



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 5

[Docket No. USCG-1999-6712]

RIN 1625-AB66

Revision of Auxiliary Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise and reorganize the regulations that govern the operation and administration of the Coast Guard Auxiliary, a uniformed, volunteer, non-military organization chartered by Congress. The proposed changes would conform the regulatory language to changes in the laws governing the Coast Guard Auxiliary, clarify the Auxiliary's organization, status, and role in Coast Guard operations, and update provisions on liability protection for Auxiliary members assigned to Coast Guard duty.

DATES: Comments and related material must either be submitted to our online docket via

<http://www.regulations.gov> on or before [Insert date 90

days after date of publication in the FEDERAL REGISTER] or reach the Docket Management facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-1999-6712 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Stephen Minutolo, CG-BSX-11, U.S. Coast Guard Headquarters, 2100 2nd St. SW Stop 7581, Washington, DC 20593-7581; telephone 202 372-1267; e-mail hqs-dg-m-cgauxregs@uscg.mil. If you have questions on

viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-1999-6712), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that the Coast Guard can contact you if the Coast Guard has questions regarding your submission.

To submit your comments online, go to <http://www.regulations.gov>. Insert "USCG-1999-6712" in the Search box and click "Search." Click on the "Comment Now" button next on the line with this document.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received

during the comment period. The Coast Guard may change this proposed rule in view of your comments.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert "USCG-1999-6712" in the Search box and click "Search." Click on the "Open Docket Folder" link and click on each comment or document you would like to view. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
Pub. L.	Public Law
§	Section symbol
SAMA	Standard Auxiliary Maintenance Allowance
U.S.C.	United States Code
USCG	United States Coast Guard
1996 Act	The Coast Guard Authorization Act of 1996

III. Background

This proposed rule would revise and reorganize the regulations governing the Coast Guard Auxiliary. The Coast Guard Auxiliary regulations were last updated in 2003 (68 FR 9534, Feb 28, 2003) and 1996 (61 FR 33662, June 28, 1996), but these changes did not address all of the legislative changes being addressed in this proposed rule. Through this proposed rule, the Coast Guard would update the regulations in accordance with recent legislation; clarify Auxiliary powers, duties, and organization; amend

provisions regarding Auxiliary membership; and address other administrative matters. These changes would address several problems common to Auxiliary units.

First, this proposed rule is necessary to conform Coast Guard regulations to current law. The following changes to the Auxiliary's governing statutes, codified at Title 14, Chapter 23 of the U.S. Code (collectively referred to in this document as "legislative changes") are addressed by this rulemaking:

- The Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112-213) section 215, extending eligibility for Auxiliary membership to nationals of the United States and aliens lawfully admitted for permanent residence.
- The Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241) section 208, authorizing the Auxiliary to use motor vehicles in support of Auxiliary functions and duties.
- The Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293), section 226, allowing personal property of the Auxiliary to be treated as United States property for liability purposes.
- The Maritime Transportation Security Act of 2002 (Pub. L. 107-295), section 415, authorizing

payment of a death gratuity to Auxiliary members who died in the line of duty.

- The Coast Guard Authorization Act of 1996 (Pub. L. 104-324) ("The 1996 Act") authorizing the Auxiliary organizational structure, extending civil liability protection to Auxiliary units and members, and authorizing the Auxiliary to form a corporation. The 1996 Act also redefined the purpose of the Auxiliary, "to assist the Coast Guard... in performing any Coast Guard function... ." The previous definition enumerated specific missions (promoting safety, effecting rescues, promoting efficiency in the operation of motorboats and yachts, and fostering wider knowledge of boating laws), along with a catch-all provision ("facilitate other operations of the Coast Guard.").
- The Coast Guard Authorization Act of 1986 (Pub L. 99-640) authorized the payment of interest on reimbursement claims.
- In 2006, conforming amendments to 14 U.S.C. 821(b) and 823a(b) in The Act to Complete the Codification of Title 46, United States Code, "Shipping," as Positive Law (Pub. L. 109-304)

made non-substantive, editorial changes to 14 U.S.C. 821(b) and 823a(b).

Second, this proposed rule would clarify the organization of the Auxiliary and the authority given to Auxiliary units and officers to conduct Auxiliary business. This change is necessary to help Auxiliary units interact with commercial service providers, such as banks and insurance companies, who may be reluctant to enter into a business relationship with an Auxiliary unit without a better understanding of the nature of the Auxiliary and its relationship with the regular Coast Guard.

Third, the proposed rule would clarify for operational commanders the Auxiliary's ability to participate in Coast Guard operations and to work with other federal, state and local agencies.

Finally, this proposed rule would reorganize the Auxiliary regulations by eliminating unnecessary sections and organizing 33 CFR part 5 into five subject-oriented subparts, making it easier to find regulations about particular topics.

Consistent with these objectives, the Coast Guard proposes to revise and reorganize the regulations at 33 CFR part 5.

IV. Discussion of Proposed Rule

This discussion provides both a summary and a section-by-section analysis of proposed changes to regulations in 33 CFR part 5. Generally, existing sections are removed entirely, revised, or moved to another section (where they may be revised or combined with other provisions). Added sections are entirely new numbers and headings; these sections do not exist in the current 33 CFR part 5. Removed sections exist in the current 33 CFR part 5 but not in the proposed rule. Provisions that are merely restatements of existing law will be removed from the regulations. Revised sections exist in the current 33 CFR part 5, but are being changed in the proposed rule. Often some or all of the contents of the section are exported to another section; these are identified as moved.

Tables 1A and 1B describe the proposed distribution and deletion of existing sections and the derivation of proposed new sections.

Table 1A is a distribution table. Table 1A describes what will happen to each section of the current regulations under the proposed rule. For example, the third row of Table 1A tells the reader that, in the proposed rule, § 5.05 will be moved to § 5.3(a) and how the text will change.

Table 1B is a derivation table. Table 1B describes where the provisions of the proposed regulations came from. For example, the sixth row of Table 1B tells the reader the language of § 5.10 came from §§ 5.09, 5.13 and 5.15. If, for any section there is no text in the second column, that means the proposed text is new and unrelated to the contents of the existing section. To see where the content of the existing section moved, see Table 1A.

Table 1A: Distribution Table

Existing (Old) Section	Proposed (New) Section	Summary of Proposed Changes to Existing Section
§ 5.01	§ 5.1	Added definitions for "Auxiliary Act", "Direct law enforcement", "Personal property of the Auxiliary". Amended the definitions for "Facility or facilities" "Radio station", and "Secretary".
§ 5.03	Revised.	
§ 5.05	Moved to § 5.3(a).	Added "uniformed."
§ 5.07	§ 5.7	Revised. Added new provisions.
§ 5.09	Moved to § 5.10.	Revised. Eliminated minimum age requirement and 25 percent ownership requirement. Added eligibility for U.S. nationals and aliens lawfully admitted for permanent residence.

Existing (Old) Section	Proposed (New) Section	Summary of Proposed Changes to Existing Section
§ 5.11	Removed.	
§ 5.13	Removed.	
§ 5.15	Moved to § 5.10(b).	Revised.
§ 5.17	Moved to § 5.19.	
§ 5.19	Moved to § 5.26(b).	Revised.
§ 5.21	Moved to § 5.12.	
§ 5.23	Moved to § 5.13.	
§ 5.25	Moved to § 5.11.	
§ 5.27	Moved to § 5.22.	Revised.
§ 5.29	Removed.	
§ 5.31	Moved to § 5.20(a).	Revised.
§ 5.33	Moved to § 5.26(a).	
§ 5.35	Moved to § 5.36.	Revised.
§ 5.37	Moved to § 5.36	Revised.
§ 5.39	Moved to § 5.36(b).	
§ 5.41	Moved to §§ 5.32(c), 5.34(c) and 5.36(c).	Revised.
§ 5.43	Moved to § 5.30(b)(3).	Revised.
§ 5.45	Moved to § 5.36(a).	
§ 5.47(a)	Moved to § 5.42(b).	
§ 5.47(b)	Moved to § 5.42(a).	
§ 5.47(c)	Moved to § 5.41(a).	
§ 5.48(a)	Moved to § 5.40(c)(2).	
§ 5.48(b)	Moved to § 5.46(a).	
§ 5.49	Moved to § 5.30(c)(1).	Revised.
§ 5.55	Moved to § 5.16(a).	
§ 5.57	Moved to § 5.16(b).	
§ 5.59	Moved to § 5.18(b) and (c).	Revised.
§ 5.61	Moved to § 5.14.	
§ 5.63	Moved to § 5.14.	
§ 5.65	Removed.	
§ 5.69	Removed.	

