of this section or rules and regulations which have been shown to raise substantial issues or to generate controversy.

(f) Except for those matters specified in paragraph (c) of this section, the Commandant has redelegated to Coast Guard Captains of the Port, with the reservation that this authority shall not be further redelegated, the authority to establish safety and security zones.

(g) The Commandant has redelegated to Coast Guard District Commanders, Captains of the Port, the Assistant Commandant for Operations, and the Assistant Commandant for Marine Safety, Security and Environmental Protection, the authority to make the certification required by section 605(b) of the Regulatory Flexibility Act (Sec. 605(b), Pub. L. 96-354, 94 Stat. 1168 (5 U.S.C. 605)) for rules that they issue.

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003; USCG-2003-15404, 68 FR 37740, June 25, 2003]

#### § 1.05-5 Marine Safety and Security Council.

The Marine Safety and Security Council, composed of senior Coast Guard officials, acts as policy advisor to the Commandant and is the focal point of the Coast Guard regulatory system. The Marine Safety and Security Council provides oversight, review, and guidance for all Coast Guard regulatory activity.

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003]

**§ 1.05–10 Regulatory process overview.**

(a) Most rules of local applicability are issued by District Commanders and Captains of the Port, while rules of wider applicability are issued by senior Coast Guard officials at Coast Guard Headquarters. For both significant rulemaking (defined by Executive Order 12866, Regulatory Planning and Review) and non-significant rulemaking, other than those areas delegated to District Commanders and Captains of the Port, the regulatory process begins when an office chief with program responsibilities identifies a possible need for a new regulation or for changes to an existing regulation. The need may arise due to statutory changes, or be based on internal review or public input. Early public involvement is strongly encouraged.

(b) After a tentative significant regulatory approach is developed, a significant regulatory project proposal is submitted to the Marine Safety and Security Council for approval. The proposal describes the scope of the proposed regulation, alternatives considered, and potential cost and benefits, including possible environmental impacts. All significant regulatory projects require Marine Safety and Security Council approval.

(c) Significant rulemaking projects must also be approved by the Commandant of the Coast Guard.

(d) If the project is approved, the necessary documents are drafted, including documents to be published in the FEDERAL REGISTER. These may include regulatory evaluations, environmental analyses, requests for comments, announcements of public meetings, notices of proposed rulemakings, and final rules.

[CGD 95–057, 60 FR 34148, June 30, 1995, as amended by USCG–2003–14505, 68 FR 9534, Feb. 28, 2003; USCG–2003–15404, 68 FR 37740, June 25, 2003]

**§ 1.05–15 Public participation.**

The Coast Guard considers public participation essential to effective rulemaking, and encourages the public to participate in its rulemaking process. Coast Guard policy is to provide opportunities for public participation early in potential rulemaking projects. Generally, the Coast Guard will solicit

public input by publishing a notice of public meeting or request for comments in the FEDERAL REGISTER. Advance Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, Supplemental Notices of Proposed Rulemaking, and Interim Rules will usually provide 90 days, or more if possible, after publication for submission of comments. This time period is intended to allow interested persons the opportunity to participate in the rulemaking process through the submission of written data and views. However, certain cases and circumstances may make it necessary to provide a shorter comment period. Public meetings may also be held to provide an opportunity for oral presentations. The Coast Guard will consider the comments received and, in subsequent rulemaking documents, will incorporate a concise general statement of the comments received and identify changes from a proposed rule based on the comments.

**§ 1.05–20 Petitions for rulemaking.**

(a) Any member of the public may petition the Coast Guard to undertake a rulemaking action. There is no prescribed form for a petition for rulemaking, but the document should provide some supporting information as to why the petitioner believes the proposed rulemaking is necessary and the document should clearly indicate that it is a petition for rulemaking. Petitions should be addressed to the Executive Secretary, Marine Safety and Security Council (G-LRA), United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

(b) The petitioner will be notified of the Coast Guard's decision whether to initiate a rulemaking or not. If the Coast Guard decides not to pursue a rulemaking, the petitioner will be notified of the reasons why. If the Coast Guard decides to initiate rulemaking, it will follow the procedure outlined in this subpart. The Coast Guard may publish a notice acknowledging receipt of a petition for rulemaking in the FEDERAL REGISTER.

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(c) Any petition for rulemaking and any reply to the petition will be kept in a public file open for inspection.

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003]

### § 1.05-25 Public docket.

(a) A public file is maintained for each petition for rulemaking and each Coast Guard regulation and notice published in the FEDERAL REGISTER. Each file contains copies of every rulemaking document published for the project, public comments received, summaries of public meetings or hearings, regulatory assessments, and other publicly-available information. Members of the public may inspect the public docket and copy any documents in the file. Each rulemaking document will identify where the public file for that rulemaking is maintained. Public dockets for rulemakings originating at Coast Guard Headquarters are kept at a Docket Management Facility (DMS) maintained by the Department of Transportation, at the Nassif Building, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001. These dockets are available electronically through the DMS Web site at <http://dms.dot.gov>.

(b) The public dockets for Coast Guard rulemaking activity initiated by Coast Guard District Commanders are available for public inspection at the appropriate Coast Guard District office.

(c) The public dockets for Coast Guard rulemaking activity initiated by Captains of the Port are available for inspection at the appropriate Captain of the Port office.

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-14505, 68 FR 9534, Feb. 28, 2003]

### § 1.05-30 Advance notice of proposed rulemaking (ANPRM).

An advance notice of proposed rulemaking may be used to alert the affected public about a new regulatory project, or when the Coast Guard needs more information about what form proposed regulations should take, the actual need for a regulation, the cost of a proposal, or any other information. The ANPRM may solicit general infor-

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mation or ask the public to respond to specific questions.

### § 1.05-35 Notice of proposed rulemaking (NPRM).

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, an NPRM is generally published in the FEDERAL REGISTER for Coast Guard rulemakings. The NPRM normally contains a preamble statement in sufficient detail to explain the proposal, its background, basis, and purpose, and the various issues involved. It also contains a discussion of any comments received in response to prior notices, a citation of legal authority for the rule, and the text of the proposed rule.

### § 1.05-40 Supplemental notice of proposed rulemaking (SNPRM).

An SNPRM may be issued if a proposed rule has been substantially changed from the original notice of proposed rulemaking. The supplemental notice advises the public of the revised proposal and provides an opportunity for additional comment. To give the public a reasonable opportunity to become reacquainted with a rulemaking, a supplemental notice may also be issued if considerable time has elapsed since publication of a notice of proposed rulemaking. An SNPRM contains the same type of information generally included in an NPRM.

### § 1.05-45 Interim rule.

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

(b) An interim rule will be published in the FEDERAL REGISTER with an effective date that will generally be at least 30 days after the date of publication. After the effective date, an interim rule is enforceable and is codified in

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the next annual revision of the appropriate title of the Code of Federal Regulations.

### § 1.05-50 Final rule.

In some instances, a final rule may be issued without prior notice and comment. When notice and comment procedures have been used, and after all comments received have been considered, a final rule is issued. A final rule document contains a preamble that discusses comments received, responses to comments and changes made from the proposed or interim rule, a citation of legal authority, and the text of the rule.

### § 1.05-55 Direct final rule.

(a) A direct final rule may be issued to allow noncontroversial rules that are unlikely to result in adverse public comment to become effective more quickly.

(b) A direct final rule will be published in the FEDERAL REGISTER with an effective date that is generally at least 90 days after the date of publication.

(c) The public will usually be given at least 60 days from the date of publication in which to submit comments or notice of intent to submit comments.

(d) If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, the Coast Guard will publish a notice in the FEDERAL REGISTER to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives a written adverse comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the FEDERAL REGISTER to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking

(NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

(f) A comment is considered adverse if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

[CGD 94-105, 60 FR 49224, Sept. 22, 1995]

### § 1.05-60 Negotiated rulemaking.

(a) The Coast Guard may establish a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) when it is in the public interest.

(b) Generally, the Coast Guard will consider negotiated rulemaking when:

(1) There is a need for a rule;

(2) There are a limited number of representatives for identifiable parties affected by the rule;

(3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;

(4) There is a likelihood of a committee consensus in a fixed time period;

(5) The negotiated rulemaking process will not unreasonably delay the rule;

(6) The Coast Guard has resources to do negotiated rulemaking; and

(7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

## Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

AUTHORITY: 14 U.S.C. 633; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.46.

SOURCE: CGD 78-82, 43 FR 54186, Nov. 20, 1978, unless otherwise noted.

### § 1.07-1 Purpose.

This part describes procedures for enforcement and administration of all statutory penalty provisions that the Coast Guard is authorized to enforce.

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### § 1.07-5 Definitions.

(a) The term *District Commander*, when used in this subpart, means the District Commander, or any person under the District Commander's command, delegated to carry out the provisions of § 1.07-10(b).

(b) The term *Hearing Officer* means a Coast Guard officer or employee who has been delegated the authority to assess civil penalties.

(c) The term *issuing officer* means any qualified Coast Guard commissioned, warrant, or petty officer.

(d) The term *Notice of Violation* means a notification of violation and preliminary assessment of penalty, given to a party, in accordance with § 1.07-11.

(e) The term *party* means the person alleged to have violated a statute or regulation to which a civil penalty applies and includes an individual or public or private corporation, partnership or other association, or a governmental entity.

[CGD 93-079, 59 FR 16560, Apr. 7, 1994]

### § 1.07-10 Reporting and investigation.

(a) Any person may report an apparent violation of any law, regulation, or order that is enforced by the Coast Guard to any Coast Guard facility. When a report of an apparent violation has been received, or when an apparent violation has been detected by any Coast Guard personnel, the matter is investigated or evaluated by Coast Guard personnel. Once an apparent violation has been investigated or evaluated, a report of the investigation may be sent to the District Commander or other designated official in accordance with paragraph (b) of this section or a Notice of Violation under § 1.07-11 may be given to the party by an issuing officer.

(b) Reports of any investigation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred may be forwarded to a District Commander or other designated official for further action. This is normally the District Commander of the District in which the violation is believed to have occurred, or the District in which the reporting unit or agency is found. The report is reviewed to determine if there

is sufficient evidence to establish a *prima facie* case. If there is insufficient evidence, the case is either returned for further investigation or closed if further action is unwarranted. The case is closed in situations in which the investigation has established that a violation did not occur, the violator is unknown, or there is little likelihood of discovering additional relevant facts. If it is determined that a *prima facie* case does exist, a case file is prepared and forwarded to the Hearing Officer, with a recommended action. A record of any prior violations by the same person or entity, is forwarded with the case file.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17554, May 11, 1987; CGD 93-079, 59 FR 16560, Apr. 7, 1994; USCG-2000-7223, 65 FR 40054, June 29, 2000]

### § 1.07-11 Notice of violation.

(a) After investigation and evaluation of an alleged violation has been completed, an issuing officer may issue a Notice of Violation to the party.

(b) The Notice of Violation will contain the following information:

(1) The alleged violation and the applicable law or regulations violated;

(2) The amount of the maximum penalty that may be assessed for each violation;

(3) The amount of proposed penalty that appears to be appropriate;

(4) A statement that payment of the proposed penalty within 45 days will settle the case;

(5) The place to which, and the manner in which, payment is to be made;

(6) A statement that the party may decline the Notice of Violation and that if the Notice of Violation is declined, the party has the right to a hearing prior to a final assessment of a penalty by a Hearing Officer.

(7) A statement that failure to either pay the proposed penalty on the Notice of Violation or decline the Notice of Violation and request a hearing within 45 days will result in a finding of default and the Coast Guard will proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07-10(b).

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(c) The Notice of Violation may be hand delivered to the party or an employee of the party, or may be mailed to the business address of the party.

(d) If a party declines the Notice of Violation within 45 days, the case file will be sent to the District Commander for processing under the procedures described in 33 CFR 1.07-10(b).

(e) If a party pays the proposed penalty on the Notice of Violation within 45 days, a finding of proved will be entered into the case file.

(f) If within 45 days of receipt a party—

(1) Fails to pay the proposed penalty on the Notice of Violation; and

(2) Fails to decline the Notice of Violation—the Coast Guard will enter a finding of default in the case file and proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07-10(b).

[CGD 93-079, 59 FR 66482, Dec. 27, 1994, as amended by USCG-2001-9175, 67 FR 38388, June 4, 2002]

### § 1.07-15 Hearing Officer.

(a) The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. The hearing officer may take action on a case referred by any District Commander.

(b) The Hearing Officer decides each case on the basis of the evidence before him, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him.

(c) The Hearing Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17554, May 11, 1987; USCG-2002-12471, 67 FR 41331, June 18, 2002]

### § 1.07-20 Initiation of action.

(a) When a case is received for action, the Hearing Officer makes a preliminary examination of the material submitted. If, on the basis of the preliminary examination, the Hearing Officer determines that there is insufficient

evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer returns the case to the District Commander with a written statement of the reason. The District Commander may close the case or cause a further investigation of the alleged violation to be made with a view toward resubmittal of the case to the Hearing Officer.

(b) If on the basis of the preliminary examination of the case file, the Hearing Officer determines that a violation appears to have been committed, the Hearing Officer notifies the party in writing of:

(1) The alleged violation and the applicable law or regulations;

(2) The amount of the maximum penalty that may be assessed for each violation;

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all materials in the case file and have a copy of all written documents provided upon request; and,

(6) The fact that the party may demand a hearing prior to any actual assessment of a penalty.

(c) If at any time it appears that the addition of another party to the proceedings is necessary or desirable, the Hearing Officer provides the additional party with notice as described above.

### § 1.07-25 Preliminary matters.

(a) Within 30 days after receipt of notice of the initiation of the action, as described above, the party, or counsel for the party, may request a hearing, provide any written evidence and arguments in lieu of a hearing, or pay the amount specified in the notice as being appropriate. A hearing must be requested in writing; the request must specify the issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(b) The right to a hearing is waived if the party does not submit the request to the Hearing Officer within 30 days after receiving notice of the alleged

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violation. At the discretion of the Hearing Officer, a hearing may be granted if the party submits a late request.

(c) The Hearing Officer must promptly schedule all hearings which are requested. The Hearing Officer shall grant any delays or continuances which may be necessary or desirable in the interest of fairly resolving the case.

(d) A party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the scheduled hearing may be presented only at the discretion of the Hearing Officer.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 85-001A, 51 FR 19329, May 29, 1986]

### § 1.07-30 Disclosure of evidence.

The alleged violator may, upon request, receive a free copy of all the written evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or video tapes, oil samples, and photographs may be examined in the Hearing Officer's offices. The Hearing Officer may provide for examination or testing of evidence at other locations if there are adequate safeguards to prevent loss or tampering.

### § 1.07-35 Request for confidential treatment.

(a) In addition to information treated as confidential under § 1.07-30, a request for confidential treatment of a document or portion thereof may be made by the person supplying the information on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The person desiring confidential treatment must submit the request to the Hearing Officer in writing and

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state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material is not considered by the Hearing Officer in reaching a decision unless:

(1) It has been furnished by a party, or

(2) It has been furnished pursuant to a subpoena.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2002-12471, 67 FR 41331, June 18, 2002]

### § 1.07-40 Counsel.

A party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a party is represented by counsel, the Hearing Officer directs all further communications to that counsel.

### § 1.07-45 Location of hearings and change of venue.

(a) The hearing is normally held at the office of the Hearing Officer.

(b) The Hearing Officer may transfer a case to another Hearing Officer on request or on the Hearing Officer's own motion.

(c) A request for change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

[CGD 87-008a, 52 FR 17554, May 11, 1987]

### § 1.07-50 Witnesses.

A party may present the testimony of any witness either through a personal appearance or through a written statement. The party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the

Hearing Officer seeks to obtain the witness' appearance. Because many statutes prescribing civil penalties do not provide subpoena power, there may be cases where a witness cannot be required to attend. In such a case, the Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony. If none of these procedures is practical, the Hearing Officer shall proceed on the basis of the evidence before him.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2002-12471, 67 FR 41331, June 18, 2002]

#### § 1.07-55 Hearing procedures.

(a) The Hearing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard. At the outset of the hearing, the Hearing Officer insures that the party is aware of the nature of the proceeding and of the alleged violation, and of the provisions of the law or regulation allegedly violated.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer is presented. The party has the right to examine, and to respond to or rebut, this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items which bear on appropriate issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence. The Hearing Officer may allow the party to respond to any such evidence submitted.

(d) In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Hearing Officer must give due consideration to the reliability and relevance of each item of evidence.

(e) The Hearing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily avail-

able sources of known accuracy. Prior to taking notice of a matter, the Hearing Officer gives the party an opportunity to show why notice should not be taken. In any case in which notice is taken, the Hearing Officer places a written statement of the matters as to which notice was taken in the record, with the basis for such notice, including a statement that the party consented to notice being taken or a summary of the party's objections.

(f) After the evidence in the case has been presented, the party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer and for further review. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the time prescribed, or within the limits of any extension of time granted by the Hearing Officer, the Hearing Officer renders his decision in the case.

#### § 1.07-60 Records.

(a) A verbatim transcript will not normally be prepared. The Hearing Officer prepares notes on the material and points raised by the party, in sufficient detail to permit a full and fair review and resolution of the case, should it be appealed.

(b) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made, the party shall submit two copies to the Hearing Officer not later than the time of filing an administrative appeal. The Hearing Officer includes them in the record.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2002-12471, 67 FR 41331, June 18, 2002]

#### § 1.07-65 Hearing Officer's decisions.

(a) The Hearing Officer issues a written decision. Any decision to assess a penalty is based upon substantial evidence in the record. If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation or some other violation of which the party had full and fair notice, the Hearing Officer shall

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dismiss the case and remand it to the District Commander. A dismissal is without prejudice to the District Commander's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) If the Hearing Officer assesses a penalty, the Hearing Officer's decision contains a statement advising the party of the right to an administrative appeal. The party is advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 85-001A, 51 FR 19329, May 29, 1986]

### § 1.07-70 Right to appeal.

(a) Any appeal from the decision of the Hearing Officer must be submitted by a party within 30 days from the date of receipt of the decision. The appeal and any supporting brief must be submitted to the Hearing Officer. The only issues which will be considered on appeal are those issues specified in the appeal which were properly raised before the Hearing Officer and jurisdictional questions.

(b) The failure to file an appeal within the prescribed time limit results in the action of the Hearing Officer becoming the final agency action in the case.

### § 1.07-75 Action on appeals.

(a) Upon receipt, the Hearing Officer provides a copy of the appeal and any supporting brief to the District Commander who referred the case. Any comments which the District Commander desires to submit must be received by the Hearing Officer within 30 days. The Hearing Officer includes the District Commander's comments, or not later than 30 days after receipt of the appeal if no comments are submitted by the District Commander, the Hearing Officer forwards all materials in the case to the Commandant.

(b) The Commandant issues a written decision in each case and furnishes copies to the party, the District Commander, and the Hearing Officer. The

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Commandant may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision of the Commandant on appeal shall be final. In addition to the actions which may be taken by the Commandant on appeal, the Commandant may also remit, mitigate or suspend the assessment in whole or in part. Upon the taking of remission, mitigation, or suspension action, the Commandant will inform the party of the action and any conditions placed on the action.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17555, May 11, 1987]

### § 1.07-80 Reopening of hearings.

(a) At any time prior to final agency action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(b) Petitions to reopen must be in writing describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner, whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence. The party must submit the petition to the Hearing Officer.

(c) The District Commander may file comments in opposition to the petition. If comments are filed, a copy is provided the party.

(d) A petition to reopen is considered by the Hearing Officer unless an appeal has been filed, in which case the petition is considered by the Commandant.

(e) The decision on the petition is decided on the basis of the record, the petition, and the comments in opposition, if any. The petition is granted only when newly found evidence is described which has a direct and material bearing on the issues and when a valid explanation is provided as to why the evidence was not and could not have been, in the exercise of due diligence, produced at the hearing. The decision is rendered in writing.

(f) Following a denial of a petition to reopen, the party is given 30 days to file an appeal if one has not already

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been filed, or to amend an appeal which has already been filed.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17555, May 11, 1987]

### § 1.07-85 Collection of civil penalties.

(a) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Coast Guard.

(b) Within 30 days after receipt of the Commandant's decision on appeal, or the Hearing Officer's decision in a case in which no appeal has been filed, the party must submit payment of any assessed penalty to the office specified in the assessment notice. Failure to make timely payment will result in the institution of appropriate action under the Federal Claims Collection Act and the regulations issued thereunder.

(c) When a penalty of not more than \$200 has been assessed under Chapter 43 or 123 of Title 46 U.S.C., the matter may be referred for collection of the penalty directly to the Federal Magistrate of the jurisdiction wherein the person liable may be found, for the institution of collection procedures under supervision of the district court, if the court has issued an order delegating such authority under section 636(b) of Title 28, United States Code.

[CGD 87-008a, 52 FR 17555, May 11, 1987]

### § 1.07-90 Criminal penalties.

(a) Prosecution in the Federal courts for violations of those laws or regulations enforced by the Coast Guard which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) Except in those cases where the approval of the Commandant is required, the Area, Maintenance & Logistics Command (MLC), and District Commanders are authorized to refer the case to the U.S. attorney. The Commandant's approval is required in the following cases where evidence of a criminal offense is disclosed:

(1) Marine casualties or accidents resulting in death.

(2) Marine Boards (46 CFR part 4).

(3) Violations of port security regulations (33 CFR parts 6, 121 to 126 inclusive).

(c) The Area, MLC, or District Commander will identify the laws or regulations which were violated and make specific recommendations concerning the proceedings to be instituted by the U.S. attorney in every case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 1.07-95 Civil and criminal penalties.

(a) If a violation of law or regulation carries both a civil and a criminal penalty, the Area, MLC, and District Commanders are authorized to determine whether to institute civil penalty proceedings or to refer the case to the U.S. attorney for prosecution in accordance with § 1.07-90.

(b) When the U.S. Attorney declines to institute criminal proceedings, the Area, MLC, or District Commander decides whether to initiate civil penalty proceedings or to close the case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 1.07-100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) *Commercial fishing industry vessel* means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) *Personal use quantity* means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. App. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in subpart F of 19 CFR part 171 in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or

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(2) Actively engaged in fishing operations.

[CGD 89-003, 54 FR 37615, Sept. 11, 1989]

### Subpart 1.08—Written Warnings by Coast Guard Boarding Officers

AUTHORITY: 14 U.S.C. 633; 49 CFR 1.46(b).

#### § 1.08-1 Applicability.

(a) The regulations in this subpart apply to certain violations of the following statutes and regulations for which Coast Guard boarding officers are authorized to issue written warnings instead of recommending civil or criminal penalty procedures under subpart 1.07 of this part:

- (1) 46 CFR 25.05 whistles or other sound producing devices;
- (2) 33 CFR part 175, subpart B and 46 CFR subpart 25.25, Personal Flotation Devices.
- (3) 46 CFR 25.35 backfire flame control;
- (4) 46 CFR 25.40 ventilation;
- (5) 33 CFR part 173 numbering;
- (6) 46 U.S.C. 103, documented yachts;
- (7) 33 CFR part 155 oil pollution prevention; and
- (8) 46 CFR 25.30 fire extinguishers;
- (9) 33 CFR part 159 marine sanitation devices;
- (10) 33 CFR part 175 subpart C, Visual Distress Signals.
- (11) 33 CFR 88.05 Copy of rules.

(b) The Commandant authorizes designated boarding officers to issue warnings for certain minor violations of the statutes and regulations listed in paragraph (a) of this section. Written warnings are not authorized for all violations of these statutes and regulations.

(14 U.S.C. 633, 85 Stat. 228 (46 U.S.C. 1488); 86 Stat. 871 (33 U.S.C. 1322); 49 CFR 1.46(b), (m), and (n)(1))

[CGD 74-155, 41 FR 17894, Apr. 29, 1976, as amended by CGD 77-182, 43 FR 22657, May 25, 1978; CGD 82-040, 47 FR 21042, May 17, 1982; CGD 85-009, 50 FR 10761, Mar. 18, 1985]

#### § 1.08-5 Procedures.

(a) A written warning may be issued where the boarding officer determines that:

- (1) The observed violation is a first offense; and

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(2) The operator states that the violation will be promptly corrected.

(b) A written warning may not be issued where:

- (1) The operator is required to be licensed;
- (2) The violation is a failure to have required safety equipment on board; or
- (3) The boarding officer notes three or more violations during one boarding.

(c) Each district office maintains a record of each written warning issued within that district for a period of not more than one year after date of issue except in cases involving violations of 33 CFR part 159 marine sanitation devices, records of which are maintained by each district office for not more than three years after date of issue.

(d) The district commander of the district in which the warning is issued may rescind a written warning and institute civil penalty action under § 1.07-9 of this part if a record check discloses a prior written warning or violation issued within one year or in the case of a violation of 33 CFR part 159 a prior written warning or violation issued within three years.

(e) Within 15 days after the date of issue, any person issued a written warning by a Coast Guard boarding officer may appeal the issuance of the warning to the district commander by providing in writing or in person any information that denies, explains, or mitigates the violations noted in the warning.

(f) Each written warning shall indicate that:

(1) The warning is kept on file for a period of not more than one year after date of issue or in the case of a violation of 33 CFR part 159 a period of not more than three years for reference in determining appropriate penalty action if there is a subsequent violation;

(2) If a record check reveals a prior written warning or violation within the time period designated in § 1.08-5(d) of this part, the warning may be revoked and civil penalty action instituted;

(3) If an additional violation occurs within the time period designated in § 1.08-5(d) the warning may be used as a basis for the assessment of a higher

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penalty for the subsequent violation; and

(4) Within 15 days after the date of issue, the person who is issued the warning may appeal to the District Commander by providing in writing or in person any information or material that denies, explains, or mitigates the violations noted in the warning.

(14 U.S.C. 633; 85 Stat. 228 (46 U.S.C. 1488); 86 Stat. 871 (33 U.S.C. 1322); 49 CFR 1.46 (b), (m), and (n)(1))

[CGD 74-155, 41 FR 17894, Apr. 29, 1976, as amended by CGD 77-182, 43 FR 22657, May 25, 1978]

### Subpart 1.10—Public Availability of Information

AUTHORITY: 5 U.S.C. 552, 14 U.S.C. 633, sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).

SOURCE: CGD-73-54R, 38 FR 12396, May 11, 1973, unless otherwise noted.

#### § 1.10-1 Official records and documents.

Identifiable records and documents of the Coast Guard are made available to the public in accordance with the Department of Transportation regulations contained in part 7 of title 49, Code of Federal Regulations.

#### § 1.10-5 Public availability of records and documents.

(a) Each person desiring to inspect a record or document covered by this subpart that is located in Headquarters, or to obtain a copy of such a record or document, must make a written request to the Chief, Office of Information Management, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

(b) Each person desiring to inspect a record or document covered by this subpart that is located in a Coast Guard district, or to obtain a copy of such a record or document, must make a written request to the district commander in command of the district, or to the officer-in-charge of the appropriate marine inspection zone. Coast Guard districts and marine inspection zones are listed in part 3 of this chapter.

(c) If the person making the request does not know where in the Coast Guard the record or document is located, he may send his request to the Chief, Office of Information Management, at the address in paragraph (a) of this section.

[CGD-73-54R, 38 FR 12396, May 11, 1973, as amended by CGD 96-026, 61 FR 33662, June 28, 1996]

### Subpart 1.20—Testimony by Coast Guard Personnel and Production of Records in Legal Proceedings

AUTHORITY: 5 U.S.C. 301; 14 U.S.C. 632, 633, 49 U.S.C. 322; 49 CFR 1.46 and part 9.

#### § 1.20-1 Testimony by Coast Guard personnel and production of records.

(a) The regulations in 49 CFR part 9 apply to the testimony of Coast Guard personnel, production of Coast Guard records, and service of process in legal proceedings.

(b) Except for the acceptance of service of process or pleadings under paragraph (d) of this section and 49 CFR 9.19, the Legal Officer of each Maintenance and Logistics Command, each District Legal Officer, and the Legal Officer assigned to any other Coast Guard unit or command, for matters involving personnel assigned to their command, are delegated the functions of "agency counsel" described in 49 CFR part 9.

(c) A request for a member or employee of the Coast Guard to testify, or for permission to interview such a member or employee, should be made to the Legal officer serving the command to which that member or employee is assigned, or, if the member or employee is serving at Coast Guard Headquarters, or with a command receiving legal services from the Chief counsel, U.S. Coast Guard, to the Chief, Office of Claims and Litigation. Should the member or employee no longer be employed by the Coast Guard, and the testimony or information sought falls within the provisions of 49 CFR part 9, the request should be made to the District Legal Officer serving the geographic area where the former member

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or employee resides or, if no District Legal Officer has geographic responsibility, to the Chief, Office of Claims and Litigation.

(d) Process or pleadings in any legal proceeding concerning the Coast Guard may be served, at the option of the server, on the Chief Counsel or the Deputy Chief Counsel of the Coast Guard with the same effect as if served on the Commandant of the Coast Guard. The official accepting the service under this section acknowledges the service and takes further action as appropriate.

(80 Stat. 383, as amended, sec. 1, 33 Stat. 1022, as amended, sec. 9, 80 Stat. 944; 5 U.S.C. 552, 14 U.S.C. 632, 633, 46 U.S.C. 375, 416, 49 U.S.C. 1657 (a) and (e); 49 CFR 1.46, and part 9)

[CGFR 71-30, 36 FR 8732, May 12, 1971, as amended by CGD 95-057, 60 FR 34150, June 30, 1995; USCG-1998-3799, 63 FR 35525, June 30, 1998]

### Subpart 1.25—Fees and Charges for Certain Records and Services

AUTHORITY: 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.46.

#### § 1.25-1 Purpose.

(a) The regulations in this subpart established fees and charges which shall be imposed by the Coast Guard for making copies or excerpts of information or records, and for issuing certain duplicate documents, certificates, or licenses.

(b) These fees and charges are imposed as required by Title V of the Independent Offices Appropriation Act of 1952 (Sec. 501, 65 Stat. 290, 31 U.S.C. 483a). This Act states that it is the sense of Congress that fees and charges shall be charged for services rendered the public by Federal agencies in order that such services may be performed on a self-sustaining basis to the fullest extent possible.

#### § 1.25-30 Exceptions.

(a) The general policies and instructions of the Bureau of the Budget specify when certain services as specifically described in this subpart will be furnished without charge.

(b) The fees and charges prescribed in this subpart are not applicable when

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requested by, or furnished to, the following persons, or under the following circumstances:

(1) A person who donated the original document.

(2) A person who has an official, voluntary or cooperative relationship to the Coast Guard in rendering services promoting safety of life and property.

(3) Any agency, corporation or branch of the Federal Government.

(4) A person found guilty by an administrative law judge receives one copy of the transcript of the hearing if he:

(i) Files a notice of appeal, under 46 CFR 5.30-1; and

(ii) Requests a copy of the transcript.

(5) A person who has been required to furnish personal documents retained by the Coast Guard.

(6) For other exceptions see 49 CFR 7.97.

(31 U.S.C. 483a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 67-13, 32 FR 11211, Aug. 2, 1967, as amended by CGD 76-124, 42 FR 23507, May 9, 1977]

#### § 1.25-40 Fees for services for the public.

The fees for services performed for the public, as prescribed in sections 552(a) (2) and (3) of title 5, United States Code, by the Department of Transportation are in subpart I of title 49, Code of Federal Regulations. The fee schedule for these services is contained in 49 CFR 7.95. The applicable fees are imposed and collected by the Coast Guard as prescribed in 49 CFR 7.93.

(Title V, 65 Stat. 268, 290; sec. 6(b)(1), 80 Stat. 937; 31 U.S.C. 483a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGD 72-62R, 37 FR 20166, Sept. 27, 1972; 37 FR 21481, Oct. 12, 1972, as amended by 40 FR 23743, June 2, 1975; CGD 77-065, 42 FR 31169, June 20, 1977; CGD 89-085, 55 FR 23930, June 13, 1990; CGD 91-002, 58 FR 15236, Mar. 19, 1993]

#### § 1.25-45 Special admeasurement services.

If an admeasurer is assigned to measure or certify the tonnage of a vessel at the request of the owner thereof at a place other than a port of entry, a custom station, or port where an officer-

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in-charge, marine inspection, is located, the owner shall pay the admeasurer's:

(a) Pay based on the hourly rate for the grade or level of position held or the daily military compensation rate, as appropriate;

(b) Travel expense based on the estimated cost of travel from and return to the nearest port of entry, customs station, or office of an officer-in-charge, marine inspection; and

(c) Daily subsistence expense from the time he leaves his official duty station until he returns thereto.

(Title V, 65 Stat. 268, 290; sec. 6(b)(1), 80 Stat. 937; 31 U.S.C. 483a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGD 72-62R, 37 FR 20166, Sept. 27, 1972]

### § 1.25-48 Oceanographic research.

(a) Each person allowed by the Coast Guard to join a Coast Guard voyage for the purpose of oceanographic research is charged the cost of each meal that he consumes while on board the Coast Guard vessel.

(b) The person, company, association, or government agency engaging a Coast Guard vessel for an oceanographic research study is charged the daily cost of operating the vessel.

(Title V, 65 Stat. 268, 290; sec. 6(b)(1), 80 Stat. 937; 31 U.S.C. 483a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGD 72-62R, 37 FR 20167, Sept. 27, 1972]

### § 1.25-80 Payment of fees, charges or sales.

(a) The payment of fees and charges must be made by postal money order or check payable to the "Treasurer of the United States" or "U.S. Coast Guard," and sent to the office of the Coast Guard performing the service or furnishing or delivering the record, document, or certificate. If copy is to be transmitted by registered, air, or special delivery mail, postal fees therefor will be added to fees provided in this subpart (or the order must include postage stamps or stamped return envelopes).

(b) The fee is payable in advance.

[CGFR 67-13, 32 FR 11211, Aug. 2, 1967]

## Subpart 1.26—Charges for Duplicate Medals, and Sales of Personal Property, Equipment or Services and Rentals

AUTHORITY: 14 U.S.C. 633; 49 CFR 1.46(k).

SOURCE: CGFR 67-13, 32 FR 11211, Aug. 2, 1967, unless otherwise noted.

### § 1.26-1 Purpose.

(a) The regulations in this subpart establish charges which shall be imposed by the Coast Guard when the Coast Guard sells supplies, equipment, apparatus, temporary shelter, and services under certain specified conditions as authorized by law.

(b) These sales are intended to permit repayment of costs involved in those instances which are ordinarily outside the scope of those distress services with which the Coast Guard is primarily concerned (14 U.S.C. 88), or the equipment and apparatus are not readily procurable in the open market.

### § 1.26-5 Replacement of medals.

(a) A medal, or a bar, emblem, or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded by the Coast Guard is replaced without charge by the Coast Guard as authorized in 14 U.S.C. 501.

(b) A medal, a bar, emblem or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use due to the fault or neglect of the person to whom it was awarded, is replaced after the Coast Guard is reimbursed for its cost. Current prices may be obtained from Commandant (G-WPM-3), 2100 2nd St. SW. Washington, DC 20593.

(Sec. 1, 63 Stat. 537, 545; sec. 6(b)(1), 80 Stat. 937; 14 U.S.C. 501, 633; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGD 72-207R, 37 FR 25167, Nov. 28, 1972 as amended by CGD 85-077, 51 FR 25366, July 14, 1986; CGD 96-026, 61 FR 33662, June 28, 1996]

### § 1.26-10 Sales to Coast Guard Auxiliary.

(a) The provisions of Title 14, U.S. Code, section 891, authorizes the Coast Guard to furnish the Coast Guard Auxiliary such items as flags, pennants, uniforms, and insignia at actual cost.

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(b) Sales of the following items (when available) are permitted to members of the Auxiliary:

- (1) Auxiliary flags and pennants.
- (2) Uniforms.
- (3) Auxiliary insignia.

