

# UNITED STATES COAST GUARD AUXILIARY

## ELEVENTH DISTRICT SOUTHERN REGION DISTRICT 11(SR) LEGAL DEPARTMENT COMO Michael C. Johnson, DSO-LP

### 2013 LEGAL MATTERS MEMORANDUM

This Memo outlines legal rules and procedures applicable to some of the common Auxiliary activities and issues. Complete rules, regulations, and procedures are contained in the several official publications, particularly in the current version of the Auxiliary Manual, COMDTINST M16790.1G ("AUXMAN"). The most current version of the AUXMAN is maintained online on the Auxiliary's National website. **Members should always refer to the website to ensure they have the most up-to-date version.** An Auxiliary member who has a legal question about any Auxiliary matter and who cannot find the answer in an official Auxiliary publication should contact the "assigned" Assistant District Legal Officer.

**A. DISTRICT LEGAL OFFICERS' ASSIGNMENTS.** To expedite legal assistance, District legal officers have divided responsibility for all legal matters in District 11(SR). The DSO-LP is responsible for District Bridge and District Staff matters. **The ADSOs-LP (Assistant District Legal Officers) are assigned to Divisions--and each Flotilla of each Division.** Effective January 1, 2013, the assignments are as follows:

1. Arthur C. Wynn: Divisions 1, 9 and 10.
2. Eugene D. Tavis: Divisions 4 and 11.
3. Robert G. van Schoonenberg: Divisions 5 and 6.
4. Sam Milligan: Divisions 7 and 12.

**Please send all inquiries to the assigned legal officer.** Presenting a legal inquiry or proposed Auxiliary Agreement to the "wrong" legal officer will only delay response while the matter is transferred to the assigned legal officer.

**B. ELECTED AND APPOINTED LEADERS' RESPONSIBILITIES.** Each Auxiliary member is personally responsible for being familiar with and adhering to Coast Guard and Auxiliary rules and procedures applicable to the particular mission or activity in which the member may be engaged. Elected and appointed leaders at all Unit levels, however, are directly in the chain of communication and have a leadership responsibility to ensure that new information is efficiently, effectively, and quickly passed down the chain. In the event failure to do so causes another member to suffer a loss of Coast Guard benefits or incur liability to a Third Party, the responsible leader could be personally liable to the Third Party and/or to the other Auxiliary member.

**C. ASSIGNMENT TO DUTY -- "INCIDENT COVERAGE".**

1. **NO "Coverage" Guarantee.** The Coast Guard Authorization Act of 1996, as amended to date (the "**1996 ACT**") is **not** an absolute guarantee of coverage in every case. In the event of an "Incident" during an Auxiliary mission, the coverage issue in **each** case is decided on its own facts and circumstances. The Coast Guard investigates and makes the determination whether there is coverage for Auxiliary property loss claims; the Department of Labor ("DOL") for Auxiliary members' injury or death claims; the Department of Justice ("DOJ") for Third Party claims for property damage, injury, and/or death. Although both DOL and DOJ will take into account a Coast Guard coverage recommendation, DOL and DOJ each make an independent investigation and determination for claims within their respective jurisdiction.

2. **Auxiliary Coverage Benefits.** In the event of an "Incident", a qualified member properly assigned to duty should have coverage during the mission and also should have benefits and liability coverage en route (to/from) the place of the mission, **provided** the mission is one in which an Auxiliarist is authorized by the AUXMAN to participate. The Coast Guard and federal government benefits and protection may include medical coverage, reimbursement for personal property loss, educational and survivors' benefits, and insulation from personal liability for injury or damage to a Third Party person and/or property.

3. **"Qualified for" AND "Assignment to Duty".** To be eligible for coverage benefits, an Auxiliary member must conform to the minimum rules and procedures established by the Commandant (generally found in the AUXMAN and/or the new Auxiliary Operations Policy Manual, COMDTINST M16798.3E (the "OPMAN")). It is **extremely important** that members understand the **distinction between: (a) qualification for duty; and (b) assignment to duty**--and comply with the assignment to duty requirement. To be "qualified for duty," certain Auxiliary programs require that a member be "current" (specifically trained for and holding official program certification in the form of a certificate or other writing) in all certification requirements for that particular program (e.g., surface and air operations, vessel examination, instructor). Most such programs impose annual requirements (and/or periodic, mandatory workshops) to maintain currency. Other program areas may require only that the person be an Auxiliary member to be "qualified for duty." **Even though** a member may be **qualified** for a particular mission or activity (e.g., a VE is qualified to perform VSCs), **to be eligible for full "coverage" the member also must be assigned to duty** for the particular mission by the Coast Guard or an authorized Auxiliary officer.