Table 1B: Derivation Table

Proposed (new) Section	Existing (Old) Section	Proposed change
§ 5.1	§ 5.01	Added definitions for

Proposed (new) Section	Existing (Old) Section	Proposed change
		"Auxiliary Act", "Direct law enforcement", "Personal property of the Auxiliary". Amended the definitions for "Facility or facilities", "Radio station" and "Secretary".
§ 5.3	Paragraph (a) imported from § 5.05.	Added new provisions.
§ 5.5	§ 5.05	Added new provisions.
§ 5.7	§ 5.07	Added new provisions.
§ 5.9		Added new provisions.
§ 5.10	Imported language from §§ 5.09, 5.13, and 5.15.	New section.
§ 5.11	Imported language from § 5.25.	
§ 5.12	Imported language from § 5.21.	New section.
§ 5.13	Imported language from § 5.23.	
§ 5.14	Imported language from §§ 5.61 and 5.63.	New section.
§ 5.15		Reserved for future use.
§ 5.16	Imported language from §§ 5.55 and 5.57.	New section.
§ 5.17		Added new provisions.
§ 5.18	Paragraphs (b) and (c) imported language from § 5.59.	New section. Added new provisions.
§ 5.19	Imported language from § 5.17.	
§ 5.20	Imported and amended language from § 5.31.	New section.
§ 5.22	Imported language from §§ 5.27 and 5.29.	New section.
§ 5.24		New section. Added new

Proposed (new) Section	Existing (Old) Section	Proposed change
		provisions.
§ 5.26	Paragraph (a) imported from § 5.33. Paragraph (b) imported from § 5.19.	New section.
§ 5.30	Imported language from § 5.43.	New section.
§ 5.32	Imported and amended language from § 5.41.	New section.
§ 5.34	Imported language from § 5.41.	New section.
§ 5.36	Imported and amended provisions from §§ 5.35, 5.37, 5.39, 5.41, and 5.45.	New section.
§ 5.40	Paragraph (c) (2) imported from §§ 5.47 and 5.48.	New section. Added new provisions.
§ 5.41		Added new provisions.
§ 5.42	Imported language from 5.47(a) and (b).	New section.
§ 5.43		Added new provisions.
§ 5.44		New section. New provisions.
§ 5.45		Added new provisions.
§ 5.46	Imported language from § 5.48.	New section.
§ 5.47		Added new provisions.
§ 5.48		Added new provisions.

Subpart A - General

§ 5.1 - Definitions: We propose to revise this section to update several definitions.

The definition of "Act," which currently includes only "the Coast Guard Auxiliary and Reserve Act of 1941, as

amended and recodified by [the] Act of August 4, 1949" would be deleted and replaced by a new definition, "Auxiliary Act", which includes the provisions of the U.S. Code dealing most directly with the Auxiliary (14 U.S.C. 821-894), including the legislative changes set out in section III, Background.

The definition of "facility" would be amended to add motorized vehicles, trailers, and other equipment accepted for use by the Coast Guard.

The definition of "radio station" would be amended to clarify that it includes any equipment used for radio communications or direction finding as well as a building or vehicle housing such equipment.

The definition of "Secretary" would be amended to reflect the nature of the Coast Guard's service. Most of the time, the Coast Guard is a part of the Department of Homeland Security and the Coast Guard's Secretary is the Secretary of DHS. In time of war, the Coast Guard may be transferred to the Department of the Navy, and the Coast Guard's Secretary is the Secretary of the Navy. The proposed language is standard language for Coast Guard regulations in which the term Secretary is defined.

The proposed definitions section would also include a definition of "direct law enforcement." Direct law

enforcement is described in Chapter 4.E. of the Auxiliary Operations Policy Manual, COMDTINST 16798.3E (series), and is used in other Auxiliary publications and section 5.20(b) of the proposed rule.

Finally, we propose to define a new term, "Personal property of the Auxiliary," to cover motor boats, yachts, aircraft, radio stations, motorized vehicles, trailers, or other equipment owned by or under the administrative jurisdiction of the Auxiliary and used solely for Auxiliary purposes, as provided by section 226 of the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293, codified at 14 U.S.C. 821(d)(2)).

§ 5.3 - Purpose: We propose to clarify the purpose of the Auxiliary to conform to current statutory language. The new language is broader than the existing regulation, in keeping with the current language of 14 U.S.C. 822.

Proposed paragraphs (a) and (b) of this section review basic information about the Auxiliary. Paragraph (c) of this section would specify that Auxiliary units may act as caretakers, docents, or tour guides for Coast Guard and other Federal- or State-owned property, a customary role which many Coast Guard units may not be aware is an authorized mission of the Auxiliary. Paragraph (d) of this section would be a new provision supporting the

Commandant's commitment to strengthening partnerships with other Federal, State and local agencies.

§ 5.5 - Organization, officers, and leadership: We propose to revise this section to explain the organization and composition of the Auxiliary. Because of the Auxiliary's unique nature as a Congressionally-chartered volunteer organization, its units are sometimes not recognized as distinct from the Coast Guard. This explanation would also assist Auxiliary units in their dealings with commercial institutions (e.g. banks and insurance companies).

§ 5.7 - Administration, specific authorizations: This section would address the Commandant's ability to delegate authority, and provide examples of specific actions that the Commandant has delegated to the Auxiliary. It would also clarify that the Auxiliary national board and Auxiliary districts or regions may incorporate under State law and pursuant to Coast Guard policy, and establish basic functions of the Auxiliary's national corporation.

§ 5.9 - References: We propose to move the contents of existing § 5.09 to new § 5.10. We propose to add a new section § 5.9 to establish various Coast Guard directives and publications as appropriate references for the Coast

Guard and the public. Those directives and publications can be found online at <http://www.uscg.mil/auxiliary/publications/comdtinst/>.

Subpart B - Membership

This proposed new subpart would contain regulations relating to members and membership eligibility, discipline and compensation.

§ 5.10 - Eligibility for membership: We propose to add this section to consolidate and revise existing §§ 5.09, 5.11, 5.13, and 5.15.

Paragraph (a) would identify the basic eligibility criteria for Auxiliary membership and eliminate the minimum age requirement and the 25-percent ownership requirement in § 5.09 of the current regulations. This paragraph also incorporates the 2012 legislative change that authorizes eligibility for Auxiliary membership to include nationals of the United States¹ and aliens lawfully admitted for permanent residence. The minimum age is not set by statute.

¹"Nationals of the United States" includes all U.S. citizens as well as individuals who, though not citizens, owe permanent allegiance to the United States. 8 U.S.C. 1101(a) (22). Non-citizen nationals currently are primarily American Samoans and Swain Islanders.

Current Auxiliary policy does not require any portion of ownership in any vessel or other equipment as a pre-condition for membership. The 25-percent ownership requirement in the current regulations was founded on an ownership requirement in the Act of Aug 4, 1949 (63 Stat. 555) which required that members either have an ownership interest in a motorboat, yacht, aircraft, or radio station, or possess special training or experience which qualifies them for duty. Current Auxiliary policy and practice is to consider all prospective members under the "special training or experience" provision, including applicants who are willing to undergo training in order to qualify. Although owners of vessels or other equipment would still be eligible for membership, removing the ownership requirement from the CFR will emphasize the importance of training and experience for prospective auxiliary members and reduce the chance of a prospective member mistakenly believing that not being a vessel owner precludes him or her from membership.