(Sec. 891, 63 Stat. 557 (14 U.S.C. 891)).

### § 1.26-15 Sales of nonexcess personal property and services.

(a) *Authority.* The provisions of Title 14, U.S. Code, section 641(b), authorizes the Coast Guard to sell apparatus or equipment manufactured by or in use in the Coast Guard, which is not readily procurable in the open market. The provisions of Title 14, U.S. Code, section 654 (Pub. L. 86-159 approved Aug. 14, 1959), authorize the Coast Guard to sell supplies and furnish services to public and commercial vessels, and other watercraft. 49 U.S.C. 44502(d) authorizes the Coast Guard to provide for assistance, the sale of fuel, oil, equipment, and supplies, to an aircraft when necessary to allow the aircraft to continue to the nearest private airport.

(b) *Charges established by District Commander.* The charges for supplies and services which may be normally expected to be furnished to persons, corporations, companies, vessels, and other watercraft, and non-Federal aircraft will vary between various geographical regions depending on local circumstances. The District Commander is hereby delegated authority to prescribe and he shall establish, in advance wherever practicable, the charges to be imposed and collected in various areas under his jurisdiction, which will be in accordance with the applicable general minimum terms and conditions in the laws and this section. In those cases where the charges have not been established in advance, the matter shall be priced on an individual basis, taking into consideration the facts and circumstances regarding the situation. The list(s) of charges established by the District Commander shall be available for reading and copying at the office of the issuing District Commander, which list(s) will be updated and reissued when necessary.

(c) *Sales to vessels and other watercraft.*  
(1) The charges imposed for services are intended to permit repayment of costs involved in those instances where

supplies and services are furnished to meet the necessities of the circumstances, and such vessels or watercraft are not within the scope of those distress services performed by the Coast Guard.

(2) Charges for sales of supplies and/or furnishing of services are considered appropriate when the furnishing of food, fuel, general stores, or repairs to the vessel or its equipment are primarily for the convenience of the owner, master, or crew, and furnished at his or their request. It is not intended and the Coast Guard does not procure and stock equipment and supplies except as provided for in current instructions issued by competent authority.

(3) Supplies provided and services performed will be of a limited nature consistent with the situation and within the capabilities of the Coast Guard unit concerned; provided this will not be in competition with commercial enterprise when such facilities are available and deemed adequate. It is not intended to permit the operators of vessels or watercraft to take advantage of the Government by demanding free supplies or services. Determination as to whether charges will be made is dependent upon the circumstances involved in each instance. The responsibility to make this determination rests with the District Commander who may delegate it to his subordinates.

(4) The minimum charge for any supplies or services furnished to a vessel or other watercraft shall be \$10. The prices for fuels and materials which may be sold will be at Coast Guard cost plus 20 percent or, if readily determinable, at the commercial price in the immediate operating area, whichever is higher. The charges for services furnished a vessel or watercraft will be an average cost equal to the full price, plus taxes, that a boat owner would pay a local commercial concern for such services.

(5) The sales of supplies and services will be documented and will set forth the name, type, and identifying number of the vessel or watercraft receiving supplies or services; name and address of vessel's owner; and conditions under which it was determined to make a sale to the vessel or watercraft. Wherever possible, payment shall be

obtained at the time supplies and services are furnished.

(d) *Sales of equipment not readily procurable on the open market.* Charges imposed for sales of apparatus and equipment manufactured by or in use in the Coast Guard which, in the opinion of the Commandant (FS), is not readily procurable in the open market, are subject to the following conditions:

(1) The apparatus or equipment has not been reported as excess to the General Services Administration (if so reported, requests to purchase will be submitted by the Commandant (FS) to the General Services Administration); and,

(2) The apparatus or equipment is not classified for security reasons or is not dangerous to the public health and safety; and,

(3) The authorized buyers of this apparatus or equipment are foreign, State, or municipal governments or governmental units thereof; parties required to maintain private aids to navigation; contractors engaged on public works; and in other cases in which, in the judgment of the Commandant (FS), the public interest may be served; and,

(4) The approved sales will be at prices determined by the Commandant (FS), which will include an overhead charge not to exceed 25 percent of acquisition cost.

(e) *Sales to and storage of non-Federal aircraft.* (1) Activities having the necessary supplies and facilities are authorized to furnish fuel, oil, equipment, supplies, mechanical services, temporary storage, or other assistance to any aircraft operated by State, municipal, or private enterprise in emergency cases. Complete engines, airplane wings, or other major items of equipment shall not be furnished without prior authority from the Commandant.

(2) Aircraft damaged to the extent that major repairs are required may be given emergency storage at the request of the pilot, provided the necessary facilities are available. No such aircraft will be given a major or minor overhaul. Damaged aircraft may be stored in its original damaged condition. If aircraft requires extensive repairs, such as would include the replacing of

major parts and such major parts cannot be made available or supplied within a reasonable length of time by the operator of such aircraft, then the aircraft must be removed from the Coast Guard reservation by the operator without delay.

(3) The Government will not assume any responsibility for any loss or damage incurred by such aircraft while on a Coast Guard reservation and the owner shall be required to remove the aircraft from the reservation at the earliest practicable date.

(4) Storage charges for such aircraft on a Coast Guard reservation shall be as follows:

(i) For the first 6 working days, no charge;

(ii) For each calendar day thereafter, \$3 for a single motor plane and \$5 for a dual or multiengine plane.

(5) In the absence of any information to the contrary regarding a particular item or material, the price at which the item is carried in stock, or on the Plant Property Record (book price) will be regarded as the fair market value.

(6) When materials or services or both materials and services are furnished an aircraft, a deposit equal to the estimated value of such services and materials as will be required shall be obtained in advance of the rendition of the services and issuance of the materials.

(7) The charges for mechanical services rendered (other than in connection with the arrival, refueling, and departure of airplanes) shall be an hourly charge for labor, with a minimum of 1 hour, which shall be the equivalent to the schedule of wage rates for civilian personnel for the district (i.e., machinists, helpers, etc.), regardless of whether the services are performed by enlisted or civilian personnel.

(Sec. 1107, 72 Stat. 798, as amended; sec. 641, 63 Stat. 547, as amended; sec. 1, 73 Stat. 357; 49 U.S.C. 1507; 14 U.S.C. 641(b), 654)

[CGFR 67-13, 32 FR 11211, Aug. 2, 1967, as amended by USCG-1998-3799, 63 FR 35525, June 30, 1998]

**§ 1.26-20 Sales to eligible foreign governments.**

(a) *Policy of United States.* The Congressional policy is set forth in Title

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22, U.S. Code, section 2351. The Executive Order No. 10973 dated November 3, 1961 (26 FR 10469), describes the administration of foreign assistance and related functions.

(b) *Diplomatic transactions.* Sales of Coast Guard material under reimbursable aid will be by direction of the Commandant (FS) and as approved by the Office of the Chief of Naval Operations. Reimbursable aid transactions are diplomatic transactions and are negotiated primarily between the respective foreign military attaché or other representatives of their embassy in Washington, DC, and the Office of the Chief of Naval Operations. Prices will be based on material cost only and estimates will not include packing, crating, and handling or transportation costs. Under reimbursable aid, transportation costs are borne by the purchasing country and shipments are usually accomplished on collect commercial bills of lading.

### § 1.26-25 Payment of charges.

(a) The payment of charges shall be by postal money order or check payable to "U.S. Coast Guard," and given or sent to the office of the Coast Guard performing the service or furnishing the supplies, equipment, etc.

## PART 2—JURISDICTION

### Subpart A—General

Sec.

2.1 Purpose.

2.5 Specific definitions control.

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### Subpart B—Jurisdictional Terms

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### Subpart C—Availability of Jurisdictional Decisions

2.40 Maintenance of decisions.

2.45 Decisions subject to change or modification and availability of lists and charts.

AUTHORITY: 14 U.S.C. 633; 33 U.S.C. 1222; Pub. L. 89-670, 80 Stat. 931, 49 U.S.C. 108; Pub. L. 107-296, 116 Stat. 2135, 2249, 6 U.S.C. 101 note and 468; Department of Homeland Security Delegation No. 0170.1.

SOURCE: USCG-2001-9044, 68 FR 42598, July 18, 2003, unless otherwise noted.

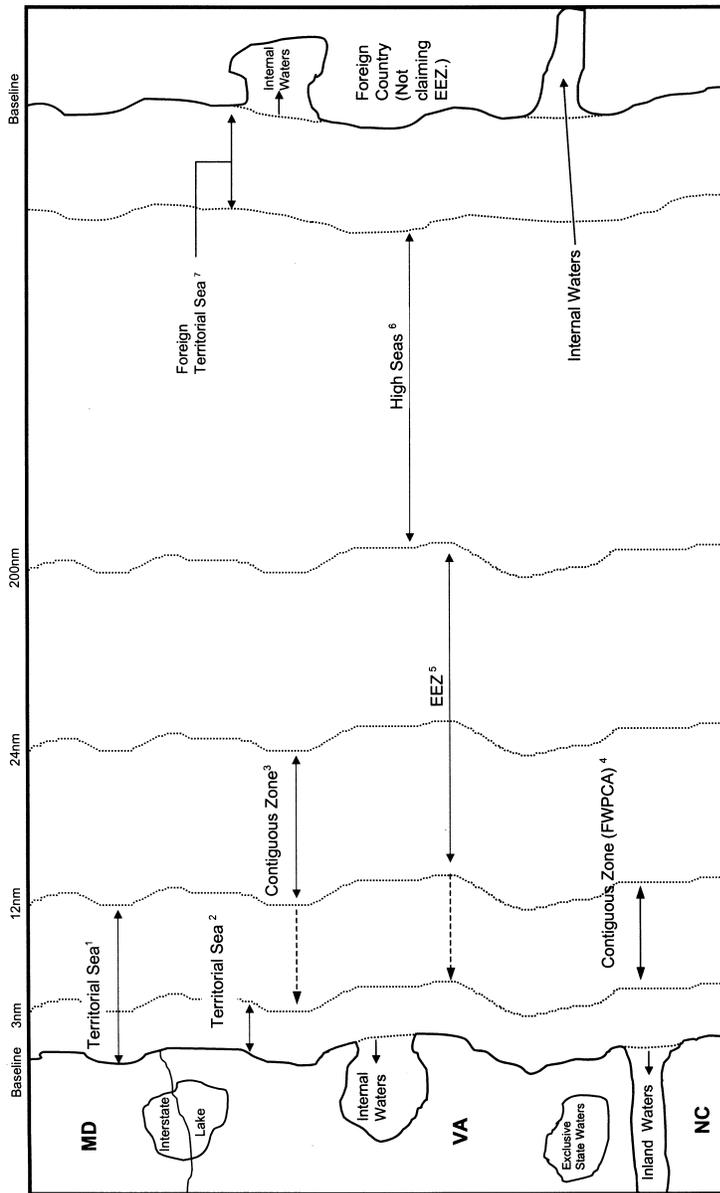
### Subpart A—General

#### § 2.1 Purpose.

(a) The purpose of this part is to define terms the Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters in cases where specific jurisdictional definitions are not otherwise provided.

(b) Figure 2.1 is a visual aid to assist you in understanding this part.

FIGURE 2.1. JURISDICTIONAL AREAS



<sup>1</sup> Territorial sea for purposes identified in §2.27(a)(1).  
<sup>2</sup> Territorial sea for purposes identified in §2.27(a)(2).  
<sup>3</sup> Contiguous zone as described in §2.28(b), varies with territorial sea width for particular purpose involved.  
<sup>4</sup> Contiguous zone as described in §2.28(a), for Federal Water Pollution Control Act purposes.  
<sup>5</sup> Exclusive Economic Zone (EEZ) is measured from the seaward limit of the territorial sea, as variously defined in §2.22(a), to a distance of 200 nautical miles from the baseline. The inner (shoreward) boundary of the EEZ will vary for particular purposes.  
<sup>6</sup> High seas as defined in §2.37(d). When a nation has not proclaimed an EEZ, the high seas begin at the seaward edge of their territorial sea.  
<sup>7</sup> The U.S. recognizes territorial sea claims of other nations up to a maximum distance of 12 nautical miles from the baseline.

§2.5 Specific definitions control.

In cases where a particular statute, regulation, policy or procedure provides a specific jurisdictional definition that differs from the definitions

contained in this part, the former definition controls.

NOTE TO §2.5: For example, the definition of "inland waters" in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2003(o)) would control the interpretation of inland

navigation rules created under that Act and the “inland waters” definition in 46 CFR 10.103 would control regulations in 46 CFR part 10. Also, in various laws administered and enforced by the Coast Guard, the terms “State” and “United States” are defined to include some or all of the territories and possessions of the United States. The definitions in §§ 2.36 and 2.38 should be considered as supplementary to these statutory definitions and not as interpretive of them.

### Subpart B—Jurisdictional Terms

#### § 2.20 Territorial sea baseline.

*Territorial sea baseline* means the line defining the shoreward extent of the territorial sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), 21 I.L.M. 1261. Normally, the territorial sea baseline is the mean low water line along the coast of the United States.

NOTE TO § 2.20: Charts depicting the territorial sea baseline are available for examination in accordance with § 1.10–5 of this chapter.

#### § 2.22 Territorial sea.

(a) With respect to the United States, the following apply—

(1) *Territorial sea* means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, for—

(i) Statutes included within subtitle II and subtitle VI, title 46, U.S.C.; the Ports and Waterways Safety Act, as amended (33 U.S.C. 1221–1232); the Act of June 15, 1917, as amended (50 U.S.C. 191–195); and the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201–1208), and any regulations issued under the authority of these statutes.

(ii) Purposes of criminal jurisdiction pursuant to Title 18, United States Code.

(iii) The special maritime and territorial jurisdiction as defined in 18 U.S.C. 7.

(iv) Interpreting international law.

(v) Any other treaty, statute, or regulation, or amendment thereto, interpreted by the Coast Guard as incorporating the definition of territorial sea as being 12 nautical miles wide, ad-

acent to the coast of the United States and seaward of the territorial sea baseline.

(2) Unless otherwise specified in paragraph (a)(1) of this section, *territorial sea* means the waters, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(3) In cases where regulations are promulgated under the authority of statutes covered by both paragraphs (a)(1) and (a)(2) of this section, the Coast Guard may use the definition of territorial sea in paragraph (a)(1) of this section.

(b) With respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.

[USCG–2001–9044, 68 FR 42598, July 18, 2003, as amended by USCG–2003–14792, 68 FR 60470, Oct. 22, 2003]

#### § 2.24 Internal waters.

(a) With respect to the United States, *internal waters* means the waters shoreward of the territorial sea baseline.

(b) With respect to any other nation, *internal waters* means the waters shoreward of its territorial sea baseline, as recognized by the United States.

#### § 2.26 Inland waters.

*Inland waters* means the waters shoreward of the territorial sea baseline.

#### § 2.28 Contiguous zone.

(a) For the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), *contiguous zone* means the zone, 9 nautical miles wide, adjacent to and seaward of the territorial sea, as defined in § 2.22(a)(2), that was declared to exist in Department of State Public Notice 358 of June 1, 1972 and that extends from 3 nautical miles to 12 nautical miles as measured from the territorial sea baseline.

(b) For all other purposes, *contiguous zone* means all waters within the area adjacent to and seaward of the territorial sea, as defined in § 2.22(a), and extending to 24 nautical miles from the territorial sea baseline, but in no case extending within the territorial sea of

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another nation, as declared in Presidential Proclamation 7219 of September 2, 1999 (113 Stat. 2138).

### §2.30 Exclusive Economic Zone.

(a) With respect to the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and any other territory or possession over which the United States exercises sovereignty, *exclusive economic zone* means the zone seaward of and adjacent to the territorial sea, as defined in §2.22(a), including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline (except where otherwise limited by treaty or other agreement recognized by the United States) in which the United States has the sovereign rights and jurisdiction and all nations have the high seas freedoms mentioned in Presidential Proclamation 5030 of March 10, 1983.

(b) Under customary international law as reflected in Article 56 of the 1982 United Nations Convention on the Law of the Sea, and with respect to other nations, *exclusive economic zone* means the waters seaward of and adjacent to the territorial sea, not extending beyond 200 nautical miles from the territorial sea baseline, as recognized by the United States.

### §2.32 High seas.

(a) For purposes of special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. 7, *high seas* means all waters seaward of the territorial sea baseline.

(b) For the purposes of section 2 of the Act of February 19, 1895, as amended (33 U.S.C. 151) and the Inland Navigational Rules Act of 1980 (33 U.S.C. Chapter 34), *high seas* means the waters seaward of any lines established under these statutes, including the lines described in part 80 of this chapter and 46 CFR part 7.

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et. seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (e.g., The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in §2.30), territorial sea (as defined in §2.22), or internal waters of the United States or any other nation.

### §2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

(a) *Waters subject to tidal influence and waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

(b) *Mean high water* is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

### §2.36 Navigable waters of the United States, navigable waters, and territorial waters.

(a) Except as provided in paragraph (b) of this section, *navigable waters of the United States*, *navigable waters*, and *territorial waters* mean, except where Congress has designated them not to be navigable waters of the United States:

(1) Territorial seas of the United States;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters of the United States not subject to tidal influence that:

(i) Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage, or

## § 2.38

(ii) A governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce.

(b) *Navigable waters of the United States* and *navigable waters*, as used in sections 311 and 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1321 and 1322, mean:

(1) Navigable waters of the United States as defined in paragraph (a) of this section and all waters within the United States tributary thereto; and

(2) Other waters over which the Federal Government may exercise Constitutional authority.

### **§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.**

*Waters subject to the jurisdiction of the United States* and *waters over which the United States has jurisdiction* mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(a).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

### **Subpart C—Availability of Jurisdictional Decisions**

#### **§ 2.40 Maintenance of decisions.**

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions thereof, in order to determine its juris-

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diction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the portion of the territorial sea is located.

### **§ 2.45 Decisions subject to change or modification and availability of lists and charts.**

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10-5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

## **PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES**

### **Subpart 3.01—General Provisions**

Sec.

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AUTHORITY: 14 U.S.C. 633; Pub. L. 107-296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

## Subpart 3.01—General Provisions

### § 3.01-1 General description.

(a) The structure of the Coast Guard's general organization for the performance of its assigned functions and duties consists of the Commandant, assisted by the Headquarters staff, two Area Offices to act as intermediate echelons of operational command, and District Offices to provide regional direction and coordination. The District Offices operate within defined geographical areas of the United

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States, its territories, and possessions, including portions of the high seas adjacent thereto. The description of the districts is established by the Commandant.

(b) The two Coast Guard Areas are the Atlantic Area (see §3.04-1) and the Pacific Area (see §3.04-3). The Coast Guard Area Commander is in command of a Coast Guard Area; the offices are referred to as a Coast Guard Area Office. The office of the Commander, Atlantic Area, is located in the Fifth Coast Guard District and the Commander, Atlantic Area, also serves as the Fifth District Commander. The office of the Commander, Pacific Area, is located in the Eleventh Coast Guard District and the Commander, Pacific Area, also serves as the Eleventh District Commander. Area Commanders have the responsibility of determining when operational matters require the coordination of forces and facilities of more than one district.

(c) The Coast Guard District Commander is in command of a Coast Guard District and his office may be referred to as a Coast Guard District Office. (See §1.01-1 of this subchapter.)

(d) An Officer in Charge, Marine Inspection, is in command of a Marine Inspection Zone and his office may be referred to as a Coast Guard Marine Inspection Office. (See §1.01-20 of this subchapter.)

(e) The Captain of the Port is in command of a Captain of the Port Area and his office may be referred to as a Captain of the Port Office. (See §1.01-30 of this subchapter.)

(f) Each Captain of the Port Area and each Marine Inspection Zone described in this part also includes the United States territorial seas adjacent to the described Area or Zone for the purpose of enforcing or acting pursuant to a statute effective in the United States territorial seas. Each Captain of the Port Area and each Marine Inspection Zone described in this part also includes the Contiguous Zone adjacent to the Area or Zone for the purpose of enforcing or acting pursuant to a statute effective in the Contiguous Zone. (See §§2.05-5 and 2.05-15.) Each Captain of the Port Zone and each Marine Inspection Zone described in this part also includes the Exclusive Economic Zone

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(EEZ) adjacent to the area for the purpose of enforcing or acting pursuant to a statute effective in the EEZ.

(g) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

[CGFR 70-150, 36 FR 909, Jan. 20, 1971, as amended by CGD 77-091, 42 FR 48022, Sept. 22, 1977; CGD 87-008, 52 FR 13083, Apr. 21, 1987; CGD 87-008b, 52 FR 25217, July 6, 1987; CGD 86-082, 52 FR 33810, Sept. 8, 1987; CGD 93-020, 58 FR 51726, Oct. 4, 1993; CGD 96-025, 61 FR 29959, June 13, 1996; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003]

#### §3.01-5 Assignment of functions.

Section 888 of Pub. L. 107-296, 116 Stat. 2135, authorizes the Commandant of the Coast Guard to exercise certain functions, powers, and duties vested in the Secretary of Homeland Security by law. The general statements of policy in the rules describing Coast Guard organization are prescribed pursuant to 5 U.S.C. 552 (80 Stat. 383, as amended) and 14 U.S.C. 633 (63 Stat. 545).

[CGFR 70-150, 36 FR 910, Jan. 20, 1971, as amended by USCG-2003-14505, 68 FR 9534, Feb. 28, 2003]

## Subpart 3.04—Coast Guard Areas

### §3.04-1 Atlantic Area.

(a) The Area Office is in Portsmouth, VA.

(b) The Atlantic Area is comprised of the land areas and U.S. navigable waters of the First, Fifth, Seventh, Eighth and Ninth Coast Guard Districts and the ocean areas lying east of a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the east coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole.

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These waters extend east to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

[CGFR 70-150, 36 FR 910, Jan. 20, 1971, as amended by CGD 87-008, 52 FR 13083, Apr. 21, 1987; CGD 96-025, 61 FR 29959, June 13, 1996]

### § 3.04-3 Pacific Area.

(a) The Area Office is in Alameda, CA.

(b) The Pacific Area is comprised of the land areas and the U.S. navigable waters of the Eleventh, Thirteenth, Fourteenth, and Seventeenth Coast Guard Districts and the ocean areas lying west of a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the west coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole. These waters extend west to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

[CGFR 70-150, 36 FR 910, Jan. 20, 1971, as amended by CGD 87-008, 52 FR 13084, Apr. 21, 1987; CGD 96-025, 61 FR 29959, June 13, 1996]

### Subpart 3.05—First Coast Guard District

#### § 3.05-1 First district.

(a) The District Office is in Boston, Massachusetts.

(b) The First Coast Guard District is comprised of: Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut; New York except that part north of latitude 42° N. and west of longitude 74°39' W.; that part of New Jersey north of 40°18' N. latitude, east of 74°30.5' W. longitude, and northeast of a line from 40°18' N. 74°30.5' W. north-northwesterly to the New York, New Jersey & Pennsylvania boundaries at

Tristate; all U.S. Naval reservations on shore at Newfoundland; the ocean area encompassed by the Search and Rescue boundary between Canada and the United States easterly to longitude 63° W.; thence due south to latitude 41° N.; thence southwesterly along a line bearing 219°T to the point of intersection at 37° N. latitude, 67°13' W. longitude with a line bearing 122°T from the New Jersey shoreline at 40°18' N. latitude (just south of the Shrewsbury River); thence northwesterly along this line to the coast.

[CGFR 61-40, 26 FR 10344, Nov. 3, 1961, as amended by CGD 87-008, 52 FR 13084, Apr. 21, 1987; CGD 96-016, 61 FR 21958, May 13, 1996]

### § 3.05-10 Boston Marine Inspection Zone and Captain of the Port Zone.

(a) The Boston Marine Inspection Office and Captain of the Port Office are located in Boston, Massachusetts.

(b) The boundary of the Boston Marine Inspection Zone and Captain of the Port Zone starts at the boundary of the Massachusetts and New Hampshire coasts at 42°52.3' N. latitude, 70°49.0' W. longitude and proceeds seaward on a line bearing 90° T to the outermost extent of the EEZ; thence southeast along the outermost extent of the EEZ to 42°08' N. latitude; thence west to 42°08' N. latitude, 70°15' W. longitude; thence southwest to the Massachusetts coast at Manomet Point at 41°55' N. latitude, 70°33' W. longitude; thence northwest to 42°04' N. latitude, 71°06' W. longitude; thence to the Massachusetts and Rhode Island boundaries at 42°01.5' N. latitude, 71°28.0' W. longitude; thence west along the southern boundary of Massachusetts, except the waters of Congamond Lakes; thence north along the Massachusetts-New York boundary to the intersection of the Massachusetts-New York-Vermont boundaries; thence east along the Massachusetts-Vermont boundary and the Massachusetts-New Hampshire boundary to the point of origin.

[CGD 74-169, 39 FR 32558, Sept. 9, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 84-037, 49 FR 26583, June 28, 1984; CGD 93-020, 58 FR 51727, Oct. 4, 1993]

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**§ 3.05-15 Portland, Maine Marine Inspection Zone and Captain of the Port Zone.**

(a) The Portland, Maine Marine Inspection Office and Captain of the Port Office are located in Portland, Maine.

(b) The boundary of the Portland, Maine, Marine Inspection Zone and Captain of the Port Zone starts at the boundary of the Massachusetts and New Hampshire coasts at 42°52.3' N. latitude, 70°49.0' W. longitude and proceeds seaward on a line bearing 90° T to the outermost extent of the EEZ; thence northerly and westerly along the outermost extent of the EEZ and the Canadian border to the western boundary of Essex County in Vermont; thence south along the westernmost Vermont county boundaries of Essex, Caledonia, Lamoille, Washington, Orange, Windsor, and Bennington to the intersection of the Vermont-New York-Massachusetts boundaries; thence east along the Vermont-Massachusetts and New Hampshire-Massachusetts boundaries to the point of origin.

[CGD 74-169, 39 FR 32558, Sept. 9, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51727, Oct. 4, 1993]

**§ 3.05-20 Providence Marine Inspection Zone and Captain of the Port Zone.**

(a) The Providence Marine Inspection Office and Captain of the Port Office are located in Providence, Rhode Island.

(b) The boundary of the Providence Marine Inspection Zone and Captain of the Port Zone starts on the Massachusetts coast at Manomet Point at 41°55' N. latitude, 70°33' W. longitude and proceeds northeast to 42°08' N. latitude 70°15' W. longitude; thence east along 42°08' N. latitude to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to a line bearing 132° T from Watch Hill Light, Rhode Island; thence northwest along a line bearing 132° T from Watch Hill Light, Rhode Island, to Watch Hill Light; thence northeast to 41°21' N. latitude, 71°48.5' W. longitude at Westerly, Rhode Island; thence north to 41°25' N. latitude, 71°48' W. longitude; thence north along the Connecticut-Rhode Island boundary, including the waters of Beach Pond, to the Massa-

chusetts boundary; thence east along the Massachusetts-Rhode Island boundary to 42°01.5' N. latitude, 71°28.0' W. longitude; thence east to 42°04' N. latitude, 71°06' W. longitude; thence south-easterly to the point of origin.

[CGD 74-169, 39 FR 32558, Sept. 9, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 84-037, 49 FR 26583, June 28, 1984; CGD1 87-101, 53 FR 24935, July 1, 1988; CGD 93-020, 58 FR 51727, Oct. 4, 1993]

**§ 3.05-30 New York Marine Inspection Zone and Captain of the Port Zone.**

(a) The New York Marine Inspection Office and Captain of the Port Office is located in New York, New York.

(b) The boundary of the New York Marine Inspection Zone and Captain of the Port Zone starts on the south shore of Long Island at 40°35.4' N. latitude, 73°46.6' W. longitude and proceeds southeasterly along a line bearing 127.5° T to 38°28' N. latitude, 70°11' W. longitude; thence northwesterly along a line bearing 122° T from the New Jersey coast at 40°18' N. latitude; thence west along 40°18' N. latitude to 74°30.5' W. longitude; thence northwesterly to the intersection of the New York-New Jersey-Pennsylvania boundaries at Tri-state; thence northwesterly along the east bank of the Delaware River to 42°00' N. latitude; thence east to 74°39' W. longitude; thence north to the Canadian border; thence easterly along the Canadian Border to the northeast corner of the Orleans County line in Vermont; thence following the eastern and southern boundaries of Orleans, Franklin, Chittenden, Addison, and Rutland Counties to the Vermont-New York boundary; thence southerly along the New York boundary to 41°01.5' N. latitude, 73°40' W. longitude; thence southerly to the southern shore of Manursing Island at 40°58' N. latitude, 73°40' W. longitude; thence south-easterly to 40°52.5' N. latitude, 73°37.2' W. longitude; thence southerly to 40°40' N. latitude, 73°40' W. longitude; thence southwesterly to the point of origin.

[CGD 96-016, 61 FR 21958, May 13, 1996]

**§ 3.05-35 Long Island Sound Marine Inspection and Captain of the Port Zone.**

(a) The Long Island Sound Marine Inspection Office and Captain of the Port

Office is located in New Haven, Connecticut.

(b) The boundary of the Long Island Sound Marine Inspection Zone and Captain of the Port Zone starts at 40°35.4' N. latitude, 73°46.6' W. longitude; thence proceeds along a line northeasterly to 40°40' N. latitude, 73°40' W. longitude; thence to 40°52.5' N. latitude, 73°37.2' W. longitude; thence northwest to the south shore of Manursing Island at 40°58' N. latitude, 73°40' W. longitude; thence northerly to the Connecticut-New York boundary at 41°01.5' N. latitude, 73°40' W. longitude; thence north along the western boundary of Connecticut to the Massachusetts-Connecticut boundary; thence east along the southern boundary of Massachusetts, including the waters of the Congamond Lakes, to the Rhode Island boundary; thence south along the Connecticut-Rhode Island boundary, excluding the waters of Beach Pond, to 41°24' N. latitude, 71°48' W. longitude; thence southerly to 41°21' N. latitude, 71°48.5' W. longitude at Westerly, Rhode Island; thence southwesterly to Watch Hill Light, Rhode Island. The northern offshore boundary is a line bearing 132°T from Watch Hill Light to the outermost extent of the EEZ. The southern offshore boundary extends along a line bearing 127.5°T from the south shore of Long Island at 40°35.4' N. latitude, 73°46.6' W. longitude to 38°28' N. latitude, 70°11' W. longitude; thence easterly to the outermost extent of the EEZ; thence northerly along the outermost extent of the EEZ to the intersection of the northern boundary.

[CGD 96-016, 61 FR 21958, May 13, 1996, as amended by USCG-2000-7223, 65 FR 40054, June 29, 2000]

### Subpart 3.25—Fifth Coast Guard District

#### § 3.25-1 Fifth district.

(a) The District Office is in Portsmouth, Va.

(b) The Fifth Coast Guard District is comprised of: North Carolina; Virginia; District of Columbia; Maryland; Delaware; that part of Pennsylvania east of a line drawn along 78°55' W. longitude south to 41°00' N. latitude, thence west to 79°00' W. longitude, and thence south to the Pennsylvania-Maryland bound-

ary; that portion of New Jersey that lies south and west of a line drawn from the New Jersey shoreline at 40°18' N. latitude (just south of the Shrewsbury River), thence westward to 40°18' N. latitude, 74°30.5' W. longitude, thence north-northwesterly to the junction of the New York, New Jersey, and Pennsylvania boundaries at Tristate; and the ocean area encompassed by a line bearing 122°T from the coastal end of the First and Fifth Districts' land boundary at the intersection of the New Jersey shoreline and 40°18' N. latitude (just south of the Shrewsbury River) to the southernmost point in the First Coast Guard District (a point located at approximately 37° N. latitude, 67°13' W. longitude); thence along a line bearing 219°T to the point of intersection with the ocean boundary between the Fifth and Seventh Coast Guard Districts, which is defined as a line bearing 122°T from the coastal end of the Fifth and Seventh Districts' land boundary at the shoreline at the North Carolina-South Carolina border, point located at approximately 30°55' N. 73° W.; thence northwesterly along this line to the coast.

[CGFR 61-40, 26 FR 10347, Nov. 3, 1961, as amended by CGD 87-008, 52 FR 13084, Apr. 21, 1987; 52 FR 16480, May 5, 1987; CGD 87-008b, 52 FR 25217, July 6, 1987; CGD 96-016, 61 FR 21959, May 13, 1996]

#### § 3.25-05 Philadelphia Marine Inspection Zone and Captain of the Port Zone.

(a) The Philadelphia Marine Inspection Office and the Philadelphia, Captain of the Port Office are located in Philadelphia, Pennsylvania.

(b) The boundary of the Philadelphia Marine Inspection zone and Captain of the Port Zone starts at the New Jersey coast at 40°18' N. latitude, thence proceeds westward to 40°18' N. latitude, 74°30.5' W. longitude, thence north-northwesterly to the junction of the New York, New Jersey, and Pennsylvania boundaries at Tristate; thence northwesterly along the east bank of the Delaware River to 42°00' N. latitude; thence west along the New York-

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Pennsylvania boundary to 78°55' W. longitude; thence south to 41°00' N. latitude; thence west to 79°00' W. longitude; thence south to the Pennsylvania-Maryland boundary; thence east to the intersection of the Maryland-Delaware boundary; thence south and east along the Maryland-Delaware boundary to the sea, including Fenwick Island Light. The offshore boundary starts at Fenwick Island Light and proceeds east along 38°28' N. latitude to 70°11' W. longitude; thence northwesterly along a line bearing 122°T from the New Jersey Coast at 40°18' N. latitude.

[CGD 75-093, 40 FR 45168, Oct. 1, 1975, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 82-080, 47 FR 47811, Oct. 28, 1982. Redesignated by CGD 87-008, 52 FR 13084, Apr. 21, 1987. Further amended by CGD 88-052, 53 FR 25119, July 1, 1988; CGD 93-020, 58 FR 51728, Oct. 4, 1993; CGD 96-016, 61 FR 21959, May 13, 1996]

### § 3.25-10 Hampton Roads Marine Inspection Zone and Captain of the Port Zone.

(a) The Hampton Roads Marine Inspection Office and the Hampton Roads Captain of the Port Office are located in Norfolk, Virginia.

(b) The boundary of the Hampton Roads Marine Inspection Zone and Captain of the Port Zone starts at the intersection of the Maryland-Delaware boundary and the coast and proceeds along the Maryland-Delaware boundary to a point 75°30.0' W. longitude; thence southerly to a point 75°30.0' W. longitude on the Maryland-Virginia boundary, thence westerly along the Maryland-Virginia boundary as it proceeds across the Delmarva Peninsula, Pocomoke River, Tangier and Pocomoke Sounds, and Chesapeake Bay; thence northwesterly along the Maryland-Virginia boundary and the District of Columbia-Virginia boundary as those boundaries are formed along the southern bank of the Potomac River to the intersection of the Virginia-Maryland-West Virginia boundaries; thence southerly along the Virginia-West Virginia boundary and the Virginia-Kentucky boundary to the Tennessee boundary; thence eastward along the Virginia-Tennessee boundary to the Virginia-North Carolina boundary; thence eastward to the sea. The offshore boundary starts at the inter-

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section of the Maryland-Delaware boundary and the coast and proceeds east to a point 38°28.0' N. latitude, 70°11.0' W. longitude; thence southeasterly on a line bearing 122°T to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to 36°33.0' N. latitude, and thence westerly along 36°33.0' N latitude to the coast at 75°52.0' W. longitude.

[CGD 73-31R, 39 FR 8613, Mar. 6, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51728, Oct. 4, 1993; 58 FR 67909, Dec. 22, 1993; CGD 96-016, 61 FR 21959, May 13, 1996; USCG-2002-12471, 67 FR 41331, June 18, 2002]

### § 3.25-15 Baltimore Marine Inspection Zone and Captain of the Port Zone.

(a) The Baltimore Marine Inspection Office and the Baltimore Captain of the Port Office are located in Baltimore, Maryland.

