

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Directive No. 1–10]

Redelegation of Authority of Assistant Attorney General, Civil Division, to Branch Directors, Heads of Offices and United States Attorneys in Civil Division Cases

AGENCY: Office of the Assistant Attorney General, Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends Civil Directive 14–95, published in the Appendix to Subpart Y of Part 0, which sets forth the redelegation of authority by the Assistant Attorney General of the Civil Division to branch directors, heads of offices, and United States Attorneys. On May 20, 2009, the President signed the Fraud Enforcement and Recovery Act (FERA), which authorized the Attorney General to delegate his authority to issue civil investigative demands (CIDs). As a result, the Attorney General signed Order No. 3134–2010 (Jan. 15, 2010) delegating to the Assistant Attorney General for the Civil Division the Attorney General’s authority to issue CIDs, and permitting that authority to be redelegated to other Department officials, including United States Attorneys. Pursuant to FERA and the Attorney General’s order, the new rule would redelegate the authority of the Assistant Attorney General for the Civil Division to issue CIDs in monitored and delegated cases to United States Attorneys, with a notice and reporting requirement. The new rule also eliminates certain differences between the authorities of branch directors and United States Attorneys to file, close, or compromise Civil Division cases, revise the documentation requirements in cases delegated to the latter, and make a few “housekeeping” revisions.

DATES: *Effective Date:* This rule is effective March 24, 2010 and is applicable beginning March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Joyce R. Branda, Director, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530; 202–305–2335.

SUPPLEMENTARY INFORMATION: This rule is a matter of internal Department management. It has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. The Assistant Attorney General for the Civil Division has determined that this rule is not a “significant regulatory action”

under section 3(f) of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Assistant Attorney General for the Civil Division has reviewed this rule, and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, International agreements, Organization and functions (Government agencies), Treaties, Whistleblowing.

■ Accordingly, for the reasons stated in the preamble, title 28, chapter I, part 0, of the Code of Federal Regulations is amended as set forth below:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Appendix to Subpart Y is amended by removing Civil Directive No. 14–95 and adding Civil Directive No. 1–10, to read as follows:

Appendix to Subpart Y—Redelegations of Authority To Compromise and Close Civil Claims

* * * * *

[Directive No. 1–10]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.160, 0.164, and 0.168, it is hereby ordered as follows:

Section 1. Authority To Compromise or Close Cases and to File Suits and Claims

(a) Delegation to Deputy Assistant Attorneys General. The Deputy Assistant Attorneys General are authorized to act for, and to exercise the authority of, the Assistant Attorney General in charge of the Civil Division with respect to the institution of suits, the acceptance or rejection of compromise offers, and the closing of claims or cases, unless any such authority is required by law to be exercised by the

Assistant Attorney General personally or has been specifically delegated to another Department official.

(b) Delegation to United States Attorneys, Branch, Office and Staff Directors and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by 28 CFR 0.160(c), and 0.164(a) and section 4(c) of this directive, and the authority of the Solicitor General set forth in 28 CFR 0.163,

(1) Branch, Office, and Staff Directors, and Attorneys-in-Charge of Field Offices with respect to matters assigned or delegated to their respective components are hereby delegated the authority to:

(i) Accept offers in compromise of claims on behalf of the United States in all cases in which the gross amount of the original claim does not exceed \$5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000;

(ii) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed \$1,000,000; and,

(iii) Reject any offers.

(2) United States Attorneys with respect to matters assigned or delegated to their respective components are hereby delegated the authority to:

(i) Accept offers in compromise of claims on behalf of the United States;

(A) In all cases in which the gross amount of the original claim does not exceed \$1,000,000 and,

(B) In all cases in which the gross amount of the original claim does not exceed \$5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000;

(ii) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed \$1,000,000 and,

(iii) Reject any offers.