Paragraph (b) incorporates the provisions of the current § 5.15 - Admission for membership, without substantive change.

§ 5.11 - Honorary members: Provisions of the existing § 5.11, "Membership in military organizations",

would be removed, as they are unnecessarily duplicative of law (14 U.S.C. 825) and policy. We propose to revise this section to incorporate existing § 5.25 "Honorary members."

§ 5.12 - Ranks, titles, designations, or grades: This new section contains language, without substantive change, from existing § 5.21.

§ 5.13 - Advancement: Provisions of existing § 5.13 would be moved to § 5.10. Proposed § 5.13 states that the Commandant will prescribe policy on advancement, which will be described in Auxiliary policy manuals. This language was moved with minor edits from § 5.23.

§ 5.14 - Uniforms and insignia: We propose to add this section to incorporate provisions of existing §§ 5.61 and 5.63.

§ 5.15: We propose to remove and reserve this section. The provisions of existing § 5.15 would be consolidated in § 5.10.

§ 5.16 - Compensation and travel expenses: This section would specify that Auxiliarists are not authorized to receive compensation for their services, but may be paid actual necessary travel expenses. This section combines existing §§ 5.55 and 5.57.

§ 5.17 - Status of members as Federal employees: Provisions of existing § 5.17 would be moved to § 5.19. We

propose to add new language in this section to clarify that Auxiliaries are not considered Federal employees, except as provided by 14 U.S.C. 823a.

§ 5.18 - Injury or death in the line of duty: We propose to add this section to clarify the compensation an Auxiliary is entitled to receive if injured or killed in the performance of duty; codify Coast Guard policy on what is "performance of duty" in the context of Auxiliary activity, describe Auxiliaries' access to medical and dental care; and summarize compensation provisions for the beneficiaries of Auxiliaries who are injured or die in the performance of duty.

Paragraph (a) of this section would codify Coast Guard policy and practice relating to the definition of "performance of duty" in the context of Auxiliary activity. The Coast Guard compensates members for injuries sustained in the performance of duty under 14 USC §§ 707 and 832 and the Federal Employees Compensation Act, 5 U.S.C. 8101 *et seq.* Existing Coast Guard policy extends this coverage to include travel to and from the Auxiliaries' permanent residence to a place of duty (see paragraph 7.0.2.c. of the Administrative Investigation Manual COMDTINST M5830.1). This proposed rule would codify the Coast Guard's practice

of including stops *en route* and incidental to duty, and travel between duty locations, as "performance of duty."

Paragraphs (b) and (c) of this section would specify Auxiliaries' entitlement to hospitalization, medical care, and compensation for injury or death in the performance of duty. Paragraphs (b) and (c) of this section were imported from existing § 5.59. These entitlements are taken from three different statutory provisions:

- 14 U.S.C. 832 provides that Auxiliaries are entitled to hospitalization and medical care as if they were members of the Temporary Reserve.
- 14 U.S.C. 707 provides that temporary members of the reserve who are injured or die while performing active duty will be compensated as if they were civilian employees with basic pay equivalent to grade GS-9.
- The note to 5 U.S.C. 8133 provides additional compensation eligibility for civilian employees killed in the performance of duty.

§ 5.19 - Disenrollment: The provisions of existing § 5.19 would be incorporated into new § 5.28. We propose to revise this section to incorporate provisions from existing § 5.17 without substantive change.

Subpart C - Activities, Operations and Training

§ 5.20 - Authority: We propose to add this section to clarify the limits on Auxiliarists' authority in the performance of their duties. Paragraph (a) would incorporate the provisions of existing § 5.31. Paragraph (b) would state the prohibition on Auxiliarists engaging in direct law enforcement or military operations. Paragraph (c) would clarify that Auxiliarists' authority in supporting enforcement of limited access areas, regulated navigation areas, and special local regulations is limited to advising the public of such restrictions.

§ 5.21: We propose to move this section to § 5.12.

§ 5.22 - Assignment to duties: We propose to consolidate the provisions of existing §§ 5.27 and 5.29 regarding assignment to duty in this section.

§ 5.23: We propose to remove this section, as its provisions would be consolidated in new § 5.13.

§ 5.24 - Procedure for assignment to duty: We propose to add this section to include information about procedures for assignment to duty of Auxiliarists and their facilities.

§ 5.25: We propose to remove this section, as its provisions would be consolidated in new § 5.11.

§ 5.27: We propose to remove this section, as its provisions would be consolidated in new § 5.22.

§ 5.26 - Training, examination, and assignment: We propose to consolidate existing §§ 5.19 and 5.33 into this new section to explain that the Commandant will set the training, qualification and examination requirements for Auxiliarists and may authorize Auxiliarists to take correspondence and distance-learning courses from Coast Guard providers.

§ 5.29: We propose to consolidate this section into new § 5.22.

Subpart D - Facilities and Equipment

Subpart D would contain the regulations dealing with vessels, aircraft, radio stations, motor vehicles, or other equipment used by the Auxiliary, the treatment of such facilities as United States property, and the procedures for transferring administrative jurisdiction of such property to and from the Auxiliary.

§ 5.30 - Facilities and other equipment: We propose to add this section to codify Coast Guard policy regarding duty status, liability protection, and status as a public vessel of facilities and other equipment used by the Auxiliary, and to revise provisions for reimbursement of facility operating expenses.

Paragraph (b) (1) "Duty status" would clarify that personal property of the Auxiliary (typically unit-owned property) is considered assigned to authorized Coast Guard duty at all times. This is consistent with Coast Guard policy, established by paragraph D.2. of ALCOAST 600/05, "Changes to Auxiliary Administrative Policies."

Paragraph (b) (2) would clarify the scope of liability protection for personal property of the Auxiliary. The Commandant has directed that personal property of the Auxiliary be treated as property of the United States for the purposes of the Federal Tort Claims Act, the Military Claims Act, the Public Vessels Act, the Suits in Admiralty Act, the Admiralty Extension Act, and other matters related to non-contractual civil liability, in accordance with provisions of 14 U.S.C. 821(d) (2), as amended by the Coast Guard and Maritime Transportation Act of 2004 (Pub L. 108-293).

Paragraph (b) (3), "Public vessels," will clarify that facilities loaned or given to the Auxiliary by the Coast Guard or other Federal agencies retain their public status.

Paragraph (c), "Expenses," codifies Coast Guard policy for reimbursement of expenses incurred by Auxiliarists for the use, operation, maintenance, damage, or loss of their facilities.

§ 5.31: We propose to consolidate this section into new § 5.20.

§ 5.32 - Offer of member-owned vessels, aircraft, radio stations, motorized vehicles, trailers, and other equipment for use as a facility: We propose to add this section to update the terms of existing § 5.37. This proposed section would apply when Auxiliary members want to offer member-owned vessels, aircraft, radio stations, motorized vehicles, trailers, and other equipment for use as a facility. Specific procedures for these offers are in the Auxiliary Policy Manual.

§ 5.34 - Offers of personal property of the Auxiliary as a facility: We propose to add this section to describe Coast Guard policy for personal property of the Auxiliary to be accepted as a facility. This proposed section would apply when an Auxiliary unit has ownership or administrative jurisdiction over a vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment and wants to offer it for use as a facility. Specific procedures for these offers are in the Auxiliary Policy Manual.

§ 5.37 Offer of facilities: We propose to remove this section as its provisions would be consolidated in new § 5.32.

§ 5.35: We propose to remove this section because it restates language contained in 14 U.S.C. 826.