(b) The boundary of the Baltimore Marine Inspection Zone and Captain of the Port Zone starts at a point of 75°30' W. longitude on the Delaware-Maryland boundary and proceeds along the Delaware-Maryland boundary west and north to the Pennsylvania boundary; thence west along the Pennsylvania-Maryland boundary to the West Virginia boundary; thence southerly and easterly along the Maryland-West Virginia boundary to the Virginia boundary; thence southeasterly along the Maryland-Virginia boundary and the District of Columbia-Virginia boundary as those boundaries are formed along the southern bank of the Potomac River; thence easterly along the Maryland-Virginia boundary as it proceeds across the Chesapeake Bay, Tangier and Pocomoke Sounds, Pocomoke River, and Delmarva Peninsula to a point 75°30' W. longitude on the Maryland-Virginia boundary; thence northerly to a point 75°30' W. longitude on the Delaware-Maryland boundary.

[CGD 73-31R, 39 FR 8614, Mar. 6, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51728, Oct. 4, 1993; CGD 95-081, 60 FR 67062, Dec. 28, 1995]

**§ 3.25-20 Wilmington Marine Inspection Zone and Captain of the Port Zone.**

(a) The Wilmington Marine Inspection Office and the Wilmington Captain of the Port Office are located in Wilmington, North Carolina.

(b) The boundary of the Wilmington Marine Inspection Zone and Captain of the Port Zone starts at the sea at 36°33.0' N. latitude, 75°52.0' W. longitude, and proceeds westerly along the North Carolina-Virginia boundary to the Tennessee boundary; thence southwesterly along the North Carolina-Tennessee boundary to the Georgia boundary; thence easterly along the North Carolina-Georgia boundary to the South Carolina boundary; thence easterly along the South Carolina-North Carolina boundary to the sea. The offshore boundary of the Wilmington Captain of the Port Zone starts at the coast at 36°33.0' N. latitude; thence proceeds easterly to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to a line bearing 122°T from the intersection of the South Carolina-North Carolina boundary and the sea to the outermost extent of the EEZ; thence westerly along a line bearing 122°T to the coast.

[CGD 73-31R, 39 FR 8614, Mar. 6, 1974; CGD 73-31R, 39 FR 12007, Apr. 2, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 59 FR 948, Jan. 7, 1994; USCG-2002-12471, 67 FR 41331, June 18, 2002]

**Subpart 3.35—Seventh Coast Guard District**

**§ 3.35-1 Seventh district.**

(a) The District Office is in Miami, Fla.

(b) The Seventh Coast Guard District is comprised of the states of South Carolina, Georgia and Florida, except for that part of Georgia and Florida west of a line from the intersection of the Florida coast with Longitude 83°50' W. (30°00' N., 83°50' W.) due north to a position 30°15' N., 83°50' W.; thence due west to a position 30°15' N., 84°45' W.; thence due north to the intersection with the south shore of the Jim Woodruff Reservoir; thence along the east bank of the Jim Woodruff Reservoir and the east bank of the Flint River up stream to Montezuma, GA, thence

northwesterly to West Point, GA. Also included is the Panama Canal Zone, all the island possessions of the United States pertaining to Puerto Rico and the U.S. Virgin Islands; and the U.S. Naval reservations in the islands of the West Indies and on the north coast of South America. The ocean areas are those portions of the western North Atlantic, Caribbean Sea, Gulf of Mexico and the Straits of Florida areas encompassed by a line originating at the state boundary between North Carolina and South Carolina, and extending southeasterly through 30°57' N., 73°06' W. and 29°00' N., 69°19' W. to 12°00' N., 43°00' W.; thence southwestwardly to 10°00' N., 48°00' W.; thence westerly to 09°20' N., 57°00' W.; thence due west to the coastline of South America; thence westerly and northerly along the north coast of South America, and the eastern coasts of Central America and Mexico to the Yucatan Peninsula at 21°25' N., 87°11' W.; thence along a line 019° T to the intersection of longitude 83°50' W. and the western coastline of Florida (30°00' N., 83°50' W.).

[CGFR 61-40, 26 FR 10348, Nov. 3, 1961, as amended by CGFR 70-150, 36 FR 911, Jan. 20, 1971; USCG-1999-5832, 64 FR 34711, June 29, 1999]

**§ 3.35-10 Miami Marine Inspection Zone and Captain of the Port Zone.**

(a) The Miami Marine Inspection Office and the Miami Captain of the Port Office are located in Miami, Florida.

(b) The boundary of the Miami Marine Inspection Zone and Captain of the Port Zone starts at the eastern Florida coast at 28°00' N. latitude; thence proceeds west to 28°00' N. latitude, 81°30' W. longitude; thence south to 26°00' N. latitude, 81°30' W. longitude; thence southwestwardly to the southern tip of Cape Romano, Florida. The offshore area of the Miami Captain of the Port Zone includes that portion of the western North Atlantic Ocean area bounded on the north by 28°00' N. latitude from the coast to the outermost extent of the EEZ and bounded on the east and south by the outermost extent of the EEZ; and that portion of the eastern Gulf of Mexico and the Florida Bay bounded on the north by a line bearing 227° T from the southern tip of Cape Romano to the outermost extent of the

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EEZ and bounded on the west and south by the outermost extent of the EEZ.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

#### **§ 3.35-15 Charleston Marine Inspection Zone and Captain of the Port Zone.**

(a) The Charleston Marine Inspection Office and the Charleston Captain of the Port Office are located in Charleston, South Carolina.

(b) The boundary of the Charleston Marine Inspection Zone and Captain of the Port Zone starts at the sea at the intersection of the North Carolina-South Carolina boundary; thence proceeds westerly along the North Carolina-South Carolina boundary to the intersection of the North Carolina-South Carolina-Georgia boundaries; thence southerly along the South Carolina-Georgia boundary to the intersection with the Federal dam at the southern end of Hartwell Reservoir; thence southerly along the eastern bank of the Savannah River to 32°30' N. latitude; thence easterly to the eastern bank of the Edisto River at 32°41' N. latitude; thence southerly along the eastern bank of the Edisto River to the southern tip of Bay Point, Edisto Island, South Carolina. The offshore boundary starts at a line bearing 122° T from the intersection of the South Carolina-North Carolina boundary and the sea to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to 30°50' N. latitude; thence east along 30°50' N. latitude to a line bearing 122° T from the southern tip of Bay Point, Edisto Island, South Carolina; thence easterly along a line bearing 122° T to the coast.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

#### **§ 3.35-20 Jacksonville Marine Inspection Zone and Captain of the Port Zone.**

(a) The Jacksonville Marine Inspection Office and the Jacksonville Captain of the Port Office are located in Jacksonville, Florida.

(b) The boundary of the Jacksonville Marine Inspection Zone and Captain of the Port Zone starts at the Georgia

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coast at 30°50' N. latitude; thence proceeds west to 30°50' N. latitude, 82°15' W. longitude; thence south to the intersection of the Florida-Georgia boundary at 82°15' W. longitude; thence westerly along the Florida-Georgia boundary to 83°00' W. longitude; thence southeasterly to 28°00' N. latitude, 81°30' W. longitude; thence east to the sea at 28°00' N. latitude. The offshore boundary starts at the coast at 30°50' N. latitude; thence proceeds easterly to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to 28°00' N. latitude; thence westerly along 28°00' N. latitude to the coast.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978; 43 FR 18553, May 1, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

#### **§ 3.35-25 San Juan Marine Inspection Zone and Captain of the Port Zone.**

(a) The San Juan Marine Inspection Office and the San Juan Captain of the Port Office are located in San Juan, Puerto Rico.

(b) The San Juan Marine Inspection Zone and Captain of the Port Zone are comprised of both the Commonwealth of Puerto Rico and the Territory of the Virgin Islands and the adjacent waters to the outermost extent of the EEZ.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

#### **§ 3.35-30 Savannah Marine Inspection Zone and Captain of the Port Zone.**

(a) The Savannah Marine Inspection Office and the Savannah Captain of the Port Office are located in Savannah, Georgia.

(b) The boundary of the Savannah Marine Inspection Zone and Captain of the Port Zone starts at the southern tip of Bay Point, Edisto Island, South Carolina; thence proceeds northerly along the eastern bank of the Edisto River to 32°41' N. latitude; thence westerly to the eastern bank of the Savannah River at 32°30' N. latitude; thence northerly along the eastern bank of the Savannah River to the intersection of the South Carolina-Georgia boundary with the Federal dam at the southern end of Hartwell Reservoir; thence northerly along the South Carolina-

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Georgia boundary to the intersection of the North Carolina-South Carolina-Georgia boundaries; thence westerly along the Georgia-North Carolina boundary and continuing westerly along the Georgia-Tennessee boundary to the intersection of the Georgia-Tennessee-Alabama boundaries; thence southerly along the Georgia-Alabama boundary to 32°53' N. latitude; thence southeasterly to the eastern bank of the Flint River at 32°20' N. latitude; thence southerly along the eastern bank of the Flint River and continuing southerly along the southeastern shore of Jim Woodruff Reservoir to 84°45' W. longitude; thence southerly to the intersection of the Florida-Georgia boundary; thence easterly along the Florida-Georgia boundary to 82°15' W. longitude; thence north to 30°50' N. latitude, 82°15' W. longitude; thence east to the sea at 30°50' N. latitude. The offshore boundary starts at a line bearing 122° T from the southern tip of Bay Point, Edisto Island, South Carolina to the intersection with 30°50' N. latitude; thence proceeds westerly along 30°50' N. latitude to the coast.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

### § 3.35-35 Tampa Marine Inspection Zone and Captain of the Port Zone.

(a) The Tampa Marine Inspection Office and the Tampa Captain of the Port Office are located in Tampa, Florida.

(b) The boundary of the Tampa Marine Inspection Zone and Captain of the Port Zone starts at the Florida coast at 83°50' W. longitude; thence proceeds north to 30°15' N. latitude, 83°50' W. longitude; thence west to 30°15' N. latitude, 84°45' W. longitude; thence north to the Florida-Georgia boundary at 84°45' W. longitude; thence easterly along the Florida-Georgia boundary to 83°00' W. longitude; thence southeasterly to 28°00' N. latitude, 81°30' W. longitude; thence south to 26°00' N. latitude, 81°30' W. longitude; thence southwest to the southern tip of Cape Romano, Florida; thence southwest along a line bearing 227° T to the outermost extent of the EEZ; thence westerly along the outermost extent of the EEZ to the intersection with a line bearing 199° T from the intersection of

the Florida coast at 83°50' W. longitude; thence easterly along a line bearing 199° T to the coast.

[CGD 76-212, 43 FR 1056, Jan. 5, 1978, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

## Subpart 3.40—Eighth Coast Guard District

### § 3.40-1 Eighth district.

(a) The District Office is in New Orleans, La.

(b) The Eighth Coast Guard District is comprised of North Dakota, South Dakota, Wyoming, Nebraska, Iowa, Colorado, Kansas, Missouri, Kentucky, West Virginia, Tennessee, Arkansas, Oklahoma, New Mexico, Texas, Louisiana, Mississippi, and Alabama; that part of Pennsylvania south of 41° N. latitude and west of 79° W. longitude; those parts of Ohio and Indiana south of 41° N. latitude; Illinois, except that part north of 41° N. latitude and east of 90° W. longitude; that part of Wisconsin south of 46°20' N. latitude and west of 90° W. longitude; that part of Minnesota south of 46°20' N. latitude; those parts of Florida and Georgia west of a line starting at the Florida coast at 83°50' W. longitude; thence northerly to 30°15' N. latitude, 83°50' W. longitude; thence due west to 30°15' N. latitude, 84°45' W. longitude; thence due north to the southern bank of the Jim Woodruff Reservoir at 84°45' W. longitude; thence northeasterly along the eastern bank of the Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to Montezuma, GA.; thence northwesterly to West Point, GA.; and the Gulf of Mexico area west of a line bearing 199 T. from the intersection of the Florida coast at 83°50' W. longitude (the coastal end of the Seventh and Eighth Coast Guard District land boundary.) [DATUM NAD83]

[CGFR 67-15, 32 FR 5270, Mar. 29, 1967, as amended by CGD 77-167, 43 FR 2372, Jan. 16, 1978; CGD 96-025, 61 FR 29959, June 13, 1996]

### § 3.40-10 Mobile Marine Inspection Zone and Captain of the Port Zone.

(a) The Mobile Marine Inspection Office and the Mobile Captain of the Port Office are located in Mobile, Alabama.

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(b) The boundary of the Mobile Marine Inspection Zone and Captain of the Port Zone starts at the Florida coast at 83°50' W. longitude; thence proceeds north to 30°15' N. latitude, 83°50' W. longitude; thence west to 30°15' N. latitude, 84°45' W. longitude; thence north to the southern shore of the Jim Woodruff Reservoir at 84°45' W. longitude; thence northeasterly along the eastern shore of Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to 32°20' N. latitude, 84°02' W. longitude; thence northwesterly to the intersection of the Georgia-Alabama boundary at 32°53' N. latitude; thence northerly along the Georgia-Alabama boundary to 34°00' N. latitude; thence west to the Alabama-Mississippi boundary at 34°00' N. latitude; thence northerly along the Alabama-Mississippi boundary to the southern boundary of Tishomingo County, Mississippi; thence westerly and southerly along the southern boundaries of Tishomingo and Prentiss Counties, Mississippi, including that area of the Tennessee-Tombigby Waterway south of the Bay Springs Lock and Dam; thence southerly and westerly along the eastern and southern boundaries of Lee, Chickasaw, and Calhoun Counties, Mississippi; thence southerly along the western boundaries of Webster, Choctaw, Winston, Neshoba, Newton, Jasper, Jones, Forrest and Stone Counties, Mississippi; thence easterly along the northern boundary of Harrison County, Mississippi, to 89°10' W. longitude; thence south to the Mississippi coast; thence southeasterly to 29°10' N. latitude, 88°00' W. longitude; thence south to the outermost extent of the EEZ; thence easterly along the outermost extent of the EEZ to the intersection with a line bearing 199° T from the intersection of the Florida coast at 83°50' W. longitude; thence northeasterly along a line bearing 199° T from the Florida coast at 83°50' W. longitude to the coast.

[CGD 74-40, 39 FR 32131, Sept. 5, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 87-062, 52 FR 35913, Sept. 24, 1987; CGD 93-020, 58 FR 51729, Oct. 4, 1993]

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**§ 3.40-15 New Orleans Marine Inspection Zone and Captain of the Port Zone.**

(a) The New Orleans Marine Inspection Office and the New Orleans Captain of the Port Office are located in New Orleans, Louisiana.

(b) The boundary of the New Orleans Marine Inspection Zone and Captain of the Port Zone starts at 28°50' N. latitude, 88°00' W. longitude; thence proceeds north to 29°10' N. latitude, 88°00' W. longitude; thence northwesterly to the Mississippi coast at 89°10' W. longitude; thence north to the northern Harrison County Boundary; thence westerly along the northern Harrison County boundary; thence northerly along the western boundaries of Stone, Forrest, Jones, Jasper, Newton, Neshoba, Winston, Choctaw, and Webster Counties to the northern boundary of Montgomery County; thence southwesterly along the northern and western boundaries of Montgomery, Carroll, Holmes, Humphreys, Sharkey, and Issaquena Counties to the Louisiana-Arkansas boundary; thence west along the Louisiana-Arkansas boundary to the Texas-Louisiana boundary; thence south along the Texas-Louisiana boundary to the northern DeSoto Parish boundary; thence easterly along the northern and eastern boundaries of DeSoto, Sabine, Vernon, and Allen Parishes; thence east along the northern boundaries of Acadia, Lafayette, St. Martin, Iberia, Assumption, and Lafourche Parishes to 29°18' N. latitude, 90°00' W. longitude; thence southeast to 28°50' N. latitude, 89°27'06" W. longitude; thence east to 88°00' W. longitude.

[CGD 74-40, 39 FR 32131, Sept. 5, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 88-02, 53 FR 5572, Feb. 25, 1988; CGD 93-020, 58 FR 51730, Oct. 4, 1993; USCG-2003-15404, 68 FR 37740, June 25, 2003]

**§ 3.40-17 Morgan City Marine Inspection Zone and Captain of the Port Zone.**

(a) The Morgan City Marine Inspection Office and Captain of the Port Office are in Morgan City, Louisiana.

(b) The boundary of the Morgan City Marine Inspection Zone and the Captain of the Port Zone starts at 28°50' N. latitude, 88°00' W. longitude; thence

proceeds west to 28°50' N. latitude, 89°27'06" W. longitude; thence northwesterly to 29°18' N. latitude, 90°00' W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia, and St. Martin Parishes; thence northwesterly along the northern boundary of Lafayette and Acadia Parishes to 92°23' W. longitude; thence south along 92°23' W. longitude to the outermost extent of the EEZ; thence easterly along the outermost extent of the EEZ to 88°00' W. longitude; thence north to 28°50' N. latitude, 88°00' W. longitude.

[CGD 87-062, 52 FR 35913, Sept. 24, 1987, as amended by CGD 88-02, 53 FR 5572, Feb. 25, 1988; CGD 93-020, 58 FR 51730, Oct. 4, 1993]

**§ 3.40-20 Port Arthur Marine Inspection Zone and Captain of the Port Zone.**

(a) The Port Arthur Marine Inspection Office and Captain of the Port Office are in Port Arthur, Texas.

(b) The boundary of the Port Arthur Marine Inspection Zone and the Captain of the Port Zone starts at the intersection of the sea and 92°23' W. longitude; thence proceeds north along 92°23' W. longitude to the northern boundary of Acadia Parish, thence westerly along the northern boundary of Acadia Parish; thence northwesterly along the northeastern boundaries of Allen, Vernon, Sabine, and De Soto Parishes; thence westerly along the northern boundary of De Soto Parish to the Louisiana-Texas boundary; thence northerly along the Louisiana-Texas boundary to the Texas-Arkansas-Louisiana boundaries; thence westerly along the Texas-Arkansas boundary and the Texas-Oklahoma boundary to 97°00' W. longitude; thence south along 97°00' W. longitude to the southern boundary of Dallas County, Texas; thence easterly along the southern boundary of Dallas County, Texas, to the east bank of the Trinity River; thence southeasterly along the east bank of the Trinity River; thence southeasterly along the east shore of Lake Livingston; thence southerly along the east bank of the Trinity River to 30°00' N. latitude, 93°55' W. longitude; thence east along 30°00' N. latitude to 94°23' W. longitude; thence south along 94°23' W. longitude to the

sea; thence seaward to 29°24' N. latitude, 94°20' W. longitude; thence easterly following a line 10.3 nautical miles from the coast to 29°30' N. latitude, 93°48' W. longitude; thence south-easterly to 27°49' N. latitude, 93°25' W. longitude; thence south along 93°25' W. longitude to the outermost extent of the EEZ; thence east along the outermost extent of the EEZ to 92°23' W. longitude; thence north along 92°23' W. longitude to the point of origin.

[CGD 74-40, 39 FR 32131, Sept. 5, 1974, as amended by CGD 76-079, 41 FR 37104, Sept. 2, 1976; CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 87-062, 52 FR 35913, Sept. 24, 1987; CGD 93-020, 58 FR 51730, Oct. 4, 1993]

**§ 3.40-28 Houston-Galveston Marine Inspection Zone and Captain of the Port Zone.**

(a) The Houston-Galveston Marine Inspection Office and the Captain of the Port Office are located in Houston, Texas. The Galveston Marine Safety Unit is a subordinate unit of the Marine Safety Office and is located in Galveston, Texas.

(b) The boundary of the Houston-Galveston Marine Inspection Zone and Captain of the Port Zone starts at the intersection of the sea and 94°23' W. longitude; thence proceeds north along 94°23' W. longitude to 30°00' N. latitude; thence west along 30°00' N. latitude to the east bank of the Trinity River; thence northerly along the east bank of the Trinity River; thence northwesterly along the eastern shore of Lake Livingston; thence northwesterly along the east bank of the Trinity River to the southern boundary of Dallas County, Texas; thence westerly along the southern boundary of Dallas County, Texas to 97°00' W. longitude; thence north along 97°00' W. longitude to the Texas-Oklahoma boundary; thence northwesterly along the Texas-Oklahoma boundary; thence north along the New Mexico-Oklahoma boundary; thence west along the New Mexico-Colorado boundary; thence south along the New Mexico-Arizona boundary; thence easterly along the southern boundary of New Mexico to the southeast corner of New Mexico at 32°00' N. latitude; thence southeasterly to 29°18' N. latitude, 96°07' W. longitude on the east bank of the Colorado River; thence

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southerly along the east bank of the Colorado River to the sea; thence along a line bearing 140°T to the outermost extent of the EEZ; thence easterly along the outermost extent of the EEZ to 93°25' W. longitude; thence north to 27°49' N. latitude, 93°25' W. longitude; thence northwesterly to 29°30' N. latitude, 93°48' W. longitude; thence westward following a line 10.3 nautical miles from the coast to 29°24' N. latitude, 94°20' W. longitude; thence northwesterly to the coast at 94°23' W. longitude.

[CGD 95-081, 60 FR 67062, Dec. 28, 1995]

### § 3.40-35 Corpus Christi Marine Inspection Zone and Captain of the Port Zone.

(a) The Corpus Christi Marine Inspection Office and the Corpus Christi Captain of the Port Office are located in Corpus Christi, Texas.

(b) The boundary of the Corpus Christi Marine Inspection Zone and Captain of the Port Zone starts at the junction of the sea and the east bank of the Colorado River; thence proceeds northerly along the east bank of the Colorado River to 29°18' N. latitude, 96°07' W. longitude; thence northwesterly to the southeast corner of New Mexico at 32°00' N. latitude; thence westerly along the Texas-New Mexico boundary; thence southeasterly along the Mexican border to the sea. The offshore area includes all waters and islands contained therein of the EEZ that are south and west of a line bearing 140° T from the junction of the sea and the east bank of the Colorado River to the outermost extent of the EEZ.

[CGD 74-40, 39 FR 32132, Sept. 5, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51730, Oct. 4, 1993]

### § 3.40-40 St. Louis Marine Inspection Zone and Captain of the Port Zone.

(a) The St. Louis Marine Inspection Office and the St. Louis Captain of the Port Office are located in St. Louis, Missouri.

(b) The St. Louis Marine Inspection Zone and Captain of the Port Zone are comprised of all of Wyoming except for Sweetwater County; Colorado; North Dakota; South Dakota; Kansas; Nebraska; in Arkansas, Boone, Marion, Baxter, and Fulton Counties; all of

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Missouri except for Scott, Stoddard, Mississippi, New Madrid, Dunklin, and Pemiscot Counties, and those parts of Cape Girardeau and Bollinger Counties south of a line drawn from the southeast corner of Madison County eastward to the point of intersection of the upper Mississippi River (Mile 55.3) and Union and Alexander Counties (in Illinois); Iowa; that part of Minnesota south of 46°20' N. latitude; that part of Wisconsin south of 46°20' N. latitude and west of 90° W. longitude; that part of Illinois north of Alexander, Pulaski, and Johnson Counties, and west of Johnson, Saline, Hamilton, Wayne, Clay, Jasper, Cumberland, Coles, Douglas, Champaign, and Ford Counties and south of 41° N. latitude; and that part of Illinois west of 90° W. longitude and north of 41° N. latitude.

[CGD 86-056, 52 FR 2688, Jan. 26, 1987, as amended by CGD 93-020, 58 FR 51728, Oct. 4, 1993. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

### § 3.40-45 Paducah Marine Inspection Zone and Captain of the Port Zone.

(a) The Paducah Marine Inspection Office and the Paducah Captain of the Port Office are located in Paducah, Kentucky.

(b) The Paducah Marine Inspection Zone and the Paducah Captain of the Port Zone are comprised of: In Missouri: Stoddard, Mississippi and Scott Counties, and those parts of Cape Girardeau and Bollinger Counties south of a line drawn eastward from the southeast corner of Madison County to the point of intersection of the upper Mississippi River (Mile 55.3) and Union and Alexander Counties, and those parts of Dunklin and New Madrid Counties north of a line drawn eastward from the southeast corner of Butler County to the westernmost point of intersection of the Missouri, Kentucky and Tennessee border at the lower Mississippi River (Mile 882.7), and all that part of New Madrid County, and all waters of the Mississippi River which border any part of New Madrid County, lying east of 89°30' W. longitude (including the area known as Winchester Towhead). In Illinois: Johnson, Pope, Hardin, Alexander, Pulaski, and Massac Counties. In Kentucky: Fulton, Hickman, Carlisle, Ballard,

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McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg, Crittenden, Caldwell, and Christian Counties, and that part of Union County south of a line drawn from the point of intersection of Gallatin and Hardin Counties (in Illinois) and the Ohio River to the point of intersection of Union, Webster and Henderson Counties; all of Tennessee except for Dyer, Crockett, Lauderdale, Tipton, Haywood, Shelby, Fayette, Hardeman and Lake Counties; that part of Alabama north of 34° N. latitude, and in Mississippi: Alcorn, Prentiss, and Tishomingo Counties except for that portion of the Tennessee-Tombigbee Waterway south of the Bay Springs Lock and Dam.

[CGD 86-056, 52 FR 2688, Jan. 26, 1987. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

### § 3.40-50 Huntington Marine Inspection Zone and Captain of the Port Zone.

(a) The Huntington Marine Inspection Office and the Huntington Captain of the Port Office are located in Huntington, West Virginia.

(b) The Huntington Marine Inspection Zone and the Huntington Captain of the Port Zone are comprised of: All of West Virginia except for Preston, Monongalia, Marion, Marshall, Ohio, Brooke, and Hancock Counties; in Ohio: Wayne, Holmes, Knox, Cushtocoy, Licking, Muskingum, Guernsey, Noble, Fairfield, Perry, Morgan, Pickaway, Ross, Hocking, Vinton, Athens, Washington, Pike, Jackson, Gallia, Meigs, Scioto, and Lawrence Counties, those parts of Ashland and Medina Counties south of 41° N. latitude, and that part of Monroe County south and west of a line drawn from the point of intersection of Marshall and Wetzel Counties and the Ohio River to the point of intersection of Belmont, Noble, and Monroe Counties; and in Kentucky: Letcher, Perry, Owsley, Breathitt, Knott, Pike, Floyd, Magoffin, Wolfe, Menifee, Morgan, Johnson, Martin, Lawrence, Elliott, Boyd, Carter, and Greenup Counties, and that part of Lewis County north and east of a line drawn from the point of intersection of Scioto and Adams Counties and the Ohio River to the

point of intersection of Carter, Greenup, and Lewis Counties.

[CGD 79-011, 44 FR 33400, June 11, 1979. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

### § 3.40-55 Louisville Marine Inspection Zone and Captain of the Port Zone.

(a) The Louisville Marine Inspection Office and the Louisville Captain of the Port Office are located in Louisville, Kentucky.

(b) The Louisville Marine Inspection Zone and the Louisville Captain of the Port Zone are comprised of: that part of Indiana south of 41° N. latitude; that part of Ohio south of 41° N. latitude and west of Ashland, Knox, Licking, Fairfield, Pickaway, Ross, Pike, and Scioto Counties; that part of Illinois north of Pope and Hardin Counties, east of Williamson, Franklin, Jefferson, Marion, Fayette, Effingham, Shelby, Moultrie, Piatt, McLean, and Livingston Counties, and south of 41° N. latitude; and in Kentucky: Todd, Logan, Simpson, Allen, Warren, Baren, Metcalfe, Muhlenberg, Butler, Edmonson, Hart, Green, Taylor, Adair, Casey, Lincoln, Webster, Hopkins, McLean, Ohio, Grayson, Henderson, Daviess, Hancock, Breckinridge, Meade, Hardin, Larue, Nelson, Washington, Marion, Anderson, Mercer, Boyle, Woodford, Jessamine, Garrard, Fayette, Clark, Madison, Estill, Powell, Lee, Bullitt, Spencer, Jefferson, Shelby, Franklin, Scott, Oldham, Henry, Owen, Trimble, Carroll, Montgomery, Bath, Rowan, Bourbon, Nicholas, Fleming, Harrison, Robertson, Mason, Grant, Pendleton, Bracken, Gallatin, Boone, Kenton, Campbell, Monroe, Cumberland, Russell, Clinton, Wayne, Pulaski, McCreary, Rock Castle, Whitley, Jackson, Laurel, Knox, Clay, Bell, Leslie and Harlan Counties, that part of Lewis County south and west of a line drawn from the point of intersection of Scioto and Adams Counties (in Ohio) and the Ohio River to the point of intersection of Carter, Greenup, and Lewis Counties (in Kentucky), and that part of Union County north of a line drawn from the point of intersection of Gallatin and Hardin Counties (in Illinois) and the Ohio River to the point of intersection of

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Union, Webster, and Henderson Counties (in Kentucky).

[CGD 86-056, 52 FR 2688, Jan. 26, 1987. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

#### § 3.40-60 Memphis Marine Inspection Zone and Captain of the Port Zone.

(a) The Memphis Marine Inspection Office and the Memphis Captain of the Port Office are located in Memphis, Tennessee.

(b) The Memphis Marine Inspection Zone and the Memphis Captain of the Port Zone are comprised of: Oklahoma; all of Arkansas except for Boone, Marion, Baxter, and Fulton Counties; in Tennessee: Shelby, Fayette, Hardeman, Tipton, Haywood, Lauderdale, Crockett, and Dyer Counties, and all of Lake County, with the exception of the portion of the Mississippi River which borders that part of New Madrid County, Missouri, lying east of 89°30' W. longitude (including the area known as Winchester Towhead); in Missouri: Pemiscot County, and those portions of Dunklin and New Madrid Counties south of a line drawn eastward from the southeast corner of Butler County to the westernmost point of intersection of the Missouri, Kentucky, and Tennessee borders at the lower Mississippi River (Mile 882.7). In Mississippi: DeSoto, Marshall, Benton, Tippah, Tunica, Tate, Coahoma, Quitman, Panola, Lafayette, Union, Pontotoc, Lee, Bolivar, Washington, Sunflower, Tallahatchie, Leflore, Yalobusha, Grenada, Calhoun and Chickasaw Counties.

[CGD 86-056, 52 FR 2689, Jan. 26, 1987. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

#### § 3.40-65 Pittsburgh Marine Inspection Zone and Captain of the Port Zone.

(a) The Pittsburgh Marine Inspection Office and the Pittsburgh Captain of the Port Office are located in Pittsburgh, Pennsylvania.

(b) The Pittsburgh Marine Inspection Zone and the Pittsburgh Captain of the Port Zone are comprised of: that part of Pennsylvania south of 41° N. latitude and west of 79° W. longitude; in West Virginia: Preston, Monongalia, Marion, Marshall, Ohio, Brooke, and Hancock Counties; and in Ohio: Stark,

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Columbiana, Tuscarawas, Carroll, Harrison, Jefferson, and Belmont Counties, those parts of Summit, Portage, and Mahoning Counties south of 41° N. latitude, and that part of Monroe County north and east of a line drawn from the point of intersection of Marshall and Wetzel Counties and the Ohio River to the point of intersection of Belmont, Nobile, and Monroe Counties.

[CGD 79-011, 44 FR 33400, June 11, 1979. Redesignated by CGD 96-025, 61 FR 29959, June 13, 1996]

#### Subpart 3.45—Ninth Coast Guard District

SOURCE: CGD 79-011, 44 FR 33401, June 11, 1979, unless otherwise noted.

##### § 3.45-1 Ninth district.

(a) The District Office is in Cleveland Ohio.

(b) The Ninth Coast Guard District comprise Michigan, New York north of latitude 42° N. and west of longitude 74°39' W.; Pennsylvania north of latitude 41° and west of longitude 78°55' W.; that part of Ohio and Indiana north of latitude 41° N.; that part of Illinois north of latitude 41° N. and east of longitude 90° W.; Wisconsin, except that part south of latitude 46°20' N. and west of longitude 90° W.; and that part of Minnesota north of latitude 46°20' N.

[CGFR 61-40, 26 FR 10350, Nov. 3, 1961, as amended by CGFR 71-85, 36 FR 16577, Aug. 24, 1971]

##### § 3.45-5 Cleveland Marine Inspection Zone and Captain of the Port Zone.

(a) The Cleveland Marine Inspection Office and the Cleveland Captain of the Port Office are located in Cleveland, Ohio.

(b) The Cleveland Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From the international boundary in Lake Erie at longitude 82°25' W.; thence due south to latitude 41° N.; thence due east to longitude 80°31'12" W. (Ohio/Pennsylvania State boundary); thence due north to the international boundary; thence southwesterly along the

international boundary to the starting point.

(c) Notwithstanding paragraph (b) of this section and § 3.10-50(b), factory inspections at the towns of Alliance and Sebring, Ohio, are conducted by marine inspectors from the Cleveland Marine Inspection Office rather than from the Pittsburgh Marine Inspection Office.

[CGD 82-019, 47 FR 13797, Apr. 1, 1982]

**§ 3.45-10 Buffalo Marine Inspection Zone and Captain of the Port Zone.**

(a) The Buffalo Marine Inspection Office and the Buffalo Captain of the Port Office are located in Buffalo, New York.

(b) The Buffalo Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From the international boundary in Lake Erie at longitude 80°31'12" W. (Ohio/Pennsylvania State boundary); thence due south to latitude 41° N.; thence due east to longitude 78°55' W.; thence due north to latitude 42° N.; thence due east to longitude 74°39' W.; thence due north to the international boundary; thence southeasterly along the international boundary to the starting point.

[CGD 82-019, 47 FR 13798, Apr. 1, 1982]

**§ 3.45-15 Chicago Marine Inspection Zone and Captain of the Port Zone.**

(a) The Chicago Marine Inspection Office and the Chicago Captain of the Port Office are located in Chicago, Illinois.

(b) The Chicago Marine Inspection Zone and the Chicago Captain of the Port Zone include those parts of Michigan, Indiana, Ohio, and Illinois within the following boundaries: From the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15' N.; thence northeasterly to latitude 44°43' N., longitude 86°40' W.; thence due east to longitude 84°30' W.; thence due south to latitude 41° N.; thence due west to longitude 90° W.; thence due north to the starting point.

[CGD 94-107, 60 FR 17223, Apr. 5, 1995]

**§ 3.45-20 Detroit Marine Inspection Zone and Captain of the Port Zone.**

(a) The Detroit Marine Inspection Office and the Detroit Captain of the Port Office are located in Detroit, Michigan.

(b) The Detroit Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From latitude 42° N., longitude 84°30' W.; thence due east to the international boundary; thence northerly along the international boundaries to latitude 44°43' N.; thence due west to longitude 84°30' W.; thence due south to the starting point.

**§ 3.45-25 Duluth Marine Inspection Zone and Captain of Port Zone.**

(a) The Duluth Marine Inspection Office and the Duluth Captain of the Port Office are located in Duluth, Minnesota.

(b) The boundary of the Duluth Marine Inspection Zone and Captain of the Port Zone starts at the intersection of the Minnesota-North Dakota boundary and the international boundary; thence southerly along the Minnesota-North Dakota boundary to latitude 46°20' N.; thence due east to longitude 88°30' W.; thence northeasterly to the shore of Lake Superior at longitude 87°45' W.; thence northerly to Manitou Island Light, located at latitude 47°25' N., longitude 87°35' W.; thence due north to the international boundary at longitude 87°35' W.; thence westerly along the international boundary to the starting point.

**§ 3.45-30 Milwaukee Marine Inspection Zone and Captain of the Port Zone.**

(a) The Milwaukee Marine Inspection Office and the Milwaukee Captain of the Port Office are located in Milwaukee, Wisconsin.

