



U.S. Department
of Transportation
Maritime
Administration

MANUAL OF ORDERS

MARITIME ADMINISTRATIVE ORDER

REVOKES
MAO 22-1 dated
3/20/03 and
Amdt. 1, dated
4/25/05

NO. 22-1

EFFECTIVE DATE
10/28/05

SUBJECT

OFFICE OF CHIEF COUNSEL

Section 1. Organization: The Office of Chief Counsel is under the direction and supervision of the Chief Counsel, who reports to the Maritime Administrator (Administrator). The office provides legal counsel and advice for handling all legal matters with which the Maritime Administration (MARAD) is concerned and is organized as depicted in the attached organization chart. The Office of Chief Counsel includes an immediate office staff and three divisions. The Chief Counsel is assisted by a Deputy Chief Counsel and, if determined necessary by the Chief Counsel, a Senior Attorney-Advisor. Each division is headed by an Assistant Chief Counsel.

Section 2. Redelegations of Authority:

2.01 Subject to any conditions or limitations imposed by the Administrator in other directives, the Chief Counsel is authorized to exercise all the authorities of the Administrator required to perform the functions assigned to the Chief Counsel in Department of Transportation (DOT) Order 1100.69A and this order, except authority to:

- 1 Settle admiralty claims, just compensation claims and claims referred to the Office of Chief Counsel for litigation, in behalf of or against the Government, in excess of \$1,000,000.
- 2 Concur with settlement recommendations of the Department of Justice for cases in litigation where the recommended settlement exceeds \$1,000,000 and the settlement is to be paid from agency or agency-administered appropriations.

2.02 The Chief Counsel is authorized to request that the Attorney General begin court proceedings and to make use of the Federal debt collection procedures or any other applicable remedies authorized under 46 U.S.C. App. § 1295b(e) and § 1295c(g), as such may be amended and modified, and conditioned on the concurrence of the Associate Administrator for Policy and International Trade, to settle any actions arising out of or related to efforts to recover the cost of education provided.

2.03 The authorities delegated in 2.01 above are also delegated, with the concurrence of the Chief Counsel, to the Deputy Chief Counsel and Assistant Chief Counsels for performance of their respective functions assigned in sections 3 through 7 of this order, subject to the limitations set forth below.

2.04 In exercising delegated authority, Assistant Chief Counsels shall consult with the Chief Counsel on any matter involving a deviation from established policy or precedent or establishment of a new policy or precedent.

2.05 The authorities delegated in this order under Sections 2.02 and 2.05 do not include the authority of the Chief Counsel to act in the capacity of the Administrator pursuant to Maritime Administrative Orders (MAOs) 10-2 and 800-1.

2.06 All authorities delegated above may be redelegated in accordance with MAO 200-1.

Section 3. Immediate Office of Chief Counsel:

3.01 The Chief Counsel, assisted by the Deputy Chief Counsel and others in the immediate Office of Chief Counsel, shall:

- 1 Plan and direct office functions.
- 2 Approve requests for employment of individuals by non-personal service contracts, to serve as special counsel and witnesses, and experts or appraisers for the valuation of ships involved in litigation for just compensation.
- 3 Approve payment of attorneys' fees where contracts require approval of such fees by MARAD, or where reimbursement is requested from MARAD.
- 4 Approve the settlement of claims under the Federal Tort Claims Act and the compromise, termination, or suspension of claims of the United States under the Federal Claims Collection Act.
- 5 Provide legal review for the settlement of claims of employees and others for loss or damage to personal property incident to their service under the Military and Civilian Employees Claims Act.
- 6 Approve the settlement of other claims before the Maritime Administration, as provided for in MAO 420-1.
- 7 Serve as Deputy Ethics Official for MARAD.

3.02 The Chief Counsel also serves as a member of the Maritime Subsidy Board.

3.03 The Deputy Chief Counsel shall act for the Chief Counsel when that official is absent or preoccupied.

3.04 The Senior Attorney-Advisor is assigned to the Immediate Office of the Chief Counsel, and, if so determined by the Chief Counsel, shall be responsible for the following assignments:

- 1 Sea-21 Initiative(s) including port infrastructure, port efficiency and intermodal aspects of maritime initiatives.
- 2 Short Sea Shipping program.
- 3 International matters, including international negotiations and agreements such as treaties, conventions, and bilateral and multilateral agreements.