§ 5.36 - Loan of vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment to the Coast Guard: This section would apply when a person wants to loan a vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment to the Coast Guard for Coast Guard use. This section would consolidate and update provisions of existing §§ 5.35, 5.37, 5.39, 5.41, and 5.45 and would add motorized vehicles, trailers, and other equipment owned by members or Auxiliary units to the list of property which may be loaned to the Coast Guard. In addition, this section would specify procedures for the return of facilities at the expiration of the loan period, clarify that facilities will not be considered loaned until accepted by a person authorized by the Commandant, and provide for waiver of loan procedures in an emergency.

§ 5.39 - Acceptance of facilities: We propose to remove this section. Provisions of the existing § 5.39 would be consolidated in new § 5.30.

Subpart E - Auxiliary Markings

This new subpart will describe the distinctive marks, decals and ensigns (flags) the public is likely to see on

Auxiliary facilities. Sections of the current 33 CFR part 5 will be moved into this subpart. The proposed regulations would not change the design or display of any marks, decals, or ensigns. Marks which were previously described only in the Auxiliary Manual COMDTINST M16790.1 (series) or the Coast Guard Heraldry Manual COMDTINST M5200.18A would be described here, which would help the public more easily identify Auxiliary facilities.

Auxiliary markings distinguish Auxiliary boats, aircraft, and other equipment. Ensigns are flags flown by or at an asset (e.g., flown on a flag staff at a building) to signify that the asset is associated with the Auxiliary or Coast Guard. Decals are markings adhesively applied to the asset to denote its status as an Auxiliary facility that has been accepted for use by the Coast Guard. Patrol signs are placards, normally removable and of a proportionate size for the vessel on which they are displayed, which indicate to nearby vessels that the vessel is engaged in Auxiliary activities. The Auxiliary mark is a permanent marking signifying that the asset belongs to the Auxiliary in terms of custody, ownership, or as personal property.

§ 5.40 - Distinctive markings for vessels, aircraft, motorized vehicles, trailers, radio stations, and other

equipment: This section incorporates provisions of the current §§ 5.47 and 5.48. We propose to add this section on facility markings to clarify for both Auxiliarists and the public the identification of Auxiliary vessels, aircraft, motorized vehicles, trailers, radio stations, and other equipment, and advise the public of the penalties for unauthorized display of Auxiliary markings.

§ 5.41 - Auxiliary emblem: We propose to revise this section. Provisions of the existing § 5.41 would be distributed to §§ 5.32(c), 5.34(c), and 5.36(c). The proposed section would incorporate provisions of existing § 5.47(c) describing the Auxiliary emblem and explain the use of the emblem as identification.

§ 5.42 - Auxiliary ensign: The provisions of this proposed new section would be imported from existing § 5.47 and would describe the Auxiliary ensign and its display.

§ 5.43 - Auxiliary mark: We propose to revise this section. Provisions of the existing § 5.43 would be moved to § 5.30(b)(3) or removed. The proposed revised section would describe the Auxiliary mark and its display.

§ 5.44 - Auxiliary facility decal: We propose to add this section to describe the Auxiliary facility decal and its display.

§ 5.45 - Patrol signs: We propose to revise this section. The provisions of the current section would move to § 5.36(a). The revised section would describe the Auxiliary patrol sign and its display.

§ 5.46 - Auxiliary patrol boat ensign: This proposed new section would describe the Auxiliary patrol boat ensign and its display. These provisions would be imported from the current § 5.48.

§ 5.47 - Coast Guard ensign: We propose to revise this section. Provisions of the existing § 5.47 would be moved to § 5.46. The revised section would describe the correct display of the Coast Guard ensign and cross-reference to the official description of the Coast Guard ensign at 33 CFR 23.15.

§ 5.48 - Auxiliary patrol boat ensign: We propose to revise this section. Provisions of the existing § 5.48 would be moved to § 5.46. The revised section would describe markings that may be displayed on Auxiliary aircraft.

§ 5.49 - Reimbursement for expenses: We propose to remove this section; its provisions would be moved to § 5.30(c).

§ 5.55: We propose to remove this section; its provisions would be consolidated in § 5.16.

§ 5.57: We propose to remove this section; its provisions would be consolidated in § 5.16.

§ 5.59: We propose to remove this section because its provisions would be consolidated in § 5.18.

§ 5.61: We propose to remove this section because its provisions would be consolidated in § 5.14.

§ 5.63: We propose to remove this section because its provisions would be consolidated in § 5.14.

§ 5.65: We propose to remove this section because its provisions (dealing with the eligibility of Auxiliary members for Coast Guard medals and awards) are more appropriately covered in the primary Auxiliary policy reference, the Coast Guard Auxiliary Manual (COMDTINST M16790.1 (series)). Medals and awards are a matter of agency management and agency personnel, and therefore exempt from the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

§ 5.69: We propose to remove this section because it restates, verbatim, language contained in 14 U.S.C. 893.

V. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Coast Guard has determined that this NPRM is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows.

The proposed rule would conform regulatory language to statutes, codify many existing practices, clarify procedures, increase procedural flexibility for Coast Guard and Auxiliarists, increase overall efficiency in the process, and re-organize content to improve clarity. There are no costs to either the federal government or the private sector associated with these proposed changes.

This notice of proposed rulemaking applies to members and prospective members of the Coast Guard Auxiliary and people and companies that interact with the Auxiliary. The Auxiliary is a Congressionally-chartered component of the Coast Guard made up of civilian volunteers. Auxiliary units ("flotillas") are neither corporations nor charities and often encounter administrative trouble with banks, insurance companies, and businesses. This rulemaking would clarify for the public the nature, organization, and purpose of the Auxiliary, and conform the regulatory language to the Auxiliary statutes, as amended by legislative changes. Many of these changes are already reflected in Coast Guard policies and manuals. For example, the financial aspects of these regulations, such as reimbursement of expenses, including the Standard Auxiliary Maintenance Allowance (SAMA), incorporate already existing practices and authorities, as detailed in Auxiliary Manual COMDTINST M16790.1 (series), chapter 9 and Auxiliary Operations Policy Manual COMDTINST M16798.3 (series), chapter 3 and section B-2.

These proposed changes would update our regulations to capture our current practices regarding reimbursement of Auxiliary facility expenses and maintenance costs. The payment of death gratuities to the representatives of

Auxiliarists who die in the performance of duty while assigned to duty is currently funded pursuant to legislative authorization and supported by Commandant policy (COMDTINST 12550.21A, CG Death Gratuity Payment), enabling Auxiliarists to be regarded equally as Coast Guard employees for the purpose of death gratuity payments.

The primary benefit of this proposed rule would be to conform regulatory language to the legislative changes described in section III, Background. This would result in increased efficiencies in Auxiliary interactions with the Coast Guard and with the public, including Auxiliarists' interaction with banks and insurance agents. Banks help provide reimbursement (via direct deposit) for operations and other missions requiring Auxiliarists to incur an initial expense from their personal funds. Insurance agents' relationships are also important, as Auxiliarists may be reimbursed for damages to their vessels when those vessels are engaged in waterborne or airborne operational patrols.

We have classified the proposed changes into categories, as listed in Table 2. There are no costs associated with the changes.

Table 2. 33 CFR part 5 categories and discussion of proposed changes

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
§ 5.1	Revise section	None-Administrative revisions made consistent with statutory changes	Revises the definition of "Act" to "Auxiliary Act" and to include recent statutory amendments, including Coast Guard Authorization Act of 1996 amendments, the 2002 amendment contained in the Maritime Transportation Security Act of 2002 (Pub. L. 107-295), the 2004 amendment contained in the Coast Guard and Maritime Transportation Security Act of 2004 (Pub. L. 108-293), the 2006 amendments contained in the Coast Guard and Maritime Security Act of 2006 (Pub. L. 109-241) and the 2012 amendments contained in the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112-213). Added definitions for "Personal property of the Auxiliary" and "Direct law enforcement". Amended definition for "Facility or facilities", "radio station" and "Secretary".