(b) The boundary of the Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone starts at the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15' N.; thence northeasterly to latitude 44°43' N., longitude 86°40' W.; thence due north to latitude 45°27' N.; thence due west to longitude 88°30' W.;

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thence due north to latitude 46°20' N.; thence due west to longitude 90° W.; thence due south to the starting point.

[CGD 82-019, 47 FR 13798, Apr. 1, 1982, as amended by CGD 94-107, 60 FR 17224, Apr. 5, 1995]

**§ 3.45-45 Sault Ste. Marie Marine Inspection Zone and Captain of the Port Zone.**

(a) The Sault Ste. Marie Marine Inspection Office and the Sault Ste. Marie Captain of the Port Office are located in Sault Ste. Marie, Michigan.

(b) The boundary of the Sault Ste. Marie Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone starts at the international boundary at latitude 44°43' N.; thence due west to longitude 86°40' W.; thence due north to latitude 45°27' N.; thence due west to longitude 88°30' W.; thence due north to latitude 46°20' N.; thence northeasterly to the shore of Lake Superior at longitude 87°45' W.; thence northerly to Manitou Island Light, located at latitude 47°25' N., longitude 87°35' W.; thence due north to the international boundary at longitude 87°35' W.; thence southeasterly along the international boundary to the starting point.

[CGD 94-107, 60 FR 17224, Apr. 5, 1995]

**§ 3.45-50 Toledo Marine Inspection Zone and Captain of the Port Zone.**

(a) The Toledo Marine Inspection Office and the Toledo Captain of the Port Office are located in Toledo, Ohio.

(b) The Toledo Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From latitude 42° N.; longitude 84°30' W.; thence due south to latitude 41° N.; thence due east to longitude 82°25' W.; thence due north to the international boundary in Lake Erie; thence northwesterly along the international boundary to latitude 42° N.; thence due west to the starting point.

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**Subpart 3.55—Eleventh Coast Guard District**

**§ 3.55-1 Eleventh district.**

(a) The District Office is in Alameda, California.

(b) The Eleventh Coast Guard District is comprised of: Arizona; Utah; Nevada; California; and the ocean area bounded by a line from the California-Oregon state line westerly to 40° N. latitude, 150° W. longitude; thence southeasterly to 5° S. latitude, 110° W. longitude; thence northeasterly to the border between Guatemala and Mexico on the Pacific Coast (14°38' N. latitude, 92°19' W. longitude).

[CGFR 61-40, 26 FR 10351, Nov. 3, 1961, as amended by CGD 87-008, 52 FR 13084, Apr. 21, 1987; CGD 96-025, 61 FR 29959, June 13, 1996]

**§ 3.55-10 Los Angeles-Long Beach Marine Inspection Zone and Captain of the Port Zone.**

(a) The Los Angeles-Long Beach Marine Inspection Office and the Los Angeles-Long Beach Captain of the Port Office are located in Long Beach, California.

(b) The Los Angeles-Long Beach Marine Inspection Zone and Captain of the Port Zone comprise the land masses and waters of California south of Monterey, Kings, Tulare, and Inyo Counties except San Diego and Imperial Counties. The offshore boundary starts at a line bearing 240° T from the intersection of the Monterey-San Luis Obispo County line (approximately 35°47.5' N. latitude) and the California coast to the outermost extent of the EEZ; thence proceeds southerly along the outermost extent of the EEZ to a line bearing 255° T from the intersection of the Orange-San Diego County lines (approximately 33°22.5' N. latitude) and the California coast; thence easterly along this line to the coast.

[CGD 74-241, 39 FR 44979, Dec. 30, 1974, as amended by CGD 77-234, 43 FR 18553, May 1, 1978; CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 82-038, 47 FR 27264, June 24, 1982; CGD 93-020, 58 FR 51731, Oct. 4, 1993]

**§ 3.55-15 San Diego Marine Inspection Zone and Captain of the Port Zone.**

(a) The San Diego Marine Inspection Office and San Diego Captain of the

Port Office are located in San Diego, California.

(b) The San Diego Marine Inspection Zone and Captain of the Port Zone comprise the land masses and waters of Arizona; in Utah, Washington, Kane, San Juan, and Garfield Counties; in Nevada, Clark County; and in California, San Diego and Imperial Counties. The offshore boundary, which includes all ocean waters and islands contained therein, starts at the intersection of the Orange-San Diego County lines (approximately 33°22.5' N. latitude) and the California coast and proceeds seaward on a line bearing 255 T° to the outermost extent of the EEZ; thence proceeds southerly along the outermost extent of the EEZ to the intersection of the maritime boundary with Mexico; thence easterly, along the maritime boundary with Mexico to its intersection with the California coast.

[CGD 74-241, 39 FR 44980, Dec. 30, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 82-038, 47 FR 27264, June 24, 1982; CGD 93-020, 58 FR 59364, Nov. 9, 1993]

**§ 3.55-20 San Francisco Bay Marine Inspection Zone and Captain of the Port Zone.**

(a) The San Francisco Bay Marine Inspection Zone and Captain of the Port Office are located in Alameda, California.

(b) The San Francisco Bay Marine Inspection Zone and Captain of the Port Zone comprise the land masses and waters of Wyoming within the boundaries of Sweetwater County; Utah, except for Washington, Kane, San Juan, and Garfield Counties; Nevada, except for Clark County; and California, north of San Luis Obispo, Kern, and San Bernardino Counties. It also includes all ocean waters and islands contained therein of the EEZ bounded on the north by the northern boundary of the Eleventh Coast Guard District which is described in § 3.55-1; and on the south by a line bearing 240° T from the intersection of the Monterey-San Luis Obispo County lines (approximately 35°47.5' N. latitude) and the California coast to the outermost extent of the EEZ; and on the west by the outermost extent of the EEZ.

[CGD 93-020, 58 FR 51731, Oct. 4, 1993]

**Subpart 3.65—Thirteenth Coast Guard District**

**§ 3.65-1 Thirteenth district.**

(a) The District Office is in Seattle, Wash.

(b) The Thirteenth Coast Guard District shall comprise Washington, Oregon, Idaho, and Montana; and the ocean area bounded by a line from California-Oregon state line westerly to latitude 40° N. longitude, 150° W., thence northeasterly to latitude 54°40' N., longitude 140° W., thence due east to the Canadian coast.

[CGFR 61-40, 26 FR 10352, Nov. 3, 1961]

**§ 3.65-10 Puget Sound Marine Inspection Zone and Captain of the Port Zone.**

(a) The Puget Sound Marine Inspection Office and the Puget Sound Captain of the Port Office are located in Seattle, Washington.

(b) The boundary of the Puget Sound Marine Inspection Zone and Captain of the Port Zone starts at 48°29'35" N. latitude, 124°43'45" W. longitude and proceeds along the Canadian border eastward to the Montana-North Dakota boundary; thence southerly along this boundary to the Wyoming State line; thence westerly and southerly along the Montana-Wyoming boundary to the Idaho State line; thence northwesterly along the Montana-Idaho boundary to 46°55' N. latitude; thence westerly along 46°55' N. latitude to 123°18' W. longitude; thence northerly to a point 47°32' N. latitude, 123°18' W. longitude; thence westerly along 47°32' N. latitude to the outermost extent of the EEZ; thence northeasterly along the outermost extent of the EEZ to the Canadian border; thence easterly along the Canadian border to the point of origin.

[CGD 84-056, 49 FR 33874, Aug. 27, 1984, as amended by CGD 93-020, 58 FR 51731, Oct. 4, 1993]

**§ 3.65-15 Portland, Oregon, Marine Inspection Zone and Captain of the Port Zone.**

(a) The Portland Marine Inspection Office and the Portland Captain of the Port Office are located in Portland, Oregon.

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(b) The boundary of the Portland, Oregon, Marine Inspection Zone and Captain of the Port Zone starts at the Washington coast at 47°32' N. latitude and proceeds along this latitude easterly to a point 47°32' N. latitude, 123°18' W. longitude; thence southerly to 46°55' N. latitude; thence easterly along this latitude to the eastern Idaho State line; thence southeasterly along the Idaho State line to the intersection of the Idaho-Wyoming boundary; thence southerly along the Idaho-Wyoming boundary to the intersection of the Idaho-Utah-Wyoming boundaries; thence westerly along the 42°00' N. latitude to the sea. The offshore boundary is bounded on the south by the southern boundary of the Thirteenth Coast Guard District which is described in § 3.65-10, to the outermost extent of the EEZ; thence northerly along the outermost extent of the EEZ to 47°32' N. latitude; thence easterly along 47°32' N. latitude to the coast.

[CGD 74-78, 39 FR 17312, May 15, 1974, as amended by CGD 77-241, 44 FR 10983, Feb. 26, 1979; CGD 93-020, 58 FR 51731, Oct. 4, 1993; 59 FR 948, Jan. 7, 1994]

**Subpart 3.70—Fourteenth Coast Guard District**

**§ 3.70-1 Fourteenth district.**

(a) The District Office is in Honolulu, Hawaii.

(b) The Fourteenth Coast Guard District shall comprise the State of Hawaii; and the Pacific Islands belonging to the United States south of latitude 40° N., and west of a line running from 40° N., 150° W. through latitude 5° S., 110° W.; the ocean area west and south of a line running from position 51° N., 158° E. to position 43° N., 165° E.; thence due south to latitude 40° N.; thence due east to longitude 150° W.; thence southeasterly through latitude 5° S., longitude 110° W.

[CGFR 61-40, 26 FR 10352, Nov. 3, 1961, as amended by CGFR 70-150, 36 FR 912, Jan. 20, 1971]

**§ 3.70-10 Honolulu Marine Inspection Zone and Captain of the Port Zone.**

(a) The Honolulu Marine Inspection Office and Captain of the Port Office are in Honolulu, Hawaii.

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(b) The boundaries of the Honolulu Marine Inspection Zone coincide with the boundaries of the Fourteenth Coast Guard District, excluding portions surrounding the territory of Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands covered in § 3.70-15(b).

(c) The Honolulu Captain of the Port Zone comprises:

(1) The State of Hawaii, including all the islands and atolls of the Hawaiian Chain and the adjacent waters of the EEZ.

(2) American Samoa and the adjacent waters of the EEZ.

(3) Johnston Atoll and the adjacent waters of the EEZ.

(4) Palmyra Atoll and Kingman Reef and the adjacent waters of the EEZ.

(5) Wake Island and the adjacent waters of the EEZ.

(6) Jarvis Island and the adjacent waters of the EEZ.

(7) Howland and Baker Islands and the adjacent waters of the EEZ.

(8) Midway Island and the adjacent waters of the EEZ.

(d) In American Samoa, required notifications to the Officer in Charge, Marine Inspection and the Captain of the Port, Honolulu, may be made to: Supervisor, United States Coast Guard, Marine Safety Detachment, P.O. Box 249, Pago Pago, American Samoa 96799-0249.

[CGD 82-019, 47 FR 13798, Apr. 1, 1982, as amended by CDG 88-037, 53 FR 21814, June 10, 1988; CGD 89-039, 54 FR 19166, May 4, 1989; CGD 93-020, 58 FR 51731, Oct. 4, 1993; 59 FR 948, Jan. 7, 1994]

**§ 3.70-15 Guam Marine Inspection Zone and Captain of the Port Zone.**

(a) The Guam Marine Inspection Office and Captain of the Port Office are located in Piti, Guam.

(b) The Guam Marine Inspection Zone and Captain of the Port Zone comprise:

(1) The Territory of Guam and the adjacent waters of the EEZ.

(2) The Commonwealth of the Northern Mariana Islands and the adjacent waters of the EEZ.

(c) In Commonwealth of the Northern Mariana Islands, required notifications

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to the Officer in Charge, Marine Inspection and the Captain of the Port, Guam, may be made to: Supervisor, United States Coast Guard, Marine Safety Detachment, Emergency Operations Center, Capitol Hill, Saipan, Commonwealth of the Northern Mariana Islands 96950–5000.

[CGD 93–020, 58 FR 51731, Oct. 4, 1993, as amended by CGD 97–023, 62 FR 33361, June 19, 1997]

### Subpart 3.85—Seventeenth Coast Guard District

#### § 3.85–1 Seventeenth district.

(a) The District Office is in Juneau, Alaska.

(b) The Seventeenth Coast Guard District shall comprise the State of Alaska; the ocean area bounded by a line from the Canadian Coast at latitude 54°40′ N. due west to longitude 140° W.; thence southwesterly to position 40° N., 150° W.; thence due west to position 40° N., 165° E.; thence due north to latitude 43° N.; thence northwesterly to 51° N., 158° E.; thence north and east along the coastline of the continent of Asia to East Cape; thence north to the Arctic Ocean.

[CGFR 61–40, 26 FR 10353, Nov. 3, 1961, as amended by CGFR 70–150, 36 FR 912, Jan. 20, 1971]

#### § 3.85–10 Southeast Alaska Marine Inspection Zone and Captain of the Port Zone.

(a) The Southeast Alaska Marine Inspection Office and the Southeast Alaska Captain of the Port Office are located in Juneau, Alaska.

(b) The Southeast Alaska Marine Inspection Zone and Captain of the Port Zone comprise the area within the boundary which starts at 60°01.3′ N. latitude, 142°00′ W. longitude; thence proceeds northeasterly to the Canadian border at 60°18.7′ N. latitude, 141°00′ W. longitude; thence southerly and easterly along the United States-Canadian shoreside boundary to 54°40′ N. latitude; thence westerly along the United States-Canadian maritime boundary to the outermost extent of the EEZ; thence northerly along the outer boundary of the EEZ to 142°00′ W lon-

gitude; thence due north to the point of origin.

[CGD 75–095, 40 FR 28451, July 7, 1975, as amended by CGD 77–241, 44 FR 10983, Feb. 26, 1979; CGD 93–020, 58 FR 51732, Oct. 4, 1993]

#### § 3.85–15 Western Alaska Marine Inspection Zone and Captain of the Port Zone.

(a) The Western Alaska Marine Inspection Office and the Western Alaska Captain of the Port Office are located in Anchorage, Alaska.

(b) The Western Alaska Marine Inspection Zone and Captain of the Port Zone comprise that portion of the State of Alaska and the adjacent waters to the outermost extent of the EEZ, except for those sections of Alaska covered in §§ 3.85–10(b) and 3.85–20(b).

[CGD 77–023, 42 FR 36252, July 14, 1977; 42 FR 38354, July 28, 1977, as amended by CGD 77–241, 44 FR 10983, Feb. 26, 1979; CGD 90–063, 55 FR 52047, Dec. 19, 1990; CGD 93–020, 58 FR 51732, Oct. 4, 1993]

#### § 3.85–20 Prince William Sound Marine Inspection Zone and Captain of the Port Zone.

(a) The Prince William Sound Marine Inspection Office and the Prince William Sound Captain of the Port Office are located in Valdez, Alaska.

(b) The Prince William Sound Marine Inspection Zone and Captain of the Port Zone comprise the area within the boundary which starts at Cape Puget at 148°26′ W. longitude, 59°56.06′ N. latitude, and proceeds northerly to 61°30′ N. latitude; thence easterly to the United States-Canadian boundary; thence southerly along the United States-Canadian boundary to 60°18.7′ N. latitude; thence southwesterly to the sea at 60°01.3′ N. latitude, 142°00′ W. longitude; thence southerly along 142°00′ W. longitude to the outermost boundary of the EEZ; thence along the outermost boundary of the EEZ to 148°26′ N. longitude; thence northerly along 148°26′ W. longitude to the place of origin at Cape Puget at 59°56.06′ N. latitude.

[CGD 77–023, 42 FR 36252, July 14, 1977, as amended by CGD 77–241, 44 FR 10983, Feb. 26, 1979; CGD 79–133, 44 FR 70720, Dec. 10, 1979; CGD 90–063, 55 FR 52047, Dec. 19, 1990; 56 FR 2134, Jan. 22, 1991; CGD 93–020, 58 FR 51732, Oct. 4, 1993]

**PART 4—OMB CONTROL NUMBERS  
ASSIGNED PURSUANT TO THE PA-  
PERWORK REDUCTION ACT**

Sec.

4.01 Purpose.

4.02 Display.

AUTHORITY: 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

**§ 4.01 Purpose.**

This part collects and displays the control numbers assigned to information collection requirements of the Coast Guard by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, (Pub. L. 96-511, 44 U.S.C. 3501 et seq.). The Coast Guard intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (“OMB”) for each agency information collection requirement.

[CGD 84-050, 49 FR 26584, June 28, 1984]

**§ 4.02 Display.**

33 CFR part or section where identified and described	Current OMB control No.
Part 6 .....	1625-0020
Part 67 .....	1625-0011
Part 96 .....	1625-0084
Part 100 .....	1625-0008
Part 101 .....	1625-0077
Section 101.115 .....	1625-0017
Part 103 .....	1625-0077
Part 104 .....	1625-0077
Section 104.297 .....	1625-0017
Part 105 .....	1625-0077
Part 106 .....	1625-0077
Part 115 .....	1625-0015
Part 116 .....	1625-0073
Part 120 .....	1625-0077
Section 126.15(c) .....	1625-0016
Section 126.17 .....	1625-0005
Part 127 .....	1625-0049
Section 127.617 .....	1625-0016
Section 127.1603 .....	1625-0016
Part 128 .....	1625-0077
Part 130 .....	1625-0046
Part 138 .....	1625-0046
Section 140.15 .....	1625-0050
Section 140.103 .....	1625-0054
Section 141.35 .....	1625-0098
Part 143 .....	1625-0059
Part 144 .....	1625-0059
Part 145 .....	1625-0059
Part 146 .....	1625-0001 and 1625-0059
Section 146.130 .....	1625-0044
Section 146.140 .....	1625-0059
Section 146.210 .....	1625-0059
Part 151 .....	1625-0009

33 CFR part or section where identified and described	Current OMB control No.
Section 151.19 .....	1625-0041
Section 151.21 .....	1625-0041
Section 151.43 .....	1625-0045
Section 151.55 .....	1625-0072
Section 151.57 .....	1625-0072
Section 151.2040 .....	1625-0069
Section 153.203 .....	1625-0096
Section 154.107 .....	1625-0095
Section 154.108 .....	1625-0095
Section 154.110 .....	1625-0093
Section 154.300 through 154.325 .....	1625-0021
Section 154.710 .....	1625-0039
Section 154.740 .....	1625-0039
Section 154.804 .....	1625-0060
Section 154.806 .....	1625-0060
Section 154.1220 .....	1625-0066
Section 154.1225 .....	1625-0066
Section 155.120 .....	1625-0051 and 1625-0095
Section 155.130 .....	1625-0051 and 1625-0095
Section 155.710 .....	1625-0072
Section 155.715 .....	1625-0072
Section 155.720 .....	1625-0030
Section 155.740 .....	1625-0030
Section 155.750 .....	1625-0030
Section 155.820 .....	1625-0030
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Section 156.120 .....	1625-0039
Section 156.150 .....	1625-0039
Part 156, Subpart B .....	1625-0042
Section 156.200 .....	1625-0042
Part 157 .....	1625-0036 and 1625-0041
Section 157.37 .....	1625-0041
Section 157.415 .....	1625-0083
Section 157.420 .....	1625-0083
Section 157.430 .....	1625-0083
Section 157.435 .....	1625-0083
Section 157.450 .....	1625-0083
Section 157.455 .....	1625-0083
Part 158 .....	1625-0045
Section 158.140 .....	1625-0045
Section 158.150 .....	1625-0045
Section 158.165 .....	1625-0045
Section 158.190 .....	1625-0045
Part 159 .....	1625-0041 and 1625-0092
Part 160 .....	1625-0043 and 1625-0100
Part 161 .....	1625-0043
Part 164 .....	1625-0043 and 1625-0082
Part 165 .....	1625-0020 and 1625-0043
Section 165.100 .....	1625-0088
Section 165.803(i) .....	1625-0023
Section 165.1709 .....	1625-0043
Section 169.140 .....	1625-0103
Section 173.55 .....	1625-0003
Section 179.13 .....	1625-0010
Section 179.15 .....	1625-0010
Section 181.21 through 181.31 .....	1625-0056
Part 183 .....	1625-0056
Part 187 .....	1625-0070

[69 FR 34924, June 23, 2004]

## PART 5—COAST GUARD AUXILIARY

- Sec.
- 5.01 Definitions.
  - 5.03 Purpose.
  - 5.05 Organization.
  - 5.07 Administration.
  - 5.09 Eligibility for membership.
  - 5.11 Membership in military organizations.
  - 5.13 Application for membership.
  - 5.15 Admission to membership.
  - 5.17 Disenrollment.
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  - 5.21 Ranks, titles, designations, or grades.
  - 5.23 Advancement.
  - 5.25 Honorary members.
  - 5.27 Assignment to specific duties.
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  - 5.59 Medical treatment and hospitalization.
  - 5.61 Uniforms.
  - 5.63 Insignia.
  - 5.65 Medals.
  - 5.69 Limitations of rights, privileges, and benefits.

AUTHORITY: 14 U.S.C. 633, 892; Pub. L. 107-296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

SOURCE: CGFR 48-64, 13 FR 8393, Dec. 28, 1948, unless otherwise noted.

**§ 5.01 Definitions.**

Certain terms used in this part are defined as follows:

- (a) *Act* means the Coast Guard Auxiliary and Reserve Act of 1941, as amended, and recodified by Act of August 4, 1949, as 14 U.S.C. 821 through 832.
- (b) *Auxiliary* means the United States Coast Guard Auxiliary established pursuant to the Act.
- (c) *Commandant* means the Commandant of the United States Coast Guard.
- (d) *Member* means any person who is a member of the Auxiliary.
- (e) *Vessel* means a motorboat or yacht.

(f) *Motorboat* means any documented or numbered vessel propelled by machinery, not more than 65 feet in length measured end to end over the deck excluding sheer.

(g) *Yacht* means either (1) any documented or numbered vessel used exclusively for pleasure, or (2) any sailboat used exclusively for pleasure over 16 feet in length measured from end to end over the deck excluding sheer.

(h) *Radio station* means any equipment (including a building which houses such equipment) the use of which to transmit communications by radio is authorized pursuant to law.

(i) *Aircraft* means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

(j) *Secretary* means the Secretary of Homeland Security when the Coast Guard operates in the Department of Homeland Security or the Secretary of the Navy when the Coast Guard operates as part of the Navy.

(k) *Facility* or *facilities* means a vessel, aircraft, and/or radio station.

[CGFR 48-64, 13 FR 8393, Dec. 28, 1948, as amended by CGFR 59-58, 24 FR 10717, Dec. 25, 1959; CGD 96-026, 61 FR 33662, June 28, 1996; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003]

**§ 5.03 Purpose.**

The Auxiliary was created in order to assist the Coast Guard to:

- (a) Promote safety and to effect rescues on and over the high seas and on navigable waters.
- (b) Promote efficiency in the operation of motorboats and yachts.
- (c) Foster a wider knowledge of, and better compliance with, the laws, rules, and regulations governing the operation of motorboats and yachts.
- (d) Facilitate other operations of the Coast Guard.

**§ 5.05 Organization.**

The Auxiliary is a nonmilitary organization administered by the Commandant, under the direction of the Secretary.

**§ 5.07 Administration.**

Any authority vested in the Commandant by this part may be delegated by him to such personnel of the Coast

## § 5.09

Guard, in such manner and to such extent, as he deems necessary or appropriate for the functioning, organization, and internal administration of the Auxiliary.

### § 5.09 Eligibility for membership.

To be eligible for membership in the Auxiliary, a person (male or female) must be over 17 years of age; a citizen of the United States or of its Territories and possessions; and either own not less than a twenty-five percent interest in a motorboat, yacht, aircraft, or radio station; or have had such special training or experience as to qualify him in the opinion of the Commandant, for duty in the Auxiliary.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.11 Membership in military organizations.

Members of the Auxiliary may also be enrolled, enlisted or commissioned in the Coast Guard Reserve. Membership in the Auxiliary is not a bar to membership in any other naval or military organization.

### § 5.13 Application for membership.

Application for membership in the Auxiliary shall be made on the prescribed form which may be obtained from the Commander of the Coast Guard district in which located. Membership is based on the needs of the Auxiliary and will necessarily vary in the various Coast Guard districts.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.15 Admission to membership.

An applicant who is accepted for membership shall be enrolled in the Auxiliary and shall be issued a membership certificate and identification card. Mere ownership of such a certificate or card shall not entitle a member of the Auxiliary to be vested with or exercise any right, privilege, power, or duty vested in or imposed upon the personnel of the Coast Guard or the Coast Guard Reserve.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.17 Disenrollment.

A member of the Auxiliary shall be disenrolled on request; upon ceasing to

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possess the qualifications for membership; for cause; upon direction of the Commandant; or upon death.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.19 Training.

The Commandant may authorize members of the Auxiliary to pursue correspondence courses conducted by the Coast Guard Institute at cost when the furnishing of such courses does not interfere with other regular Coast Guard activities.

### § 5.21 Ranks, titles, designations, or grades.

The members of the Auxiliary shall have such ranks, titles, designations, or grades, pursuant to their qualifications, as the Commandant considers necessary for the administration and operation of the Auxiliary.

### § 5.23 Advancement.

The Commandant shall prescribe the circumstances and qualifications under which members of the Auxiliary may be advanced.

### § 5.25 Honorary members.

For conspicuous service to or active interest in the Auxiliary, the Commandant may award any person with honorary membership in the Auxiliary. An honorary member of the Auxiliary, solely by reason of such honorary membership, shall not be entitled to any of the rights, benefits, privileges, duties, or obligations of regular members of the Auxiliary.

### § 5.27 Assignment to specific duties.

Members of the Auxiliary shall not be assigned to specific duties until they have been found, after appropriate training and examination, to be competent to perform such duties.

### § 5.29 Assignment to duty on a motorboat, yacht, aircraft, or radio station.

No member of the Auxiliary shall be placed in charge of a motorboat, yacht, aircraft, or radio station assigned to Coast Guard duty unless he has been specifically designated by authority of the Commandant to perform such duty.

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### § 5.31 Power and authority.

Members of the Auxiliary, when assigned to specific duties shall, unless otherwise limited by the Commandant, be vested with the same power and authority, in execution of such duties, as members of the regular Coast Guard assigned to similar duties.

### § 5.33 Training, examination, and assignment.

The Commandant will prescribe the type of training, qualifications and examinations required before a member of the Auxiliary shall be deemed qualified to perform certain duties, and will prescribe the circumstances and manner in which certain members of the Auxiliary shall be authorized to perform regular and emergency specific duties.

### § 5.35 Use of facilities.

Section 826 of Title 14, U.S. Code, reads as follows:

The Coast Guard may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any motorboat, yacht, aircraft, or radio station placed at its disposition for any of such purposes by any member of the Auxiliary, by any corporation, partnership, or association, or by any State or political subdivision thereof.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.37 Offer of facilities.

Any member of the Auxiliary desiring to place a vessel, aircraft, or radio station at the disposal of the Coast Guard pursuant to the Act and the regulations in this part, shall communicate with the Commander of the Coast Guard district in which located indicating in such communication which facility is offered. Except in emergencies, an offer to the Coast Guard must be made on the prescribed form.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.39 Acceptance of facilities.

No vessel, aircraft or radio station shall be deemed loaned to the Coast Guard until an acceptance, on the prescribed form, has been signed on behalf of the Coast Guard by a person authorized by the Commandant to sign such

acceptance and a complete inventory of consumable and expendable stores and equipment has been made and mutually settled by the owner and the representative of the Coast Guard.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.41 Emergencies.

In an emergency, as declared by the Commandant, the offer of a vessel, aircraft, or radio station may be made without the use of the prescribed form, and such facility may be accepted on behalf of the Coast Guard without the use of the acceptance section of the above form or the inventory last above mentioned.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.43 Public vessels, aircraft, and radio stations.

While assigned to Coast Guard duty as authorized herein:

(a) Any motorboat or yacht shall be deemed to be a public vessel of the United States, and within the meaning of section 827 of title 14, U.S. Code, shall be deemed to be a vessel of the United States Coast Guard.

(b) Any aircraft shall be deemed to be a vessel of the United States Coast Guard within the meaning of section 828 of title 14, U.S. Code, and shall be deemed to be a "public aircraft" within the meaning of the act of June 23, 1958 (72 Stat. 737; 49 U.S.C. 1301).

(c) Any radio station shall be deemed to be a radio station of the United States Coast Guard and a "Government station" within the meaning of section 829, title 14, U.S. Code.

[CGFR 59-58, 24 FR 10717, Dec. 25, 1959]

### § 5.45 Return of facility.

A vessel, aircraft, or radio station placed at the disposal of the Coast Guard for a specific period, shall be returned at the expiration of such period, unless circumstances or emergent need make the return impracticable at that time. The Commandant will determine the method, time, and documents to be exchanged upon the return to the owner of any facility. The property shall be reinventoried as of the time, date and place of redelivery, and mutually settled by the owner and the representative of the Coast Guard. Should

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the vessel have been accepted under emergent conditions, any claim for lost equipment or stores must be supported by invoices showing the date of purchase and the cost thereof by the person submitting claim therefor. The representative of the Coast Guard shall take all proper precautions to protect the interest of the owner as well as that of the United States.

### §5.47 Auxiliary ensign.

(a) The Coast Guard Auxiliary ensign is a distinguishing mark, authorized by the Secretary, and may be displayed by any vessel, aircraft, or radio station at such times and under such circumstances as may be authorized by the Commandant. The penalty for the unauthorized flying of any ensign, flag or pennant of the Auxiliary is set forth in §5.67 of this part.

(b) The field of the Auxiliary ensign is medium blue (Coast Guard blue) with a broad diagonal white slash upon which a matching blue Coast Guard Auxiliary emblem is centered. The white slash shall be at a 70 degree angle, rising away from the hoist.

(c) The Auxiliary emblem consists of a disk with the shield of the Coat of Arms of the United States circumscribed by an annulet edged and inscribed "U.S. COAST GUARD AUXILIARY" all in front of two crossed anchors.

[CGD 85-073, 52 FR 36760, Oct. 1, 1987; 52 FR 37716, Oct. 8, 1987]

### §5.48 Auxiliary Patrol Boat ensign.

(a) The Coast Guard Auxiliary Patrol Boat ensign is authorized to be flown on all Auxiliary Operational Facility vessels under orders. The penalty for the unauthorized flying of any ensign, flag or pennant of the Auxiliary is set forth in §5.67 of this part.

(b) The field of the Auxiliary Patrol Boat ensign is white. A medium blue (Coast Guard blue) Coast Guard Auxiliary emblem is centered on a broad diagonal red (Coast Guard red) slash which is at a 70 degree angle, rising toward the hoist. The red (Coast Guard red) slash is followed, away from the hoist, by two narrow, parallel stripes, first a white stripe and then a medium

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blue (Coast Guard blue) stripe. The entire design is centered on the ensign.

[CGD 85-073, 52 FR 36760, Oct. 1, 1987]

### §5.49 Reimbursement for expenses.

Any person whose facility has been offered to and accepted by the Coast Guard may be reimbursed for the actual necessary expenses of operating that facility, in accordance with applicable statutes and the procedures prescribed by the Commandant.

[USCG-2003-15404, 68 FR 37740, June 25, 2003]

### §5.55 Compensation.

No member of the Auxiliary shall receive any compensation for his services as a member of the Auxiliary.

### §5.57 Traveling expenses and per diem.

A member of the Auxiliary, when assigned to specific duties, may be paid actual necessary traveling expenses, including a per diem allowance, in conformity with Comptroller's Manual, U.S. Coast Guard.

[CGFR 49-46, 14 FR 7528, Dec. 16, 1949, as amended by CGFR 61-55, 26 FR 10571, Dec. 28, 1961]

### §5.59 Medical treatment and hospitalization.

When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing patrol duty or any other specific duty to which he has been assigned, such member or his beneficiary shall be entitled to the same benefits as are now or as may hereafter be provided for temporary members of the Coast Guard Reserve who suffer physical injury or death resulting from physical injury incurred in line of duty. Members of the Auxiliary who contract sickness or disease while performing patrol duty or any other specific duty to which they have been assigned shall be entitled to the same hospital treatment as is afforded members of the Regular Coast Guard.

### §5.61 Uniforms.

Members of the Auxiliary may purchase from the Coast Guard at actual cost such uniforms as may be authorized by the Secretary. Such uniforms

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may be worn by members of the Auxiliary under such circumstances and upon such occasions as may be authorized by the Commandant.

### § 5.63 Insignia.

Insignia, as authorized by the Secretary, may be purchased from the Coast Guard at actual cost and may be worn by members of the Auxiliary under such circumstances, at such places, and upon such occasions as may be prescribed by the Commandant.

### § 5.65 Medals.

The Commandant may make awards, including medals, to members of the Auxiliary.

### § 5.69 Limitations of rights, privileges, and benefits.

Section 893 of Title 14, U.S. Code, reads as follows:

Members of the Auxiliary and temporary members of the Reserve shall be entitled only to such rights, privileges, and benefits as are specifically set forth for them in this title or as may be specifically provided for them in any other Act of Congress. Any Act of Congress which grants rights, privileges, or benefits generally to military personnel, or among others, to personnel of the Coast Guard and the Coast Guard Reserve, without specifically granting such rights, privileges, or benefits to members of the Auxiliary or temporary members of the Reserve, shall not be deemed applicable to members of the Auxiliary or to temporary members of the Reserve.

[CGFR 59-58, 24 FR 10718, Dec. 25, 1959]

## PART 6—PROTECTION AND SECURITY OF VESSELS, HARBORS, AND WATERFRONT FACILITIES

### Subpart 6.01—Definitions

Sec.

- 6.01-1 Commandant.
- 6.01-2 District Commander.
- 6.01-3 Captain of the Port.
- 6.01-4 Waterfront facility.
- 6.01-5 Security zone.
- 6.01-6 Area Commander.

### Subpart 6.04—General Provisions

- 6.04-1 Enforcement.
- 6.04-5 Preventing access of persons, articles or things to vessels, or waterfront facilities.

- 6.04-6 Establishing security zones; prohibitions with respect thereto.
- 6.04-7 Visitation, search, and removal.
- 6.04-8 Possession and control of vessels.
- 6.04-11 Assistance of other agencies.

### Subpart 6.10—Identification and Exclusion of Persons From Vessels and Waterfront Facilities

- 6.10-1 Issuance of documents and employment of persons aboard vessels.
- 6.10-5 Access to vessels and waterfront facilities.
- 6.10-7 Identification credentials.
- 6.10-9 Appeals.

### Subpart 6.12—Supervision and Control of Explosives or Other Dangerous Cargo

- 6.12-1 General supervision and control.
- 6.12-3 Approval of facility for dangerous cargo.

### Subpart 6.14—Security of Waterfront Facilities and Vessels in Port

- 6.14-1 Safety measures.
- 6.14-2 Condition of waterfront facility a danger to vessel.

### Subpart 6.16—Sabotage and Subversive Activity

- 6.16-1 Reporting of sabotage and subversive activity.
- 6.16-3 Precautions against sabotage.

### Subpart 6.18—Penalties

- 6.18-1 Violations.

### Subpart 6.19—Responsibility for Security of Vessels and Waterfront Facilities

- 6.19-1 Primary responsibility.

AUTHORITY: 40 Stat. 220, as amended; 50 U.S.C. 191.

SOURCE: E. O. 10173, 15 FR 7012, Oct. 20, 1950, unless otherwise noted.

CROSS REFERENCE: For regulations implementing the general enforcement provisions contained in Subparts 6.01—Definitions and 6.04—General Provisions, see part 125 of this chapter.

### Subpart 6.01—Definitions

#### § 6.01-1 Commandant.

*Commandant* as used in this part, means the Commandant of the United States Coast Guard.

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### § 6.01-2 District Commander.

*District Commander* as used in this part, means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District.

