

(ii) The cognizant District Commander, upon a determination that an amendment is needed to maintain the OCS facility's security. The cognizant District Commander will give the OCS facility owner or operator written notice and request that the OCS facility owner or operator propose amendments addressing any matters specified in the notice. The OCS facility owner or operator will have at least 60 days to submit its proposed amendments. Until amendments are approved, the OCS facility owner or operator shall ensure temporary security measures are implemented to the satisfaction of the cognizant District Commander.

(2) Proposed amendments must be sent to the cognizant District Commander. If initiated by the OCS facility owner or operator, the proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the cognizant District Commander allows a shorter period. The cognizant District Commander will approve or disapprove the proposed amendment in accordance with §106.410 of this subpart.

(3) Nothing in this section should be construed as limiting the OCS facility owner or operator from the timely implementation of such additional security measures not enumerated in the approved FSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the cognizant District Commander by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

(4) If the owner or operator has changed, the Facility Security Officer (FSO) must amend the Facility Security Plan (FSP) to include the name and contact information of the new OCS facility owner(s) or operator(s) and submit the affected portion of the FSP for review and approval in accordance with §106.410 of this subpart.

(b) *Audits.* (1) The FSO must ensure an audit of the FSP is performed annually, beginning no later than one year from the initial date of approval and attach a letter to the FSP certifying

that the FSP meets the applicable requirements of this part.

(2) If there is a change in ownership or operations of the OCS facility, or if there have been modifications to the OCS facility, the FSP must be audited including but not limited to physical structure, emergency response procedures, security measures, or operations.

(3) Auditing the FSP as a result of modifications to the OCS facility may be limited to those sections of the FSP affected by the OCS facility modifications.

(4) Unless impracticable due to the size and nature of the company or the OCS facility, personnel conducting internal audits of the security measures specified in the FSP or evaluating its implementation must:

(i) Have knowledge of methods of conducting audits and inspections, and control and monitoring techniques;

(ii) Not have regularly assigned security duties; and

(iii) Be independent of any security measures being audited.

(5) If the results of an audit require an amendment of either the Facility Security Assessment (FSA) or FSP, the FSO must submit, in accordance with §106.410 of this subpart, the amendments to the cognizant District Commander for review and approval no later than 30 days after completion of the audit and a letter certifying that the amended FSP meets the applicable requirements of this part.

[USCG-2003-14759, 68 FR 39345, July 1, 2003, as amended at 68 FR 60559, Oct. 22, 2003]

## PART 107—NATIONAL VESSEL AND FACILITY CONTROL MEASURES AND LIMITED ACCESS AREAS

### Subpart A [Reserved]

### Subpart B—Unauthorized Entry Into Cuban Territorial Waters

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## § 107.200

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AUTHORITY: 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamation 6867, 61 FR 8843, 3 CFR, 1996 Comp., p. 8; Presidential Proclamation 7757, 69 FR 9515 (March 1, 2004); Secretary of Homeland Security Order 2004–001; Department of Homeland Security Delegation No. 0170.1; and 33 CFR 1.05–1.

SOURCE: Order 2004–001, 69 FR 41372, July 8, 2004, unless otherwise noted.

### Subpart A [Reserved]

### Subpart B—Unauthorized Entry Into Cuban Territorial Waters

#### § 107.200 Definitions.

Unless otherwise specified, as used in this subpart:

*Auxiliary vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water attached to, or embarked in, another vessel to which this subpart applies.

*Cuban territorial waters* means the territorial sea and internal waters of Cuba determined in accordance with international law.

*Owner, agent, master, officer, or person in charge* means the persons or entities that maintain operational control over any vessel subject to the requirements of this subpart.

*U.S. territorial waters* has the same meaning as provided in 50 U.S.C. 195.

*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including auxiliary vessels.

*Vessel of the United States* means—

(1) A vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(2) A vessel owned in whole or part by—

(i) The United States or a territory, commonwealth, or possession of the United States;

(ii) A State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) A corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other legal entity, created and authorized to own vessels

under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law;

(3) A vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation;

(4) A vessel without nationality as defined in 46 U.S.C. Appendix 1903(c)(2)–(3); or

(5) A vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas.

#### § 107.205 Purpose and delegation.

The purpose of this subpart is to implement Presidential Proclamation 7757, and Secretary of Homeland Security Order 2004–001. All powers and authorities granted to officers of the Coast Guard by this subpart may be delegated to other officers and agents of the Coast Guard unless otherwise prohibited by law.

#### § 107.210 Applicability.

(a) This subpart applies to:

(1) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels, that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters;

(2) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and

the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that are located at or get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or depart U.S. territorial waters with the intent to enter Cuban territorial waters; and

(3) Any person who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart.

(b) This subpart does not apply to: Foreign vessels, as defined by 46 U.S.C. 2101(12), public vessels, as defined by 46 U.S.C. 2101(24) operated for non-commercial purposes, or vessels of the United States entering Cuban territorial waters under force majeure.

#### § 107.215 Regulations.

(a) Each person or vessel to which this subpart applies may not get underway or depart from U.S. territorial waters without a written permit from the Commander, Seventh Coast Guard District, or the District Commander's designee. Permits may be obtained pursuant to the process established in § 107.220. The owner, agent, master, or person in charge of the vessel must maintain the written permit for the vessel on board the vessel.

(b) Each person or vessel to which this subpart applies must obey any oral or written order issued by a Coast Guard Area or District Commander, or their designees, who may issue oral or written orders to control the anchorage or movement of such vessels and persons. Designees include Captains of the Port, and commissioned, warrant and petty officers of the Coast Guard.