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
§ 5.3	Revise section	None- Administrative revisions made consistent with statutory changes	Discusses Auxiliary purpose and scope of activities to conform to language in 14 U.S.C. 822, as amended in 1996.
§ 5.5	Revise and expand section	None- Clarification of existing law	Added to clarify non-military nature of Auxiliary and composition of elected and appointed officers.
§ 5.7	Revise section	None	Defines the nature and authority of Auxiliary.
§ 5.9	Revise section	None- Reorganization and revision to reflect current practice	Existing contents covered in new section § 5.10. New content establishes various Coast Guard directives and publications as appropriate references. Provides details of Auxiliary activities through Source 1: Auxiliary Manual COMDTINST M16790.1 (series) and Source 2: Auxiliary Operations Policy Manual COMDTINST M16798.3 (series).
§ 5.10	Add section	None- Removes Barrier to Entry	New content moved from 5.09 and revised. Eliminates minimum age and ownership requirements to remove unnecessary barriers to entry into Auxiliary. Reflects recent legislative change that authorizes eligibility for Auxiliary members to include United States nationals and aliens lawfully admitted for permanent

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
			residence.
§ 5.11	Revise section	None-Reorganization	Existing content removed as redundant of 14 U.S.C. 825; new content moved with minor edits from § 5.25.
§ 5.12	Add section	None-Reorganization	New content moved with minor edits from § 5.21.
§ 5.13	Revise section	None-Reorganization	Existing content covered by § 5.10 and published in the Auxiliary manual COMDT INSTM16790.1 (series), Chapter 3A. New content moved with minor edits from § 5.23.
§ 5.14	Add section	None-Reorganization	New content moved from § 5.61-- Uniforms and § 5.63-- Insignia and combined. See Source 1 for additional background.
§ 5.15	Reserved	None-Reorganization and Clarification	Existing content moved to § 5.10 and revised for clarity.
§ 5.16	Add section	None-Reorganization	New content moved from § 5.55-- Compensation and § 5.57-- Traveling expenses and per diem and combined with minor edit.
§ 5.17	Revise section	None-Reorganization and Clarification Of Current Practice consistent with statute	Existing content moved to § 5.19. New content added to clarify the status of Auxiliarists as Federal employees only as provided for by 14 U.S.C. 823a.

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
§ 5.18	Add section	None-Clarification Of Current Practice	Added to clarify the benefits paid in case of injury or death while assigned to duty. In general, these benefits are currently covered in AFC-08 account for civilian pay. Procedures already in place. See Source One, Chapter 5 Section K: Claims, Injury, or Death while Assigned to Duty and K.6.: Death of an Auxiliarist while Assigned to Duty. No net cost to the Coast Guard or Auxiliary.
§ 5.19	Revise section	None-Reorganization	Existing content moved to § 5.26(b); new content moved from current § 5.17.
§ 5.20	Add section	None-Reorganization, revisions to reflect current practice	Moved from § 5.31. The Coast Guard would amend this section to remove the word "specific". It would also implement current policy on exclusion from law enforcement power and authority of Auxiliarists and recognition that status and authority of Auxiliarists in various duty assignments may be limited beyond that of their regular Coast Guard counterparts.
	Remove § 5.21	None-Reorganization	Moved to § 5.12.

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
§ 5.22	Add section	None- Reorganization	Existing content moved to § 5.12. New content moved from §§ 5.27 and
	Remove § 5.23	None- Reorganization	Moved to § 5.13.
§ 5.24	Add section	None- Current practice	Added to include information about procedures for assignment to duty of Auxiliarists and their facilities. This section would codify the language in the Auxiliary Manual, based on the 1996 Act.
	Remove § 5.25	None- Reorganization	Moved to § 5.11.
§ 5.26	Add section	None- Reorganization	New content moved from § 5.33. Added minor edited item from § 5.19.
	Remove § 5.27	None- Reorganization	Moved to § 5.22.
	Remove § 5.29	None- Reorganization	Moved to § 5.22.
§ 5.30	Add section	None- Reorganization	New section with clarification of facilities' duty status. Clarification of facilities' liability status, in accordance with 14 U.S.C. 821(d)(2). New section to clarify expense reimbursement using concepts from current § 5.49.

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
	Remove § 5.31	None- Reorganization	Moved to § 5.20.
§ 5.32	Add section	None- Reorganization	Incorporates provisions of § 5.41.
	Remove § 5.33	None- Reorganization	Moved to § 5.26.
§ 5.34	Add section	None- Clarification of current practice consistent with statute	This section would be added to address offers of use personal property of the Auxiliary, pursuant to 14 U.S.C. 821. Incorporates provisions of § 5.41.
	Remove § 5.35	None- Reorganization	Incorporated into § 5.36.
§ 5.36	Add section	None - Clarification of current practice	New provision on how member-owned or unit-owned property can be loaned to the Coast Guard (no Auxiliarists onboard). Incorporates provisions from current §§ 5.35, 5.37, 5.39, 5.41, and 5.45.
	Remove § 5.37	None- Reorganization	Incorporated into § 5.36.
	Remove § 5.39	None- Reorganization	Moved without change to § 5.36(b).
§ 5.40	Add section	None - Clarification of current practice	Added this new section on facility markings to ensure clarity for both the Auxiliary and public regarding the identification of Auxiliary vessels, aircraft, motorized vehicles, trailers, radio stations, and other equipment when

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
			assigned to Coast Guard duty.
§ 5.41	Revise section	None-Clarification of current practice	Concept of existing section moved to §§ 5.32(c), 5.34(c), and 5.36(c). Added language to describe the Auxiliary emblem and discuss when it can be worn and used. Paragraph (b) moved from section § 5.47(c).
§ 5.42	Add section	None-Clarification of current practice	Content moved from 5.47. Prescribes the use of the Auxiliary ensign in accordance with Auxiliary policy.
§ 5.43	Revise section	None-Current practice	Existing content moved to § 5.30. New content would codify the description of the Auxiliary mark from the Auxiliary Manual.
§ 5.44	Add section	None-Clarification of current practice	Added to prescribe the use of the Auxiliary facility decal as a distinctive marking for vessels, aircraft, and radio stations that have been offered, inspected, and accepted for Coast Guard use.
§ 5.45	Revise section	None - Reorganization and clarification of current practice	Concept of existing section moved to § 5.36(a). Added new content to describe the use of Auxiliary patrol signs as distinctive markings for vessels, motorized vehicles, and trailers when assigned to duty.

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
§ 5.46	Add section	None - Clarification of current practice	Added to address the proper use of the Auxiliary patrol boat ensign. Moved part of § 5.48 to this location.
§ 5.47	Revise section	None- Reorganization and Current practice	Existing content moved to §§ 5.40, 5.41, and 5.42. New content would codify the display of the Coast Guard ensign as described in Auxiliary policy.
§ 5.48	Revise section	None - Reorganization and clarification of current practice	Existing content moved to §§5.40 and 5.46. New content added to address the additional markings of Auxiliary aircraft. Would reflect the allowance for Auxiliary aircraft to display the Auxiliary facility decal.
	Remove § 5.49	None- Reorganization	Concept moved to § 5.30.
	Remove § 5.55	None- Reorganization	Moved to § 5.16.
	Remove § 5.57	None- Reorganization	Moved to § 5.16.
	Remove § 5.59	None- Reorganization	Moved to § 5.18 (b) and (c) and revised.
	Remove § 5.61	None- Reorganization	Moved to § 5.14.
	Remove § 5.63	None- Reorganization	Moved to § 5.14.
	Remove § 5.65	None- Current Practice	Internal policy in Auxiliary Manual COMDTINST M16790.1

Proposed Section	Category of Change	Cost Impact	Discussion of proposed changes
			(series) Chapter 11, and in Coast Guard Medals and Awards Manual, COMDTINST M1650.25. See also 14 U.S.C. 502.
	Remove § 5.69	None-Duplicative	Duplicative of 14 U.S.C. 893.