### § 6.01-3 Captain of the Port.

*Captain of the Port* as used in this part, means the officer of the Coast Guard, under the command of a District Commander, so designated by the Commandant for the purpose of giving immediate direction to Coast Guard law enforcement activities within his assigned area. In addition, the District Commander shall be Captain of the Port with respect to remaining areas in his District not assigned to officers designated by the Commandant as Captain of the Port.

[EO 11249, 30 FR 13001, Oct. 13, 1965]

### § 6.01-4 Waterfront facility.

*Waterfront facility.* “Waterfront facility,” as used in this part, means all piers, wharves, docks, or similar structures to which vessels may be secured and naval yards, stations, and installations, including ranges; areas of land, water, or land and water under and in immediate proximity to them; buildings on them or contiguous to them and equipment and materials on or in them.

[EO 13143, 64 FR 68273, Dec. 6, 1999]

### § 6.01-5 Security zone.

*Security zone* as used in this part, means all areas of land, water, or land and water, which are so designated by the Captain of the Port for such time as he deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States.

[EO 11249, 30 FR 13001, Oct. 13, 1965]

### § 6.01-6 Area Commander.

*Area Commander*, as used in this part, means the officer of the Coast Guard designated by the Commandant to command a Coast Guard Area.

[EO 13273, 67 FR 56215, Sept. 3, 2002]

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### Subpart 6.04—General Provisions

#### § 6.04-1 Enforcement.

(a) The rules and regulations in this part shall be enforced by the Captain of the Port under the supervision and general direction of the District Commander, Area Commander, and the Commandant. All authority and power vested in the Captain of the Port by the regulations in this part shall be deemed vested in and may be exercised by the District Commander, Area Commander, and the Commandant.

(b) The rules and regulations in this part may be enforced by any other officer or petty officer of the Coast Guard designated by the District Commander, Area Commander, or the Commandant.

(c) Any authority or power under this part vested in, delegated to, or exercised by a member of the Coast Guard shall be subject to the direction of the Secretary of the Department in which the Coast Guard is operating.

[EO 13273, 67 FR 56215, Sept. 3, 2002]

#### § 6.04-5 Preventing access of persons, articles or things to vessels, or waterfront facilities.

The Captain of the Port may prevent any person, article, or thing from boarding or being taken or placed on board any vessel or entering or being taken into or upon or placed in or upon any waterfront facility whenever it appears to him that such action is necessary in order to secure such vessel from damage or injury or to prevent damage or injury to any vessel, or waterfront facility or waters of the United States, or to secure the observances of rights and obligations of the United States.

[EO 11249, 30 FR 13001, Oct. 13, 1965]

#### § 6.04-6 Establishing security zones; prohibitions with respect thereto.

The Captain of a Port may establish security zones subject to the terms and conditions specified in § 6.01-5. No person or vessel shall enter a security zone without the permission of the Captain of the Port. No person shall board or take or place any article or thing on board any vessel in a security zone without the permission of the Captain of the Port. No person shall

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take or place any article or thing upon any waterfront facility in any such zone without such permission.

[EO 11249, 30 FR 13001, Oct. 13, 1965]

### § 6.04-7 Visitation, search, and removal.

The Captain of the Port may cause to be inspected and searched at any time any vessel, waterfront facility, or security zone, or any person, article, or thing thereon or therein, within the jurisdiction of the United States, may place guards upon any such vessel, waterfront facility, or security zone and may remove therefrom any and all persons, articles, or things not specifically authorized by him to go or remain thereon or therein.

[EO 11249, 30 FR 13002, Oct. 13, 1965]

### § 6.04-8 Possession and control of vessels.

The Captain of the port may supervise and control the movement of any vessel and shall take full or partial possession or control of any vessel or any part thereof, within the territorial waters of the United States under his jurisdiction, whenever it appears to him that such action is necessary in order to secure such vessel from damage or injury, or to prevent damage or injury to any vessel or waterfront facility or waters of the United States, or to secure the observance of rights and obligations of the United States.

### § 6.04-11 Assistance of other agencies.

The Captain of the port may enlist the aid and cooperation of Federal, State, county, municipal, and private agencies to assist in the enforcement of regulations issued pursuant to this part.

## Subpart 6.10—Identification and Exclusion of Persons From Vessels and Waterfront Facilities

### § 6.10-1 Issuance of documents and employment of persons aboard vessels.

No person shall be issued a document required for employment on a merchant vessel of the United States nor shall any person be employed on a mer-

chant vessel of the United States unless the Commandant is satisfied that the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be inimical to the security of the United States: *Provided*, That the Commandant may designate categories of merchant vessels to which the foregoing shall not apply.

[EO 10352, 17 FR 4624, May 21, 1952]

### § 6.10-5 Access to vessels and waterfront facilities.

Any person on board any vessel or any person seeking access to any vessel or any waterfront facility within the jurisdiction of the United States may be required to carry identification credentials issued by or otherwise satisfactory to the Commandant. The Commandant may define and designate those categories of vessels and areas of the waterfront wherein such credentials are required.

### § 6.10-7 Identification credentials.

The identification credential to be issued by the Commandant shall be known as the Coast Guard Port Security Card, and the form of such credential, and the conditions and the manner of its issuance shall be as prescribed by the Commandant after consultation with the Secretary of Labor. The Commandant shall not issue a Coast Guard Port Security Card unless he is satisfied that the character and habits of life of the applicant therefor are such as to authorize the belief that the presence of such individual on board a vessel or within a waterfront facility would not be inimical to the security of the United States. The Commandant shall revoke and require the surrender of a Coast Guard Port Security Card when he is no longer satisfied that the holder is entitled thereto. The Commandant may recognize for the same purpose such other credentials as he may designate in lieu of the Coast Guard Port Security Card.

[EO 10277, 16 FR 7541, Aug. 2, 1951]

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### § 6.10-9 Appeals.

Persons who are refused employment or who are refused the issuance of documents or who are required to surrender such documents, under this subpart, shall have the right of appeal, and the Commandant shall appoint Boards for acting on such appeals. Each such Board shall, so far as practicable, be composed of one Coast Guard officer, one member drawn from management, and one member drawn from labor. The members drawn from management and labor shall, upon suitable security clearance, be nominated by the Secretary of Labor. Such members shall be deemed to be employees of the United States and shall be entitled to compensation under the provisions of section 15 of the act of August 2, 1946 (5 U.S.C. 55a) while performing duties incident to such employment. The Board shall consider each appeal brought before it and, in recommending final action to the Commandant, shall insure the appellant all fairness consistent with the safeguarding of the national security.

### Subpart 6.12—Supervision and Control of Explosives or Other Dangerous Cargo

#### § 6.12-1 General supervision and control.

The Captain of the Port may supervise and control the transportation, handling, loading, discharging, stowage, or storage of hazardous materials on board vessels as covered by the regulations in 49 CFR parts 170-189, 46 CFR parts 150-156, 46 CFR parts 146-148 and the regulations governing tank vessels (46 CFR parts 30-39).

[CGD 77-228, 43 FR 53427, Nov. 16, 1978]

#### § 6.12-3 Approval of facility for dangerous cargo.

The Commandant may designate waterfront facilities for the handling and storage of, and for vessel loading and discharging, explosives, inflammable or combustible liquids in bulk, or other dangerous articles or cargo covered by the regulations referred to in § 6.12-1, and may require the owners, operators, masters, and others concerned to secure permits for such handling, stor-

age, loading, and unloading from the Captain of the Port, conditioned upon the fulfillment of such requirements for the safeguarding of such waterfront facilities and vessels as the Commandant may prescribe.

### Subpart 6.14—Security of Waterfront Facilities and Vessels in Port

#### § 6.14-1 Safety measures.

The Commandant, in order to achieve the purposes of this part, may prescribe such conditions and restrictions relating to the safety of waterfront facilities and vessels in port as he finds to be necessary under existing circumstances. Such conditions and restrictions may extend, but shall not be limited to, the inspection, operation, maintenance, guarding, and manning of, and fire-prevention measures for, such vessels and waterfront facilities.

[EO 10277, 16 FR 7541, Aug. 2, 1951]

#### § 6.14-2 Condition of waterfront facility a danger to vessel.

Whenever the captain of the port finds that the mooring of any vessel to a wharf, dock, pier, or other waterfront structure would endanger such vessel, or any other vessel, or the harbor or any facility therein by reason of conditions existing on or about such wharf, dock, pier, or other waterfront structure, including, but not limited to, inadequate guard service, insufficient lighting, fire hazards, inadequate fire protection, unsafe machinery, internal disturbance, or unsatisfactory operation, the captain of the port may prevent the mooring of any vessel to such wharf, dock, pier, or other waterfront structure until the unsatisfactory condition or conditions so found are corrected, and he may, for the same reasons, after any vessel has been moored, compel the shifting of such vessel from any such wharf, dock, pier, or other waterfront structure.

[EO 10277, 16 FR 7541, Aug. 2, 1951]

### Subpart 6.16—Sabotage and Subversive Activity

#### § 6.16-1 Reporting of sabotage and subversive activity.

Evidence of sabotage or subversive activity involving or endangering any vessel, harbor, port, or waterfront facility shall be reported immediately to the Federal Bureau of Investigation and to the captain of the port, or to their respective representatives.

#### § 6.16-3 Precautions against sabotage.

The master, owner, agent, or operator of a vessel or waterfront facility shall take all necessary precautions to protect the vessel, waterfront facility, and cargo from sabotage.

### Subpart 6.18—Penalties

#### § 6.18-1 Violations.

Section 2, Title II of the act of June 15, 1917, as amended, 50 U.S.C. 192, provides as follows:

If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$10,000.

(a) If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than \$10,000.

### Subpart 6.19—Responsibility for Security of Vessels and Waterfront Facilities

#### § 6.19-1 Primary responsibility.

Nothing contained in this part shall be construed as relieving the masters,

owners, operators, and agents of vessels or other waterfront facilities from their primary responsibility for the protection and security of such vessels or waterfront facilities.

[EO 10277, 16 FR 7541, Aug. 2, 1951]

## PART 8—UNITED STATES COAST GUARD RESERVE

Sec.

- 8.1 Functions of the Coast Guard Reserve.
- 8.3 Organization of the Coast Guard Reserve.
- 8.5 Regulations for the Coast Guard Reserve.
- 8.7 Information.

AUTHORITY: 14 U.S.C. 633.

SOURCE: CGD 79-105, 48 FR 36449, Aug. 11, 1983, unless otherwise noted.

#### § 8.1 Functions of the Coast Guard Reserve.

(a) The Coast Guard Reserve is a component of the Coast Guard. The Coast Guard Reserve trains personnel for mobilization and for augmentation of the regular Coast Guard.

(b) Members of the Coast Guard Reserve can be used for:

1. Partial or full mobilization under 10 U.S.C. 12301;
- (2) Voluntary or involuntary call-up for emergency augmentation of the regular Coast Guard during time of serious natural or man-made disaster under 14 U.S.C. 712; and
- (3) Augmentation of the regular Coast Guard during active duty or inactive duty for training.

(c) A member of the Reserve on active duty or inactive duty training has the same authority, rights, and privileges in the performance of that duty as a member of the regular Coast Guard of corresponding grade or rating.

[CGD 79-105, 48 FR 36449, Aug. 11, 1983, as amended by CGD 97-023, 62 FR 33361, June 19, 1997]

#### § 8.3 Organization of the Coast Guard Reserve.

(a) The Coast Guard Reserve is organized, trained and equipped under the direction of the Commandant.

(b) The Director of Reserve and Training is responsible for the overall

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administration and supervision of the Reserve.

(c) In Atlantic Area, Integrated Support Commands have responsibility for local Reserve issues; however, in Pacific Area, responsibility for local Reserve issues remains with District Commanders.

(d) Most Coast Guard Reservists are fully integrated into active duty Coast Guard units. There, Reservists perform the same duties and have the same responsibilities as their active duty counterparts. Their integrated work prepares Reservists to perform the duties of their mobilization assignments while at the same time providing assistance to the active service. Some Reservists are assigned to dedicated Reserve units where they train and mobilize in support of national defense operations.

[CGD 96-026, 61 FR 33662, June 28, 1996]

### § 8.5 Regulations for the Coast Guard Reserve.

(a) Regulations for the Coast Guard Reserve are established by the Commandant.

(b) Permanent regulations are published in Coast Guard publications and manuals and include the following:

- (1) Coast Guard Regulations.
- (2) Coast Guard Organization Manual.
- (3) Coast Guard Reserve Policy Manual.
- (4) Personnel Manual.
- (5) Recruiting Manual.
- (6) Military Justice Manual.
- (7) Comptroller Manual.

(c) Temporary regulations and orders affecting Reservists are included in instructions or notices in the Coast Guard directives system.

(d) Other regulations that affect the Reserve are located in Department of Defense and Department of the Navy regulations in Title 32 of the Code of Federal Regulations.

[CGD 96-026, 61 FR 33662, June 28, 1996, as amended by CGD 97-023, 62 FR 33362, June 19, 1997]

### § 8.7 Information.

(a) Information concerning the Coast Guard Reserve may be obtained from Commandant (G-WTR), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

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(b) Information and requirements for enlistment in the Coast Guard Reserve or concerning the procurement of officers for the Coast Guard Reserve can be obtained from the following offices:

(1) Any Coast Guard Recruiting Office.

(2) Coast Guard Recruiting Center, 4200 Wilson Boulevard, Suite 450, Arlington, VA 22203.

[CGD 96-026, 61 FR 33662, June 28, 1996]

## PART 13—DECORATIONS, MEDALS, RIBBONS AND SIMILAR DEVICES

### Subpart 13.01—Gold and Silver Lifesaving Medals, Bars, and Miniatures

Sec.

13.01-1 General.

13.01-5 Gold and Silver Lifesaving Medals.

13.01-10 Gold and silver bars.

13.01-15 Applications and recommendations.

13.01-20 Definitions.

13.01-25 Description of Gold Lifesaving Medal.

13.01-30 Description of Silver Lifesaving Medal.

13.01-35 Description of gold and silver bars.

13.01-40 Miniature medals and bars.

13.01-45 Replacement of medals and bars.

AUTHORITY: Secs. 500, 633, 63 Stat. 536, 545, sec. 6(b)(1), 80 Stat. 938; 14 U.S.C. 500, 633; 49 U.S.C. 1655(b); 49 CFR 1.4 (a)(2) and (f).

SOURCE: CGFR 68-134, 33 FR 18932, Dec. 19, 1968, unless otherwise noted.

### Subpart 13.01—Gold and Silver Lifesaving Medals, Bars, and Miniatures

#### § 13.01-1 General.

Lifesaving Medals of gold and silver, designated as the Gold Lifesaving Medal and the Silver Lifesaving Medal, respectively, may be awarded by the Commandant, U.S. Coast Guard, hereinafter called the Commandant, under 14 U.S.C. 500 and the regulations in this subpart to persons rescuing or endeavoring to rescue any other person from drowning, shipwreck or other peril of the water.

#### § 13.01-5 Gold and Silver Lifesaving Medals.

Lifesaving Medals may be awarded to any person who rescues or endeavors to

rescue any other person from drowning, shipwreck or other peril of the water. In order for a person to be eligible for a Lifesaving Medal the rescue or attempted rescue must take place in waters within the United States or subject to the jurisdiction thereof, or if the rescue or attempted rescue takes place outside such waters, one or the other of the parties must be a citizen of the United States or from a vessel or aircraft owned or operated by citizens of the United States. If such rescue or attempted rescue is made at the risk of one's own life and evidences extreme and heroic daring, the medal shall be of gold. If such rescue or attempted rescue is not sufficiently distinguished to deserve the medal of gold but evidences the exercise of such signal exertion as to merit recognition, the medal shall be of silver. Lifesaving Medals may be awarded posthumously.

**§ 13.01-10 Gold and silver bars.**

No person shall receive more than one Gold Lifesaving Medal and one Silver Lifesaving Medal; but any person who has received or may hereafter receive a Gold or Silver Lifesaving Medal and who again performs an act which would entitle him to receive another medal of the same class, may be awarded, in lieu of a second medal of the same class, a gold or silver bar, as the case may be, to be worn with the medal already bestowed, and for every such additional act, an additional bar may be awarded. Gold and silver bars may be awarded posthumously.

**§ 13.01-15 Applications and recommendations.**

(a) All administrative details pertaining to the award of Lifesaving Medals are under the jurisdiction of the Commandant. Applications and recommendations for the award of a Lifesaving Medal may be filed by or in behalf of the person making or attempting a rescue under circumstances contemplated by the regulations in this subpart. Applications or recommendations for award of medals or requests for information pertaining thereto should be addressed to the Commander of the Coast Guard District, hereinafter called the District Commander, where the incident took place. (See

part 3 of this subchapter for descriptions of Coast Guard Districts.) If the District is unknown, or if the incident took place outside any such district, applications and recommendations should be addressed to the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(b) Completed applications must include:

(1) Satisfactory evidence of the services performed, in the form of affidavits, made by eyewitnesses of good repute and standing testifying of their own knowledge. The opinion of witnesses that the person for whom an award is sought imperiled his or her own life or made signal exertions is not sufficient but the affidavits must set forth in detail all facts and occurrences tending to show clearly in what manner and to what extent life was risked or signal exertions made so that the Commandant may judge for himself as to the degree of merit involved.

(2) The precise locality of the rescue or attempted rescue, whether from waters within the United States or subject to the jurisdiction thereof, or if the rescue or attempted rescue is outside such waters, whether one or the other of the parties is a citizen of the United States, or from a vessel or aircraft owned or operated by citizens of the United States, shall be stated. The date, time of day, nature of the weather, condition of the water, the names of all persons present when practicable, the names of all persons rendering assistance, and all pertinent circumstances and data, showing the precise nature and degree of risk involved, should be stated.

(c) Recommendations must include:

(1) As much of the information indicated in paragraphs (b) (1) and (2) of this section which is available to the person making the recommendation. Upon receipt the Commandant or the cognizant District Commander shall cause such recommendation to be referred to an investigating officer who shall cause to be developed such additional information and evidence as is deemed necessary to either (i) terminate the investigation as containing insufficient justification to continue

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further, or (ii) to complete the application for submission to the Commandant for his final determination.

(d) Either the Commandant or the District Commander may, without any application or recommendation, of his own motion, order an informal investigation into such an incident under Chapter II, of the Coast Guard Supplement to the Manual for Courts-Martial (CG-241).

(e) Affidavits required by this subpart shall be made before an officer duly authorized to administer oaths and if taken before an officer without an official seal, his official character must be certified by the proper officer of a court of record, under the seal thereof, unless the oath be taken before an officer of the Armed Forces authorized to administer oaths under the provisions of Article 136, UCMJ (10 U.S.C. 936).

(f) Cognizant District Commanders shall act upon all applications and recommendations submitted to them from whatever source and shall:

(1) Forward completed applications with his recommendations to the Commandant for his consideration and determination; or,

(2) Inform the applicant or the person submitting the recommendation that he considers such application or recommendation incomplete together with the reasons therefor and that a period of 90 days will be allowed for additional evidence to be provided upon the expiration of which he will file the application or recommendation without further action.

(g) Whenever the cognizant District Commander shall deem such action necessary, he may require that the aforementioned affidavits shall be accompanied by a certificate showing the affiants to be credible persons, certified by some U.S. Officer, such as a judge or clerk of a U.S. Court, district attorney, collector of customs, postmaster, or officer of the Armed Forces. If the affiant is a citizen or resident of a foreign country and if the affidavit is executed in such foreign country, the credibility certificate may be executed by an officer of such foreign country, who occupies an official position similar to the aforementioned U.S. officers.

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(h) The decision of the Commandant on all applications, recommendations, and investigations for the Gold or Silver Lifesaving Medals shall be final.

**§ 13.01-20 Definitions.**

As used in the statutes cited and in the regulations in this subpart:

(a) "Peril of the water" includes all perils on water caused by, or which are such by reason of, the sea or bodies of water such as lakes, bays, sounds and rivers; whenever, wherever and in whatever way human life is directly imperiled by the sea or a body of water is a peril of the water.

(b) A "shipwreck" includes an incident threatening persons whose lives are endangered by perils of the water as well as those who are, strictly speaking, no longer in danger from the sea or a body of water, that peril already having passed, but who are in imminent danger and in great need of succor or rescue, as e.g., being adrift in an open boat or stranded on some barren coast where, without succor or rescue, they would die of starvation, thirst, or exposure.

(c) "Waters within the United States or subject to the jurisdiction thereof," embrace all waters within the United States, and any other waters over which the United States exercises jurisdiction.

**§ 13.01-25 Description of Gold Lifesaving Medal.**

(a) The Gold Lifesaving Medal is 99.9 percent pure gold and consists of a pendant suspended by a swivel from the head of an eagle attached to a silk program ribbon 1 and  $\frac{3}{8}$ ths inches in width, composed of a  $\frac{3}{16}$ ths of an inch red stripe, a  $\frac{1}{32}$ d of an inch white stripe, a  $\frac{15}{16}$ ths of an inch gold stripe, a  $\frac{1}{32}$ d of an inch white stripe, and a  $\frac{3}{16}$ ths of an inch red stripe. The pendant is 1 and  $\frac{7}{16}$ ths inches in diameter and  $\frac{3}{32}$ ds of an inch in thickness. There appear, on the obverse side of the pendant, three men in a boat in a heavy sea; one is rescuing a person clinging to a spar at the end of which is a block and line; another is standing, prepared to heave a line; a third is rowing; in the distance, to the left, is the wreck of a vessel; the whole is encircled by the words: "United States of America", in

the upper half, and “Act of Congress, August 4, 1949”, in the lower half. On the reverse side of the pendant there appears, in the center a monument surmounted by an American eagle; the figure of a woman stands, to the left, holding in her left hand an oak wreath, and with her right hand, preparing to inscribe the name of the recipient on the monument; to the right are grouped a mast, a yard with a sail, an anchor, a sextant, and a laurel branch; the whole is encircled by the words: “In testimony of heroic deeds in saving life from the perils of the water.”

(b) Engraving: Before presentation, the recipient’s name shall be inscribed on the “monument”, on the reverse of the medal.

**§ 13.01–30 Description of Silver Lifesaving Medal.**

(a) The Silver Lifesaving Medal is 99 percent pure silver and consists of a pendant suspended by a swivel from the head of an eagle attached to a silk program ribbon 1 and  $\frac{3}{8}$ ths inches in width, composed of a  $\frac{3}{16}$ ths of an inch blue stripe, a  $\frac{1}{32}$ d of an inch white stripe, a  $\frac{15}{16}$ ths of an inch silver gray stripe, a  $\frac{1}{32}$ d of an inch white stripe, and a  $\frac{3}{32}$ ds of an inch blue stripe. The pendant is 1 and  $\frac{7}{16}$ ths inches in diameter and  $\frac{3}{32}$ ds of an inch in thickness. On the obverse side of the pendant there appears the figure of a woman hovering over a man struggling in heavy sea and extending to him one end of a long scarf; the whole is encircled by the words: “United States of America”, in the upper half, and “Act of Congress, August 4, 1949”, in the lower half. On the reverse there appears a laurel wreath encircled by the words: “In testimony of heroic deeds in saving life from the perils of the water.”

(b) Engraving: Before presentation, the recipient’s name shall be inscribed inside the laurel wreath, on the reverse of the medal.

**§ 13.01–35 Description of gold and silver bars.**

(a) The bar is plain and horizontal, composed of the same metal as the medal previously awarded recipient, and is 1 and  $\frac{5}{8}$ ths inches long by  $\frac{3}{16}$ ths of an inch wide with a flowing ribbon

draped over the left end and passing in back and appearing beneath the bar. The part of the ribbon showing beneath the bar bears the inscription “Act of Congress, August 4, 1949”, in raised block letters. The bar and ribbon are in folds of a spray of laurel with the leave showing above and beneath.

(b) Engraving: Before presentation, the recipient’s name shall be inscribed on the obverse of the bar.

**§ 13.01–40 Miniature medals and bars.**

(a) Miniature Gold and Silver Lifesaving Medals and bars are replicas of the Lifesaving Medals and bars, to be worn on civilian clothing. Such miniatures are not furnished by the Government.

(b) Miniature medals and bars may be procured from sources authorized by the Commandant, U.S. Coast Guard, to furnish same to persons who produce original documentary evidence of having been awarded the medal or bar for which a miniature replica is desired.

**§ 13.01–45 Replacement of medals and bars.**

The Gold or Silver Lifesaving Medal or bar will be replaced at cost to the applicant upon submitting a statement in affidavit form of having been awarded a medal or bar and the circumstances involving loss of same. A Lifesaving Medal or bar, however, may be replaced without charge in the discretion of the Commandant, if said medal or bar has, under extremely unusual circumstances, been lost, destroyed or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded.

**PART 17—UNITED STATES COAST GUARD GENERAL GIFT FUND**

**Subpart 17.01—General Provisions**

Sec.

17.01–1 Basis and purpose.

17.01–10 Authority to receive gifts.

**Subpart 17.05—Administration**

17.05–1 Gifts.

17.05–5 Acceptance and disbursement of gifts.

17.05–10 Instructions for administration.

## § 17.01-1

AUTHORITY: Secs. 92, 633, 63 Stat. 503, as amended, 545, sec. 2601, 70A Stat. 144; 14 U.S.C. 92, 633, 10 U.S.C. 2601; Treasury Dept. Order 167-1, 18 FR 671.

### Subpart 17.01—General Provisions

#### § 17.01-1 Basis and purpose.

In accordance with 10 U.S.C. 2601 (formerly the Act of March 11, 1948, secs. 1, to 4, 62 Stat. 71, 72); and Treasury Department Order No. 167-1, dated January 16, 1953 (18 FR 671), the regulations in this part are hereby prescribed to provide for the acceptance and subsequent use of gifts, devises, or bequests of property, real or personal, made on the condition that they be used for the benefit of, or in connection with, the establishment, operation, maintenance, or administration of any school, hospital, library, museum, chapel, or other institution or organization under the jurisdiction of the United States Coast Guard.

[CGFR 61-36, 26 FR 9321, Oct. 3, 1961]

#### § 17.01-10 Authority to receive gifts.

(a) The Commandant, United States Coast Guard, may accept, receive, hold, or administer gifts, devises, or bequests of property, real or personal, made on the condition that they be used for the benefit of, or in connection with, the establishment, operation, maintenance, or administration of any school, hospital, library, museum, chapel, or other institution or organization under the jurisdiction of the United States Coast Guard. The Commandant is authorized to pay all necessary fees, charges, and expenses in connection with the conveyance or transfer of any such gifts, devises, or bequests.

(b) The Commandant may authorize or designate officers of the United States Coast Guard to accept gifts, devises, or bequests.

[CGFR 53-18, 18 FR 3171, June 3, 1953, as amended by CGFR 61-36, 26 FR 9321, Oct. 3, 1961]

### Subpart 17.05—Administration

#### § 17.05-1 Gifts.

The gifts or bequests may be in money or negotiable instrument form. If in the form of a money order, check,

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etc., it should be made payable to the Treasurer of the United States.

[CGFR 53-18, 18 FR 3171, June 3, 1953]

#### § 17.05-5 Acceptance and disbursement of gifts.

(a) The immediate receiving person shall give a proper receipt on the proper form used by the United States Coast Guard to acknowledge receipt of collections to the donor of a gift or bequest of money or for the proceeds from a sale of property received as a gift or devise.

(b) Gifts or bequests of money, or the proceeds from sales of property received as gifts or devises shall be deposited in the Treasury of the United States under symbol and title “20X8533—United States Coast Guard, General Gift Fund.” Funds so deposited shall be subject to disbursement by or at the direction of the Commandant, United States Coast Guard, for the benefit or use of the designated school, hospital, library, museum, chapel, or other institution or organization under the jurisdiction of the United States Coast Guard subject to the terms of the particular gift, devise, or bequest.

(c) 10 U.S.C. 2601(c) states that any gift, devise, or bequest of property, real or personal, accepted under these provisions shall be deemed to be a gift, devise, or bequest to or for the use of the United States for the purpose of Federal income, estate, and gift taxes.

[CGFR 53-18, 18 FR 3171, June 3, 1953, as amended by CGFR 61-36, 26 FR 9321, Oct. 3, 1961]

#### § 17.05-10 Instructions for administration.

The Commandant, United States Coast Guard, will issue such detailed instructions as may be necessary for the administration of the “United States Coast Guard General Gift Fund” or for the acceptance, operation, or maintenance of property, real or personal, that may be accepted for the benefit of or in connection with any school, hospital, library, museum, chapel, or other institution or organization under the jurisdiction of the United States Coast Guard subject to

the terms and conditions of any particular gift, devise, or bequest.

[CGFR 61-36, 26 FR 9321, Oct. 3, 1961]

## PART 19—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS<sup>1</sup>

Sec.

- 19.01 Procedures for effecting individual waivers of navigation and vessel inspection laws and regulations.
- 19.04 Vessels requisitioned by the United States for emergency evacuation.
- 19.06 Vessels operated by or chartered to Military Sealift Command.
- 19.07 Chronological record of seaman's previous employment.
- 19.15 Permits for commercial vessels handling explosives at military installations.

AUTHORITY: Sec. 1, 64 Stat. 1120, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. note prec. 1, 49 U.S.C. 108; Department of Homeland Security Delegation No. 0170.1.

### § 19.01 Procedures for effecting individual waivers of navigation and vessel inspection laws and regulations.

(a) It is hereby found necessary in the interest of national defense to waive compliance with the navigation and vessel inspection laws administered by the Coast Guard, as well as the regulations issued thereunder and contained in 46 CFR Chapter I or in this chapter, to the extent and in the manner and upon the terms and conditions as set forth in this section.

(b) An application requesting that a waiver be made effective with respect to a particular vessel may be made by any authorized representative of an agency of the United States Government or any other interested person (including the master, agent, or owner of the vessel involved). Except as provided in paragraph (d) of this section, the application shall be in writing. The application shall be delivered to the Coast Guard District Commander or to his designated representative at the port or place where the vessel is located. In the case of a vessel in any port or place of the Canal Zone or in any foreign port or place, the application shall be made to the designated

representative of the Commandant at such port or place, or if the Coast Guard has not established facilities in such port or place, to the nearest designated representative of the Commandant at a port or place where such facilities have been established. Every application shall contain a statement of the particular provisions of law with respect to which waiver of compliance is requested, a certification that the waiver of compliance with such laws with respect to the vessel involved is necessary in the interest of national defense and, an outline of the facts upon which such certification is based. The Coast Guard District Commander (or his designated representative or the designated representative of the Commandant, as the case may be) shall promptly examine every application for the purpose of determining whether the necessity for prompt action is such as to require that the waiver be made effective by him without reference to the Commandant. In any case in which it appears to the Coast Guard officer concerned that reference of the application to the Commandant for action would not delay the sailing of the vessel or otherwise be contrary to the interest of national defense, the application shall be so referred. In all other cases such Coast Guard officer shall give immediate consideration to the application and if he reaches the conclusion that the urgency of the situation outweighs the marine hazard involved, then such waiver shall be made effective in regard to such vessel to the extent and under the circumstances specified by him.

(c) The Coast Guard officer making such a waiver effective pursuant to paragraph (b) of this section shall immediately prepare, in triplicate, an order setting forth the name of the vessel involved, the laws (also regulations, if any) with respect to which the waiver is effective, the extent to which compliance with such laws (also regulations, if any) is waived, and the period for which the waiver shall be effective. If practicable, one copy of this order shall be delivered to the master of the vessel involved before such vessel sails. In any case where the order is not delivered to the master, it shall be delivered to the owner, operator, or

<sup>1</sup> Also codified as 46 CFR part 6.

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agent of the vessel without delay. One copy of the order shall be transmitted to the Commandant and the remaining copy kept on file.

(d) In any case of extreme urgency the application for a waiver may be made orally and if the Coast Guard District Commander (or his designated representative or the designated representative of the Commandant, as the case may be) reaches the conclusion referred to in paragraph (b) of this section, the waiver shall be made effective without further delay, subject to the condition that the application be reduced to writing and delivered within such period after the date of the oral request as the Coast Guard officer making the waiver effective shall specify in the order.

(e) No penalty shall be imposed because of failure to comply with any provision of law (or regulation, if any), the waiver of which has been made effective pursuant to the requirements in this section.

[CGFR 51-10, 16 FR 1959, Mar. 1, 1951]

### **§ 19.04 Vessels requisitioned by the United States for emergency evacuation.**

Pursuant to the request of the Acting Secretary of Defense, dated November 21, 1951, made under the provisions of section 1 of Pub. L. 891, 81st Congress, approved December 27, 1950, compliance is hereby waived with the provisions of the navigation and vessel inspection laws administered by the United States Coast Guard, as well as the regulations issued thereunder and contained in this chapter, to the extent necessary to permit the operation of vessels which might be requisitioned by the United States for the purpose of emergency evacuation.

[CGFR 51-61, 16 FR 12792, Dec. 20, 1951]

### **§ 19.06 Vessels operated by or chartered to Military Sealift Command.**

(a) Pursuant to the request of the Deputy Secretary of Defense, dated August 6, 1958, and to the request of the Assistant Secretary of Defense, Installations and Logistics, dated May 23, 1964, made under the provisions of section 1 of Pub. L. 891, 81st Congress, approved December 27, 1950 (64 Stat. 1120;

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46 U.S.C., note preceding section 1), and their findings that a waiver is necessary in the interest of national defense, compliance with the provisions of the navigation and vessel inspection laws administered by the United States Coast Guard, as well as the regulations issued thereunder and contained in 33 CFR Chapter I, or in this chapter, is hereby waived to the extent and upon the terms and conditions as set forth in this section, in order to permit vessels operated by or chartered to the Military Sealift Command to carry out their assigned missions.

(b) An application requesting that this waiver be made effective with respect to a particular vessel may be made by the Commander, Military Sealift Command, or any one of his duly designated representatives. Except as provided in paragraph (e) of this section, the application shall be in writing. The application shall be delivered to the Coast Guard District Commander or to his designated representative at the port or place where the vessel is located. In the case of a vessel in any foreign port or place, the application shall be made to the designated representative of the Commandant at such port or place, or if the Coast Guard has not established facilities in such port or place, to the nearest designated representative of the Commandant at a port or place where such facilities have been established, or to the Commandant (G-MOC), U.S. Coast Guard, Washington, DC 20593-0001. Every application shall:

(1) Describe the laws and/or regulations by appropriate references and/or subjects with respect to which the waiver of compliance is desired;

(2) Contain a certification that the waiver of compliance with such laws and/or regulations with respect to the vessel involved is necessary in the interest of national defense and is necessary for the Military Sealift Command to carry out an assigned mission;

(3) The name and official number of the vessel involved (including the names of master, agent, and owner of the vessel involved); and

(4) For how long the waiver is needed.

(c) The Coast Guard officer making the waiver in paragraph (a) of this section effective for a particular vessel

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shall immediately prepare, in quadruplicate, an order setting forth:

(1) The name and official number of the vessel involved;

(2) The laws and/or regulations with respect to which the waiver is effective;

(3) The extent to which compliance with such laws and/or regulations is waived; and

(4) The period for which the waiver shall be effective.

(d) If practicable, one copy of this waiver order shall be delivered to the master of the vessel involved before such vessel sails. In any case where the waiver order is not delivered to the master, it shall be delivered to the owner, operator, or agent of the vessel without delay. One copy of the waiver order shall be delivered to the Commander, Military Sealift Command, or his duly designated representative, who submitted the application. One copy of the waiver order shall be transmitted to the Commandant (G-MOC) and the remaining copy kept on file.

(e) In any case of extreme urgency, the application for a waiver order may be made orally and if the Coast Guard District Commander (or his designated representative, or the designated representative of the Commandant, or the Commandant, as the case may be), determines that the conditions in this section have been met, the waiver order shall be made effective without further delay, subject to the condition that the application be reduced to writing and delivered within such period after the date of the oral request as the Coast Guard officer making the waiver effective shall specify in the confirming written waiver order.