- 4 Review of exceptionally complex Title XI issues, as assigned by the Chief Counsel, including, but not limited to, the development of new Title XI remedies to protect the Government's interests in the event of default by Title XI obligors;
- 5 Conduct investigations under authority of section 214 of the Merchant Marine Act, 1936, as amended;.
- 6 Such other assignments, as the Chief Counsel may determine.

Section 4. The Division of Litigation and General Law shall:

4.01 Prepare and review documents relating to:

- 1 Acquisition of goods and services by MARAD;
- 2 Cooperative agreements for research and development projects;
- 3 Transfer and operation of ships in the National Defense Reserve Fleet under agency, ship management, or charter agreements pursuant to the provisions of the Merchant Marine Act, 1936, as amended, the Merchant Ship Sales Act of 1946, as amended, or other authorization; sale or purchase of ships under the Merchant Ship Sales Act of 1946, as amended; and donations and other disposition of vessels pursuant to special public and private laws.
- 4 Memorandum of Understanding between the MARAD and other entities;
- 5 Such other documents as the Chief Counsel may direct.

4.02 Advise on matters relating to the requisitioning of ships and mobilization; agency budget and appropriations and non-appropriated funds.

4.03 As appropriate, prepare, review as to form and legal sufficiency, and advise on leases, deeds, permits, easements, performance bonds, operating agreements, and related documents in connection with MARAD's real and personal property.

4.04 Review assignment of claims made by contractors under the Assignment of Claims Act.

4.05 Review and advise the Associate Administrator for Port, Intermodal, and Environmental Activities, on the applications for transfer of surplus property at a closed or realigned military installation for the development or operation of a port or facility under Public Law 103-160, enacted November 30, 1993.

4.06 Provide legal review and advice on matters concerning the Federal Advisory Committee Act.

4.07 Prepare final decisions on appeals under the Freedom of Information Act and the Privacy Act.

4.08 Review and give legal clearance to applications for, and prepare and review documents related to sale and donation of vessels by MARAD, under section 508 of

the Merchant Marine Act, 1936, as amended or other provisions of law, with the exception that the sale of vessels acquired under the Title XI program shall be the responsibility of the Division of Maritime Programs; and trade-in, use and exchange of vessels under section 510 of the Merchant Marine Act, 1936, as amended.

4.09 Review documents and advise on matters relating to environmental protection issues within MARAD's cognizance.

4.10 Investigate, negotiate and settle, or recommend settlement of admiralty claims, just compensation claims, and all other claims handled by the Office of Chief Counsel except those claims subject to the Clarification Act, Part 327. Investigate, negotiate and settle, or recommend action to the Chief Counsel on matters relating to administrative settlement of tort claims under the Federal Tort Claims Act. Provide legal review of settlement of claims of employees for losses of or damage to personal property incident to their service under the Military Personnel and Civilian Employees Claims Act. Settlement authority is limited to \$50,000 for admiralty claims, just compensation claims, claims referred to the Office of Chief Counsel for litigation and Federal Tort Claims Act claims.

4.11 Concur with settlement recommendations of the Department of Justice for cases in litigation where the recommended settlement does not exceed \$500,000, except that such authority is limited to settlements which do not exceed \$50,000 for cases where (1) the payment of the settlement is to be made from agency or agency-administered appropriations or (2) for cases arising in contract.

4.12 Prepare and present the legal aspects of the Government's case at hearings or arguments on all claims pending before MARAD, the Maritime Subsidy Board, or its authorized representatives, including, but not limited to acting as the agency's legal representative before the Merit System Protection Board, the Equal Employment Opportunity Commission, the General Accountability Office, the DOT Board of Contract Appeals, and any other legal proceedings or hearing involving MARAD.

4.13 Investigate, negotiate and settle, or recommend action to the Chief Counsel, on matters relating to the compromise, termination or suspension of claims of the United States under the Federal Claims Collection Act as well as any actions brought to collect the costs of education provided from graduates of the United States Merchant Marine Academy and State Academies.

4.14 Assess the advisability and policy impact on intervention in precedential cases, and recommend intervention as appropriate.