Source 1 Auxiliary Manual COMDTINST M16790.1 (series).

Source 2 Auxiliary Operations Policy Manual COMDTINST M16798.3 (series).

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule imposes no direct costs; consequently, there are no impacts on small entities to consider.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think your business or organization qualifies, how and to what degree this rule would economically affect it.

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects

of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may

disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant regulatory action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis

checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule involves the operation and administration of the Coast Guard Auxiliary and falls under section 2.B.2, figure 2-1, paragraphs (34) (a), (b), (c), and (d) of the Instruction. These paragraphs exempt regulations which are editorial or procedural, concern internal agency functions or organization, concern the training and qualifying of maritime personnel, and concern the inspection of vessels, respectively. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of subjects

33 CFR Part 5

Volunteers.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 5 as follows:

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

PART 5--COAST GUARD AUXILIARY

1. Revise part 5 to read as follows:

Subpart A--General

Sec.

5.1 Definitions.

5.3 Purpose.

- 5.5 Organization, officers, and leadership.
- 5.7 Administration, specific authorizations.
- 5.9 References.

Subpart B--Membership

- 5.10 Eligibility for membership.
- 5.11 Honorary members.
- 5.12 Ranks, titles, designations, or grades.
- 5.13 Advancement.
- 5.14 Uniforms and insignia.
- 5.15 [Reserved]
- 5.16 Compensation and travel expenses.
- 5.17 Status of members as Federal employees.
- 5.18 Injury or death in the line of duty.
- 5.19 Disenrollment.

Subpart C--Activities, Operations, and Training

- 5.20 Authority.
- 5.22 Assignment to duties.
- 5.24 Procedure for assignment to duty.
- 5.26 Training, examination, and assignment.

Subpart D--Facilities and other equipment

- 5.30 Facilities and other equipment.
- 5.32 Offer of member-owned vessels, aircraft, radio stations, motorized vehicles, trailers, and other equipment for use as a facility.
- 5.34 Offers of personal property of the Auxiliary as a facility.
- 5.36 Loan of vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment to the Coast Guard.

Subpart E--Auxiliary Markings

- 5.40 Distinctive markings for vessels, aircraft, motorized vehicles, trailers, radio stations, and other equipment.
- 5.41 Auxiliary emblem.
- 5.42 Auxiliary ensign.
- 5.43 Auxiliary mark.
- 5.44 Auxiliary facility decal.
- 5.45 Patrol signs.
- 5.46 Auxiliary patrol boat ensign.
- 5.47 Coast Guard Ensign.
- 5.48 Marking of aircraft.

Authority: 14 U.S.C. 633, 821, 822, 823, 823a, 824, 825, 826, 827, 828, 829, 830, 831, 832, 892; Department of Homeland Security Delegation No. 0170.1

Subpart A--General

§ 5.1 Definitions.

Certain terms used in this part are defined as follows:

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

Auxiliary means the United States Coast Guard Auxiliary established pursuant to the Auxiliary Act.

Auxiliary Act means the laws governing the Coast Guard Auxiliary, codified in chapters 23 and 25 of Title 14, United States Code (14 U.S.C. 821-894).

Commandant means the Commandant of the United States Coast Guard.

Direct Law Enforcement is described in Chapter 4.E. of the Auxiliary Operations Policy Manual, COMDTINST M16798.3E, and includes boarding a vessel for law enforcement purposes, carrying on their person firearms or law enforcement equipment (handcuffs, pepper spray, etc.), investigating complains of negligent operations, serving subpoenas, and covert operations.

Facility or facilities means a vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment accepted for use by the Coast Guard.

Member means any person who is a member of the Auxiliary.

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.

Personal property of the Auxiliary means a vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment owned by, or under the administrative jurisdiction of, the Coast Guard Auxiliary or an Auxiliary unit, and that is used solely for Auxiliary purposes and in accordance with the Auxiliary Act.

Radio station means any equipment (including a building, recreational vehicle, trailer, or other motorized vehicle which houses such equipment) used for radio communication or direction finding.

Secretary means the Secretary of the Department in which the Coast Guard is operating.

Vessel means a motorboat or yacht.

Yacht means either--

(1) Any documented or numbered vessel used exclusively for pleasure; or

(2) Any sailboat used exclusively for pleasure more than 16 feet in length measured end-to-end over the deck, excluding sheer.

§ 5.3 Purpose.

(a) The Auxiliary is a uniformed, volunteer, non-military organization administered by the Commandant under the direction of the Secretary.

(b) The purpose of the Auxiliary is to assist the Coast Guard, as authorized by the Commandant, in performing any Coast Guard function, power, duty, role, mission, or operation authorized by law.

(c) Auxiliary units may assist the Coast Guard in maintenance and upkeep, and in conducting tours of Coast Guard and other Federal- or State-owned structures and property.

(d) The Auxiliary may assist Federal, State, and municipal agencies, as authorized by the Commandant.

§ 5.5 Organization, officers, and leadership.

(a) The Coast Guard Auxiliary is organized pursuant to the Auxiliary Act and Coast Guard regulations. Organizational elements include a national board and staff, national leadership, areas, districts, regions, divisions, and flotillas. A flotilla is the basic organizational unit of the Auxiliary.

(b) The Auxiliary has elected and appointed officers.

(1) Elected officers are in charge of Auxiliary units and elements at both the national and local levels of the Auxiliary organization. The Unit Leader is the senior elected officer at each level of the Auxiliary organization: Flotilla Commanders, Division Commanders, District Commodores, and the National Commodore are unit leaders.

(2) Appointed officers are appointed by elected officers and hold staff positions in Auxiliary units at both the national and local levels of the Auxiliary organization.

(c) For all Auxiliary units, the Unit Leader is the person authorized to exercise the authority set forth in § 5.07 of this part on behalf of his or her unit, and may delegate that authority.

(d) For all Auxiliary units, the Finance Officer is the person authorized to handle, transfer and disburse bank accounts, monies, stocks, bonds, and other items of intangible personal property on behalf of his or her Auxiliary Unit.

§ 5.7 Administration, specific authorizations.

(a) The Commandant may delegate any authority vested in him by the Auxiliary Act or by this part to personnel of

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

(b) The Commandant has authorized Auxiliary Unit Leaders to take the following actions in furtherance of the authorized missions of the Auxiliary. This is not an exclusive list--

(1) Acquire, own, hold, use, and dispose of vessels, aircraft, motorized vehicles, trailers, radio stations, and electronic equipment and other items of tangible, personal property;

(2) Accept ownership, custody, or use of vessels, boats, aircraft, radio stations, motorized vehicles, trailers, electronic equipment, and other tangible property from the Coast Guard, from other Federal, State, or municipal agencies, or from private or non-profit groups;

(3) Create and manage bank accounts, monies, stocks, bonds, and other financial instruments;

(4) Accept and use gifts, grants, legacies, and bequests;

(5) Accept funds, materials, services, and the use of facilities from public and private entities and Federal, State, or municipal agencies;

(6) Enter into licenses, leases, contracts, memoranda of agreement, or understanding, and other agreements; and

(7) Enter into cooperative agreements and grant agreements with the Coast Guard and other Federal, State, or municipal agencies.

(c) The national board of the Auxiliary may form a corporation under State law and Coast Guard policy to manage the Auxiliary's fiscal affairs. The national corporation may--

(1) Hold copyrights, trademarks, and titles to Auxiliary property;

(2) Contract with the Coast Guard and other Federal, State, and municipal agencies to procure such goods and services;

(3) Receive grants, gifts, and other items on behalf of the Auxiliary; and

(4) Conduct other activities as may be authorized by the Commandant.