(f) No penalty shall be imposed because of failure to comply with any provision of law and/or regulation, the waiver of which has been made effective pursuant to the requirements of this section.

(g) This waiver order shall remain in effect until terminated by proper authority and notice of cancellation is published in the FEDERAL REGISTER.

[CGFR 64-86, 30 FR 88, Jan. 6, 1965, as amended by CGD 88-052, 53 FR 25119, July 1, 1988; CGD 96-026, 61 FR 33662, June 28, 1996; USCG-2004-18057, 69 FR 34925, June 23, 2004]

### § 19.07 Chronological record of seaman's previous employment.

(a) Compliance is hereby waived with regard to the provisions of subsection (h) of R.S. 4551, as amended (46 U.S.C. 643), to the extent necessary to permit the Commandant of the United States Coast Guard to issue a chronological record of a seaman's previous employment on a single document, in lieu of making individual entry in a duplicate continuous discharge book or furnishing individual certificates of discharge.

(b) It is hereby found that the waiving of the provisions of R.S. 4551(h), as amended (46 U.S.C. 643), is necessary in the interest of national defense.

[CGFR 51-9, 16 FR 1829, Feb. 27, 1951, as amended by CGFR 59-4a, 24 FR 3055, Apr. 21, 1959]

CROSS REFERENCE: See 49 CFR 7.93 for the fee for this record.

### § 19.15 Permits for commercial vessels handling explosives at military installations.

Pursuant to the request of the Secretary of Defense in a letter dated October 19, 1955, made under the provisions of section 1 of the act of December 27, 1950 (64 Stat. 1120; 46 U.S.C., note prec. 1), I hereby waive in the interest of national defense compliance with the provisions of R.S. 4472, as amended (46 U.S.C. 170), and the regulations promulgated thereunder in part 146 of this chapter to the extent that no quantitative restrictions, based on considerations of isolation and remoteness, shall be required by the Coast Guard for commercial vessels loading or unloading explosives at the Department of Defense waterfront installations. This waiver shall not relieve a commercial vessel loading or unloading explosives at the Department of Defense waterfront installations from the requirement of securing a permit from the Coast Guard for such operations with respect to quantitative or other restrictions imposed by the Coast Guard on the basis of each vessel's ability to meet prescribed stowage and handling requirements.

[CGFR 55-49, 20 FR 8638, Nov. 23, 1955]

**PART 20—RULES OF PRACTICE,  
PROCEDURE, AND EVIDENCE  
FOR FORMAL ADMINISTRATIVE  
PROCEEDINGS OF THE COAST  
GUARD**

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AUTHORITY: 33 U.S.C. 1321; 42 U.S.C. 9609; 46 U.S.C. 7701, 7702; 49 CFR 1.46.

SOURCE: CGD 98-3472, 64 FR 28062, May 24, 1999, unless otherwise noted.

### Subpart A—General

#### § 20.101 Scope.

Except as otherwise noted, the rules of practice, procedure, and evidence in this part apply to the following subjects of administrative proceedings before the United States Coast Guard:

- (a) Class II civil penalties assessed under subsection 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)).
- (b) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9609(b)).
- (c) Suspensions and revocations conducted under 46 U.S.C. Chapter 77.

#### § 20.102 Definitions.

*Administrative Law Judge or ALJ* means any person designated by the Commandant under paragraph 556(b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 556(b)(3)) to conduct hearings arising under 33 U.S.C. 1321(b); 42 U.S.C. 9609(b); or 46 U.S.C. Chapter 77.

*Chief Administrative Law Judge or Chief ALJ* means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the Coast Guard by the Commandant.

*Class II Civil penalty proceeding* means a trial-type proceeding for the assessment of a civil penalty that affords an opportunity for an oral, fact-finding hearing before an ALJ.

*Coast Guard Representative* means an official of the Coast Guard designated to prosecute an administrative proceeding.

*Commandant* means the Commandant of the Coast Guard. It includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any matter.

*Complaint* means a document issued by a Coast Guard representative alleging a violation for which a penalty may be administratively assessed under 33 U.S.C. 1321(b) or 42 U.S.C. 9609(b), or a merchant mariner's license, certificate of registry, or document suspended or revoked under 46 U.S.C. 7703 or 7704.

*Hearing Docket Clerk* means an employee of the Office of the Chief ALJ who is responsible for receiving documents, determining their completeness and legibility, and distributing them to ALJs and others, as required by this part.

*Interested person* means a person who, as allowed in § 20.404, files written comments on a proposed assessment of a class II civil penalty or files written notice of intent to present evidence in any such hearing held on the proposed assessment.

*Mail* means first-class, certified, or registered matter sent by the Postal Service, or matter sent by an express-courier service.

*Motion* means a request for an order or ruling from an ALJ.

*Party* means a respondent or the Coast Guard.

*Person* means an individual, a partnership, a corporation, an association, a public or private organization, or a governmental agency.

*Personal delivery* means delivery by hand or in person, or through use of a contract service or an express-courier service. It does not include use of governmental interoffice mail.

*Pleading* means a complaint, an answer, and any amendment to such document permitted under this part.

*Respondent* means a person charged with a violation in a complaint issued under this part.

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*Suspension and revocation proceeding* or *S&R proceeding* means a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ.

### § 20.103 Construction and waiver of rules.

(a) Each person with a duty to construe the rules in this part in an administrative proceeding shall construe them so as to secure a just, speedy, and inexpensive determination.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief ALJ, or a presiding ALJ may, after notice, waive any of the rules in this part either to prevent undue hardship or manifest injustice or to secure a just, speedy, and inexpensive determination.

(c) Absent a specific provision in this part, the Federal Rules of Civil Procedure control.

## Subpart B—Administrative Law Judges

### § 20.201 Assignment.

An ALJ, assigned by the Chief ALJ after receipt of the complaint, shall preside over each administrative proceeding under this part.

### § 20.202 Powers.

The ALJ shall have all powers necessary to the conduct of fair, fast, and impartial hearings, including the powers to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided for in this part;
- (e) Hold hearings or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, or disorderly or rebellious conduct; and
- (j) Institute policy authorized by the Chief ALJ.

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### § 20.203 Unavailability.

(a) If an ALJ cannot perform the duties described in § 20.202 or otherwise becomes unavailable, the Chief ALJ shall designate a successor.

(b) If a hearing has commenced and the assigned ALJ cannot proceed with it, a successor ALJ may. The successor ALJ may, at the request of a party, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

### § 20.204 Withdrawal or disqualification.

(a) An ALJ may disqualify herself or himself at any time.

(b) Until the filing of the ALJ's decision, either party may move that the ALJ disqualify herself or himself for personal bias or other valid cause. The party shall file with the ALJ, promptly upon discovery of the facts or other reasons allegedly constituting cause, an affidavit setting forth in detail the reasons.

(1) The ALJ shall rule upon the motion, stating the grounds for the ruling. If the ALJ concludes that the motion is timely and meritorious, she or he shall disqualify herself or himself and withdraw from the proceeding. If the ALJ does not disqualify herself or himself and withdraw from the proceeding, the ALJ shall carry on with the proceeding, or, if a hearing has concluded, issue a decision.

(2) If an ALJ denies a motion to disqualify herself or himself, the moving party may, according to the procedures in subpart J of this part, appeal to the Commandant once the hearing has concluded. When that party does appeal, the ALJ shall forward the motion, the affidavit, and supporting evidence to the Commandant along with the ruling.

### § 20.205 Ex parte communications.

Ex parte communications are governed by subsection 557(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

**§ 20.206 Separation of functions.**

(a) No ALJ may be responsible to, or supervised or directed by, an officer, employee, or agent who investigates for or represents the Coast Guard.

(b) No officer, employee, or agent of the Coast Guard who investigates for or represents the Coast Guard in connection with any administrative proceeding may, in that proceeding or one factually related, participate or advise in the decision of the ALJ or of the Commandant in an appeal, except as a witness or counsel in the proceeding or the appeal.

### Subpart C—Pleadings and Motions

**§ 20.301 Representation.**

(a) A party may appear—

(1) Without counsel;

(2) With an attorney; or

(3) With other duly authorized representative.

(b) Any attorney, or any other duly authorized representative, shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and the representative's mailing addresses and telephone numbers.

(c) Any attorney or other duly authorized representative shall also file a notice, including the items listed in paragraph (a) of this section, for any withdrawal of appearance.

(d) Any attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless the ALJ orders more evidence.

(e) Any person who would act as a duly authorized representative and who is not an attorney shall file a statement setting forth the basis of his or her authority to so act. The ALJ may deny appearance as representative to any person who, the ALJ finds, lacks the requisite character, integrity, or proper personal conduct.

**§ 20.302 Filing of documents and other materials.**

(a) The proper address at which to file all documents and other materials relating to an administrative proceeding is: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022.

(b) The telephone number is: 410-962-5100.

(c) The fax number is: 410-962-1746.

(d) The appropriate party shall file with the Hearing Docket Clerk an executed original of each document (including any exhibit and supporting affidavit).

(e) A party may file by mail or personal delivery. The ALJ or the Hearing Docket Clerk may permit other methods, such as fax or other electronic means.

(f) When the Hearing Docket Clerk determines that a document, or other material, offered for filing does not comply with requirements of this part, the Clerk will accept it, and may advise the person offering it of the defect, and require that person to correct the defect. If the defect is failure to serve copies on other parties, the parties' response period begins when properly served.

**§ 20.303 Form and content of filed documents.**

(a) Each filed document must clearly—

(1) State the title of the case;

(2) State the docket number of the case, if one has been assigned;

(3) Designate the type of filing (for instance: petition, notice, or motion to dismiss);

(4) Identify the filing party by name and capacity acted in; and

(5) State the address, telephone number, and any fax number of the filing party and, if that party is represented, the name, address, telephone number, and any fax number of the representative.

(b) Each filed document must—

(1) Measure 8½ by 11 inches, except that a table, chart, or other attachment may be larger if folded to the size of the filed document to which it is physically attached;

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(2) Be printed on just one side of the page and be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(3) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(4) Have a left margin of at least 1½ inches and other margins of at least 1 inch; and

(5) Be bound on the left side, if bound.

(c) Each filed document must be in English or, if in another language, accompanied by a certified translation. The original of each filed document must be signed by the filing party or her or his representative. Unless the rules in this part or the ALJ requires it to be verified or accompanied by an affidavit, no filed document need be. The signature constitutes a certification by the signer that she or he has read the document; that, to the best of her or his knowledge, information, and belief, the statements made in it are true; and that she or he does not intend it to cause delay.

(d) Complaints, answers, and simple motions may employ forms approved for use in proceedings of the Coast Guard instead of the format set out in this section.

**§ 20.304 Service of documents.**

(a) The ALJ shall serve upon each party to the proceeding a copy of each document issued by the ALJ in it. The ALJ shall serve upon each interested person, as determined under §20.404, a copy of the notice of hearing. Unless this part provides otherwise, the ALJ shall upon request furnish to each such interested person a copy of each document filed with the Hearing Docket Clerk or issued by the ALJ.

(b) Unless the ALJ orders otherwise, each person filing a document with the

Hearing Docket Clerk shall serve upon each party a copy of it.

(c) If a party filing a document must serve a copy of it upon each party, each copy must bear a certificate of service, signed by or on behalf of the filing party, stating that she or he has so served it. The certificate shall be in substantially the following form:

I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by [specify the method]:

(1) [name, address of party]  
 (2) [name, address of party]  
 Done at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ or 20\_\_.  
 [Signature]  
 For  
 [Capacity].

(d) This table describes how to serve filed documents.

**TABLE 20.304(D)—HOW TO SERVE FILED DOCUMENTS**

Type of filed document	Acceptable methods of service
(1) Complaint .....	(i) Certified mail, return receipt requested. (ii) Personal delivery. (iii) Express-courier service that has receipt capability.
(2) Default Motion .....	(i) Certified mail, return receipt requested. (ii) Personal delivery. (iii) Express-courier service that has receipt capability.
(3) Answer .....	(i) Mail. (ii) Personal delivery. (iii) Express-courier service. (iv) Fax.
(4) Any other filed document.	(i) Mail. (ii) Personal delivery. (iii) Express-courier service. (iv) Fax. (v) Other electronic means (at the discretion of the ALJ).

(e)(1) Unless the ALJ orders otherwise, if a party files a document under §20.302, the party must serve a copy to the person indicated in this table.

**TABLE 20.304(E)—WHO RECEIVES COPIES OF FILED DOCUMENTS**

If a party—	Then the serving party must serve—
Is represented .....	The counsel or other representative.
Is not represented .....	The party.

(2) Service upon counsel or representative constitutes service upon the person to be served.

(f) The serving party must send service copies to the address indicated in this table.

TABLE 20.304(F)—WHERE TO SEND SERVICE COPIES

If the party—	Then the serving party must send the copies to—
Is represented .....	The address of the counsel or representative.
Is not represented .....	The last known address of the residence or principal place of business of the person to be served.

(g) This table describes when service of a filed document is complete.

TABLE 20.304(G)—WHEN SERVICE IS COMPLETE

If method of service used is—	Then service is complete when the document is—
(1) Personal delivery (Complaint or Default Motion).	(i) Handed to the person to be served. (ii) Delivered to the person's office during business hours. (iii) Delivered to the person's residence and service made to a person of suitable age and discretion residing at the individual's residence.
(2) Personal delivery (all other filed documents).	(i) Handed to the person to be served. (ii) Delivered to the person's office during business hours. (iii) Delivered to the person's residence and deposited in a conspicuous place.
(3) Certified Mail or express-courier (Complaint or Default Motion).	(i) Delivered to the person's residence and signed for by a person of suitable age and discretion residing at the individual's residence. (ii) Delivered to the person's office during business hours and signed for by a person of suitable age and discretion.
(4) Mail or express-courier service (all other filed documents).	(i) Mailed (postmarked). (ii) Deposited with express-courier service.
(5) Fax or other electronic means .....	Transmitted.

(h) If a person refuses to accept delivery of any document or fails to claim a properly addressed document other than a complaint sent under this subpart, the Coast Guard considers the document served anyway. Service is valid at the date and the time of mailing, of deposit with a contract service or express-courier service, or of refusal to accept delivery.

(b) The ALJ may allow other amendments or supplements to previously filed pleadings or other documents.

(c) Each party or interested person shall notify the Hearing Docket Clerk, the ALJ, and every other party or interested person, or her or his representative, of any change of address.

[CGD 98-3472, 64 FR 28062, May 24, 1999; 64 FR 34540, June 28, 1999, as amended by USCG-2000-7223, 65 FR 40054, June 29, 2000]

**§ 20.306 Computation of time.**

(a) We compute time periods as follows:

(1) We do not include the first day of the period.

(2) If the last day of the period is a Saturday, Sunday, or Federal holiday, we extend the period to the next business day.

(3) If the period is 7 days or less, we do not include Saturdays, Sundays, or Federal holidays.

**§ 20.305 Amendment or supplementation of filed documents.**

(a) Each party or interested person shall amend or supplement a previously filed pleading or other document if she or he learns of a material change that may affect the outcome of the administrative proceeding. However, no amendment or supplement may broaden the issues without an opportunity for any other party or interested person both to reply to it and to prepare for the broadened issues.

(b) If you were served a document (by domestic mail) that requires or permits a response, you may add 3 days to any period for response.

(c) If you need additional time to file a response, follow the rules in these tables.

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(1) You may request an extension—

**TABLE 20.306(C)(1)—HOW TO REQUEST AN EXTENSION**

If the response period—	By—
Has not expired .....	Telephone, letter, or motion.
Has expired .....	Only by motion describing why the failure to file was excusable.

(2) You file your request as follows:

**TABLE 20.306(C)(2)—WHERE TO FILE AN EXTENSION REQUEST**

If—	Then you file your request with the—
An ALJ has not been assigned .....	Hearing Docket Clerk.
An ALJ has been assigned .....	ALJ.
Your case is on appeal .....	Hearing Docket Clerk.

**§ 20.307 Complaints.**

- (a) The complaint must set forth—
  - (1) The type of case;
  - (2) The statute or rule allegedly violated;
  - (3) The pertinent facts alleged; and
  - (4)(i) The amount of the class II civil penalty sought; or
  - (ii) The order of suspension or revocation proposed.
- (b) The Coast Guard shall propose a place of hearing when filing the complaint.
- (c) The complaint must conform to the requirements of this subpart for filing and service.

**§ 20.308 Answers.**

- (a) The respondent shall file a written answer to the complaint 20 days or less after service of the complaint. The answer must conform to the requirements of this subpart for filing and service.
- (b) The person filing the answer shall, in the answer, either agree to the place of hearing proposed in the complaint or propose an alternative.
- (c) Each answer must state whether the respondent intends to contest any of the allegations set forth in the complaint. It must include any affirmative defenses that the respondent intends to assert at the hearing. The answer must admit or deny each numbered paragraph of the complaint. If it states that the respondent lacks sufficient knowledge or information to admit or deny a particular numbered paragraph, it de-

nies that paragraph. If it does not specifically deny a particular numbered paragraph, it admits that paragraph.

(d) A respondent's failure without good cause to file an answer admits each allegation made in the complaint.

**§ 20.309 Motions.**

- (a) A person may apply for an order or ruling not specifically provided for in this subpart, but shall apply for it by motion. Each written motion must comply with the requirements of this subpart for form, filing, and service. Each motion must state clearly and concisely—
  - (1) Its purpose, and the relief sought;
  - (2) Any statutory or regulatory authority; and
  - (3) The facts constituting the grounds for the relief sought.
- (b) A proposed order may accompany a motion.
- (c) Each motion must be in writing; except that one made at a hearing will be sufficient if stated orally upon the record, unless the ALJ directs that it be reduced to writing.
- (d) Except as otherwise required by this part, a party shall file any response to a written motion 10 days or less after service of the motion. When a party makes a motion at a hearing, an oral response to the motion made at the hearing is timely.
- (e) Unless the ALJ orders otherwise, the filing of a motion does not stay a proceeding.
- (f) The ALJ will rule on the record either orally or in writing. She or he

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may summarily deny any dilatory, repetitive, or frivolous motion.

### § 20.310 Default by respondent.

(a) The ALJ may find a respondent in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown.

(b) Each motion for default must conform to the rules of form, service, and filing of this subpart. Each motion must include a proposed decision and proof of service under section 20.304(d). The respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.

(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of her or his right to a hearing on those facts.

(d) Upon finding a respondent in default, the ALJ shall issue a decision against her or him.

(e) For good cause shown, the ALJ may set aside a finding of default.

### § 20.311 Withdrawal or dismissal.

(a) An administrative proceeding may end in withdrawal without any act by an ALJ in any of the following ways:

(1) By the filing of a stipulation by all parties who have appeared in the proceeding.

(2) By the filing of a notice of withdrawal by the Coast Guard representative at any time before the respondent has served a responsive pleading.

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)) or section 109(d) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)), by the filing of—

(i) A notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, but before the issuance of an order assessing or denying a class II civil penalty, together with

(ii) A certification by the representative that the filing of the notice is due to a request by the Attorney General—in accordance with subsection 10(d) of

Executive Order 12777 (56 FR 54757; 3 CFR, 1991 Comp., p. 351)—that the Coast Guard refrain from conducting an administrative proceeding.

(b) Unless the stipulation or notice of withdrawal states otherwise, a withdrawal under paragraph (a) of this section is without prejudice.

(c) Except as provided in paragraph (a) of this section, no administrative proceeding may end in withdrawal unless approved by an ALJ upon such terms as she or he deems proper.

(d) Any respondent may move to dismiss a complaint, the government may move to dismiss a petition, or any party may lodge a request for relief, for failure of another party to—

(1) Comply with the requirements of this part or with any order of the ALJ;

(2) Show a right to relief based upon the facts or law; or

(3) Prosecute the proceeding.

(e) A dismissal resides within the discretion of the ALJ.

## Subpart D—Proceedings

### § 20.401 Initiation of administrative proceedings.

An administrative proceeding commences when the Coast Guard representative files the complaint with the Hearing Docket Clerk and serves a copy of it on the respondent.

### § 20.402 Public notice.

Upon the filing of a complaint under 33 U.S.C. 1321(b) (6), the Coast Guard provides public notice of a class II civil penalty proceeding. The notice appears in the FEDERAL REGISTER.

### § 20.403 Consolidation and severance.

(a) A presiding ALJ may for good cause, with the approval of the Chief ALJ and with all parties given notice and opportunity to object, consolidate any matters at issue in two or more administrative proceedings docketed under this part. (Good cause includes the proceedings' possessing common parties, questions of fact, and issues of law and presenting the likelihood that consolidation would expedite the proceedings and serve the interests of justice.) The ALJ may not consolidate any matters if consolidation would prejudice any rights available under

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this part or impair the right of any party to place any matters at issue.

(b) Unless directed otherwise by the Chief ALJ, a presiding ALJ may, either in response to a motion or on his or her own motion, for good cause, sever any administrative proceeding with respect to some or all parties, claims, and issues.

### § 20.404 Interested persons.

(a) Any person not a party to a class II civil penalty proceeding under 33 U.S.C. 1321(b)(6) who wishes to be an interested person in the proceeding shall, 30 days or less after publication in the FEDERAL REGISTER of the public notice required by § 20.402, file with the Hearing Docket Clerk either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing in the proceeding.

(b) The presiding ALJ may, for good cause, accept late comments or late notice of intent to present evidence.

(c) Each interested person shall receive notice of any hearing due in the proceeding and of the decision in the proceeding. He or she may have a reasonable opportunity to be heard and to present evidence in any hearing.

(d) The opportunity secured by paragraph (c) of this section does not extend to—

(1) The issuance of subpoenas for witnesses;

(2) The cross-examination of witnesses; or

(3) Appearance at any settlement conference.

## Subpart E—Conferences and Settlements

### § 20.501 Conferences.

(a) Any party may by motion request a conference.

(b) The ALJ may direct the parties to attend one or more conferences before or during a hearing.

(c) The ALJ may invite interested persons to attend a conference, other than a settlement conference, as the ALJ deems appropriate.

(d) The ALJ shall give reasonable notice of the time and place of any conference to the parties, and to inter-

ested persons if invited. A conference may occur in person, by telephone, or by other appropriate means.

(e) Each party, and any interested person invited, shall be fully prepared for a useful discussion of all issues properly before the conference, both procedural and substantive, and be authorized to commit themselves or those they represent respecting those issues.

(f) Unless the ALJ excuses a party, the failure of a party to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in it and to any consequent orders or rulings.

(g) The ALJ may direct that any of the following be addressed or furnished before, during, or after the conference:

(1) Methods of service and filing.

(2) Motions for consolidation or severance of parties or issues.

(3) Motions for discovery.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) The desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the substantive standards, rules, and other policies of the Coast Guard.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the proceeding.

(h) No one may stenographically report or otherwise record a conference unless the ALJ allows.

(i) During a conference, the ALJ may dispose of any procedural matters on which he or she is authorized to rule.

(j) Actions taken at a conference may be memorialized in—

(1) A stenographic report if authorized by the ALJ;

(2) A written transcript from a magnetic tape or the equivalent if authorized by the ALJ; or

(3) A statement by the ALJ on the record at the hearing summarizing them.

#### § 20.502 Settlements.

(a) The parties may submit a proposed settlement to the ALJ.

(b) The proposed settlement must be in the form of a proposed decision, accompanied by a motion for its entry. The decision must recite the reasons that make it acceptable, and it must be signed by the parties or their representatives.

(c) The proposed decision must contain—

(1) An admission of all jurisdictional facts;

(2) An express waiver of—

(i) Any further procedural steps before the ALJ; and

(ii) All rights to seek judicial review, or otherwise challenge or contest the validity, of the decision;

(3) A statement that the decision will have the same force and effect as would a decision made after a hearing; and

(4) A statement that the decision resolves all matters needing to be adjudicated.

### Subpart F—Discovery

#### § 20.601 General.

(a) Unless the ALJ orders otherwise, each party—and each interested person who has filed written notice of intent to present evidence at any hearing in the proceeding under § 20.404—shall make available to the ALJ and to every other party and interested person—

(1) The name of each expert and other witness the party intends to call, together with a brief narrative summary of the expected testimony; and

(2) A copy, marked as an exhibit, of each document the party intends to introduce into evidence or use in the presentation of its case.

(b) During a pre-hearing conference ordered under § 20.501, the ALJ may direct that the parties exchange witness lists and exhibits either at once or by correspondence.

(c) The ALJ may establish a schedule for discovery and shall serve a copy of any such schedule on each party.

(1) The schedule may include dates by which the parties shall both exchange witness lists and exhibits and file any requests for discovery and objections to such requests.

(2) Unless the ALJ orders otherwise, the parties shall exchange witness lists and exhibits 15 days or more before hearing.

(d) Further discovery may occur only by order, and then only when the ALJ determines that—

(1) It will not unreasonably delay the proceeding;

(2) The information sought is not otherwise obtainable;

(3) The information sought has significant probative value;

(4) The information sought is neither cumulative nor repetitious; and

(5) The method or scope of the discovery is not unduly burdensome and is the least burdensome method available.

(e) A motion for discovery must set forth—

(1) The circumstances warranting the discovery;

(2) The nature of the information sought; and

(3) The proposed method and scope of discovery and the time and place where the discovery would occur.

(f) If the ALJ determines that he or she should grant the motion, he or she shall issue an order for the discovery, together with the terms on which it will occur.

#### § 20.602 Amendatory or supplementary responses.

(a) Any party or interested person shall amend or supplement information previously provided upon learning that the information—

(1) Was incorrect or incomplete when provided; or,

(2) Though correct or complete when provided, no longer is.

(b) The party or interested person shall amend or supplement that information by following the procedures in § 20.305.

#### § 20.603 Interrogatories.

(a) Any party requesting interrogatories shall so move to the ALJ. The motion must include—

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(1) A statement of the purpose and scope of the interrogatories; and

(2) The proposed interrogatories.

(b) The ALJ shall review the proposed interrogatories, and may enter an order either—

(1) Approving the service of some or all of the proposed interrogatories; or

(2) Denying the motion.

(c) The party requesting interrogatories shall serve on the party named in the interrogatories the approved written interrogatories.

(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the party named shall state the reasons for the objection instead of a response. This party, the party's attorney, or the party's representative shall sign the party's responses to interrogatories.

(e) Responses or objections must be filed within 30 days after the service of the interrogatories.

(f) A response to an interrogatory is sufficient when—

(1) The responder lists the records from which such answers may be derived or ascertained; and

(2) The burden of ascertaining the information in a response to an interrogatory is substantially the same for all parties involved in the action; and

(3) The information may be obtained from an examination, audit, or inspection of records, or from a compilation, abstract, or summary based on such records.

(g) The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the resource and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

**§ 20.604 Requests for production of documents or things, for inspection or other purposes.**

(a) Any party seeking production of documents or things for inspection or other purposes shall so move to the ALJ. The motion must state with particularity—

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(1) The purpose and scope of the request; and

(2) The documents and materials sought.

(b) The ALJ shall review the motion and enter an order approving or denying it in whole or in part.

(c) A party shall serve on the party in possession, custody, or control of the documents the order to produce or to permit inspection and copying of documents.

(d) A party may, after approval of an appropriate motion by the ALJ, inspect and copy, test, or sample any tangible things that contain, or may lead to, relevant information, and that are in the possession, custody, or control of the party upon whom the request is served.

(e) A party may, after approval of an appropriate motion by the ALJ, serve on another party a request to permit entry upon designated property in the possession or control of the other party for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or area. A request to permit entry upon property must set forth with reasonable particularity the feature to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(f) The party upon whom the request is served shall respond within 30 days after the service of the request. Inspection and related activities will be permitted as requested, unless there are objections, in which case the reason for each objection must be stated.

**§ 20.605 Depositions.**

(a) The ALJ may order a deposition only upon a showing of good cause and upon a finding that—

(1) The information sought is not obtainable more readily by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation at the hearing.

(b) Testimony may be taken by deposition upon approval of the ALJ of a motion made by any party.

(1) The motion must state—

(i) The purpose and scope of the deposition;

(ii) The time and place it is to be taken;

(iii) The name and address of the person before whom the deposition is to be taken;

(iv) The name and address of each witness from whom a deposition is to be taken;

(v) The documents and materials which the witness is to produce; and

(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.

(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(c) Upon a showing of good cause the ALJ may enter, and serve upon the parties, an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions shall be stenographically recorded and transcribed at the expense of the party requesting the deposition. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses that were noted at

the taking of the deposition and that would have been sustained if the witness had been personally present and testifying at a hearing, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the ALJ for a ruling on the objection(s). The ALJ may then limit the scope or manner of the taking of the deposition.

(k) When a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the ALJ.

(l) Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins, or as soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(m) A deposition may be taken by telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the ALJ.

(n) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions and arrangements as are prescribed in the order of the ALJ, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (m) of this section. After the deposition has been taken, and copies of the video

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recording are provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the ALJ. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

**§ 20.606 Protective orders.**

(a) In considering a motion for an order of discovery—or a motion, by a party or other person from whom discovery is sought, to reconsider or amend an order of discovery—the ALJ may enter any order that justice requires, to protect a person from annoyance, embarrassment, oppression, or undue burden or expense. This order may—

- (1) Confine discovery to specific terms and conditions, such as a particular time and place;
- (2) Confine discovery to a method other than that selected by the party seeking it;
- (3) Preclude inquiry into certain matters;
- (4) Direct that discovery occur with no one present except persons designated by the ALJ;
- (5) Preclude the disclosure of a trade secret or other proprietary information, or allow its disclosure only in a designated way or only to designated persons; or
- (6) Require that the person from whom discovery is sought file specific documents or information under seal for opening at the direction of the ALJ.

(b) When a person from whom discovery is sought seeks a protective order, the ALJ may let him or her make all or part of the showing of good cause *in camera*. The ALJ shall record any proceedings *in camera*. If he or she enters a protective order, he or she shall seal any proceedings so recorded. These shall be releasable only as required by law.

(c) Upon motion by a person from whom discovery is sought, the ALJ may—

(1) Restrict or defer disclosure by a party either of the name of a witness or, if the witness comes from the Coast Guard, of any prior statement of the witness; and

(2) Prescribe other appropriate measures to protect a witness.

(d) The ALJ will give any party an adequate opportunity to prepare for cross-examination or other presentation concerning witnesses and statement subject to protective orders.

**§ 20.607 Sanctions for failure to comply.**

If a party fails to provide or permit discovery, the ALJ may take such action as is just. This may include the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the proceeding, designated facts are established.

(c) Order that the party not introduce into evidence—or otherwise rely upon, in support of any claim or defense—the evidence that was withheld.

(d) Order that the party not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Allow the use of secondary evidence to show what the evidence withheld would have shown.

**§ 20.608 Subpoenas.**

(a) Any party may request the ALJ to issue a subpoena for the attendance of a person, the giving of testimony, or the production of books, papers, documents, or any other relevant evidence during discovery or for any hearing. Any party seeking a subpoena from the ALJ shall request its issuance by motion.

(b) An ALJ may, for good cause shown, apply to the United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence.

(c) A person serving a subpoena shall prepare a written statement setting forth either the date, time, and manner

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of service or the reason for failure of service. He or she shall swear to or affirm the statement, attach it to a copy of the subpoena, and return it to the ALJ who issued the subpoena.

(d) Coast Guard investigating officers have separate subpoena power in S&R proceedings under 46 CFR 5.301.

### § 20.609 Motions to quash or modify.

(a) A person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, ask the ALJ to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed:

(1) 10 days or less after service of a subpoena compelling the appearance and testimony of a witness or the production of evidence or

(2) At or before the time specified in the subpoena for compliance, whichever is earlier.

(c) If the subpoena is served at a hearing, the person to whom it is directed may, in person at the hearing or in writing within a reasonable time fixed by the ALJ, ask the ALJ to quash or modify it.

(d) The ALJ may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue.

## Subpart G—Hearings

### § 20.701 Standard of proof.

The party that bears the burden of proof shall prove his or her case or affirmative defense by a preponderance of the evidence.

### § 20.702 Burden of proof.

(a) Except for an affirmative defense, or as provided by paragraph (b) of this section, the Coast Guard bears the burden of proof.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order bears the burden of proof.

### § 20.703 Presumptions.

In each administrative hearing, a presumption—

(a) Imposes on the party against whom it lies the burden of going for-

ward with evidence to rebut or meet the presumption; but

(b) Does not shift the burden of proof in the sense of the risk of non-persuasion.

### § 20.704 Scheduling and notice of hearings.

(a) With due regard for the convenience of the parties, and of their representatives or witnesses, the ALJ shall, as early as possible, fix the date, time, and place for the hearing and notify all parties and interested persons.

(b) The ALJ may grant a request for a change in the date, time, or place of a hearing.

(c) At any time after commencement of a proceeding, any party may move to expedite the proceeding. A party moving to expedite shall—

(1) Explain in the motion the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits supporting any representations of fact.

(d) After timely receipt of the motion and any responses, the ALJ may expedite pleadings, pre-hearing conferences, and the hearing, as appropriate.

### § 20.705 Failure to appear.

The ALJ may enter a default under § 20.310 against a respondent threatening to fail, or having failed, to appear at a hearing unless,—

(a) Before the time for the hearing, the respondent shows good cause why neither the respondent nor his or her representative can appear; or,

(b) 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.

### § 20.706 Witnesses.

(a) Each witness shall testify under oath or affirmation.

(b) If a witness fails or refuses to answer any question the ALJ finds proper, the failure or refusal constitutes grounds for the ALJ to strike all or part of the testimony given by the witness or to take any other measure he or she deems appropriate.

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### § 20.707 Telephonic testimony.

(a) The ALJ may order the taking of the testimony of a witness by telephonic conference call. A person presenting evidence may by motion ask for the taking of testimony by this means. The arrangement of the call must let each participant listen to and speak to each other within the hearing of the ALJ, who will ensure the full identification of each so the reporter can create a proper record.

(b) The ALJ may issue a subpoena directing a witness to testify by telephonic conference call. The subpoena in any such instance issues under the procedures in § 20.608.

### § 20.708 Witnesses' fees.

(a) Each witness summoned in an administrative proceeding shall receive the same fees and mileage as a witness in a District Court of the United States.

(b) The party or interested person who calls a witness is responsible for all fees and mileage due under paragraph (a) of this section.

### § 20.709 Closing of the record.

(a) When the ALJ closes the hearing, he or she shall also close the record of the proceeding, as described in § 20.903, unless he or she directs otherwise. Even after the ALJ closes it, he or she may reopen it.

(b) The ALJ may correct the transcript of the hearing by appropriate order.

### § 20.710 Proposed findings, closing arguments, and briefs.

(a) Before the ALJ closes the hearing, he or she may hear oral argument so far as he or she deems appropriate.

(b) Before the ALJ decides the case, and upon terms he or she finds reasonable, any party may file a brief, proposed findings of fact and conclusions of law, or both. Any party may waive this right. If all parties waive it, then the ALJ may issue an oral order at the close of the hearing.

(c) Any oral argument, brief, or proposed findings of fact and conclusions of law form part of the record of the proceeding, as described in § 20.903.

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### Subpart H—Evidence

#### § 20.801 General.

Any party may present his or her case or defense by oral, documentary, or demonstrative evidence; submit rebuttal evidence; and conduct any cross-examination that may be necessary for a full and true disclosure of the facts.

#### § 20.802 Admissibility of evidence.

(a) The ALJ may admit any relevant oral, documentary, or demonstrative evidence, unless privileged. Relevant evidence is evidence tending to make the existence of any material fact more probable or less probable than it would be without the evidence.

(b) The ALJ may exclude evidence if its probative value is substantially outweighed by the danger of prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

#### § 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

#### § 20.804 Objections and offers of proof.

(a) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record. No party may raise an objection to the admission or exclusion of evidence on appeal unless he or she raised it before the ALJ.