4. **Assignment Authority; Non-Delegation.** Orders for water, air, and vehicular Patrol operations can be issued **only** by the Coast Guard--**that is** the assignment to duty. The AUXMAN specifies those Auxiliary members with authority for assigning and scheduling members to duty for other Auxiliary missions (**SEE**, e.g., AUXMAN Table 5-1 at pg 5-50). At the Flotilla level, the FC, VFC, **and** the appropriate staff officer for a particular mission/activity (e.g., the FSO-VE for a VE mission) each have assignment to duty authority **over members of their particular flotilla only**. That authority generally cannot be delegated to any other member. The assignment to duty **always** should be scheduled in writing.

5. **DCDR and VCDR Limited Assignment Authority.** Division elected officers have limited assignment to duty authority. The DCDR has assignment to duty authority as to the VCDR, the Division

Staff officers, and Flotilla Commanders--for Division matters only. As Division Chief of Staff, a VCDR has assignment to duty authority with respect to each of that Division's staff officers—for Division matters only. There is, however, **no** DCDR and/or VCDR assignment to duty authority as to any other Division member or non-Division matter.

6. **DDCs, DSOs, ADSOs, SOs Lack of Assignment Authority; Exception**. District and Division staff officers are by their appointment assigned to duty and are charged with responsibility and authority for management, oversight, and coordination of matters within their appointed sphere of responsibility and activity. With one exception, however, **no** DDC, DSO, ADSO, or SO has any authority to assign to duty any other Auxiliary member. The sole exception is that a DSO has assignment to duty authority for the ADSOs of that particular DSO, within the scope of the DSO's particular Auxiliary activity. AUXMAN Para 4.G.7. In other words (with the single DSO exception), generally **only** the Flotilla "working level" Auxiliary staff officers--the FSOs--have assignment to duty authority.

7. **No Assignment to Duty--No Coverage**. It is absolutely **critical** that Auxiliary members always comply with the assignment to duty procedures for all missions. Absent proper scheduling for and assignment to duty, an Auxiliary member (even though qualified for a particular mission) is: (a) **Not** eligible for government protection against liability to a Third Party; and (b) **Not** eligible for benefits for the member's own personal injury or property damage loss. (For example, a VE-qualified member who "goes off on her/his own" to do VSCs without being assigned to duty is at risk of loss of benefits and personal liability exposure to Third Parties.) The AUXMAN makes this crystal clear: "**The Auxiliarist's assignment to duty is a requirement before any statutory protections are available. If the Auxiliarist is not assigned to duty, then the Auxiliarist cannot be characterized as a Federal employee and therefore cannot be acting within the scope of employment.**" (AUXMAN Para 5.J.3 at pg 5-48; emphasis added)

8. **"Scope of Employment"**. In any Incident (presuming, first, the Auxiliary member is both qualified for and assigned to duty), **the ultimate issue** is whether the member was acting within the scope of employment; i.e., acting within reasonable parameters of the assigned mission. If the member materially deviates from the authorized mission, there probably is no coverage if an Incident then results.

9. **Burden of Proof in Assignment to Duty**. The AUXMAN (Para 5.J.3 at pg 5-48-49) emphasizes that the Auxiliary member bears the burden of producing evidence to support a "covered" claim and the member should be prepared to document assignment to duty: "**The strongest possible evidence is that which demonstrates assignment to duty made prior to the incident in question. Examples may include verbal orders issued by an appropriate Coast Guard Order Issuing Authority (OIA) and documented by e-mail or unit logs prior to mission execution or written orders issued by an appropriate Coast Guard OIA and received and acknowledged by an Auxiliarist prior to mission execution. Similarly, verbal authorizations from appropriate Auxiliary elected and/or appointed leaders that are documented via telephone log, e-mail or other means, as well as written Auxiliary orders or duty rosters for authorized activities (see Table 5-1) that are received and acknowledged by an Auxiliarist prior to mission execution. . . ."** (Emphasis added).

10. **Flotilla Meetings/Unit "Social Functions"**. The AUXMAN (Para 5.J.1 at pg 5-48) specifically excludes en route coverage to/from Flotilla meetings (on the Coast Guard theory that the meeting place is the "duty station"). There also is no coverage for purely social functions (e.g., a Flotilla or Division picnic). Although not required to do so by the AUXMAN, Flotilla leaders should schedule an official MT session for each Flotilla meeting and give prior notice of the MT session to Flotilla members--as a **possible** means of establishing a legal claim to en route coverage (i.e., that the member was en route to a MT session--not merely to a Flotilla meeting). For the same reason, Unit social functions at all Auxiliary levels should combine Auxiliary official business to the maximum possible extent.

#### **D. MEMBERS IN "AP" STATUS.**

When an individual meets all enrollment eligibility criteria, the Director of Auxiliary (hereinafter "DIRAUX") accepts the application and enters that individual in AUXDATA in Application Pending "AP" status. The DIRAUX of Auxiliary (hereinafter "DIRAUX") issues them an Employee Identification Number and ID card. The individual shall then have nearly all privileges of membership. They should be administered the Pledge for New Members and be presented with a Membership Certificate at the earliest opportunity. For details on the privileges and restrictions for AP Members, see Paragraph 3.D.2 of the AUXMAN.