4.15 Provide advice on issues related to the U.S. Merchant Marine Academy and State maritime academies.

4.16 Under the Deepwater Port Act of 1974, as amended, prepare for approval by the Chief Counsel: (1) notice of the commencement of a civil suit (33 U.S.C. 1515(b)(2)); (2) intervention in any civil action to which the Secretary of Transportation is not a party (33 U.S.C. 1515); and (3) requests for the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Surface Transportation Board (33 U.S.C. 1507, 1511 (a)).

4.17 Assist the Department of Justice as co-counsel, or appear as lead counsel when so authorized, in representing MARAD before any State, Federal court or agency in connection with any claim or appeal by or against MARAD or the Maritime Subsidy Board. Serve as Public Counsel in proceedings under the Administrative Procedures Act.

4.18 Advise on substantive matters involving Federal employment rights and responsibilities and represent MARAD in disputes and similar issues involving Federal employees, including collective bargaining matters, and on issues relating to substance and alcohol abuse.

4.19 Provide advice on all matters arising under the Admiralty Extension Act.

4.20 Provide review and legal services for Deepwater port licensing.

4.21 Assist the Office of Marine Insurance in the preparation of insurance policies and other documents required in connection with the administration of the War Risk Insurance Program under Title XII, Merchant Marine Act, 1936, as amended, and on legal matters involved in the administration of the marine insurance provisions of contracts in which the Maritime Administration has an interest. Provide advice on valuation of ships for War Risk Insurance, requisition and other purposes.

4.22 Concur on the behalf of the Office of Chief Counsel in the recommendations of the Office of Marine Insurance with respect to the payment of Clarification Act claims, in an amount not to exceed \$130,000.

4.23 Provide legal advice to MARAD on legal issues relating to seaman and others aboard or arising out of and relating to the operations of the National Defense Reserve Fleet.

4.24 Carry out the functions set forth in section 7 of this order.

Section 5. The Division of Maritime Programs shall:

5.01 Review and give legal clearance to applications for ship financing guarantees under Title XI, Merchant Marine Act, 1936, as amended.

5.02 Act upon recommendations from the Office of Ship Financing on optional redemption of Title XI bonds, perfection of Title XI security interests, successor indenture trustees, successor shipowners, transfers and sale of Owner Participant's Interest, replacement of lost bonds, and insurance claims.

5.03 Prepare, and approve as to form and legality, commitments to guarantee, guarantee agreements, security agreements, mortgages, indentures, bonds, leases, bond purchase agreements, escrow agreements and related documents required in connection with the administration of the ship financing program.

5.04 In conjunction with the Division of Litigation and General Law, assist the Department of Justice as co-counsel, or appear as lead counsel when so authorized, in representing MARAD in any proceedings directly relating to default, actual or anticipated, under Title XI of the Merchant Marine Act, 1936, as amended.

5.05 Review and give legal clearance to: (a) applications for construction-differential subsidies and other financial aid filed under Title V, Merchant Marine Act, 1936, as amended, or the Tanker Construction Program; (b) applications for approval of capital construction funds under Title VI, Merchant Marine Act, 1936, as amended, and construction reserve funds under Section 511 of the Merchant Marine Act, 1936, as amended; and (c) applications for Maritime Security Program agreements and entry into Emergency Preparedness Programs, such as the Voluntary Intermodal Sealift Agreement program.

5.06 Prepare and review as to form and legality, contracts, addenda thereto and all related documents, incident to the foregoing programs.

5.07 Provide advice and review documents relating to administration of the following maritime promotional programs: (1) Cargo preference laws, regulations and policies; (2) Domestic cabotage laws, regulations and practices; (3) War risk and marine insurance; and (4) Vessel documentation.

5.08 Provide advice, review documents and give legal clearance relating to applications for transfer of interests in vessels to persons who are not citizens of the United States and transfers of vessels to foreign registry. Review and prepare recommendations for approval of the Chief Counsel or the Administrator regarding the remission or mitigation of forfeitures and penalties and prosecution of forfeiture arising out of violations of the provisions of sections 9, 37, and 38 of the Shipping Act, 1916, as amended.

5.09 Review documents and provide advice on matters related to 46 U.S.C. Chapter 313, including assessment of civil penalties for violations of its provisions.

5.10 Review and approve the citizenship status of applicants under various provisions of law administered by MARAD.

5.11 Administer the American Fisheries Act, acting as Citizenship Approval Officer.

5.12 Review documents and provide advice on matters relating to utilization of vessels in the National Defense Reserve Fleet including the Ready Reserve Force.

