



UNITED STATES COAST GUARD AUXILIARY

ELEVENTH DISTRICT SOUTHERN REGION
DISTRICT 11(SR) LEGAL DEPARTMENT
Bruce J. Kelton, DSO-LP

2010 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 Foxtrot version of the Auxiliary Manual, COMDTINST M16790.1F ("AUXMAN"). 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, 2010, the assignments are as follows:**

1. Arthur C. Wynn: Divisions 1 and 6.
2. Donald B. Randles: Divisions 9 and 10.
3. Alfred J. Verdj: Divisions 4 and 5.
4. Richard G. Heller: Divisions 7, 11 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 5-31). 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. **DCCR and VCCR Limited Assignment Authority.** Division elected officers have limited assignment to duty authority. The DCCR has assignment to duty authority as to the VCCR, the Division Staff officers, and Flotilla Commanders--for Division matters only. As Division Chief of Staff, a VCCR 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. 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** 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** at the Flotilla "working level" do 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 5-30; 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 5-30) 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 written Coast Guard orders or verbal authorizations from appropriate Auxiliary elected and/or appointed leaders that are documented (via telephone log or other means) and written Auxiliary orders or duty rosters for authorized events."** (Emphasis added).

10. Flotilla Meetings/Unit "Social Functions". The AUXMAN (Para 5.J.1 at pg 5-29) 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. APPROVAL PENDING ("AP") PERSONS.

Refer to Revised Policies for Auxiliarists in Approval Pending (AP) Status, CG-3PCX, 06 Aug. 07, for member status information, AUXDATA entry information, organizational assignment information, and information concerning ID cards, uniforms, awards, Auxiliary course participation and test administration, training and qualifications, and authorized activities.

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.

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. 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. 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 is required to be made by the receiving vessel's owner.

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:

(i) The DCDR may sign an Auxiliary Agreement for the benefit of the Flotilla; OR (ii) The 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 6-11. 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--ACTIVE SOLICITATION.

1. Authorized Active Solicitation. The Foxtrot AUXMAN significantly diluted the anti-solicitation provisions of the former Echo version. Subject to procedures and restrictions contained in Foxtrot Para 5.H, apparently a Flotilla (and **only** a Flotilla) is authorized to solicit and accept money, materials, and/or services from community charitable agencies, commercial firms and businesses, and private individuals, provided such prospective donors are "strictly local in nature". AUXMAN Para 5.H.1.c.1. Para 5.H.1.c.3 also appeared to authorize Auxiliary Units to "accept" the free use of physical space, free advertising, and other services from any private organization or business for authorized Auxiliary activities provided such was obtained in compliance with Para 5.H.1.c (Flotilla only solicitations) or Para 5.H.1.d (unsolicited donations to any Auxiliary Unit).

2. Ambiguity and Uncertainty. The several Para 5.H provisions, read alone and in conjunction with other related AUXMAN provisions, created a number of uncertainties and ambiguities. On 5 DEC 2005, the Coast Guard issued ALCOAST 600/05, making significant, "immediately effective" administrative policy changes "for clarification and amendment" of certain of the AUXMAN Para 5.H provisions. Unfortunately, the ALCOAST itself has created some uncertainties and ambiguities. It is anticipated that--when issued--the still-pending AUXMAN CH-1 will resolve the uncertainties and concerns. To the extent now possible, this Memo seeks to reconcile the AUXMAN and ALCOAST ambiguities and uncertainties.

3. Public and Governmental Entities. **All** Auxiliary Units now are authorized to solicit and accept offers of free use of physical space, free advertising, and other services from any public entity (e.g., schools) and any federal, state, and local governmental organizations for authorized Auxiliary activities. No prohibited source determination is required and acceptance of any such offer is not subject to the provisions of AUXMAN Para 5.H.1.d.

4. Semi-Public, Business Organizations, Private Individuals/Organizations. Subject first to a prohibited source determination by the District legal officer assigned to the Unit, **all** Auxiliary Units now are authorized to solicit and accept offers of free use of physical space, free advertising, and other services from any semi-public organization (e.g., church; homeowners association), any commercial firms and business, and any private individual or organization--"strictly local in nature"--for authorized Auxiliary activities. Acceptance of any such offer is not subject to the provisions of AUXMAN Para 5.H.1.d. When solicited, however, (a) prior DCO and DIRAUX approval is required before any Unit's acceptance of such donations, and (b) Except when given by private individuals, the AUXMAN Para 5.H.1.c.1 "dollar cap" applies to such donations.