#### **E. OPERATIONAL BOAT PATROLS.**

1. **Compliance with Coast Guard Rules and Procedures.** It is strongly recommended that, early each year and periodically thereafter, DCDRs and FCs issue a reminder to all of their Boat Crew members (CXN and Crew) of the legal requirements relating to patrols. In the event of failure to comply with Coast Guard rules and procedures, an incident could expose each Boat Crew member to personal liability to third parties and/or loss of Coast Guard benefits. The Coast Guard Order Issuing Authority may have specific instructions relating to the conduct of operational patrols within its specific AOR. Such instructions must be followed, and the DCDRs and FCs should provide each member involved in operational activities with these instructions.

2. **Coxswain in Charge.** The CXN who was issued the Patrol Orders is in charge of the patrol and is officially responsible for: (a) The Crew; (b) The patrol boat; and (c) The patrol mission. If at any time (before a patrol begins or during the course of the patrol) the CXN reasonably believes that the Boat Crew and/or the patrol boat cannot accomplish the mission with reasonable safety under existing conditions, the CXN then must immediately abort the patrol (*Operations Policy Manual, Pg 1-23*).

3. **Aborting Ordered Missions.** The Facility Owner, Auxiliary Operations Staff officers, unit elected and appointed leaders have the responsibility and authority to abort any ordered mission in the event they become aware of any situation pertaining to the facility or crew that may adversely affect the safety of the mission. (*Operations Policy Manual, Pgs 1-21, 25*)

4. **Boat Crew Qualifications and Minimums.** For each patrol, the CXN is responsible to make sure that each Crew member is currently qualified under the Boat Crew Program and that at least the minimum number of Crew members are assigned to duty in accordance with the *Auxiliary Operations Policy Manual (COMDTINST M16798.3E, Para N.2., Pg 1-31)*.

5. **CXN Assigns Crew to Duty.** It is the CXN's responsibility to assign to duty **each** Auxiliary member on board the patrol boat. Only Boat Crew qualified members and Boat Crew trainees can be assigned to "Crew" duties (the trainees **only** under the supervision of a qualified CXN, Crew member, or QE). Auxiliary members who are neither qualified Boat Crew nor Boat Crew trainees are not allowed to perform any Crew duties, **but** the CXN **must** assign **each** such other member to **some duty** (e.g., radio watch if Comms-qualified; PATON verification if AV qualified) to give the member eligibility for Coast Guard benefits and protection against liability to third parties (*Operations Policy Manual, Pg 2-16*).

6. **Guests/Passengers.** Non-Auxiliary guests or passengers (collectively, "Guests") are not permitted on a patrol boat **unless** the CXN first has obtained the express written permission from the Coast Guard Order Issuing Authority (OIA) for that **particular** patrol. Guests are **not** permitted to engage in any boat handling or other patrol duties. (*Operations Policy Manual, pg 4-29*). **NOTE:** "A/P" persons are in the **Trainee** category.

7. **Crew Equipment.** **All** Aux members on the patrol boat (not only the Boat Crew qualified members) must be properly uniformed and carry minimum survival equipment as specified in the Operations Policy Manual for each patrol.

8. **Pre-Underway Contact with Radio Guard.** Before leaving the slip/launch ramp, the name of **each** person onboard (Auxiliary member and Guest) must be given by personal contact, land-line, or NET radio (**not** by VHF radio) to the shore-based unit authorized by the OIA to be the Radio Guard. (*Operations Policy Manual, Pg 4-4*)

9. **Patrol Communications; Ops/Position Reports.** The patrol boat must maintain a communications guard with a **shore unit** at all times during the patrol. Ops/Position Reports must be submitted to the Radio Guard at such intervals as are directed by the Coast Guard. (*Operations Policy Manual, Pg 4-3*). At present the requirement for an Ops/Position report is **every thirty (30) minutes** for ocean **and** lakes/inland waterway patrols. Adverse or unusual conditions may dictate Ops/Position Reports more frequently (e.g., a patrol boat engaged in a tow of a distressed vessel is required to make Ops/Position Reports every fifteen (15) minutes).

10. **Patrol Mission; Scope of Employment.** The CXN must know the patrol mission, brief the Crew on the mission, and confine the patrol activities to those authorized for the particular assigned mission. If an Incident occurs during a material departure from the mission, there *probably* are no Coast Guard benefits or liability coverage for the boat and the Boat Crew members.