(d) An Auxiliary district or region may form a corporation under State law and Coast Guard policy.

§ 5.9 References.

Further guidance on Auxiliary missions and activities may be found in Coast Guard directives and publications, including the Coast Guard Auxiliary Manual (Commandant

Instruction M16790.1 (series)) and the Coast Guard Auxiliary Operations Policy Manual (Commandant Instruction M16798.3 (series)). Those directives and publications can be found online at <http://www.uscg.mil/auxiliary/publications/comdtinst/>.

Subpart B--Membership

§ 5.10 Eligibility for membership.

(a) To be eligible for membership in the Auxiliary, a person must be a United States citizen, a national of the United States or of its Territories and possessions, or an alien lawfully admitted for permanent residence; and must meet the standards for enrollment, retention, and conduct established by the Commandant.

(b) An applicant who is accepted for membership will be enrolled in the Auxiliary and will be issued a membership certificate and identification card. Possession of a membership certificate or identification card does not entitle a person to any rights or privileges of the Coast Guard or the Coast Guard Reserve except as authorized by the Commandant.

§ 5.11 Honorary members.

The Commandant may grant any person honorary membership in the Auxiliary. An honorary member of the Auxiliary, solely by reason of such honorary membership, is

not entitled to any of the rights, benefits, privileges, duties, or obligations of Auxiliary membership.

§ 5.12 Ranks, titles, designations, or grades.

The members of the Auxiliary will have such ranks, titles, designations, or grades, pursuant to their qualifications, as the Commandant considers necessary.

§ 5.13 Advancement.

The Commandant will prescribe the circumstances and qualifications under which members of the Auxiliary may be advanced in offices and programs.

§ 5.14 Uniforms and insignia.

Members of the Auxiliary may purchase from the Coast Guard such uniforms and insignia as may be authorized by the Secretary. Such uniforms and insignia may be worn by members of the Auxiliary under such circumstances and upon such occasions as may be authorized by the Commandant.

§ 5.15 [Reserved]

§ 5.16 Compensation and travel expenses.

(a) Except as provided in paragraph (b) of this section, no member of the Auxiliary will receive any compensation for services as a member of the Auxiliary.

(b) A member of the Auxiliary may be paid actual necessary travelling expenses, including a per diem allowance.

§ 5.17 Status of members as Federal Employees.

Members of the Auxiliary are not considered Federal employees except as provided by 14 U.S.C. 823a or other provisions of law.

§ 5.18 Injury or death in the line of duty.

(a) The performance of duty, as the term is used in this part, includes time spent in the performance of duty, travel between duty locations, and travel to and from a place of assigned duty and the permanent residence or other appropriate non-duty destination.

(b) A member of the Auxiliary who incurs physical injury or contracts sickness or disease in the performance of duty is entitled to medical and dental care until the resulting impairment cannot be materially improved by further hospitalization or treatment. A member of the Auxiliary who incurs physical injury or contracts sickness or disease in the performance of duty is entitled to obtain medical care from the Coast Guard, including through Coast Guard arrangements with a contract provider, the Public Health Service, the Department of Defense, or a Veterans' Administration facility.

(c) If a member of the Auxiliary is physically injured or dies as a result of physical injury, and the injury is incurred in the performance of duty, the member

or the member's beneficiaries are authorized to receive compensation in accordance with 14 U.S.C. 707, 5 U.S.C. 8133 and 8134 and section 651 of Pub. L. 104-208 (5 U.S.C. 8133 Note).

§ 5.19 Disenrollment.

A member of the Auxiliary will be disenrolled on request, upon ceasing to possess the qualifications for membership, for cause, upon direction of the Commandant, or upon death.

Subpart C--Activities, Operations and Training

§ 5.20 Authority.

(a) Except as provided in paragraphs (b) and (c) of this section, or otherwise limited by the Commandant, members of the Auxiliary assigned to duty will have the same authority in its execution as a member of the regular Coast Guard who is assigned to a similar duty.

(b) Members of the Auxiliary are not authorized to engage in direct law enforcement or military missions.

(c) Members of the Auxiliary are not authorized to enforce limited access areas, regulated navigation areas, or special local regulations. Members of the Auxiliary assigned to patrol limited access areas, regulated navigation areas, or areas regulated under special local regulations may advise the public regarding compliance with

the limited access area, regulated navigation area, or areas regulated by special local regulations.

§ 5.22 Assignment to duties.

Members of the Auxiliary will not be assigned duties until they have been found to be competent to perform such duties and have been designated by authority of the Commandant to perform such duties.

§ 5.24 Procedure for assignment to duty.

Members and facilities may be assigned to duty by any of the following procedures:

(a) Verbal or written orders issued by competent Coast Guard authority;

(b) The actual performance of an authorized activity or mission by a qualified member of the Auxiliary; or

(c) Other procedures, as designated by the Commandant.

§ 5.26 Training, examination, and assignment.

(a) The Commandant will prescribe, through the Coast Guard Auxiliary references described in § 5.09 of this part, the type of training, qualifications, and examinations required before a member of the Auxiliary will be deemed qualified to perform certain duties, and will prescribe the circumstances and manner in which members of

the Auxiliary will be authorized to perform regular and emergency duties.

(b) The Commandant may authorize members of the Auxiliary to pursue correspondence courses and distance-learning courses conducted by the Coast Guard Institute or other authorized Coast Guard providers and to attend other courses and training available to members of the Coast Guard or Reserve.

Subpart D-Facilities and Equipment

§ 5.30 Facilities and Other Equipment.

(a) This subpart contains regulations related to the facilities and other equipment used by the Auxiliary or loaned by the Auxiliary to the Coast Guard.

(b) *Status.* (1) Duty. Personal property of the Auxiliary, except when used for other than Auxiliary purposes in accordance with 14 U.S.C. 822, will be considered assigned to authorized Coast Guard duty at all times.

(2) Liability. Personal property of the Auxiliary, except when used for other than Auxiliary purposes in accordance with 14 U.S.C. 822, will be treated as property of the United States for the purposes of the Federal Tort Claims Act, the Military Claims Act, the Public Vessels Act, the Suits in Admiralty Act, the Admiralty Extension

Act, and other matters related to non-contractual civil liability. Personal property of the Auxiliary is not normally covered for damage to the property itself.

(3) Public vessels. Vessels, aircraft, and radio stations loaned to, or whose custody has been given to, the Auxiliary by the Coast Guard or other Federal agencies remain public vessels of the United States, vessels of the Coast Guard, public aircraft, Coast Guard aircraft, or government stations, as applicable.

(c) Expenses. (1) The Coast Guard may reimburse expenses related to the use, operation, or maintenance of a facility.

(2) The Coast Guard may reimburse expenses for damage or loss to or by a facility, including remediation, restoration, repair, replacement, or salvage costs.

(3) The Coast Guard may provide an allowance for the maintenance of a facility.

§ 5.32 Offers of member-owned vessels, aircraft, radio stations, motorized vehicles, trailers, and other equipment for use as a facility.

(a) Members of the Auxiliary wishing to offer vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment for use as a facility must follow the procedures set forth in the Auxiliary Operations

Policy Manual described in § 5.09 of this part.

(b) Upon acceptance of the vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment as a facility, the Coast Guard will issue to the member the appropriate numbers and decals identifying the facility as a Coast Guard Auxiliary facility.

(c) In an emergency, vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment may be accepted by the Coast Guard without an inventory or the use of the prescribed forms.

§ 5.34 Offers of personal property of the Auxiliary for use as a facility.

(a) Auxiliary units wishing to offer personal property of the Auxiliary (usually unit-owned property) for use as a facility must follow the procedures set forth in the Auxiliary Operations Policy Manual described in § 5.09 of this part.