5. Flotilla (ONLY) Solicitation of Money or Materials. Flotilla Units (and only Flotillas) are authorized to solicit money or materials provided the solicitation is made in accordance with AUXMAN Para 5.H.1.c1. Those provisions restrict the solicitation to "local" prospective donors, require prior DCO and DIRAUX approval and a prohibited source determination, and impose a cap on such donations.

6. "Local" Prospective Donor. Although the term "local" may need to be refined on a case by case basis, it is not meant to include only the traditional neighborhood "Mom and Pop" store. It could include, for example, a West Marine Store geographically local to the particular Flotilla (although not a West Marine home office/headquarters or regional office--even if located "next door" to the Flotilla's meeting place).

7. DCO and DIRAUX Approval Requirement. BEFORE making any solicitation for money or materials, the Flotilla must request and obtain the written approval of both the DCO and DIRAUX (AUXMAN Para 5.H.c.1). The written request by the FC (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 Flotilla 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 Flotilla's proposed use of the donation.

8. "Prohibited Source" Determination. When required, the DCO or DIRAUX will make a prohibited source determination (in accordance with AUXMAN Appendix E) regarding the prospective donor. The fact that a prospective donor is a prohibited source does not necessarily mean solicitation is forbidden; policy review of all of the facts may result in solicitation approval. AUXMAN Para 5.H.1.c.1 at pg 5-22 and Appendix E.

9. Dollar Cap. Except only solicitations made to private individuals, a Flotilla's active solicitation of local sources for money or materials may not exceed \$2,500 per transaction (and not more than \$2,500 per donor annually) and \$5,000 total cumulative value (all donors) in any calendar year. AUXMAN Para 5.H.1.c.1 at pg 5-22.

10. Sale of Goods—Flotillas; Raffles—ALL Units. Subject to review and procedural restrictions, including the prior written consent of the DCO and DIRAUX and compliance with all local laws, Flotillas (and only Flotillas) now are authorized to sell goods to the general public. Among other things, DIRAUX and the DCO shall determine the appropriateness of the goods a Flotilla proposes to sell. AUXMAN Para 5.H.1.c.2 at pg 5-22. All Auxiliary Units are authorized to offer banquet raffle tickets to the general public, so long as such complies with local law and subject to either: (a) The joint written approval of DCO and DIRAUX (AUXMAN Para 5.H.1.c.4 at pg 5-23); or (b) under ALCOAST 600/05, with DIRAUX annual "blanket" authority for raffles.

H. UNSOLICITED DONATIONS. Requisite DCO or Coast Guard prior review and approval of unsolicited donations depends upon the value of the proposed donation. If the dollar amount (cash amount gift or the fair market value of other donated property or materials) does not exceed \$2,500, the DCO may accept unsolicited donations for the benefit of a particular Unit (Flotilla, Division, or District) after review and a favorable prohibited source determination. An unsolicited donation of more than \$2,500 and up to \$5,000 is subject to Coast Guard District

Commander approval and an unsolicited donation of more than \$5,000 is subject to Commandant approval. AUXMAN Para 5.H.d.

I. ALL DONATIONS--SOLICITED AND UNSOLICITED.

1. Use of Donations. Any donation can be used **only** to promote or in connection with official Coast Guard Auxiliary missions. Neither the whole nor any part of a donation can be used for Auxiliary Unit social activities (e.g., may not be used for Flotilla parties, Division picnics, or the like). AUXMAN Para 5.H. subparagraphs at pgs 5-22/23.

2. Written Acknowledgement to Donor. Any Flotilla which receives any donation (solicited or unsolicited) from a private source that exceeds \$250 in value must, after consultation with the DCO and DSO-LP, provide the donor with written acknowledgment of the donation. AUXMAN Para 5.H.1.d.2 at pg 5-23. This written acknowledgement requirement also applies to Divisions and Districts that receive unsolicited donations. In addition, the senior elected leader of any Unit which accepts an offer of the free use of physical space, free advertising, or other free services from any source must appropriately acknowledge (with thanks) the receipt of such offers. ALCOAST 600/05.

3. **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 5-23 (emphasis added).