11. **Patrol Maximum Underway Time.** The **maximum** Boat Crew underway hours generally are: **(a)** 8 hours when seas are less than four feet; and **(b)** 6 hours when seas are over four feet. A rest period of 8 hours is required before undertaking another patrol. Crew underway time begins when the crew member reports to the designated place to prepare for a specific mission. Computation of such time ends when the mission is complete. Crew underway time includes time spent accomplishing pre-mission and post-mission vessel checks. Time spent trailering and standing by is also counted, but at the rate of ½ hour for every hour of actual time. Except for emergencies, a CXN may exceed such time limits only after permission of the Order issuing Authority (OIA). (*Operations Policy Manual, Pg 4-20, 21*)

12. **EPIRB/PEPIRB Requirement.** Each Auxiliary patrol boat under Orders must have on board either: (a) A 406 MHZ EPIRB; **or** (b) At least one McMurdo Fastfind 406MHZ PEPIRB. DIRAUX is charged with the purchase, issuance, training, and accountability of the PEPIRBs. NOAA registration of all *EPIRBs* is required to be made by the receiving vessel's owner. However, registration of each DIRAUX-owned *PEPIRB* will be handled by DIRAUX. The PEPIRB must be worn by one of the crew members.

13. **Cold Weather/Water Gear—Requirements.** Boat Crew and Air Crew are required to wear hypothermia protective clothing when water and/or air temperature is below that specified in the Operations Policy Manual, Pg 4-27. Waivers (with certain restrictions) may be granted by the Coast Guard Order Issuing Authority (OIA) on a case-by-case basis. The CXN/Pilot is responsible for making sure all Crew Members adhere to such requirements. There likely is no "coverage" if the gear is not worn when required and there is an incident.

## **F. AUXILIARY AGREEMENTS--AUTHORITY AND PROCEDURE.**

1. **Importance of Compliance with Requisite Procedure.** Failure to comply with the procedure applicable to Auxiliary Agreements can result in serious consequences. There then is **no** "authorized" Auxiliary Agreement. If the Coast Guard (or DOJ/DOL) determine the required procedure was not followed: (a) The signatory of the unauthorized agreement may have **personal liability**; (b) The Auxiliary members acting under such agreement risk loss of benefits; and (c) DOJ may refuse to defend or indemnify the members acting under the unauthorized agreement, thus exposing them to personal liability to Third Party claims of injury and/or damages.

2. **Two Basic Prerequisites; Exceptions.** The Commandant has specifically directed that any written agreement for Auxiliary use of non-Auxiliary premises for any Auxiliary purpose is an official, authorized Auxiliary Agreement **ONLY** if there is compliance with two fundamental requirements: (a) The Agreement **must be** signed by the Unit senior elected officer (Flotilla--FC; Division--DCDR; District--DCO); and (b) The Agreement must be reviewed and approved by a District legal officer **before** the Agreement is delivered to the Premises Owner. **Exceptions:** (a) In the absence of the FC and in "emergency" circumstances and **only** at the specific request of the VFC: The DCDR or DCO may sign an Auxiliary Agreement for the benefit of the Flotilla; and (b) In the absence of the DCDR and in "emergency" circumstances and **only** at the specific request of the VCDR, the DCO may sign an Auxiliary Agreement for the benefit of the Division. AUXMAN Para 6.D at pg 6-13. What constitutes an "emergency" is not defined (**presumably** including a situation where time is of the essence) and will be determined on a case-by-case basis. Obviously, it always is legally "safer" if the particular Unit's senior elected officer is the signatory.

3. **Unauthorized Signatory's Personal Liability.** There is **no authority** for a DCO, DCDR, or FC to delegate signatory authority. If **any** member other than a senior elected leader (absent the exceptions noted above) purports to sign an "agreement", there is **no** authorized Auxiliary Agreement (e.g., the FSO-PE **cannot** sign an agreement for a Flotilla's PE class meeting place). An unauthorized signatory effectively has a **personal agreement** with the Premises Owner and, in the event of an Incident, effectively has assumed **personal liability**--without federal government protection and benefits otherwise afforded to Auxiliary members.

4. **District Legal Approval Required**. The Unit's senior elected officer is responsible to see that each of the Unit's written agreements is reviewed and approved by a District legal officer before the agreement is delivered to the Premises Owner. In the event of failure to do so, that officer is in the same at-risk position as noted in the preceding section; i.e., that Unit senior officer effectively has a personal agreement with the Premises Owner--with all of the attendant exposure to **personal liability** and loss of Coast Guard benefits.

5. **District Legal "Lead Time"**. The original of a proposed agreement (fully completed) must be submitted to the assigned District legal officer at least fifteen (15) days before the function/event deadline date to allow time for review, any necessary discussion between the legal officer and Unit leader, and/or for any negotiations with the Premises Owner to attempt to resolve any differences. It is highly unlikely that tardy submissions will be timely completed if there are negotiation "difficulties" with the Owner.

6. **Choice of Agreement**. The Auxiliary order of preference for an agreement with a Premises Owner is: **(a) First**, if the Owner is willing, no written agreement is necessary (a verbal agreement is "the best agreement"-- do **not** offer any written agreement unless the Owner wants one); the Auxiliary still is covered and the Owner has protection under the Federal Tort Claims Act; **(b) Next**, whenever possible, use the standard Auxiliary fill-in-the-blanks form agreement (an example and a blank form of such agreement is attached--but **note** that District legal approval **still is required** on this form agreement); and **(c) Lastly**, the Owner's "form" agreement.