(b) Whenever evidence is objected to, the party offering it may make an offer of proof, which must appear in the record.

#### § 20.805 Proprietary information.

(a) The ALJ may limit introduction of evidence or issue such protective or other orders as in his or her judgment are consistent with the object of preventing undue disclosure of proprietary matters, including, among others, ones of a commercial nature.

(b) When the ALJ determines that information in a document containing proprietary matters should be made

available to another party, the ALJ may direct the party possessing the document to prepare a non-proprietary summary or extract of it. The summary or extract may be admitted as evidence in the record.

(c) If the ALJ determines that a non-proprietary summary or extract is inadequate and that proprietary matters must form part of the record to avert prejudice to a party, the ALJ may so advise the parties and arrange access to the evidence for a party or representative.

#### § 20.806 Official notice.

The ALJ may take official notice of such matters as could courts, or of other facts within the specialized knowledge of the Coast Guard as an expert body. When all or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the decision must state as much; and any party, upon timely request, shall receive an opportunity to rebut the fact.

#### § 20.807 Exhibits and documents.

(a) Each exhibit must be numbered and marked for identification by the party offering it. The original of each exhibit so marked, whether or not offered or admitted into evidence, must be filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The party introducing each exhibit so marked shall supply a copy of the exhibit to the ALJ and to every party to the proceeding.

(b) Unless the ALJ directs otherwise, each party who would offer an exhibit upon direct examination shall make it available to every other party for inspection 15 days or more before the hearing. The ALJ will deem admitted the authenticity of each exhibit submitted before the hearing unless a party either files written objection and serves it on all parties or shows good cause for failure to do both.

(c) In class II civil penalty proceedings under 33 U.S.C. 1321(b)(6), each exhibit introduced by an interested person must be marked, and filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The interested

person shall supply a copy of the exhibit to the ALJ and to every party to the proceeding. The requirements of paragraph (b) of this section apply to any interested person who would offer an exhibit upon direct examination.

#### § 20.808 Written testimony.

The ALJ may enter into the record the written testimony of a witness. The witness shall be, or have been, available for oral cross-examination. The statement must be sworn to, or affirmed, under penalty of perjury.

#### § 20.809 Stipulations.

Any party or interested person may stipulate, in writing, at any stage of the proceeding, or orally at the hearing, to any pertinent fact or other matter fairly susceptible of stipulation. A stipulation binds all parties to it.

### Subpart I—Decisions

#### § 20.901 Summary decisions.

(a) Any party may move for a summary decision in all or any part of the proceeding on the grounds that there is no genuine issue of material fact and that the party is entitled to a decision as a matter of law. The party must file the motion no later than 15 days before the date fixed for the hearing and may include supporting affidavits with the motion. Any other party, 10 days or less after service of a motion for summary decision, may serve opposing affidavits or countermove for summary decision. The ALJ may set the matter for argument and call for the submission of briefs.

(b) The ALJ may grant the motion if the filed affidavits, the filed documents, the material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue of material fact and that a party is entitled to a summary decision as a matter of law.

(c) Each affidavit must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Once a party has moved for summary decision and supported his or her motion as provided in this section, no party opposing the motion may rest

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upon the mere allegations or denials of facts contained in his or her own pleadings. The response to the motion, by affidavit or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of material fact for the hearing.

(d) If it appears from the affidavit of a party opposing the motion that this party cannot, for reasons stated, present by affidavit matters essential to justify his or her opposition, the ALJ may deny the motion for summary decision, may order a continuance to enable the obtaining of information, or may make such other order as is just.

(e) No denial of all or any part of a motion for summary decision is subject to interlocutory appeal.

**§ 20.902 Decisions of the ALJ.**

(a) After closing the record of the proceeding, the ALJ shall prepare a decision containing—

(1) A finding on each material issue of fact and conclusion of law, and the basis for each finding;

(2) The disposition of the case, including any appropriate order;

(3) The date upon which the decision will become effective;

(4) A statement of further right to appeal; and,

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the decision.

(b) The decision of the ALJ must rest upon a consideration of the whole record of the proceedings.

(c) The ALJ may, upon motion of any party or in his or her own discretion, render the initial decision from the bench (orally) at the close of the hearing and prepare and serve a written order on the parties or their authorized representatives. In rendering his or her decision from the bench, the ALJ shall state the issues in the case and make clear, on the record, his or her findings of fact and conclusions of law.

(d) If the ALJ renders the initial decision orally, and if a party asks for a copy, the Hearing Docket Clerk shall furnish a copy excerpted from the transcript of the record. The date of the decision is the date of the oral rendering of the decision by the ALJ.

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**§ 20.903 Records of proceedings.**

(a) The transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings constitute the official record of a proceeding. This record also includes any motions or other matters regarding the disqualification of the ALJ.

(b) Any person may examine the record of a proceeding at the U. S. Coast Guard Administrative Law Judge Docketing Center; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. Any person may obtain a copy of part or all of the record after payment of reasonable costs for duplicating it in accordance with 49 CFR part 7.

**§ 20.904 Reopening.**

(a) To the extent permitted by law, the ALJ may, for good cause shown in accordance with paragraph (c) of this section, reopen the record of a proceeding to take added evidence.

(b) Any party may move to reopen the record of a proceeding 30 days or less after the closing of the record.

(1) Each motion to reopen the record must clearly set forth the facts that the movant would try to prove and the grounds for reopening the record.

(2) Any party who does not respond to any motion to reopen the record waives any objection to the motion.

(c) The ALJ may reopen the record of a proceeding if he or she believes that any change in fact or law, or that the public interest, warrants reopening it.

(d) The filing of a motion to reopen the record of a proceeding does not affect any period for appeals specified in subpart J of this part, except that the filing of such a motion tolls the running of whatever time remains in the period for appeals until either the ALJ acts on the motion or the party filing it withdraws it.

(e)(1) At any time, a party may file a petition to reopen with the Docketing Center for the ALJ to rescind any order suspending or revoking a merchant mariner's license, certificate of registry, or document if—

(i) The order rests on a conviction—  
(A) For violation of a dangerous-drug law;

(B) Of an offense that would prevent the issuance or renewal of the license, certificate, or document; or

(C) Of an offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401, note); and

(ii) The respondent submits a specific order of court to the effect that the conviction has been unconditionally set aside for all purposes.

(2) The ALJ, however, may not rescind his or her order on account of any law that provides for a subsequent conditional setting-aside, modification, or expunging of the order of court, by way of granting clemency or other relief after the conviction has become final, without regard to whether punishment was imposed.

(f) Three years or less after an S&R proceeding has resulted in revocation of a license, certificate, or document, the respondent may file a motion for reopening of the proceeding to modify the order of revocation with the ALJ Docketing Center.

(1) Any motion to reopen the record must clearly state why the basis for the order of revocation is no longer valid and how the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea.

(2) Any party who does not respond to any petition to reopen the record waives any objection to the motion.

### Subpart J—Appeals

#### § 20.1001 General.

(a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.

(b) No party may appeal except on the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(3) Whether the ALJ abused his or her discretion.

(4) The ALJ's denial of a motion for disqualification.

(c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.

(d) The appeal must follow the procedural requirements of this subpart.

#### § 20.1002 Records on appeal.

(a) The record of the proceeding constitutes the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then,—

(1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,

(2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

#### § 20.1003 Procedures for appeal.

(a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.

(1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the—

(i) Basis for the appeal;

(ii) Reasons supporting the appeal; and

(iii) Relief requested in the appeal.

(2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.

(3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.

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(b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

(c) No party may file more than one appellate brief or reply brief, unless—

(1) The party has petitioned the Commandant in writing; and

(2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.

(d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

### § 20.1004 Decisions on appeal.

(a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.

(b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

## Subpart K—Finality, Petitions for Hearing, and Availability of Orders

### § 20.1101 Finality.

(a) *Civil penalty proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes an order assessing or denying a class II civil penalty 30 days after the date of its issuance.

(2) If the Commandant issues a decision under Subpart J of this part, the decision constitutes an order of the Commandant assessing or denying a class II civil penalty on the date of issuance of the Commandant's decisions.

(b) *S&R Proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes final action of the Coast Guard 30 days after the date of its issuance.

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(2) If the Commandant issues a decision under Subpart J of this part, the decision constitutes final action of the Coast Guard on the date of its issuance.

### § 20.1102 Petitions to set aside decisions and provide hearings for civil penalty proceedings.

(a) If no hearing takes place on a complaint for a class II civil penalty, any interested person may file a petition, 30 days or less after the issuance of an order assessing or denying a civil penalty, asking the Commandant to set aside the order and to provide a hearing.

(b) If the Commandant decides that evidence presented by an interested person in support of a petition under paragraph (a) of this section is material and that the ALJ did not consider the evidence in the issuance of the decision, the Commandant shall set aside the decision and direct that a hearing take place in accordance with the requirements of this part.

(c) If the Commandant denies a hearing sought under this section, he or she shall provide to the interested person, and publish in the FEDERAL REGISTER, notice of and the reasons for the denial.

### § 20.1103 Availability of decisions.

(a)(1) Copies and indexes of decisions on appeal are available for inspection and copying at—

(i) The document inspection facility at the office of any Coast Guard District, Activity, or Marine Safety Office;

(ii) The public reading room at Coast Guard Headquarters; and

(iii) The public reading room of the Coast Guard ALJ Docketing Center; Baltimore, Maryland.

(2) Appellate decisions in S&R proceedings, and both appellate and ALJs' decisions on class II civil penalties, are available on the Department of Transportation Home Page at *www.dot.gov* or the Coast Guard Home Page at *www.uscg.mil*.

(b) Any person wanting a copy of a decision may place a request with the Hearing Docket Clerk. The Clerk will bill the person on the terms prescribed in 49 CFR 7.43.

**Subpart L—Expedited Hearings****§ 20.1201 Application.**

(a) This subpart applies whenever the Coast Guard suspends a merchant mariner's license, certificate of registry, or document without a hearing under 46 U.S.C. 7702(d).

(b) The Coast Guard may, for 45 days or less, suspend and seize a license, certificate, or document if, when acting under the authority of the license, certificate, or document,—

(1) A mariner performs a safety-sensitive function on a vessel; and

(2) There is probable cause to believe that he or she—

(i) Has performed the safety-sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) Has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or,

(iii) Three years or less before the start of an S&R proceeding, has been convicted of an offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401, note).

**§ 20.1202 Filing of pleadings.**

(a) *Complaint.* If the Coast Guard has temporarily suspended a merchant mariner's license, certificate of registry, or document, it shall immediately file a complaint under § 20.307. The complaint must contain both a copy of a notice of temporary suspension and an affidavit stating the authority and reason for temporary suspension.

(b) *Answer.* In a case under this subpart—

(1) § 20.308 does not govern answers, and

(2) The respondent shall therefore enter his or her answer at the pre-hearing conference.

**§ 20.1203 Commencement of expedited hearings.**

Upon receipt of a complaint with a copy of the notice of temporary suspension and the affidavit supporting the complaint, the Chief ALJ will immediately assign an ALJ and designate the case for expedited hearing.

**§ 20.1205 Motion for return of temporarily suspended license, certificate of registry, or document.**

(a) *Procedure.* At any time during the expedited hearing, the respondent may move that his or her license, certificate of registry, or document be returned on the grounds that the agency lacked probable cause for temporary suspension. The motion must be in writing and explain why the agency lacked probable cause.

(b) *Ruling.* If the ALJ grants the motion, the ALJ may issue such orders as are necessary for the return of the suspended license, certificate, or document and for the matter to continue in an orderly way under standard procedure.

**§ 20.1206 Discontinuance of expedited hearings.**

(a) *Procedure.* At any time during the expedited hearing, the respondent may move that the hearing discontinue and that the matter continue under standard procedure. A motion to discontinue must be in writing and explain why the case is inappropriate for expedited hearing.

(b) *Ruling.* If the ALJ grants the motion to discontinue, the ALJ may issue such orders as are necessary for the matter to continue in an orderly way under standard procedure.

**§ 20.1207 Pre-hearing conferences.**

(a) *When held.* As early as practicable, the ALJ shall order and conduct a pre-hearing conference. He or she may order the holding of the conference in person, or by telephonic or electronic means.

(b) *Answer.* The respondent shall enter his or her answer at the pre-hearing conference. If the answer is an admission, the ALJ shall either issue an appropriate order or schedule a hearing on the order.

(c) *Content.* (1) At the pre-hearing conference, the parties shall:

(i) Identify and simplify the issues in dispute and prepare an agreed statement of issues, facts, and defenses.

(ii) Establish a simplified procedure appropriate to the matter.

(iii) Fix a time and place for the hearing 30 days or less after the temporary suspension.

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(iv) Discuss witnesses and exhibits.

(2) The ALJ shall issue an order directing the exchange of witness lists and documents.

(d) *Order.* Before the close of the pre-hearing conference, the ALJ shall issue an order setting forth any agreements reached by the parties. The order must specify the issues for the parties to address at the hearing.

(e) *Procedures not to cause delay.* Neither any filing of pleadings or motions, nor any conduct of discovery, may interfere with—

(1) The holding of the hearing 30 days or less after the temporary suspension or

(2) The closing of the record early enough for the issuance of an initial decision 45 days or less after the temporary suspension.

(f) *Times.* The ALJ may shorten the time for any act required or permitted under this subpart to enable him or her to issue an initial decision 45 days or less after the temporary suspension.

### § 20.1208 Expedited hearings.

(a) *Procedures.* As soon as practicable after the close of the pre-hearing conference, the ALJ shall hold a hearing, under subpart G of this part, on any issue that remains in dispute.

(b) *Oral and written argument.* (1) Each party may present oral argument at the close of the hearing or present—

(i) Proposed findings of fact and conclusions of law; and

(ii) Post-hearing briefs, under § 20.710.

(2) The ALJ shall issue a schedule, such as will enable him or her to consider the findings and briefs without delaying the issuance of the decision.

(c) *ALJ's decision.* The ALJ may issue his or her decision as an oral decision from the bench. Alternatively, he or she may issue a written decision. He or she shall issue the decision 45 days or less after the temporary suspension.

### § 20.1209 Appeals of ALJs' decisions.

Any party may appeal the ALJ's decision as provided in subpart J.

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### Subpart M—Supplementary Evidentiary Rules for Suspension and Revocation Hearings

#### § 20.1301 Purpose.

This subpart contains evidentiary rules that apply only in certain circumstances in S&R proceedings. They supplement, not supplant, the evidentiary rules in subpart H.

#### § 20.1303 Authentication and certification of extracts from shipping articles, logbooks, and the like.

(a) The investigating officer, the Coast Guard representative, any other commissioned officer of the Coast Guard, or any official custodian of extracts from shipping articles, logbooks, or records in the custody of the Coast Guard may authenticate and certify the extracts.

(b) Authentication and certification must include a statement that the person acting has seen the original, compared the copy with it, and found the copy to be a true one. This person shall sign his or her name and identify himself or herself by rank or title and by duty station.

#### § 20.1305 Admissibility and weight of entries from logbooks.

(a) Any entry in any official logbook of a vessel concerning an offense enumerated in 46 U.S.C. 11501, made in substantial compliance with the procedural requirements of 46 U.S.C. 11502, is admissible in evidence and constitutes *prima facie* evidence of the facts recited.

(b) Any entry in any such logbook made in substantial compliance with the procedural requirements of 46 U.S.C. 11502 may receive added weight from the ALJ.

#### § 20.1307 Use of judgments of conviction.

(a) A judgment of conviction by a Federal court is conclusive in any S&R proceeding under this part concerning any act or offense described in 46 U.S.C. 7703 or 7704 when the act or offense is the same as in the Federal conviction.

(b) Except as provided in paragraph (c) of this section, no judgment of conviction by a State court is conclusive

in any S&R proceeding under this part concerning any act or offense described in 46 U.S.C. 7703 or 7704, even when an act or offense forming the basis of the charge in the proceeding is the same as in the State conviction. But the judgment is admissible in evidence and constitutes substantial evidence adverse to the respondent.

(c) A judgment of conviction by a Federal or State court for a violation is conclusive in the proceeding if an S&R proceeding alleges conviction for—

(1) A violation of a dangerous-drug law;

(2) An offense that would prevent the issuance or renewal of a merchant mariner's license, certificate of registry, or document; or

(3) An offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C.S. 401, note).

(d) If the respondent participates in the scheme of a State for the expungement of convictions, and if he or she pleads *guilty* or *no contest* or, by order of the trial court, has to attend classes, contribute time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of the finding of the trial court, the Coast Guard regards him or her, for the purposes of 46 U.S.C. 7703 or 7704, as having received a conviction. The Coast Guard does not consider the conviction expunged without proof that the expungement is due to the conviction's having been in error.

(e) No respondent may challenge the jurisdiction of a Federal or State court in any proceeding under 46 U.S.C. 7703 or 7704.

**§ 20.1309. Admissibility of respondents' criminal records and records with the Coast Guard before entry of findings and conclusions.**

(a) The prior disciplinary record of the respondent is admissible when offered by him or her.

(b) The prior disciplinary record of the respondent is admissible when offered by the Coast Guard representative to impeach the credibility of evidence offered by the respondent.

(c) The use of a judgment of conviction is permissible on the terms prescribed by § 20.1307.

**§ 20.1311. Admissions by respondent.**

No person may testify regarding admissions made by the respondent during an investigation under 46 CFR part 4, except to impeach the credibility of evidence offered by the respondent.

**§ 20.1313. Medical examination of respondents.**

In any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination. Any examination ordered by the ALJ is conducted, at Federal expense, by a physician designated by the ALJ. If the respondent fails or refuses to undergo any such examination, the failure or refusal receives due weight and may be sufficient for the ALJ to infer that the results would have been adverse to the respondent.

**§ 20.1315. Submission of prior records and evidence in aggravation or mitigation.**

(a) The prior disciplinary record of the respondent comprises the following items less than 10 years old:

(1) Any written warning issued by the Coast Guard and not contested by the respondent.

(2) Final agency action by the Coast Guard on any S&R proceeding in which a sanction or consent order was entered.

(3) Any agreement for voluntary surrender entered into by the respondent.

(4) Any final judgment of conviction in Federal or State courts.

(5) Final agency action by the Coast Guard resulting in the imposition against the respondent of any civil penalty or warning in a proceeding administered by the Coast Guard under this title.

(6) Any official commendatory information concerning the respondent of which the Coast Guard representative is aware. The Coast Guard representative may offer evidence and argument in aggravation of any charge proved. The respondent may offer evidence of,

and argument on, prior maritime service, including both the record introduced by the Coast Guard representative and any commendatory evidence.

(b) The respondent may offer evidence and argument in mitigation of any charge proved.

(c) The Coast Guard representative may offer evidence and argument in rebuttal of any evidence and argument offered by the respondent in mitigation.

## PART 23—DISTINCTIVE MARKINGS FOR COAST GUARD VESSELS AND AIRCRAFT

Sec.

- 23.01 Basis and purpose.
- 23.05 Where and when displayed.
- 23.10 Coast Guard emblem.
- 23.12 Coast Guard identifying insignia.
- 23.15 Coast Guard ensign.
- 23.20 Coast Guard commission pennant.
- 23.30 Penalty.

AUTHORITY: Secs. 638, 639, 63 Stat. 546; 14 U.S.C. 638, 639, E.O. 10707, 3 CFR, 1954-1958 Comp., p. 364.

### § 23.01 Basis and purpose.

(a) This subpart establishes instructions for the display of distinctive markings of Coast Guard vessels and aircraft, including Coast Guard ensign and commission pennant and Coast Guard emblem.

(b) Coast Guard vessels and aircraft are distinguished from other vessels and aircraft by an ensign; a personal flag, command pennant, or commissioned pennant, if so authorized; or other identifying insignia or marking.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957, as amended by CGFR 66-67, 31 FR 15239, Dec. 6, 1966]

### § 23.05 Where and when displayed.

(a) The Coast Guard Ensign is a mark of authority and is required to be displayed whenever a Coast Guard vessel takes active measures in connection with boarding, examining, seizing, stopping or heaving to of a vessel for the purposes of enforcing the laws of the United States. The distinctive markings of Coast Guard aircraft serve the same purpose.

(b) The Coast Guard Commission pennant indicates a Coast Guard cutter

under the command of a commissioned officer or commissioned warrant officer.

(c) When applicable, these distinctive marks shall be displayed, the Coast Guard Ensign at the masthead of the foremast, and the commission pennant at the after masthead. On ships having but one mast the Coast Guard Ensign and commission pennant shall be at the masthead on the same halyard. In mastless ships they shall be displayed from the most conspicuous hoist.

[CGFR 67-26, 32 FR 6576, Apr. 28, 1967]

### § 23.10 Coast Guard emblem.

(a) The distinctive emblem of the Coast Guard shall be as follows:

On a disc the shield of the Coat of Arms of the United States circumscribed by an annulet edged and inscribed "UNITED STATES COAST GUARD 1790" all in front of two crossed anchors.

(b) The emblem in full color is described as follows:

White anchors and white ring all outlined in medium blue (Coast Guard blue), letters and numerals medium blue (Coast Guard blue), white area within ring, shield with medium blue (Coast Guard blue) chief and 13 alternating white and red (Coast Guard red) stripes (7 white and 6 red) with narrow medium blue (Coast Guard blue) outline.

(c) The Coast Guard emblem is intended primarily for use as identification on Coast Guard ensigns, flags, pennants, vessels, aircraft, vehicles, and shore units. It may also be reproduced for use on such items as stationery, clothing, jewelry, etc.

(d) Any person who desires to reproduce the Coast Guard emblem for non-Coast Guard use must first obtain approval from the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(Sec. 6(b)(1), 80 Stat. 937; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 67-26, 32 FR 6577, Apr. 28, 1967, as amended by CGFR 70-95, 35 FR 12541, Aug. 6, 1970]

### § 23.12 Coast Guard identifying insignia.

(a) The distinctive identification insignia of the Coast Guard consists of a broad diagonal red stripe followed to the right or left by two narrow stripes, first a white stripe and then a blue

stripe. The Coast Guard emblem, as described in §23.10(b), is centered within the confines of the broad red diagonal stripe.

(b) The Coast Guard identifying insignia is intended primarily for the identification of Coast Guard vessels, aircraft, vehicles, and shore units. It may also be reproduced for use on Coast Guard publications, stationery, jewelry, and similar items.

(c) Any person who desires to reproduce the Coast Guard identifying insignia for non-Coast Guard use must first obtain approval from the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(Sec. 6(b)(1), 80 Stat. 937; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 70-95, 35 FR 12541, Aug. 6, 1970]

### §23.15 Coast Guard ensign.

The Coast Guard ensign has sixteen perpendicular stripes alternate red and white, beginning with the red at the hoist. In the upper quarter, next to the hoist, is the union, being the Coat of Arms of the United States, in dark blue on a white field, half of the length of the flag, and extending down the hoist halfway. The distinctive emblem of the Coast Guard in blue and white is placed with its center on a line with the lower edge of the union and over the center of the seventh vertical red stripe from the hoist of the flag, the emblem covering a horizontal space of three stripes.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957]

### §23.20 Coast Guard commission pennant.

The Coast Guard commission pennant shall have the union part composed of thirteen blue stars in a horizontal line on a white field, one-fourth the length of the pennant; the remaining three-fourths shall consist of sixteen vertical stripes of equal width, alternate red and white, beginning with the red, and a tail piece of red about one-fifth the entire length of the pennant, ending in a swallow tail.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957, as amended by CGFR 71-75, 36 FR 13268, July 17, 1971]

### §23.30 Penalty.

Section 638(b) of Title 14 U.S.C. (63 Stat. 546) reads as follows:

No vessel or aircraft without authority shall carry, hoist or display any ensign, pennant or other identifying insignia prescribed for, or intended to resemble, any ensign, pennant or other identifying insignia prescribed for Coast Guard vessels or aircraft. Each person violating this provision shall be fined not more than \$5,000, or imprisoned for not more than two years, or both.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957]

## PART 25—CLAIMS

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### Subpart H—Pollution Removal Damage Claims

- 25.801 Scope.
- 25.803 Claims payable.
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AUTHORITY: 14 U.S.C. 633; 49 CFR 1.45(a); 49 CFR 1.45(b); 49 CFR 1.46(b), unless otherwise noted.

SOURCE: CGD 80-033, 46 FR 27109, May 18, 1981, unless otherwise noted.

## Subpart A—General

### § 25.101 Purpose.

This subpart prescribes the requirements for the administrative settlement of claims against the United States, other than claims against the Oil Spill Liability Trust Fund under part 136 of this chapter and contract claims, but including claims arising from acts or omissions of employees of non-appropriated fund activities within the United States, its territories, and possessions.

[USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 25.103 Information and assistance.

Any person who desires to file a claim against the United States Coast Guard arising out of the activities of the Coast Guard may obtain information and assistance from the Coast Guard Maintenance and Logistics Command Atlantic (1c), located at 300 East

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Main Street, Suite 965, Norfolk, VA 23510-9113 or from the Coast Guard Maintenance and Logistics Command Pacific (1c), located at Coast Guard Island, Alameda, California, 94501, or from Commandant (G-LCL), U.S. Coast Guard, Washington, DC 20593, or from the Commander of any Coast Guard District listed in 33 CFR Part 3.

[CGD 87-008b, 52 FR 25217, July 6, 1987, as amended by CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 25.105 Definitions.

*Accrual date.* The day on which the alleged wrongful act or omission results in injury or damage for which a claim is made or when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the alleged wrongful act or omission.

*Claim.* A written notification of an incident accompanied by demand for the payment of a sum certain of money, other than for ordinary obligations incurred for services, supplies, or equipment.

*Settle.* To consider, ascertain, adjust, determine, compromise (when specifically authorized by law), and dispose of a claim by disapproval or approval, in whole or in part.

*Settlement authority.* A person authorized to settle a claim.

[CGD 80-033, 46 FR 27109, May 18, 1981; 46 FR 29933, June 4, 1981]

### § 25.107 Who may present claims.

(a) General rules:

(1) A claim for property loss or damage may be presented by anyone having an interest in the property, including an insurer or other subrogee, unless the interest is barred under § 25.109(a).

(2) A claim for personal injury may be presented by the person injured.

(3) A claim based on death may be presented by the executor or administrator of the decedent's estate, or any other person legally entitled to assert such a claim under local law. The claimant's status must be stated in the claim.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has, in fact, incurred the expenses.

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(b) A joint claim must be presented in the names of and signed by, the joint claimants, and the settlement must be made payable to the joint claimants.

(c) A claim may be presented by a duly authorized agent, legal representative or survivor, if it is presented in the name of the claimant. If the claim is not signed by the claimant, the agent, legal representative, or survivor shall indicate their title or legal capacity and provide evidence of their authority to present the claim.

(d) Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, they must be combined in one claim.

### § 25.109 Insurance and other subrogated claims.

(a) The claims of an insured (subrogor) and an insurer (subrogee) for damages arising out of the same incident constitute a single claim. The total award of combined claims may not exceed the monetary jurisdiction of the settlement authority. If the total award of the combined claims exceeds, or is expected to exceed, a settlement authority's limits, the settlement authority is not permitted to consider either, and the claim file will be forwarded to an appropriate settlement authority.

(b) An insured (subrogor) and an insurer (subrogee) may file a claim jointly or separately. If the insurer has fully reimbursed the insured, payment will only be made to the insurer. If separate claims are filed, the settlement will be made payable to each claimant to the extent of that claimant's undisputed interest. If joint claims are filed, the settlement will be sent to the insurer.

(c) Each claimant shall include with a claim, a written disclosure concerning insurance coverage including:

- (1) The names and addresses of all insurers;
- (2) The kind and amount of insurance;
- (3) The policy number;
- (4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and whether the insurer has paid the claim in whole

or in part, or has indicated payment will be made.

(d) Each subrogee shall substantiate an interest or right to file a claim by appropriate documentary evidence and shall support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence of liability of the United States or conclusive evidence of the amount of damages. The settlement authority makes an independent determination on the issues of fact and law based upon the evidence of record.

(e) An insurance or other subrogated claim is not payable under Subpart E, F, or G of this part.

### § 25.111 Action by claimant.

(a) *Form of claim.* The claim must meet the requirements of § 25.113. Authorized forms are available from the offices indicated in § 25.103.

(b) *Presentation.* Whenever possible the claim must be presented to the geographically appropriate Coast Guard Maintenance and Logistics Command. The Coast Guard Maintenance and Logistics Command Atlantic (lc) is located at 300 East Main Street, Suite 965, Norfolk, VA 23510-9113; Coast Guard Maintenance and Logistics Command Pacific (lc) is located at Coast Guard Island, Alameda, California, 94501. If that is not possible, the claim may also be presented to:

- (1) The commanding officer of the Coast Guard unit involved;
- (2) A Coast Guard unit convenient to the claimant; or
- (3) Chief, Office of Claims and Litigation, Chief Counsel, United States Coast Guard, 2100 Second Street, SW., Washington, DC, 20593.

In a foreign country, where there is no Coast Guard unit, the claim is considered presented to the Coast Guard if it is presented to the military attache of any United States embassy or consulate or to the commanding officer of any unit of the armed services of the United States.

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(c) *Time.* The time limits for presenting claims are contained in the following subparts addressing particular claim statutes.

[CGD 80-033, 46 FR 27109, May 18, 1981, as amended by CGD 87-008b, 52 FR 25217, July 6, 1987; CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2001-9286, 66 FR 33639, June 25, 2001]

#### § 25.113 Contents of claim.

(a) A claim under the Federal Tort Claims Act must be presented using Standard Form 95, Claim for Damage, Injury, or Death.

(b) A claim under any other Act may be presented using Standard Form 95. Any claim which is not presented using Standard Form 95 shall include:

(1) The identity of the department, agency, or activity whose act or omission gave rise to the claim;

(2) The full name and mailing address of the claimant. If this mailing address is not claimant's residence, the claimant shall also include residence address;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The amount claimed, supported by independent evidence of property damage or loss, personal injury, or death, as applicable;

(5) A detailed description of the incident giving rise to the claim;

(6) A description of any property damage or loss, including the identity of the owner, if other than the claimant, as applicable;

(7) The nature and extent of the injury, as applicable;

(8) The full name, title, if any, and address of any witness to the incident and a brief statement of the witness' knowledge of the incident;

(9) A description of any insurance carried by the claimant or owner of the property and the status of any insurance claim arising from the incident; and

(10) An agreement by the claimant to accept the total amount claimed in full satisfaction and final settlement of the claim.

(c) A claimant or duly authorized agent or legal representative must sign in ink a claim and any amendment to that claim. If the person's signature does not include the first name, middle initial, if any, and surname, that infor-

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mation must be included in the claim. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

#### § 25.115 Evidence supporting a claim.

The claimant shall present independent evidence to support a claim. This evidence may include, if available, statements of witnesses, accident or casualty reports, photographs and drawings.

#### § 25.117 Proof of amount claimed for personal injury or death.

The following evidence must be presented when appropriate:

(a) Itemized medical, hospital, and burial bills.

(b) A written report by the attending physician including:

(1) The nature and extent of the injury and the treatment,

(2) The necessity and reasonableness of the various medical expenses incurred,

(3) Duration of time injuries prevented or limited employment,

(4) Past, present, and future limitations on employment,

(5) Duration and extent of pain and suffering and of any disability or physical disfigurement,

(6) A current prognosis,

(7) Any anticipated medical expenses, and

(8) Any past medical history of the claimant relevant to the particular injury alleged.

NOTE: An examination by an independent medical facility or physician may be required to provide independent medical evidence against which to evaluate the written report of the claimant's physician. The settlement authority determines the need for this examination, makes mutually convenient arrangements for such an examination, and bears the costs thereof.

(c) All hospital records or other medical documents from either this injury or any relevant past injury.

(d) If the claimant is employed, a written statement by the claimant's employer certifying the claimant's:

(1) Age,

(2) Occupation,

(3) Hours of employment,

(4) Hourly rate of pay or weekly salary,

(5) Time lost from work as a result of the incident, and

(6) Claimant's actual period of employment, full-time or part-time, and any effect of the injury upon such employment to support claims for lost earnings.

(e) If the claimant is self-employed, written statements, or other evidence showing:

(1) The amount of earnings actually lost, and

(2) The Federal tax return if filed for the three previous years.

(f) If the claim arises out of injuries to a person providing services to the claimant, statement of the cost necessarily incurred to replace the services to which claimant is entitled under law.

**§ 25.119 Proof of amount claimed for loss of, or damage to, property.**

The following evidence must be presented when appropriate:

(a) For each particular lost item, evidence of its value such as a bill of sale and a written appraisal, or two written appraisals, from separate disinterested dealers or brokers, market quotations, commercial catalogs, or other evidence of the price at which like property can be obtained in the community. The settlement authority may waive these requirements when circumstances warrant. The cost of any appraisal may be included as an element of damage if not deductible from any bill submitted to claimant.

(b) For each particular damaged item which can be economically repaired, evidence of cost of repairs such as a receipted bill and one estimate, or two estimates, from separate disinterested repairmen. The settlement authority may waive these requirements when circumstances warrant. The cost of any estimate may be included as an element of damage if not deductible from any repair bill submitted to claimant.

(c) For any claim which may result in payment in excess of \$20,000.00, a survey or appraisal shall be performed as soon as practicable after the damage accrues, and, unless waived in writing, shall be performed jointly with a government representative.

(d) If the item is so severely damaged that it cannot be economically re-

paired or used, it shall be treated as a lost item.

(e) If a claim includes loss of earnings or use during repairs to the damaged property, the following must also be furnished and supported by competent evidence:

(1) The date the property was damaged;

(2) The name and location of the repair facility;

(3) The beginning and ending dates of repairs and an explanation of any delay between the date of damage and the beginning date;

(4) A complete description of all repairs performed, segregating any work performed for the owner's account and not attributable to the incident involved, and the costs thereof;

(5) The date and place the property was returned to service after completion of repairs, and an explanation, if applicable, of any delay;

(6) Whether or not a substitute for the damaged property was available. If a substitute was used by the claimant during the time of repair, an explanation of the necessity of using the substitute, how it was used, and for how long, and the costs involved. Any costs incurred that would have been similarly incurred by the claimant in using the damaged property must be identified;

(7) Whether or not during the course of undergoing repairs the property would have been used, and an explanation submitted showing the identity of the person who offered that use, the terms of the offer, time of prospective service, and rate of compensation; and

(8) If at the time of damage the property was under charter or hire, or was otherwise employed, or would have been employed, the claimant shall submit a statement of operating expenses that were, or would have been, incurred. This statement shall include wages and all bonuses which would have been paid, the value of fuel and the value of consumable stores, separately stated, which would have been consumed, and all other costs of operation which would have been incurred including, but not limited to, license and parking fees, personnel expenses,

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harbor fees, wharfage, dockage, shedding, stevedoring, towage, pilotage, inspection, tolls, lockage, anchorage and moorage, grain elevation, storage, and customs fees.

(f) For each item which is lost, actual or constructive, proof of ownership.

### § 25.121 Effect of other payments to claimant.

The total amount to which the claimant may be entitled is normally computed as follows:

(a) The total amount of the loss, damage, or personal injury suffered for which the United States is liable, less any payment the claimant has received from the following sources:

(1) The military member or civilian employee who caused the incident;

(2) The military member's or civilian employee's insurer; and

(3) Any joint tort-feasor or insurer.

(b) No deduction is generally made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

### § 25.123 Settlement and notice to claimant.

(a) If the settlement authority determines that the full amount claimed should be paid, the settlement authority forwards the claim to the disbursing officer for payment. If the time involved in settling the claim has been extensive, the settlement authority notifies the claimant.