J. TAX ID NO. 52-1500576; FEDERAL TAX STATUS--CONTRIBUTIONS.

1. IRS Assignment of Tax ID No. 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 No. 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 No. 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.

K. UNIT STANDING RULES/"SAMPLE" STANDING RULES.

1. Standing Rules Required. The AUXMAN (Para 4.H at pg 4-39) 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. Sample Rules. National is in the process of revising Sample Standing Rules for Flotillas and Divisions which will include certain **mandatory** provisions which "may not be changed and must be included" in a Unit's Standing Rules. Current Flotilla Sample Rules are contained in the Flotilla Procedures Manual (COMDTPUB M16791.5, as modified by 10/6/99 Errata). Division Sample Rules are contained in the Auxiliary Division Procedures Guide (COMDTPUB P16791.3, as modified by CH-2 on 9/16/97). [**NOTE:** Section 8.1 of the Division Guide **incorrectly** states that "the Division Captain [now "DCDR"] or Division Vice Captain" [now "VCDR"] may sign a Division Agreement/Contract. As noted in this Memo's Para F.2 (above), a VCP [VCDR] is **not** authorized to sign Division Agreements. Therefore, do **not** include the words "or Division Vice Captain" [Division Vice Commander] in Section 8.1 of the Division Rules].

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 (Division Rules) or the DCO (Flotilla Rules). 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).

4. Sample Rules "AS IS" Adoption. A Unit can and should adopt the Sample Rules "as is" simply by filling in a few blanks with the appropriate entries; that would expedite the approval process. Material relating solely to a Unit's own peculiar, in-house matters (e.g., criteria for Unit awards) properly should be in a Standing Rules annex. This would avoid the need of formal approval of the Rules every time a Unit adopts or revises such in-house matters. Units with questions about what should go into an annex rather than into the formal Rules should contact their assigned District legal officer.

L. UNIT-OWNED PROPERTY.

1. 2001 Moratorium/ALCOAST 600/05. Under an April 2001 Moratorium, no Auxiliary Unit was authorized to acquire boats and/or highway mobile equipment. The Moratorium was imposed due to liability concerns for the Units and the Unit's individual members in the event of an Incident. ALCOAST 600/05 (copy attached), 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.

2. **Authorized Property; Government Liability "Coverage"**. 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.

3. **"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.

4. 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.

M. 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.

N. 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 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.

O. "CIVILIAN" FLARE SHOTS 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).

P. DISCIPLINARY ACTIONS.

1. **Foxtrot AUXMAN Changes.** The new AUXMAN substantially changes and expands on disciplinary action scope and process from that which was set forth in the former Echo version. This Memo makes **only** a very cursory mention of some of the factors involved in disciplinary actions. The AUXMAN (Paras 3.F through 3.K at pgs 3-21/35) 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.

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. AUXMAN Para 3.F.1 at pg 3-21.

3. **Investigation Request.** **Any** Coast Guard Forces person (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 at pg 3-21. 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.5 at pg 3-23.

4. **Informal Discipline.** A **NON-inclusive** list of types of infractions (minor violations) which may warrant informal action is in AUXMAN Para 3.G.1 at pg 3-25. Minor violations may result in verbal counseling or a Letter of Caution. AUXMAN Para 3.G.2 at pgs 3-25/26.

5. Formal Discipline. A **NON-inclusive** list of types of infractions (serious violations) which may warrant formal action is in AUXMAN Para 3.H.1 at pg 3-27. Serious violations may result in a DCO or DIRAUX Letter of Reprimand or in disenrollment by DIRAUX. AUXMAN Paras 3.H.6 through 3.H.8 at pgs 3-28/30. 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. AUXMAN Para 3.I at pg 3-31.

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]

By _____
[Typed/Printed Name and Office]

"LICENSEE"
United States Coast Guard Auxiliary
[Flotilla ___/Division ___], District Eleven (Southern Region)

By _____
[Typed/Printed Name and Office]

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

LICENSE AGREEMENT

THIS AGREEMENT is made by and between _____,
_____, hereinafter referred to as "**Licensor**", and the
United States Coast Guard Auxiliary, _____, 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:

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 _____, 200__.

"LICENSOR"

By _____

"LICENSEE"

United States Coast Guard Auxiliary
_____, District Eleven (Southern Region]

By _____

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