7. **"Indemnification" Clauses**. Almost without exception, an Owner's form agreement will contain indemnification and/or hold harmless clauses. Federal law **absolutely prohibits** any federal officer and agency--including the Auxiliary--from agreeing to such provisions (except pursuant to the Federal Tort Claims Act). Any Auxiliary member who signs such an agreement is effectively assuming virtually **unlimited personal liability** in the event of an Incident. District legal will attempt to revise the agreement with alternatives. If the Owner is adamant, however, the Auxiliary can only refuse the agreement and must seek other premises for the event/function.

## **G. DONATIONS AND SOLICITATION OF FUNDS, PROPERTY OR SERVICES.**

### **1. ACTIVE SOLICITATION**

a. **Authorized Active Solicitation**. Any fundraising or solicitation of monetary or in kind support by any Auxiliary unit or member from any outside organization or person or must be conducted pursuant to the requirements and restrictions of Para. 5.H of the AUXMAN. All Auxiliary units may now accept donations as well as the use of physical space, free advertising and other services, and may also actively solicit. However, neither solicitation nor subsequent acceptance may occur unless and until the DCO and the DIRAUX both give advance written permission (e-mail is acceptable), after conferring with the DSO-LP, who shall perform a prohibited source determination. The DCO shall serve as the Auxiliary gift acceptance authority for solicited gifts. (AUXMAN, Para. 5.H.1.c).

b. **DCO and DIRAUX Approval Requirement**. **Before** making any solicitation for money or materials, the Auxiliary unit **must** request and obtain the written approval of both the DCO and DIRAUX (AUXMAN Para 5.H.1.c). The written request by the unit elected leader (sent up through the

regular chain of communication) must contain sufficient information to enable the DCO and DIRAUX to make an informed decision, including at least: (a) The full name, address, and telephone number of the prospective donor; (b) The value of the donation the unit intends to seek from the prospective donor, including: (i) If money, the dollar amount; (ii) If materials, a description of such and the estimated Fair Market Value (based on the prospective donor's list or advertised prices or other reliable, available valuation information); and (c) The unit's proposed use of the donation.

c. **Use of Solicited Gifts.** Any solicited donation must be for the support of an authorized Auxiliary program(s) and from which an Auxiliary unit will receive benefit. Any solicited gift must be within the soliciting unit's area of responsibility.

d. **Market Value.** The market value of each solicited and accepted gift cannot exceed \$2,500. The aggregate value of all gifts solicited and accepted from any particular gift source cannot exceed \$5,000 per calendar year.

## **2. UNSOLICITED DONATIONS.**

a. Acceptance **Authority.** The DCO shall act as the Auxiliary gift acceptance authority for unsolicited gift offers at the District, Division or Flotilla level, if the offered gift does not exceed \$5,000. For unsolicited gifts having a market value in excess of \$5,000, but no greater than \$50,000, the DCO shall forward the gift offer, with an acceptance recommendation, to the DIRAUX. The DIRAUX shall determine whether or not to authorize the DCO to accept this type of gift offer, and will so notify the DCO. Unsolicited gift offers whose market value is in excess of \$50,000 shall be forwarded to the NACO for processing as the Auxiliary gift acceptance authority. (AUXMAN Para 5.H.1.d).

## **3. FREE SPACE, ADVERTISING AND SERVICES EXCEPTION.**

The offer and acceptance of free space, advertising and services falls outside of the gift, solicitation and acceptance provisions described in Paragraph G.1 and G.2 above. Auxiliary units may solicit and accept free space from any public or governmental organization for Auxiliary needs without the need for a prohibited source determination or the need to obtain advance written permission from the DCO or the DIRAUX. Auxiliary units may solicit and accept free space from any semi-public organization, commercial firm, and private individuals/organizations after first receiving written permission from the DCO and DIRAUX (AUXMAN, Chapter 5, Section H.1.e.).

## **4. RAFFLES.**

Auxiliary Units need written approval from the DIRAUX before conducting any raffle or lottery. (AUXMAN, Chapter 5, Section H.1.f.). Auxiliary Units may not conduct raffles in California. Door prizes are authorized.

## **H. ACKNOWLEDGEMENT OF GIFTS**

1. **Written Acknowledgement to Donor.** Any Auxiliary unit which receives any donation (solicited or unsolicited) from a private source of \$250 or more in value must, after consultation with the DCO and DSO-LP, provide the donor with written acknowledgment (with thanks) of the donation to the



source. AUXMAN Para 5.H.1.i. Such written acknowledgment shall include mention of the gift's description, its value, and the receiving Auxiliary unit. Notwithstanding this requirement, such written acknowledgment (with thanks) should be provided the source of any gift, regardless of value.