5.13 Provide counsel to the Maritime Subsidy Board and Maritime Administrator regarding interpretation of laws, administrative procedures and due process.

5.14 process applications and prepare for approval of the Administrator, agreements for designation of vessels as American Great Lakes vessels under Public Law 101-624.

5.15 Prepare the annual Compilation of Maritime Laws for publication.

5.16 Carry out the functions set forth in section 7 of this order.

Section 6. The Division of Legislation and Regulations shall:

6.01 Prepare drafts of proposed legislation and Executive Orders relating to MARAD responsibilities, and legislative reports to Congressional committees and

the Office of Management and Budget. Coordinate agency review of, and formulate recommendations on, proposed legislation.

6.02 Prepare drafts of testimony and assemble data required for committee hearings, appear before and serve as liaison with Congressional committees and maintain liaison with other Government agencies on legislative matters.

6.03 Review and recommend approval of reports, statements and documents prepared for submission to Congressional committees.

6.04 Compile laws, proclamations and Executive Orders, and maintain a legislative reference service.

6.05 Coordinate processing of and make initial determinations pursuant to the Freedom of Information Act (See MAO 250-4) and the Privacy Act (See MAO 250-5).

6.06 Coordinate development and publication of new and revised regulations, and revocation of existing regulations no longer required, relating to programs administered by MARAD. Develop policies and monitor procedures regarding public participation in MARAD's rulemaking process. Maintain liaison with the Office of the Secretary of Transportation, Office of Management and Budget, other Federal agencies and other interested parties on regulatory matters. Prepare MARAD's portion of the semi-annual DOT Regulatory Agenda and the Regulatory Plan. Review and prepare recommendations for the Chief Counsel to sign comments or concurrences on rule-making documents that are circulated to the Administrator or to MARAD by the Office of the General Counsel. Serve as MARAD's principal liaison with the DOT Regulations Council.

6.07 Provide Federal Register Liaison Officer and Federal Register Document Review Officer functions.

6.08 Provide legal review and advice on matters concerning the Federal Reports Act and the Paperwork Reduction Act.

6.09 Provide for Secretary, Maritime Administration/Maritime Subsidy Board functions including:

- 1 Service as Secretary of the Maritime Subsidy Board. (Note: Pursuant to 49 CFR 1.67(c), the Secretary serves when required as an alternate member of the Maritime Subsidy Board when there is a vacancy on the Board or in the absence or disability of one of its members. When serving in such capacity, the Secretary shall act pursuant to direct authority from the Secretary of Transportation and exercise judgment independently of authority otherwise delegated to the Maritime Administrator.)
- 2 Arrange meetings of the Maritime Subsidy Board; prepare the agenda and dockets, and present them at meetings; prepare and sign resulting orders, notices, etc.; record and maintain minutes of Board meetings and report actions as required to the Secretary of Transportation. Arrange for hearings and conferences before the Maritime Subsidy Board, notify interested parties and issue all orders, notices, decisions, and actions resulting from these, to the appropriate parties.

- 3 Receive in the name of MARAD or the Maritime Subsidy Board all official documents or legal instruments in administrative and judicial proceedings, including subpoenas served on the Maritime Subsidy Board or its members; and issue subpoenas in the name of MARAD or the Maritime Subsidy Board.
- 4 Initiate and arrange with the Central Dockets Facility for docketing of MARAD adjudicatory and rulemaking proceedings. Process all formal recommendations to, and official actions of, the Maritime Administrator and Maritime Subsidy Board, and provide advice in respect thereto as required. Administer MARAD's Public Reference Room facility.
- 5 Make certifications in behalf of MARAD and the Maritime Subsidy Board; affix the official seal upon appropriate documents; sign and execute contracts, agreements, agreements, and other documents, that have been authorized or approved by the Maritime Administrator, the Deputy Maritime Administrator, or a duly authorized Associate Administrator, Office Director, or Staff Official, or attest the signature of these officials on such documents; countersign specified checks; appear, before courts or tribunals as a witness in behalf of MARAD or the Maritime Subsidy Board.
- 6 Serve as Federal Register Certifying Officer with duties as prescribed in Maritime Administrative Order (MAO) 260-2. Authorize for publication in the Federal Register documents that are routine in nature and which require notice in the Federal Register.
- 7 Ensure appropriate MARAD implementation of 49 CFR Part 29 including: (1) serving as MARAD's non-procurement Debarring and Suspending Official; (2) maintaining liaison on these matters with the Office of the Secretary of Transportation, (3) ensuring that debarred, suspended, voluntarily excluded, and ineligible persons do not participate in covered MARAD assistance programs.
- 8 Maintain official files of actions, petitions, and other documents for public inspection; make copies of action files, petitions, or other documents as required; act as custodian of the records of official actions of the Maritime Subsidy Board and the Maritime Administrator. Maintain original copies of MARAD Memoranda of Agreement and Memoranda of Understanding as prescribed in MAO 250-8.