(b) Upon acceptance of the personal property of the Auxiliary as a facility, the Coast Guard will issue to the Auxiliary unit the appropriate numbers and decals identifying the facility as a Coast Guard Auxiliary facility.

(c) In an emergency, personal property of the Auxiliary may be accepted by the Coast Guard without an inventory or the use of prescribed forms.

§ 5.36 Loan of vessels, aircraft, radio stations, motorized vehicles, trailers, or other equipment to the Coast Guard.

(a) A vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment may be loaned to the Coast Guard for a specific period, and must be returned at the expiration of that period, unless circumstances or an emergency 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 will be re-inventoried as of the time, date, and place of re-delivery, and mutually settled by the owner and the Coast Guard representative. If the vessel was accepted during an emergency, 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 the claim. The Coast Guard representative will take all proper precautions to protect the owner's interest, as well as that of the United States.

(b) Except as permitted in paragraph (c) of this section, no vessel, aircraft, radio station, motorized

vehicle, trailer, or other equipment will 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 an acceptance and a complete inventory of consumable and expendable stores and equipment has been made and mutually settled by the owner and the Coast Guard representative.

(c) In an emergency, a vessel, aircraft, radio station, motorized vehicle, trailer, or other equipment may be loaned to Coast Guard without an inventory or the use of the prescribed form.

Subpart E-Auxiliary Markings

§ 5.40 Distinctive markings for vessels, aircraft, motorized vehicles, trailers, radio stations, and other equipment.

(a) This subpart establishes regulations for the display of distinctive markings of vessels, aircraft, motorized vehicles, trailers, radio stations, and other equipment used by the Auxiliary.

(b) *Auxiliary markings on vessels, aircraft, motorized vehicles, trailers, radio stations and other equipment.* (1) Vessels, aircraft, motorized vehicles, trailers, and radio stations or other equipment which are

owned by Auxiliary members, or are personal property of the Auxiliary, or are otherwise affiliated with the Auxiliary may display the Auxiliary Emblem (§ 5.41), the Auxiliary Ensign (§ 5.42), and/or the Auxiliary Mark (§ 5.43).

(2) Vessels, aircraft, motorized vehicles, trailers, radio stations or other equipment which have been accepted as Auxiliary facilities shall display the Auxiliary Facility Decal (§ 5.44).

(3) Facilities which are assigned to Coast Guard duty shall display the National Ensign, the Patrol Sign (§ 5.45) and either the Patrol Boat Ensign (§ 5.46) or the Coast Guard Ensign (§ 5.47) as appropriate and able.

(4) Facilities which are assigned to Coast Guard duty and have a Coast Guard commissioned, warrant, or non-commissioned officer onboard may display the Coast Guard Ensign in place of the Patrol Boat Ensign.

(c)(1) Any person who desires to reproduce Coast Guard Auxiliary markings for non-Coast Guard Auxiliary use must obtain approval from the U.S. Coast Guard Auxiliary Division (CG-BSX-1), 2100 2nd St. SW Stop 7581, Washington, DC 20593-7581.)

(2) Unauthorized use of Auxiliary markings is subject to the penalties of 14 U.S.C. 638, 639 and 892.

§ 5.41 Auxiliary emblem.

(a) Description. 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.

(b) Display. The Auxiliary emblem is used as identification on Auxiliary ensigns, flags, pennants, decals, and patrol signs. The emblem is used on Auxiliary insignia, such as the member collar device, cap device, and Auxiliary aviator, coxswain, and Auxiliary Operator (AUXOP) devices, and on publications, stationery, clothing, and jewelry.

§ 5.42 Auxiliary ensign.

(a) Description. 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 must be at a 70 degree angle, rising away from the hoist.

(b) Display. The Coast Guard Auxiliary ensign may be displayed by any member of the Auxiliary on a vessel, aircraft, radio station, building, or other location at any time, under such conditions as the Commandant may direct.

§ 5.43 Auxiliary mark.

(a) Description. The Auxiliary mark consists of a

broad diagonal blue stripe followed (to the left or aft) by two narrow stripes--first a white stripe, and then a red stripe. The Auxiliary emblem, as described in § 5.41 of this subpart, is centered in the diagonal blue stripe.

(b) Display. The Auxiliary identifying mark is used to identify personal property of the Auxiliary and on Coast Guard Auxiliary authorized publications, stationery, jewelry, and similar items.

§ 5.44 Auxiliary facility decal.

(a) Description. The Auxiliary facility decal is composed of two parts. The upper part is a conventional white shield with a medium blue (Coast Guard blue) Coast Guard Auxiliary emblem 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 blue (Coast Guard blue) stripe. The entire design is centered on the shield. The lower part displays two laterally radiating wreath branches centered immediately beneath the shield. A broad diagonal red (Coast Guard red) slash, which is at a 70 degree angle, rising toward the hoist and followed, away from the hoist, by two narrow, parallel stripes, first a white stripe and then a medium blue (Coast

Guard blue) stripe, is displayed on the wreath's right-hand branch.

(b) Display. Vessels, aircraft, and radio stations that are accepted for use by the Coast Guard must display the Auxiliary facility decal as authorized in the Auxiliary Operations Policy Manual described in §5.09 of this part.

(1) On vessels, the decal must be displayed on the port side of the vessel so as to be visible by another vessel when meeting such vessel in a port-to-port situation.

(2) On aircraft, the decal must be displayed on the pilot's side of the forward half of the aircraft.

(3) On radio facilities, the miniature decal must be displayed on the radio, on the exterior or interior of the building or trailer in which the radio is housed, or, in the case of mobile radios, on any legal place on the motor vehicle in which the radio is contained.

§ 5.45 Patrol sign.

(a) Description. The Auxiliary facility patrol sign has the words "Coast Guard Auxiliary Patrol" in black or dark blue lettering and must contain the Auxiliary emblem, as described in this subpart, centered within the confines of a broad diagonal red (Coast Guard red) stripe which is at a 70 degree angle rising toward the bow of the vessel.

The red (Coast Guard red) stripe is followed, away from the bow, by two narrow, parallel stripes--first a white stripe, and then a medium blue (Coast Guard blue) stripe. The background of the sign must be white.

(b) Display. (1) The patrol sign must be displayed by vessels while assigned to Coast Guard duty.

(2) The patrol sign must be displayed on the forward half of each side and may be displayed on the stern of the vessel.

(3) The patrol sign may be displayed on each side of a motorized vehicle or trailer containing a mobile radio or radio direction finding unit while assigned to Coast Guard duty. Normally, they will be placed in any legal position on the upper half of both sides of the vehicle.

§ 5.46 Auxiliary Patrol Boat ensign.

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

(b) Display. The Auxiliary Patrol Boat Ensign is flown on vessel facilities when assigned to Coast Guard duty. The Auxiliary patrol boat ensign must be displayed at the mast head or from the most conspicuous hoist.

§ 5.47 Coast Guard Ensign

(a) Description. The Coast Guard ensign is described in 33 CFR 23.15.

(b) Display. The Coast Guard ensign may be displayed in place of the Auxiliary patrol boat ensign on a vessel while it is assigned to Coast Guard duty and has a Coast Guard commissioned, warrant, or non-commissioned officer onboard. The Coast Guard ensign must be displayed at the mast head or from the most conspicuous hoist.

§ 5.48 Marking of aircraft.

(a) Aircraft owned by members of the Auxiliary or that are personal property of the Auxiliary may also display the Auxiliary emblem on both sides of the vertical stabilizer (outside of the stabilizer for twin tail aircraft) or on both sides of the fuselage aft of the wing.

(b) Aircraft which have been accepted as facilities may be marked with the Auxiliary Mark (§ 5.43) and/or the word "RESCUE" on the underside of the wing or fuselage for easier identification from the ground.

Dated: April 30, 2013

PAUL F. THOMAS
Captain, U.S. Coast Guard
Director of Inspections and Compliance

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