2. **Non-Compliance with Procedures: Mandatory Return of Donations.** "Funds, property, or services solicited or received without compliance with established procedures **must be** returned." AUXMAN Para 5.H.2 at pg 5-41. (emphasis added).

## **I. TAX ID NO. 52-1500576; FEDERAL TAX STATUS--CONTRIBUTIONS.**

1. **IRS Assignment of Tax ID Number.** In a "Notice of New Employer Identification Number Assigned" on 10 MAR 1987, the Internal Revenue Service ("IRS") assigned Tax ID No. 52-1500576 to **all** Auxiliary Units nationwide (ALL Flotillas, Divisions, Districts, and National). Accordingly, that Number must be used by **each** D11(SR) Unit whenever a Tax ID No. is required (e.g., when opening a bank account). The name (title) on a Unit bank account **must expressly** reference the **specific** Unit designation. For example:

(a) "Flotilla 51-17, D11(SR), U.S. Coast Guard Auxiliary"; (b) "Division 51, D11(SR), U.S. Coast Guard Auxiliary".

2. **Unit Responsibilities.** Since the **same** Tax ID Number is used by all Auxiliary Units, it is **imperative** for **each** Unit to be careful in its banking practices. A few years ago, a D11(SR) Division was careless about balancing its bank account. The Division's bank: (a) Stopped payment on the Division's checks for insufficient funds; **and** (b) Sent notice of such to a credit service agency. Although the mistake was resolved rather quickly, for a brief period of time the action imperiled accounts of **all** Auxiliary Units nationwide.

3. **Auxiliary Units' Tax Status.** In IRS letters to then DC-L dated 19 NOV 1980 and 14 JAN 1981, applicable to each Auxiliary Unit nationwide (Flotillas, Divisions, Districts, and National), the IRS clarified the tax status of the Auxiliary as follows:

(a) The Auxiliary (and every Unit subdivision) is an integral part of the United States Government.

(b) Accordingly, no Auxiliary Unit is subject to federal income tax or is required to file federal income tax returns.

(c) The Auxiliary is **not** a tax exempt organization of the type described in either of Internal Revenue Code Sections 501(c)(3) or 501(c)(1)--the Code Sections donors usually rely upon for federal tax deductions for contributions. Rather, contributions to the Auxiliary **are deductible** by a donor under Code Section 170(c)(1), the Section applicable to donations to U.S. Government subdivisions.

## **J. UNIT STANDING RULES/"SAMPLE" STANDING RULES.**

1. **Standing Rules Required.** The AUXMAN requires that each Auxiliary Unit have Standing Rules, duly adopted by the particular Unit. Standing Rules must conform to Coast Guard and Auxiliary policies and cannot conflict with any AUXMAN provisions.

2. **Standardized Standing Rules Templates.** Each Unit is required to adopt the Standardized Standing Rules Template available on the National Website at the Office of Chief Counsel page by filling in the blanks with the appropriate entries, and then following the approval procedures set forth in the Unit's current Standing Rules relating to amendments of those Standing Rules. For the new Standing Rules, the minimum quorum requirement for Flotillas is 25% of the members. Material relating solely to a Unit's own peculiar, in-house matters (e.g., criteria for Unit awards, meeting times, dates and locations) properly should be in a Standing Rules appendix, which cannot contain any provisions that would serve to change the requirements or provisions of the Standing Rules. Units with questions about what should go into an appendix rather than into the formal Rules should contact their assigned District legal officer.

3. **Approval Procedure.** A Unit's Rules become effective only after requisite review and approval through the chain of leadership. Briefly, the procedure is: (a) Four (4) fully signed copies of the Unit's adopted, proposed Standing Rules are sent to the Unit's **assigned** District legal officer for review (with Flotilla Rules first being sent through the DCDR for review, approval, and DCDR signature on all four (4) copies); and (b) The legal officer reviews the Rules and then sends three (3) copies up the chain for review and approval by DIRAUX. A completely signed and approved copy of each Unit's Rules is maintained at the DIRAUX office and one copy is returned to the Unit (with the Division retaining a copy of Flotilla final Rules).

#### **K. UNIT-OWNED PROPERTY.**

1. **Authorized Property; Government Liability "Coverage"**. ALCOAST 600/05, issued by the Coast Guard on 5 DEC 05 and made "effective immediately", changed CG policy to implement 9 AUG 2004 legislation amending the **1996 ACT** to authorize federal government coverage of specified, Unit-owned **personal** property, including boats and mobile equipment. Accordingly, all Auxiliary Units now are authorized to acquire and own boats, mobile trailers, trailers, motor vehicles, and administrative support equipment **provided** such personal property (collectively, "Property") is held, owned, and operated by the Unit or its members in strict accordance with published directives **and** is **used exclusively** for or in support of authorized Auxiliary missions. Such Property then will be treated as property of the United States for purposes of government "coverage" in the event of a liability Incident.