6.10 Serve as Assistant Deputy Ethics Official, advising on matters relating to ethics and conflicts of interest involving employment with MARAD and on any other matter within MARAD's cognizance.

6.11 Carry out the functions set forth in section 7 of this order.

Section 7. Other Functions:

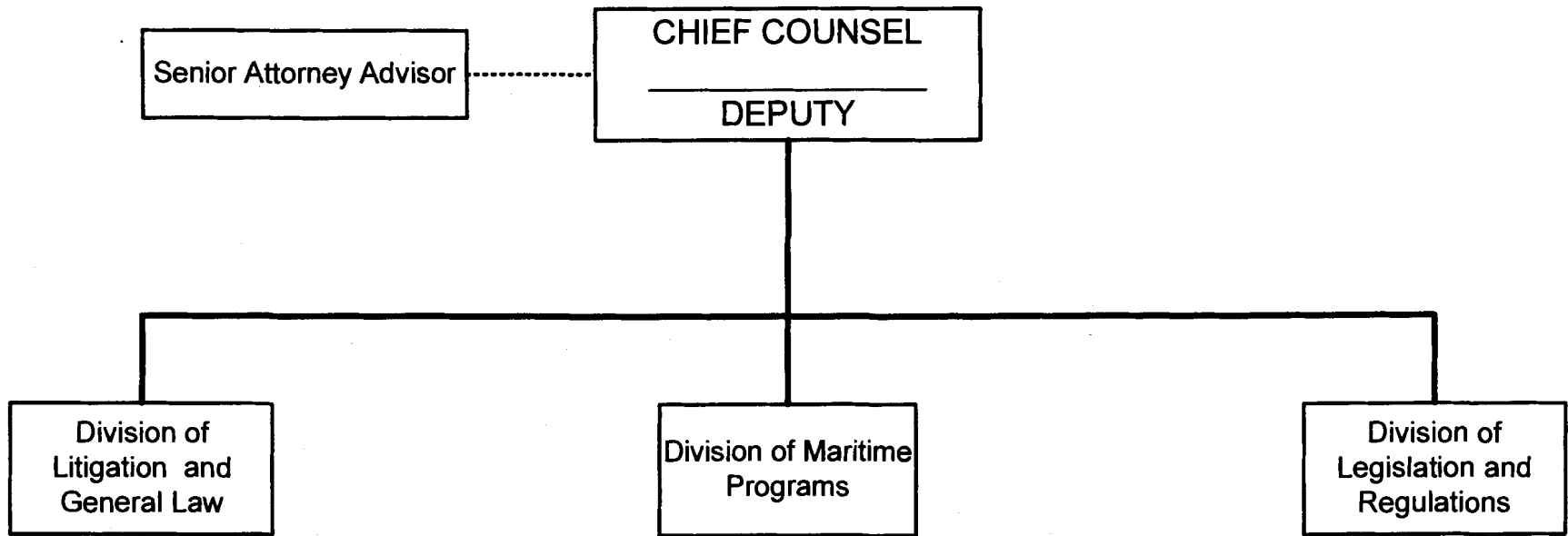
7.01 In addition to the functions set forth in sections 4 through 6 of this order, each Division of the Office of Chief Counsel shall, with respect to the activities under its jurisdiction:

MAO 22-1

- 1 Review and approve for legal sufficiency memoranda and recommendations relating to any of its functions.
- 2 Prepare legal opinions and furnish legal advice on all matters under its jurisdiction, including construction, interpretation and application of statutes, regulations, contracts, agreements and related documents.
- 3 Perform such other functions as may be assigned by the Chief Counsel.

A handwritten signature in black ink, appearing to read 'John Jamian', with a stylized flourish at the end.

John Jamian
Deputy Maritime Administrator



MAO 22-1
October 2005