(b) If the settlement authority determines that less than the full amount claimed should be paid, the settlement authority:

(1) Notifies the claimant in writing of the proposed settlement.

(2) Obtains from the claimant written acceptance and release for payment of the claim in the reduced amount.

(3) Advises the claimant, in the event claimant does not desire to accept the offer, to reply within 45 days giving reasons for rejection.

(4) Except upon a showing of good cause for delay in accepting a proposed settlement within 45 days, treats the non-acceptance as a rejection. Rejection by a claimant of an offer of settlement renders the offer void.

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(5) If a claimant rejects a proposed settlement or fails to reply within 45 days, the settlement authority may make further efforts to settle the claim. When the settlement authority determines that further efforts to settle the claim are not warranted, the settlement authority notifies the claimant in writing by registered or certified mail, return receipt requested, that the claim has been denied because the amount claimed is excessive.

(c) If the claim is denied, the settlement authority notifies the claimant in writing by registered or certified mail, return receipt requested.

### § 25.125 Appeal.

The final denial of a claim by a settlement authority or a partial approval by a settlement authority is not subject to appeal except under the procedures prescribed for Military Claims in Subpart D of this part.

### § 25.127 Reconsideration.

(a) The settlement authority may reconsider a claim upon the authority's own initiative or upon request of the claimant or someone acting on the claimant's behalf.

(b) A request for reconsideration must be in writing and include the legal or factual grounds for the relief requested.

(c) Following any investigation or other action deemed necessary for reconsideration of the original action, the settlement authority reconsiders the claim and if warranted attempts to settle it. When further settlement efforts appear unwarranted, the settlement authority notifies the claimant in writing by certified or registered mail, return receipt requested, that the relief requested is denied.

(d) For the effect of reconsideration under the Federal Tort Claims Act see 28 CFR Part 14.

### § 25.129 Acceptance of offer of settlement.

Claimant's acceptance of an offer of settlement is a complete release of any claim against the United States and against the military or civilian personnel of the Coast Guard whose act or omission gave rise to the claim.

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### § 25.131 Delegation of authority.

(a) The Chief Counsel is delegated the following authority:

(1) To carry out the functions of the Secretary and to exercise the Commandant's authority as commanding officer for all Coast Guard personnel in regard to claims brought under Article 139, Uniform Code of Military Justice (10 U.S.C. 939);

(2) To carry out the functions of an officer designated by the Secretary under the so-called "Foreign Claims Act", as amended (10 U.S.C. 2734);

(3) To request that the Department of Defense pay any meritorious claims arising under International Agreements in accordance with Title 10 U.S.C. 2734a and 2734b;

(4) To carry out the functions of the Secretary under the Act of October 9, 1962, as amended (10 U.S.C. 2737);

(5) To carry out the functions of the Secretary under the Act of August 16, 1937, as amended (14 U.S.C. 642);

(6) To carry out the functions of the Secretary under the Act of June 15, 1936, as amended (14 U.S.C. 646);

(7) To carry out the functions of the Secretary under the Act of August 4, 1949, as amended (14 U.S.C. 647);

(8) To carry out the functions of the Secretary under the Act of February 19, 1941, as amended (14 U.S.C. 830);

(9) To carry out the functions of the head of a Federal agency's designee under the Federal Tort Claims Act, as amended (28 U.S.C. 2672);

(10) To carry out the functions of the head of an agency under the Military Personnel and Civilian Employees' Claims Act, as amended (31 U.S.C. 3721);

(11) To carry out the functions of the head of an agency under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711);

(12) To carry out the functions of the head of the department under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653);

(13) To review and approve for payment any voucher for payment of a claim for \$25 or less the authority for payment of which is questioned by a certifying or disbursing officer;

(14) To establish procedures consistent with the applicable statutes

and regulations for the administration of all claims.

NOTE: Under the Military Claims Act (10 U.S.C. 2733), the Secretary has authorized the Chief Counsel to settle and pay claims, see 49 CFR 1.46(j).

(b) The Director of Finance and Procurement is delegated the authority to carry out the functions of the head of an agency under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711).

[CGD 80-033, 46 FR 27109, May 18, 1981, as amended by CGD 82-112, 48 FR 4773, Feb. 3, 1983; USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 25.133 Redelegation of authority.

The authority delegated in § 25.131 and in 49 CFR 1.46(j) to the Chief Counsel may, unless otherwise limited, be redelegated in whole or in part to settlement authorities established by the Chief Counsel. Information concerning current settlement authorities is available from the offices indicated in § 25.103.

### § 25.135 Processing and settlement of claims in foreign countries.

(a) In certain countries, the Department of Defense has assigned single-service responsibility for the settlement of claims arising under the Foreign Claims Act, Military Claims Act, Nonscope of Employment Claims Act, Federal Medical Care Recovery Act, and Federal Claims Collection Act.

(b) In a country where single-service claims responsibility has been assigned, claims against the United States cognizable under the acts referenced in paragraph (a) of this section are processed and settled by the service assigned responsibility.

(c) A list of countries assigned to a single-service is available from the military attache at any United States embassy or consulate.

(d) In a country not assigned to a single-service, the rules for presenting claims may be found in § 25.111, and the claim will be settled by the Coast Guard.

### Subpart B—Admiralty Claims

AUTHORITY: 14 U.S.C. 646; 14 U.S.C. 633; 49 CFR 1.46(b).

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### § 25.201 Scope.

This subpart prescribes the requirements for the administrative settlement of maritime tort claims against the United States for death, personal injury, damage to or loss of property caused by a vessel or other property in the service of the Coast Guard, or a maritime tort committed by an agent of the Coast Guard, and for claims for towage and salvage services rendered to a Coast Guard vessel or property.

### § 25.203 Claims payable.

A claim is payable under this subpart if it is:

- (a) A claim for death, personal injury, damage to or loss of real or personal property arising from a maritime tort caused by an agent or employee of the Coast Guard, or a vessel or other property in the service of the Coast Guard, including an auxiliary facility operated under specific orders and acting within the scope of such orders; or
- (b) A claim for compensation for towage and salvage services rendered to a vessel in the service of the Coast Guard or to other property under the jurisdiction of the Coast Guard.

### § 25.205 Claims not payable.

A claim is not payable under this subpart if it:

- (a) Results from action by an enemy, or directly or indirectly from an act of the armed services of the United States in combat;
- (b) Is purely contractual in nature;
- (c) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;
- (d) Is one for which a foreign country is responsible under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, or other similar treaty agreement;
- (e) Arises from private or domestic obligations as distinguished from governmental transactions; or
- (f) Is for damage to or loss of personal property of military personnel or

civilian employees which is cognizable under the Military Personnel and Civilian Employees' Claims Act, as amended.

### § 25.207 Time limitation on claims.

(a) A settlement authority may administratively settle and approve a claim for final payment within two years from the date that the cause of action accrues. Otherwise, the claim is barred. This two-year period is not extended by presenting a claim nor by negotiations or correspondence. The existence of an administrative claim does not extend the two year statute of limitations in 46 U.S.C. 745.

(b) If a complaint is filed in a Federal District Court before the expiration of the two-year period, an administrative settlement may be negotiated by the settlement authority only with the consent of the Department of Justice. Payment is made upon final dismissal of the complaint.

## Subpart C—Federal Tort Claims

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a)(2); 49 CFR 1.45(a)(3).

### § 25.301 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States arising out of Coast Guard activities under the Federal Tort Claims Act.

### § 25.303 Procedure.

A claim shall be presented and processed in accordance with 28 CFR Part 14. Should there be a conflict between the provisions of 33 CFR Part 25, Subpart A and the Department of Justice regulations in 28 CFR Part 14, the Department of Justice regulations govern.

## Subpart D—Military Claims

AUTHORITY: 10 U.S.C. 2733; 49 CFR 1.46(j).

### § 25.401 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States arising out of the activities of

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the Coast Guard under the Military Claims Act.

### § 25.403 Claims payable.

A claim arising at any place caused by military personnel or civilian employees of the Coast Guard acting within the scope of their employment, or otherwise incident to noncombat activities of the Coast Guard, whether or not negligence or intentional tort is shown, is payable under this subpart for:

(a) Damage to or loss of real property, including damage or loss incident to the use and occupancy of real property by the Coast Guard;

(b) Damage to or loss of personal property, including property bailed to the Coast Guard;

(c) Damage to or loss of registered or insured mail while the mail is in the possession of the Coast Guard even though damaged or lost by criminal act; or

(d) Death or personal injury.

### § 25.405 Claims not payable.

A claim is not payable under this subpart if it:

(a) Results from action by an enemy or directly or indirectly from an act of the armed services of the United States in combat;

(b) Is purely contractual in nature;

(c) Results wholly or partly from the negligent or wrongful act of the claimant, claimant's agent, or claimant's employee, unless comparative negligence is applicable under local law;

(d) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, Longshoremen's and Harbor Workers' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(e) Is cognizable under Subpart C or E of this part;

(f) Is for reimbursement for medical, hospital, or burial services furnished at the expense of the United States;

(g) Is one of the following exceptions to the Federal Tort Claims Act, 28 U.S.C. 2680 (a), (b), (e), (f), (h), or (j).

(However, a claim falling within the exception contained in 28 U.S.C. 2680 (b) is payable when not prohibited by paragraph (i) of this section.);

(h) Results from a specific risk which the claimant assumed in writing before the incident giving rise to the claim;

(i) Is for damage to or loss of a letter or postal matter while in the possession of the Postal Service;

(j) Is for rent, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the Coast Guard except as provided in § 25.403(a);

(k) Is for the taking of private property by trespass except for actual physical damage; or

(l) Is for personal injury or death of a member or civilian employee of the armed services of the U.S. whose death or injury was incident to service.

[CGD 80-033, 46 FR 27109, May 18, 1981, as amended by CGD 87-008b, 52 FR 25218, July 6, 1987]

### § 25.407 Time limitation on claims.

(a) A claim may be settled only if presented in writing within two years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not more than two years after the termination of the war or armed conflict.

(b) For the purposes of this section, a war or armed conflict is one in which an armed service of the United States is engaged. The dates of commencement and termination of an armed conflict will be as established by concurrent resolution of Congress or by determination of the President.

### § 25.409 Appeal.

(a) A claimant may submit an appeal, in writing, through the settlement authority disapproving the claim or approving the claim in part.

(1) The appeal shall set forth fully the legal or factual bases asserted as grounds for the appeal; and

(2) The appeal is permitted only if it is postmarked within 45 days after receipt of (i) notice of disapproval of the claim or (ii) offer of settlement in a reduced amount.

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(b) The disapproval of a claim is final unless the claimant submits a request for reconsideration or an appeal in writing.

(c) Upon receipt of an appeal, the settlement authority examines it and forwards it with the claim file, opinions, and recommendations to the next higher settlement authority.

### Subpart E—Foreign Claims

AUTHORITY: 10 U.S.C. 2734; 49 CFR 1.46(b).

#### § 25.501 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States by a foreign country, political subdivision or inhabitant thereof, for death, personal injury, damage to or loss of property occurring outside the United States, its territories, commonwealths, or possessions, caused by a military member or civilian employee of the Coast Guard, or otherwise incident to noncombat activities of the Coast Guard.

#### § 25.503 Proper claimants.

(a) The claimant, or the decedent in a death case, must have been an inhabitant of a foreign country at the time of the incident giving rise to the claim and must not be otherwise excluded by § 25.505. It is not necessary that a claimant be a citizen of, or legal domiciliary of the foreign country.

(b) A corporation or other organization doing business in a foreign country on a permanent basis may qualify as a proper claimant although organized under United States law.

(c) The government of a foreign country or a political subdivision thereof is a proper claimant unless excluded by waiver provisions of applicable international agreements.

#### § 25.505 Claimants excluded.

(a) Civilian employees of the United States and members of the armed services of the United States and their dependents, who are in a foreign country primarily because of their own or their sponsor's duty status.

(b) Other citizens of the United States, its territories, commonwealths,

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or possessions, unless they can establish their status as inhabitants of the foreign country.

(c) An insurer or other subrogee.

#### § 25.507 Claims payable.

(a) A claim is payable under this subpart if it was incident to a noncombat activity of the Coast Guard or was caused by:

(1) A military member of the Coast Guard;

(2) A civilian employee of the Coast Guard who is not a national of the country in which the incident occurred; or

(3) A civilian employee of the Coast Guard who is a national of the country in which the incident occurred if:

(i) The employee was within the scope of employment, or

(ii) An employer or owner of the property involved would be liable under local law.

(b) The fact that the act giving rise to a claim may constitute a crime does not, by itself, bar relief.

(c) Local law or custom pertaining to contributory or comparative negligence, and to joint tort-feasors, are applied to the extent practicable.

#### § 25.509 Claims not payable.

A claim is not payable under this subpart if it:

(a) Results from action by an enemy or directly or indirectly from an act of the armed services of the United States in combat;

(b) Is purely contractual in nature;

(c) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(d) Is one for which a foreign country is responsible under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, or other similar treaty agreement;

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(e) Arises from private or domestic obligations as distinguished from governmental transactions;

(f) Is a bastardy claim; or

(g) Involves a patent or copyright infringement.

### § 25.511 Time limitation on claims.

A claim may be settled only if presented in writing within two years after it accrues. Under appropriate circumstances, a claim presented orally may be considered.

### § 25.513 Amount claimed.

The claimant shall state the amount claimed in the currency of the country where the incident occurred or where the claimant resided at the time of the incident.

### § 25.515 Settlement and notice to claimant.

If a claim is determined to be meritorious in any amount, a written acceptance and release or a claim settlement agreement shall be signed by the claimant before payment. The release executed by the claimant shall release the United States and also release the tort-feasor or the person who occasioned the damage, injury, or death.

## Subpart F—Claims Not Cognizable Under Other Law

AUTHORITY: 10 U.S.C. 2737; 49 CFR 1.45(a)(2).

### § 25.601 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States under 10 U.S.C. 2737 incident to use of property of the United States and not cognizable under other law.

### § 25.603 Claims payable.

A claim for death, personal injury, or damage to or loss of real or personal property under this subpart is payable when caused by a military member or a civilian employee of the Coast Guard:

(a) Incident to the use of a vehicle of the United States at any place; or

(b) Incident to the use of any other property of the United States on a government installation.

### § 25.605 Claims not payable.

A claim is not payable under this subpart if it:

(a) Is legally recoverable by the claimant under a compensation statute or an insurance policy;

(b) Results wholly or partly from the negligent or wrongful act of the claimant, claimant's agent or employee;

(c) Is a subrogated claim;

(d) Is cognizable under any other provision of law or regulation administered by the Coast Guard; or

(e) Is for any element of damage pertaining to death or personal injury, other than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States.

### § 25.607 Time limitation on claims.

A claim may be settled only if presented in writing within two years after it accrues.

### § 25.609 Settlement and notice to claimant.

If a claim is determined to be meritorious in any amount, the claimant must sign a written acceptance and release or a claim settlement agreement before payment. Although larger claims may be considered, no claim may be approved or paid in an amount that exceeds \$1,000.00.

## Subpart G—Article 139, Uniform Code of Military Justice

AUTHORITY: 10 U.S.C. 939; 49 CFR 1.46(b).

### § 25.701 Scope.

This subpart prescribes the requirements for the administrative settlement of claims under Article 139, Uniform Code of Military Justice, 10 U.S.C. 939, against military members of the Coast Guard for damage to property willfully caused by them or loss of property wrongfully taken by them.

### § 25.703 Claims payable.

A claim for damage to or loss of real or personal property caused by a military member of the Coast Guard is payable under this subpart when the damage or loss results from:

(a) Willful or intentional acts;

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- (b) Wrongful taking; or
- (c) Riotous, violent, and reckless conduct or acts of depredation by an individual or group that evidences willfulness.

**§ 25.705 Claims not payable.**

A claim is not payable under this subpart if it:

- (a) Is for death or personal injury;
- (b) Results wholly or partly from the grossly negligent, or reckless act of the claimant, claimant's agent or employee;
- (c) Is a subrogated claim;
- (d) Is for damage to or loss of property owned by the United States or property of a Nonappropriated Fund Activity;
- (e) Results from negligence;
- (f) Is for indirect or remote damages;
- (g) Is for damage to or loss of property resulting from the act or omission of a member of the Coast Guard acting within the scope of the member's employment;
- (h) Extends to damage or loss that results from the owner's failure to mitigate damages; or
- (i) Has been paid by a third party.

**§ 25.707 Time limitation on claims.**

A claim may be settled only if presented within 90 days after it accrues unless good cause is shown for the delay.

**§ 25.709 Assessment limitation on claims.**

A claim is permitted in any amount; however, this subpart prohibits any assessment that exceeds one-half of one month's basic pay against the pay of any offender.

**Subpart H—Pollution Removal Damage Claims**

AUTHORITY: 33 U.S.C. 1321(j)(1)(A); 33 U.S.C. 1321(1); EO 11735, sec. 5 (a), (b)(3); 49 CFR 1.46(m).

**§ 25.801 Scope.**

This subpart prescribes the requirements for the administrative settlement of claims against the United States for damage to or loss of property resulting from containment or removal activities during Phase III or IV

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of the National Contingency Plan, under the Federal Water Pollution Control Act, as amended. 33 U.S.C. 1321.

**§ 25.803 Claims payable.**

A claim for damage to or loss of real or personal property is payable under this subpart if:

- (a) Caused by the United States, its employees, agents or contractors during containment, countermeasures, cleanup, mitigation, and disposal activities under the National Contingency Plan; and
- (b) In the exercise of care reasonable under the circumstances, the incident giving rise to the claim was necessary and the damage unavoidable.

**§ 25.805 Claims not payable.**

A claim is not payable under this subpart if it:

- (a) Is for death or personal injury; or
- (b) Arises out of activities to contain or remove a discharge of oil or other hazardous polluting substance from a United States or foreign public vessel or federally controlled facility.

**PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS**

- Sec.
- 26.01 Purpose.
- 26.02 Definitions.
- 26.03 Radiotelephone required.
- 26.04 Use of the designated frequency.
- 26.05 Use of radiotelephone.
- 26.06 Maintenance of radiotelephone; failure of radiotelephone.
- 26.07 Communications.
- 26.08 Exemption procedures.
- 26.09 List of exemptions.

AUTHORITY: 14 U.S.C. 2, 33 U.S.C. 1201-1208; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170. Rule 1, International Regulations for the Prevention of Collisions at Sea.

SOURCE: CGD 71-114R, 37 FR 12720, June 28, 1972, unless otherwise noted.

**§ 26.01 Purpose.**

- (a) The purpose of this part is to implement the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act. This part:
  - (1) Requires the use of the vessel bridge-to-bridge radiotelephone;

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(2) Provides the Coast Guard's interpretation of the meaning of important terms in the Act;

(3) Prescribes the procedures for applying for an exemption from the Act and the regulations issued under the Act and a listing of exemptions.

(b) Nothing in this part relieves any person from the obligation of complying with the rules of the road and the applicable pilot rules.

### § 26.02 Definitions.

For the purpose of this part and interpreting the Act:

*Act* means the "Vessel Bridge-to-Bridge Radiotelephone Act", 33 U.S.C. sections 1201-1208;

*Length* is measured from end to end over the deck excluding sheer;

*Power-driven vessel* means any vessel propelled by machinery; and

*Secretary* means the Secretary of the Department in which the Coast Guard is operating;

*Territorial sea* means all waters as defined in § 2.22(a)(1) of this chapter.

*Towing vessel* means any commercial vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

*Vessel Traffic Services (VTS)* means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

*Vessel Traffic Service Area* or *VTS Area* means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

NOTE: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facili-

tate traffic management within the VTS area.

(Rule 1, International Regulations for Preventing Collisions at Sea, 1972 (as rectified); EO 11964 (14 U.S.C. 2); 49 CFR 1.46(b))

[CGD 71-114R, 37 FR 12720, June 28, 1972, as amended by CGD 77-118a, 42 FR 35784, July 11, 1977; CGD 90-020, 59 FR 36322, July 15, 1994; USCG-2001-9044, 68 FR 42601, July 18, 2003]

### § 26.03 Radiotelephone required.

(a) Unless an exemption is granted under § 26.09 and except as provided in paragraph (a)(4) of this section, this part applies to:

(1) Every power-driven vessel of 20 meters or over in length while navigating;

(2) Every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating;

(3) Every towing vessel of 26 feet or over in length while navigating; and

(4) Every dredge and floating plant engaged in or near a channel or fairway in operations likely to restrict or affect navigation of other vessels except for an unmanned or intermittently manned floating plant under the control of a dredge.

(b) Every vessel, dredge, or floating plant described in paragraph (a) of this section must have a radiotelephone on board capable of operation from its navigational bridge, or in the case of a dredge, from its main control station, and capable of transmitting and receiving on the frequency or frequencies within the 156-162 Mega-Hertz band using the classes of emissions designated by the Federal Communications Commission for the exchange of navigational information.

(c) The radiotelephone required by paragraph (b) of this section must be carried on board the described vessels, dredges, and floating plants upon the navigable waters of the United States.

(d) The radiotelephone required by paragraph (b) of this section must be capable of transmitting and receiving on VHF FM channel 22A (157.1 MHz).

(e) While transiting any of the following waters, each vessel described in paragraph (a) of this section also must have on board a radiotelephone capable of transmitting and receiving on VHF FM channel 67 (156.375 MHz):

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(1) The lower Mississippi River from the territorial sea boundary, and within either the Southwest Pass safety fairway or the South Pass safety fairway specified in 33 CFR 166.200, to mile 242.4 AHP (Above Head of Passes) near Baton Rouge;

(2) The Mississippi River-Gulf Outlet from the territorial sea boundary, and within the Mississippi River-Gulf Outlet Safety Fairway specified in 33 CFR 166.200, to that channel's junction with the Inner Harbor Navigation Canal; and

(3) The full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to that canal's entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

(f) In addition to the radiotelephone required by paragraph (b) of this section, each vessel described in paragraph (a) of this section while transiting any waters within a Vessel Traffic Service Area, must have on board a radiotelephone capable of transmitting and receiving on the VTS designated frequency in Table 161.12(c) (VTS and VMRS Centers, Call Signs/MMSI, Designated Frequencies, and Monitoring Areas).

NOTE: A single VHF-FM radio capable of scanning or sequential monitoring (often referred to as "dual watch" capability) will not meet the requirements for two radios.

[CGD 91-046, 57 FR 14485, Apr. 21, 1992; 57 FR 21740, May 22, 1992, as amended by CGD 90-020, 59 FR 36322, July 15, 1994; CGD 95-033, 60 FR 28328, May 31, 1995; CGD 92-052, 61 FR 45325, Aug. 29, 1996; CGD-1999-6141, 64 FR 69635, Dec. 14, 1999; USCG-2003-14757, 68 FR 39364, July 1, 2003]

### § 26.04 Use of the designated frequency.

(a) No person may use the frequency designated by the Federal Communications Commission under section 8 of the Act, 33 U.S.C. 1207(a), to transmit any information other than information necessary for the safe navigation of vessels or necessary tests.

(b) Each person who is required to maintain a listening watch under section 5 of the Act shall, when necessary, transmit and confirm, on the designated frequency, the intentions of his vessel and any other information nec-

essary for the safe navigation of vessels.

(c) Nothing in these regulations may be construed as prohibiting the use of the designated frequency to communicate with shore stations to obtain or furnish information necessary for the safe navigation of vessels.

(d) On the navigable waters of the United States, channel 13 (156.65 MHz) is the designated frequency required to be monitored in accordance with § 26.05(a) except that in the area prescribed in § 26.03(e), channel 67 (156.375 MHz) is the designated frequency.

(e) On those navigable waters of the United States within a VTS area, the designated VTS frequency is an additional designated frequency required to be monitored in accordance with § 26.05.

(85 Stat. 164; 33 U.S.C. 1201-1208; 49 CFR 1.46(n)(2))

[CGD 71-114R, 37 FR 12720, June 28, 1982, as amended by CGD 83-036, 48 FR 30107, June 30, 1983; CGD 91-046, 57 FR 14486, Apr. 21, 1992; 57 FR 21741, May 22, 1992; CGD 90-020, 59 FR 36323, July 15, 1994; CGD 95-033, 60 FR 28329, May 31, 1995]

### § 26.05 Use of radiotelephone.

Section 5 of the Act states that the radiotelephone required by this Act is for the exclusive use of the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency. Nothing herein shall be interpreted as precluding the use of portable radiotelephone equipment to satisfy the requirements of this act.

[CGD 93-072, 59 FR 39963, Aug. 5, 1994]

### § 26.06 Maintenance of radiotelephone; failure of radiotelephone.

Section 6 of the Act states:

(a) Whenever radiotelephone capability is required by this Act, a vessel's radiotelephone equipment shall be maintained in effective operating condition. If the radiotelephone equipment carried aboard a vessel ceases to operate, the master shall exercise due diligence to restore it or cause it to be restored to effective operating condition at the earliest practicable time. The failure of a vessel's radiotelephone equipment shall not, in itself, constitute a violation of this

Act, nor shall it obligate the master of any vessel to moor or anchor his vessel; however, the loss of radiotelephone capability shall be given consideration in the navigation of the vessel.

#### § 26.07 Communications.

No person may use the services of, and no person may serve as, a person required to maintain a listening watch under section 5 of the Act, 33 U.S.C. 1204, unless the person can communicate in the English language.

[CGD 90-020, 59 FR 36323, July 15, 1994, as amended by CGD 95-033, 60 FR 28329, May 31, 1995]

#### § 26.08 Exemption procedures.

(a) The Commandant has redelegated to the Assistant Commandant for Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, with the reservation that this authority shall not be further redelegated, the authority to grant exemptions from provisions of the Vessel Bridge-to-Bridge Radiotelephone Act and this part.

(b) Any person may petition for an exemption from any provision of the Act or this part;

(c) Each petition must be submitted in writing to U.S. Coast Guard, Marine Safety, Security and Environmental Protection, 2100 Second Street SW., Washington, DC 20593-0001, and must state:

(1) The provisions of the Act or this part from which an exemption is requested; and

(2) The reasons why marine navigation will not be adversely affected if the exemption is granted and if the exemption relates to a local communication system how that system would fully comply with the intent of the concept of the Act but would not conform in detail if the exemption is granted.

[CGD 71-114R, 37 FR 12720, June 28, 1972, as amended by CGD 73-256, 39 FR 9176, Mar. 8, 1974; CGD 88-052, 53 FR 25119, July 1, 1988; CGD 95-057, 60 FR 34150, June 30, 1995; CGD 96-026, 61 FR 33663, June 28, 1996; CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2002-12471, 67 FR 41331, June 18, 2002]

#### § 26.09 List of exemptions.

(a) All vessels navigating on those waters governed by the navigation rules for Great Lakes and their connecting and tributary waters (33 U.S.C. 241 et seq.) are exempt from the requirements of the Vessel Bridge-to-Bridge Radiotelephone Act and this part until May 6, 1975.

(b) Each vessel navigating on the Great Lakes as defined in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et seq.) and to which the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201-1208) applies is exempt from the requirements in 33 U.S.C. 1203, 1204, and 1205 and the regulations under §§ 26.03, 26.04, 26.05, 26.06, and 26.07. Each of these vessels and each person to whom 33 U.S.C. 1208(a) applies must comply with Articles VII, X, XI, XII, XIII, XV, and XVI and Technical Regulations 1-9 of "The Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973."

[CGD 72-223R, 37 FR 28633, Dec. 28, 1972, as amended by CGD 74-291, 39 FR 44980, Dec. 30, 1974; CGD 83-003, 48 FR 7442, Feb. 18, 1983; CGD 91-046, 57 FR 14486, Apr. 21, 1992]

## PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

27.3 Penalty Adjustment Table.

AUTHORITY: Secs. 1-6, Pub. L. 101-410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104-134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

SOURCE: CGD 96-052, 62 FR 16700, Apr. 8, 1997, unless otherwise noted.

#### § 27.3 Penalty Table.

Table 1 lists sections of the United States Code that authorize civil monetary penalties for laws administered by the Coast Guard. These penalties are assessable in either civil judicial or administrative proceedings. Table 1 is periodically amended to reflect relevant changes in the United States Code and to show adjustments in penalty amounts that are mandated by the

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Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, but Table 1 will not reflect statutory changes that may take effect subsequent to the most recent amendment

of Table 1. In any case of conflict between Table 1 and the current provisions of the United States Code or another Federal statute, the current Code or statutory provision is controlling.

TABLE 1—CIVIL MONETARY PENALTIES

U.S. Code citation	Civil monetary penalty description	Statutory penalty (\$)	Inflation adjustments per 1990 Act as amended (\$)
14 U.S.C. 88(c)	Saving Life and Property	5,000	6,500
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense).	3,000	3,300
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses).	20,000	27,000
16 U.S.C. 4711(g)(1)	Aquatic Nuisance Species in Waters of the United States.	25,000	27,500
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels.	2,000	2,200
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	500	550
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	5,000	(**)
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty.	1,000	(**)
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	100	110
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's river.	200	220
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	* 5,000	(***)
33 U.S.C. 499(c)	Bridges/Drawbridges	* 5,000	(***)
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation.	* 5,000	(***)
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	* 5,000	(***)
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot.	500	650
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	500	650
33 U.S.C. 1232(a)	PWSA Regulations	25,000	32,500
33 U.S.C. 1236(b)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	5,000	6,500
33 U.S.C. 1236(c)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	5,000	6,500
33 U.S.C. 1236(d)	Vessel Navigation: Regattas or Marine Parades; Other Persons.	2,500	2,750
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation).	10,000	11,000
33 U.S.C. 1321(b)(6)(B)(j)	Oil/Hazardous Substances: Discharges (Class I total under paragraph).	25,000	32,500
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation).	10,000	11,000
33 U.S.C. 1321(b)(6)(B)(iii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph).	125,000	157,500
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	25,000	32,500
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	1,000	1,100
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	25,000	32,500
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	25,000	32,500
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	3,000	3,300
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	100,000	110,000
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	2,000	2,200
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	5,000	6,500
33 U.S.C. 1517(a)	Deepwater Ports: Oil Discharge	10,000	11,000
33 U.S.C. 1608(a)	International Navigation Rules; Operator	5,000	6,500
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	5,000	6,500
33 U.S.C. 1908(b)(f)	Pollution from Ships; General	25,000	32,500

TABLE 1—CIVIL MONETARY PENALTIES—Continued

U.S. Code citation	Civil monetary penalty description	Statutory penalty (\$)	Inflation adjustments per 1990 Act as amended (\$)
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	5,000	6,500
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	5,000	6,500
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	5,000	6,500
33 U.S.C. 2609(a)	Shore Protection; General	25,000	32,500
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	10,000	11,000
33 U.S.C. 2716(a)	Oil Pollution Liability and Compensation	25,000	32,500
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I).	25,000	27,500
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II).	25,000	27,500
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	75,000	82,500
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	25,000	27,500
42 U.S.C. 9609(d)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	75,000	82,500
46 U.S.C. App 1505(a)(2)	Safe Containers for International Cargo	5,000	6,500
46 U.S.C. App 1805(c)(2)	Suspension of Passenger Service	50,000	60,000
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	5,000	6,500
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	5,000	5,500
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	5,000	(***)
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	25,000	(***)
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	5,000	5,500
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	5,000	6,500
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	1,000	1,100
46 U.S.C. 3102(c)(1)	Immersion Suits	5,000	6,500
46 U.S.C. 3302(i)(5)	Inspection Permit	1,000	1,100
46 U.S.C. 3318(a)	Vessel Inspection; General	5,000	6,500
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	5,000	6,500
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice IAW 3304(b).	1,000	1,100
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c).	1,000	1,100
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥ 1600 Gross Tons	10,000	11,000
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel < 1600 Gross Tons	2,000	2,200
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	10,000	11,000
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)–3318(f)	5,000	6,500
46 U.S.C. 3502(e)	List/count of Passengers	100	110
46 U.S.C. 3504(c)	Notification to Passengers	10,000	11,000
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	500	650
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	200	220
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	25,000	32,500
46 U.S.C. 4106	Uninspected Vessels	5,000	6,500
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations).	250,000	(***)
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	5,000	(***)
46 U.S.C. 4311(c)	Recreational vessels	1,000	1,100
46 U.S.C. 4507(a)	Uninspected Commercial Fishing Industry Vessels	5,000	6,500
46 U.S.C. 4703	Abandonment of Barges	1,000	1,100
46 U.S.C. 5116(a)	Load Lines	5,000	6,500
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	10,000	11,000
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	5,000	6,500
46 U.S.C. 6103(a)	Reporting Marine Casualties	25,000	27,500
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	5,000	6,500
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	1,000	1,100
46 U.S.C. 8101(f)	Manning of Inspected Vessels	10,000	11,000
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG.	10,000	11,000
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel < 100 GT, Small Passenger Vessel, or Sailing School Vessel.	1,000	1,100
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	1,000	1,100
46 U.S.C. 8103(f)	Citizenship Requirements	500	650
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	10,000	11,000

TABLE 1—CIVIL MONETARY PENALTIES—Continued

U.S. Code citation	Civil monetary penalty description	Statutory penalty (\$)	Inflation adjustments per 1990 Act as amended (\$)
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h).	10,000	11,000
46 U.S.C. 8302(e)	Staff Department on Vessels	100	110
46 U.S.C. 8304(d)	Officer's Competency Certificates	100	110
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	10,000	11,000
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	10,000	11,000
46 U.S.C. 8503	Federal Pilots	25,000	32,500
46 U.S.C. 8701(d)	Merchant Mariners Documents	500	650
46 U.S.C. 8702(e)	Crew Requirements	10,000	11,000
46 U.S.C. 8906	Small Vessel Manning	25,000	27,500
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	10,000	11,000
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	10,000	11,000
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	10,000	11,000
46 U.S.C. 10104(b)	Failure to Report Sexual Offense	5,000	6,500
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	500	650
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment.	500	650
46 U.S.C. 10315(c)	Allotment to Seamen	500	650
46 U.S.C. 10321	Seamen Protection; General	5,000	5,500
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	5,000	5,500
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment.	5,000	5,500
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	5,000	5,500
46 U.S.C. 10711	Effects of Deceased Seamen	200	220
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	500	650
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	100	110
46 U.S.C. 10907(b)	Permission to Make Complaint	500	650
46 U.S.C. 11101(f)	Accommodations for Seamen	500	650
46 U.S.C. 11102(b)	Medicine Chests on Vessels	500	650
46 U.S.C. 11104(b)	Destitute Seamen	100	110
46 U.S.C. 11105(c)	Wages on Discharge	500	650
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	200	220
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	200	220
46 U.S.C. 11303(c)	Log Books; Late Entry	150	165
46 U.S.C. 11506	Carrying of Sheath Knives	50	65
46 U.S.C. 12122(a)	Vessel Documentation	10,000	11,000
46 U.S.C. 12122(c)	Vessel Documentation; Fishery Endorsement	100,000	110,000
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	1,000	1,100
46 U.S.C. 12507(b)	Vessel Identification System	10,000	11,000
46 U.S.C. 14701	Measurement of Vessels	20,000	27,000
46 U.S.C. 14702	Measurement; False Statements	20,000	27,000
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	10,000	11,000
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgage.	10,000	11,000
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329.	25,000	27,500
46 U.S.C. 70119	Port Security	25,000	(***)
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels	25,000	32,500
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Minimum Penalty.	250	275

\*These penalties will increase in accordance with the statute to: \$10,000 in 2005, \$15,000 in 2006, \$20,000 in 2007, and \$25,000 in 2008 and thereafter.

\*\* Enacted under the Tariff Act of 1930, exempt from inflation adjustments.

\*\*\* These penalties did not qualify for an adjustment under the rounding rules of the Act.

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EDITORIAL NOTE: This listing is provided for informational purposes only. It is compiled and kept up-to-date by the Coast Guard, Department of Homeland Security, and is revised through July 1, 2006.

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