(3) With respect to claims asserted in bankruptcy proceedings, the term gross amount of the original claim in subparagraphs (1)(i) and (2)(i) of this paragraph means liquidation value. Liquidation value is the forced sale value of the collateral, if any, securing the claim(s) plus the dividend likely to be paid for the unsecured portion of the claim(s) in an actual or hypothetical liquidation of the bankruptcy estate.

(c) Subject to the limitations imposed by sections 1(e) and 4(c) of this directive, United States Attorneys, Directors, and Attorneys-in-Charge are authorized to file suits, counterclaims, and cross-claims, to close, or to take any other action necessary to protect the interests of the United States in all routine nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the original claim does not exceed \$1,000,000. Such actions in nonmonetary cases which are other than routine will be submitted for the approval of the Assistant Attorney General, Civil Division.

(d) United States Attorneys may redelegate in writing the above-conferred compromise and suit authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(e) Limitations on delegations. The authority to compromise cases, file suits, counter-claims, and cross-claims, to close cases, or take any other action necessary to protect the interests of the United States, delegated by paragraphs (a) and (b) of this section, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Civil Division, when:

(1) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs.

(2) Because a novel question of law or a question of policy is presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Civil Division.

(3) The agency or agencies involved are opposed to the proposed action. The views of an agency must be solicited with respect to any significant proposed action if it is a party, if it has asked to be consulted with respect to any such proposed action, or if such proposed action in a case would adversely affect any of its policies.

(4) The U.S. Attorney involved is opposed to the proposed action and requests that the matter be submitted to the Assistant Attorney General for decision.

(5) The case is on appeal, except as determined by the Director of the Appellate Staff.

Section 2. Action Memoranda

(a) Whenever, pursuant to the authority delegated by this Directive, an official of the Civil Division or a United States Attorney accepts a compromise, closes a claim or files a suit or claim, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file. In the case of matters compromised, closed, or filed by United States Attorneys, a copy of the memorandum must, upon request therefrom, be sent to the appropriate Branch or Office of the Civil Division.

(b) The compromising of cases or closing of claims or the filing of suits for claims, which a United States Attorney is not authorized to approve, shall be referred to the appropriate Branch or Office within the Civil Division, for decision by the Assistant Attorney General or the appropriate authorized person within the Civil Division. The referral memorandum should contain a detailed description of the matter, the United States Attorney's recommendation, the agency's recommendation where applicable, and a full statement of the reasons therefor.

Section 3. Return of Civil Judgment Cases to Agencies

Claims arising out of judgments in favor of the United States which cannot be permanently closed as uncollectible may be

returned to the referring Federal agency for servicing and surveillance whenever all conditions set forth in USAM 4-2.230 have been met.

Section 4. Authority for Direct Reference and Delegation of Civil Division Cases to United States Attorneys

(a) Direct reference to United States Attorneys by agencies. The following civil actions under the jurisdiction of the Assistant Attorney General, Civil Division, may be referred by the agency concerned directly to the appropriate United States Attorney for handling in trial courts, subject to the limitations imposed by paragraph (c) of this section. United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representatives, subject to the limitations set forth in section 1(e) of this directive. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States, except claims involving penalties and forfeitures, where the gross amount of the original claim does not exceed \$1,000,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Department of Veterans Affairs and the Farm Service Agency.

(3) Suits to enjoin violations of, and to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376, the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a, the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d), the Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*, the Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.*, the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 *et seq.*, the Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 *et seq.*

(5) Social Security disability suits under 42 U.S.C. 423 *et seq.*

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 *et seq.*

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments and actions for general debt, 5 U.S.C. 5520a.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor

Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b).

(12) Cases referred by the Surface Transportation Board to enforce orders of the Surface Transportation Board or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 *et seq.*

(b) Delegation to United States Attorneys. Upon the recommendation of the appropriate Director, the Assistant Attorney General, Civil Division may delegate to United States Attorneys suit authority involving any claims or suits where the gross amount of the original claim does not exceed \$5,000,000 where the circumstances warrant such delegations. United States Attorneys may compromise any case redelegated under this subsection in which the gross amount of the original claim does not exceed \$5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000. United States Attorneys may close cases redelegated to them under this subsection only upon the authorization of the appropriate authorized person within the Department of Justice. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(e) of this directive also remain applicable in any case or claim delegated hereunder.