2. **"Private" Use Prohibited.** Under no circumstances may such Property be used for the private use of any Auxiliary member(s). In case of an Incident during any such "private use", there would be no government coverage and the Auxiliary member(s) using the Property for a private purpose also would have no government coverage. Moreover, any private use of the Property may result in voiding the government coverage when the Property thereafter is used in an authorized Auxiliary mission. The elected leaders of each Unit owning any Property should be **extremely careful** about monitoring and controlling **all use** of the Property.

3. **Private Insurance for Damage/Loss of Property.** The government will **not** cover any damage to or loss of the Property itself. Accordingly, Units should obtain private insurance policies, as approved by the District legal officer assigned to the Unit, to cover any such Property damage or loss. (NOTE: ALCOAST 600/05 excepts a Unit's "administrative support equipment" from the insurance

recommendation. Alternatively, Units may “self-insure”; i.e., cover any Property damage or loss from Unit funds.

4. **Real Property.** Auxiliary Units are prohibited from owning or leasing real property. The District legal officer assigned to the Unit will assist in determining whether a particular agreement consists of a “lease” of real property which is prohibited, or a license to use real property which is allowed. No Auxiliarist or CG active duty officer, other than the Commandant, the Vice-Commandant or the CG-8, may accept any unsolicited offer of real property. (AUXMAN, Chapter 5, Section H.1.d.).

**L. MEMORANDUM OF UNDERSTANDING (“MOU”).** **Only** the Coast Guard can enter into an authorized MOU agreement with another agency (federal, State, or local) relating to the use of Auxiliary resources in areas within the sole jurisdiction of the other agency. For example, assisting a State in the promotion of boating safety with Auxiliary patrols on inland waters subject to sole State jurisdiction requires an MOU between the Coast Guard and the appropriate State agency. OPMAN pg 4-19. Although Auxiliary members may have general discussions with another agency about possible use of Auxiliary resources, no member may make a binding commitment to do so. Rather, the Auxiliary must seek guidance from and follow DIRAUX's direction for a formal Coast Guard MOU.

**M. OWT PROGRAM.** The On Water Program Training Manual, dated 4/1/2001 (“OWT Manual”) appears to require only the FC's certification to begin authorized Flotilla OWT activities. In D11(SR), however, DIRAUX requires the OTO to personally examine and certify the patrol boat and the particular patrol boat's "team" (CXN, Crew, and Instructor) before a Flotilla can engage in OWT activities. There will be **NO** federal government coverage of the Auxiliary members if a Flotilla proceeds with OWT activities without such prior OTO certification. Note, also: (a) An OWT Student is in the Guest category and has **no** Coast Guard or federal government coverage; and (b) The Flotilla **must** obtain the Student's signature on the Waiver/Release contained in the OWT Manual (pgs 38-39) **before** allowing the Student to participate in any OWT activity. If a Flotilla fails to do so, the FC and any other Flotilla member responsible for such failure may well have **personal liability** for any injury or loss suffered by the Student in an OWT evolution.

**N. “CIVILIAN” FLARE SHOOTS PROHIBITED.**

1. **NO Coast Guard Authority for “Civilian” Flare Shoots.** The CG has not trained or authorized the Auxiliary to organize or conduct “firing range” flare shoots actively involving the participation of non-Auxiliary, general public “civilians.” It makes no difference whether the civilians would be using their own flares or flare guns or would be using flares/flare guns provided by the Auxiliary—it still is wholly unauthorized. Note that this would not preclude Auxiliary members (e.g., VEs, ITs in a PE class) from discussing various safety factors with civilians regarding emergency use of flares/flare guns.

2. **NO “Coverage”; Personal Liability.** In the event of any Incident during any such unauthorized Auxiliary-sponsored civilian flare shoot, there would be **no government coverage** for any Auxiliary member who planned, organized, or was directly or indirectly involved in the flare shoot. Each such Auxiliary member could have **personal liability** for any damage, loss, and/or injury suffered by any civilian(s).

## **O. DISCIPLINARY ACTIONS.**

1. **Introduction.** The AUXMAN specifically states the applicable procedures and issues, the possible penalties if it is determined that some form of disciplinary action is appropriate, and the appeal process. A separate outline of the current administrative discipline procedures has been prepared and distributed by the District Legal Department.

2. **Auxiliary Members' Rights.** Auxiliary membership is **not** (and never has been) a constitutionally protected liberty or property interest. Members, therefore, have **only** a right to the minimal due process protections set forth in the AUXMAN.

3. **Investigation Request.** Any member of Coast Guard Forces (Coast Guard active duty/Reserve, Auxiliary, civilian employee) who believes an Auxiliary member has violated any policy prescribed by the Commandant for the Auxiliary or its missions may request (verbally or in writing) a preliminary investigation. The request is made to the senior Unit elected leader at the lowest level of the Auxiliary capable of handling the complaint. AUXMAN Para 3.F.2. If the preliminary investigation finds there was no violation or there is insufficient evidence of a violation, the elected leader so notifies (in writing) the requesting person. (AUXMAN Para 3.F.3.a.).

