

§ 1.01-85

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

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

§ 1.01-85 Redlegation.

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

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

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

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

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

Subpart 1.05—Rulemaking

AUTHORITY: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.

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

§ 1.05-1 Delegation of rulemaking authority.

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

(b) The Secretary of Homeland Security has delegated much of this authority to the Commandant, U.S. Coast

33 CFR Ch. I (7-1-09 Edition)

Guard, including authority to issue regulations regarding the functions of the Coast Guard and the authority to redelegate and authorize successive redelegations of that authority within the Coast Guard.

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

(d) The Commandant has redelegated the authority to develop and issue those regulations necessary to implement laws, treaties and Executive Orders to the Assistant Commandant for Marine Safety, Security and Stewardship (CG-5). The Commandant further redelegates this same authority to the Director, National Pollution Fund Center (Director, NPFC) for those regulations within the Director, NPFC area of responsibility.

(1) The Assistant Commandant for Marine Safety, Security, and Stewardship may further reassign the delegated authority of this paragraph to:

(i) Any Director within the CG-5 Directorate as appropriate; or

(ii) Any other Assistant Commandant as appropriate.

(2) The authority redelegated in paragraph (d) of this section is limited to those regulations determined to be nonsignificant within the meaning of Executive Order 12866.

(e)(1) The Commandant has redelegated to the Coast Guard District Commanders, with the reservation that this authority must not be further redelegated except as specified in paragraph (i) below, the authority to issue regulations pertaining to the following:

(i) Anchorage grounds and special anchorage areas.

(ii) The designation of lightering zones.

(iii) The operation of drawbridges.

(iv) The establishment of Regulated Navigation Areas.

(v) The establishment of safety and security zones.

(vi) The establishment of special local regulations.

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

Coast Guard, DHS

§ 1.05-10

substantial issues or to generate controversy.

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

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

(h) The Chief, Office of Regulations and Administrative Law (CG-0943), has authority to develop and issue those regulations necessary to implement all technical, organizational, and conforming amendments and corrections to rules, regulations, and notices.

(i) The Commandant has redelegated to the Coast Guard District Commanders the authority to redelegate in writing to the Captains of the Port (COTP), with the reservation that this authority must not be further redelegated, the authority to issue such special local regulations as the COTP deems necessary to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas and marine parades.

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by CGD 96-026, 61 FR 33662, June 28, 1996; CGD 97-023, 62 FR 33361, June 19, 1997; USCG-2003-14505, 68 FR 9534, Feb. 28, 2003; USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008; USCG-2009-0416, 74 FR 27437, June 10, 2009]

§ 1.05-5 Marine Safety and Security Council.

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

and guidance for all Coast Guard regulatory activity.

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

§ 1.05-10 Regulatory process overview.

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

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

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

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

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-14505, 68 FR 9534, Feb. 28, 2003; USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008]

§ 1.05-15

33 CFR Ch. I (7-1-09 Edition)

§ 1.05-15 Public participation.

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

§ 1.05-20 Petitions for rulemaking.

(a) Any member of the public may petition the Coast Guard to undertake a rulemaking action. There is no prescribed form for a petition for rulemaking, but the document should provide some supporting information as to why the petitioner believes the proposed rulemaking is necessary and the document should clearly indicate that it is a petition for rulemaking. Petitions should be addressed to the Executive Secretary, Marine Safety and Security Council (CG-0943), United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

(b) The petitioner will be notified of the Coast Guard's decision whether to initiate a rulemaking or not. If the Coast Guard decides not to pursue a rulemaking, the petitioner will be notified of the reasons why. If the Coast Guard decides to initiate rulemaking,

it will follow the procedure outlined in this subpart. The Coast Guard may publish a notice acknowledging receipt of a petition for rulemaking in the FEDERAL REGISTER.

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

[CGD 95-057, 60 FR 34148, June 30, 1995, as amended by USCG-2003-15404, 68 FR 37740, June 25, 2003; USCG-2008-0179, 73 FR 35001, June 19, 2008]

§ 1.05-25 Public docket.

(a) A public docket is maintained electronically for each petition for rulemaking and each Coast Guard rulemaking project and notice published in the FEDERAL REGISTER. Each docket contains copies of every rulemaking document published for the project, public comments received, summaries of public meetings or hearings, regulatory assessments, and other publicly-available information. Members of the public may inspect the public docket and copy any documents in the docket. Public dockets for Coast Guard rulemakings are available electronically at <http://www.regulations.gov>. To access a rulemaking, enter the docket number associated with rulemaking in the "Search" box and click "Go >>." These documents are also kept at a Docket Management Facility maintained by the Department of Transportation, West Building, room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) The public dockets for Coast Guard rulemaking activity initiated by Coast Guard District Commanders are available for public inspection at the appropriate Coast Guard District office or online at <http://www.regulations.gov>. Paragraph (a) of this section describes how to access and view these documents.

(c) The public dockets for Coast Guard rulemaking activity initiated by Captains of the Port are available for inspection at the appropriate Captains of the Port Office or online at <http://www.regulations.gov>. Paragraph (a) of this section describes how to access and view these documents.

[USCG-2008-0179, 73 FR 35001, June 19, 2008]

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

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

§ 1.05–35 Notice of proposed rulemaking (NPRM).

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

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

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

§ 1.05–45 Interim rule.

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the

interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

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

§ 1.05–50 Final rule.

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

§ 1.05–55 Direct final rule.

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

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

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

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

(e) If the Coast Guard receives a written adverse comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the FEDERAL REGISTER to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only

§ 1.05-60

part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

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

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

§ 1.05-60 Negotiated rulemaking.

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

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

- (1) There is a need for a rule;
- (2) There are a limited number of representatives for identifiable parties affected by the rule;
- (3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;
- (4) There is a likelihood of a committee consensus in a fixed time period;
- (5) The negotiated rulemaking process will not unreasonably delay the rule;
- (6) The Coast Guard has resources to do negotiated rulemaking; and
- (7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

33 CFR Ch. I (7-1-09 Edition)

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

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

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

§ 1.07-1 Purpose.

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

§ 1.07-5 Definitions.

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

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

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

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

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

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

§ 1.07-10 Reporting and investigation.

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