(c) Cases not covered. Regardless of the amount in controversy, the following matters normally will not be delegated to United States Attorneys for handling but will be personally or jointly handled or monitored by the appropriate Branch or Office within the Civil Division:

(1) Cases in the Court of Federal Claims.

(2) Cases within the jurisdiction of the Commercial Litigation Branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office.

(5) Any fraud or False Claims Act case where the amount of single damages exceeds \$1,000,000.

(6) Any case involving vessel-caused pollution in navigable waters.

(7) Cases on appeal, except as determined by the Director of the Appellate Staff.

(8) Any case involving litigation in a foreign court.

(9) Criminal proceedings arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer

tampering), except as determined by the Director of the Office of Consumer Litigation.

(10) Nonmonetary civil cases, including injunction suits, declaratory judgment actions, and applications for inspection warrants, and cases seeking civil penalties including but not limited to those arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Office of Consumer Litigation.

(11) Administrative claims arising under the Federal Tort Claims Act.

Section 5. Civil Investigative Demands

Authority relating to Civil Investigative Demands issued under the False Claims Act is hereby delegated to United States Attorneys in cases that are delegated or assigned as monitored to their respective components. In accordance with guidelines provided by the Assistant Attorney General, each United States Attorney must provide notice and a report of Civil Investigative Demands issued by the United States Attorney. When a case is jointly handled by the Civil Division and a United States Attorney's Office, the Civil Division will issue a Civil Investigative Demand only after requesting the United States Attorney's recommendation.

Section 6. Adverse Decisions

All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult title 2 of the United States Attorney's Manual for procedures and time limitations. An appeal cannot be taken without approval of the Solicitor General. Until the Solicitor General has made a decision whether an appeal will be taken, the Government attorney handling the case must take all necessary procedural actions to preserve the Government's right to take an appeal, including filing a protective notice of appeal when the time to file a notice of appeal is about to expire and the Solicitor General has not yet made a decision. Nothing in the foregoing directive affects this obligation.

Section 7. Supersession

This directive supersedes Civil Division Directive No. 14-95 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to Branch Directors, heads of offices and United States Attorneys.

Section 8. Applicability

This directive applies to all cases pending as of the date of this directive and is effective immediately.

Section 9. No Private Right of Action

This directive consists of rules of agency organization, procedure, and practice and does not create a private right of action for any private party to challenge the rules or actions taken pursuant to them.

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Dated: March 8, 2010.

Tony West,

Assistant Attorney General, Civil Division.

[FR Doc. 2010-5816 Filed 3-23-10; 8:45 am]

BILLING CODE 4410-12-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0143]

RIN 1625-AA00

Safety Zones; March Fireworks Displays Within the Captain of the Port Puget Sound Area of Responsibility (AOR)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing two safety zones on the waters of Puget Sound, WA for fireworks displays. This action is necessary to provide for the safety of life on navigable waters during the fireworks displays. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: *Effective Date:* this rule is effective in the CFR from March 24, 2010 until 12:01 a.m. March 28, 2010. This rule is effective with actual notice for purposes of enforcement beginning 7 p.m. March 6, 2010, unless canceled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0143 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0143 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Ashley M. Wanzer, Waterways Management, Sector Seattle, Coast Guard; telephone 206-217-6175, e-mail SectorSeattleWWM@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives since immediate action is needed to protect persons and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

For the same reasons as above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Background and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during fireworks displays, and to protect mariners transiting the area from the potential hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled events.

This rule will control the movement of all vessel operators in a regulated area surrounding the fireworks events indicated in this Temporary Final Rule.

Entry into these zones by all vessel operators or persons will be prohibited