(c) No person or vessel to which this subpart applies may obstruct or interfere with the exercise of any power conferred by this subpart.

(d) Coast Guard commissioned, warrant and petty officers may go or remain on board a vessel subject to this subpart, may place guards on the subject vessel, may remove all persons not specifically authorized by the Coast Guard to go or remain on board the subject vessel, and may take full or partial possession or control of any such vessel or part thereof, or person

on board. Such actions to be taken are in the discretion of the Coast Guard Area or District Commander, or their designees, as deemed necessary to ensure compliance with this subpart and any order given pursuant thereto.

(e) Where there is a reasonable, articulable basis to believe a vessel to which this subpart applies intends to enter Cuban territorial waters, any Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge, or any member of the crew of any such vessel to provide verbal assurance that the vessel will not enter Cuban territorial waters as a condition for a vessel to get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or to depart from U.S. territorial waters. A Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge of the vessel to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations. The failure of an owner, agent, master, officer, or person in charge, or any member of the crew of any vessel (including all auxiliary vessels) to which this subpart applies to provide requested verbal assurances shall not be used as the sole basis for seizing the vessel for forfeiture under this subpart.

(f) The provisions of this subpart are in addition to any powers conferred by law upon Coast Guard commissioned, warrant, or petty officers, and not in limitation of any powers conferred by law or regulation upon such officers, or any other officers of the United States.

#### § 107.220 Permits.

(a) Applications for a permit may be obtained by writing or calling the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, telephone (305) 415-6920, or by such other means as the District Commander may make available to the public. The completed application may be returned via regular mail or facsimile to the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, facsimile

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(305) 415-6925, or by other means prescribed by the District Commander for the convenience of the applicant.

(b) All applications must be written in English and legible.

(c) The information and documentation in this paragraph must be provided with the application in order for it to be complete and considered by the Coast Guard:

(1) The name, address, and telephone number of the applicant;

(2) A copy of the valid vessel registration;

(3) A copy of a valid and applicable license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security, pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730-774 for the export of the vessel to Cuba; and

(4) A copy of a valid and applicable specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license shall make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required.

(d) Such applications must provide the documentation required by §107.220(c) for each person to which this subpart applies on board the particular vessel.

(e) Upon receiving an application for a permit, the Seventh Coast Guard District Commander (o) has ten (10) calendar days from the receipt of the application to decide whether the application is complete and, if so, whether a permit will be issued or denied. Applicants will be notified in writing of the decision to issue or deny a permit. Incomplete applications will be returned to the applicant, along with the reasons why such application was deemed incomplete.

**§ 107.225 Appeals.**

(a) Upon written notification by the Coast Guard that an application has been denied, the applicant may request the Seventh Coast Guard District Com-

mander to reconsider. The request to reconsider must be in writing, must be made within five (5) business days from the date of receipt of the initial denial, and must contain complete supporting documentation and evidence which the applicant wishes to have considered. Requests for reconsideration must be mailed to Commander, Seventh Coast Guard District (d), 909 SE First Avenue, Miami, FL 33131.

(b) Upon receipt of the request to reconsider, the Seventh Coast Guard District Commander may direct a representative to gather and submit documentation or other evidence, which, in the judgment of the Seventh District Commander, would be necessary or helpful to a resolution of the request. If gathered and submitted, a copy of this documentation and evidence shall be made available to the applicant. The applicant shall be afforded five (5) business days from the date of receipt of documentation and evidence gathered by the Seventh Coast Guard District Commander's representative to submit rebuttal materials. On or before the fifteenth (15th) calendar day following submission of all materials, the Seventh Coast Guard District Commander shall issue a ruling, in writing, on the request to reconsider. The ruling may reverse the initial denial, or, if the denial is upheld, must contain the specific basis for denial of the application upon reconsideration.

(c) The Seventh Coast Guard District Commander's denial of a request for reconsideration taken under paragraph (b) of this section constitutes final agency action.

**§ 107.230 Enforcement.**

(a) *Unauthorized departure or entry, or both.* (1) Vessels and persons to whom this subpart applies, as described in §107.210(a)(1), that do not comply with §107.215(a), or any order issued pursuant to this subpart may be subject to a civil penalty of not more than \$25,000 for each day of violation.

(2) Vessels and persons to whom §107.230(a)(1) applies shall be held to a standard of strict liability for any entry into Cuban territorial waters without a permit or for failure to maintain the permit for the vessel on board the vessel as required under this

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subpart, except that strict liability will not be imposed if the failure to obtain or carry a permit results primarily from an act of war, force majeure, or the negligence of the United States.

(b) *Knowing failure to comply.* Any person to whom this subpart applies as described in §§107.210(a)(2) or (a)(3) who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart may be subject to:

- (1) Imprisonment for not more than 10 years;
- (2) A monetary penalty of not more than \$10,000;
- (3) Seizure and forfeiture of the vessel; and
- (4) A civil penalty of not more than \$25,000 for each day of violation.

(c) *False Statements.* Violation of 18 U.S.C. 1001 may result in imprisonment for not more than five years or a fine, or both.

(d) *Other enforcement.* The civil penalties provided for in this subpart are separate from and in addition to any enforcement action that any other agency may seek for violations of the statutes and regulations administered by such agencies.

**§ 107.240 Continuation.**

This subpart will continue to be enforced so long as the national emergency with respect to Cuba, and the emergency authority relating to the regulation of the anchorage and movement of vessels declared in Proclamation 6867, and expanded in scope by Proclamation 7757, continues.