4. **Informal Discipline.** A **NON-exclusive** list of types of infractions (minor violations) which may warrant informal action is in AUXMAN Para 3.G.1 at pg 3-45. Minor violations may result in verbal counseling, suspension of WEB privileges or a Letter of Caution. AUXMAN Para 3.G.2.b.

5. **Formal Discipline.** A **NON-exclusive** list of types of infractions (serious violations) which may warrant formal action is in AUXMAN Para 3.H.1. Serious violations may result in a DCO or DIRAUX Letter of Reprimand or in disenrollment by DIRAUX. If the alleged violation is so serious as to warrant disenrollment if proven true, DIRAUX has authority to **temporarily** suspend an Auxiliary member's certifications, elected/appointed duties of office, or Auxiliary membership during the course of and pending final determination of a formal proceeding.

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## **ATTACHMENTS**

1. Standard Form Auxiliary License Agreement [Example]

2. Standard Form Auxiliary License Agreement [for use--with Blanks]  
**LICENSE AGREEMENT [Example]**

**THIS AGREEMENT** is made by and between [ insert legal name and address of Premises Owner ], hereinafter referred to as "**Licensor**", and the United States Coast Guard Auxiliary, [ insert Unit identification--for example: Flotilla XX / Division X], District Eleven (Southern Region), hereinafter referred to as "Licensee".

The parties agree as follows:

1. Licensor hereby grants to Licensee and Licensee's members and employees who are authorized to conduct boating safety and related programs, the right, privilege, and permission to enter into and on a certain tract of real property and its appurtenant facilities owned by Licensor, more particularly described as follows: [ provide description of property and facility--for example: John Doe Elementary School, Classroom 222, located at 123 Middle Street, Smalltown, CA 92222 ]

2. The above-granted permission is for the purpose of conducting boating safety awareness and related educational programs by Licensee and its authorized members and employees. This License shall be effective during the following period [ insert date period(s) and times--for example: 10:00 a.m. to 12:00 a.m. each Saturday, beginning April 5, 2006, ending May 24, 2006.]

3. The privilege granted by this Agreement is without any consideration and is merely an accommodation to Licensee.

4. The Licensee, in the manner and to the extent provided by the Federal Tort Claims Act, as amended (28 United States Code Sections 2671-2680), shall be liable for and shall hold the Licensor harmless from claims for damage or loss of property, personal injury or death caused by the acts or omissions of the Licensee, its members and employees, in the use of the licensed premises and its appurtenant facilities.

**IN WITNESS WHEREOF**, the undersigned each have executed this Agreement by its respective duly authorized representatives, made effective as of \_\_\_\_\_, 2006.

**"LICENSOR"**  
[Typed/Printed Name of Licensor]

**"LICENSEE"**  
Flotilla XX, District 11(SR), U.S. Coast  
Guard Auxiliary

By \_\_\_\_\_  
[Typed/Printed Name and Office]

By \_\_\_\_\_  
Its: Flotilla Commander

Reviewed & approved for legal purposes only X / X, 2006 by \_\_\_\_\_  
Auxiliary legal officer, D11 (SR)  
[U.S.C.G. Auxiliary License No. \_\_\_\_\_]

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The parties agree as follows:

1. Licensor hereby grants to Licensee and Licensee's members and employees who are authorized to conduct boating safety and related programs, the right, privilege, and permission to enter into and on a certain tract of real property and its appurtenant facilities owned by Licensor, more particularly described as follows:

\_\_\_\_\_

2. The above-granted permission is for the purpose of conducting boating safety awareness and related educational programs by Licensee and its authorized members and employees. This License shall be effective during the period \_\_\_\_\_.

3. The privilege granted by this Agreement is without any consideration and is merely an accommodation to Licensee.

4. The Licensee, in the manner and to the extent provided by the Federal Tort Claims Act, as amended (28 United States Code Sections 2671-2680), shall be liable for and shall hold the Licensor harmless from claims for damage or loss of property, personal injury or death caused by the acts or omissions of the Licensee, its members and employees, in the use of the licensed premises and its appurtenant facilities.

**IN WITNESS WHEREOF**, the undersigned each have executed this Agreement by its respective duly authorized representatives, made effective as of \_\_\_\_\_, 201\_\_.

**"LICENSOR"**

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**"LICENSEE"**

United States Coast Guard Auxiliary  
\_\_\_\_\_, District Eleven (SR)

By \_\_\_\_\_

Its \_\_\_\_\_

Reviewed & approved for legal purposes only \_\_\_\_\_, 200\_\_ by \_\_\_\_\_  
U.S.C.G. Auxiliary legal officer, D11 (SR)  
[U.S.C.G. Auxiliary License No. \_\_\_\_\_]