

Gulf Coast Mariners Association



P. O. Box 3589
Houma, LA 70361-3589
Phone: (985) 851-2134
Fax: (985) 879-3911
www.gulfcoastmariners.org

GCMA REPORT #R-315-E (Series) DATE: November 6, 2006

[Publication History: Consolidated, renumbered as #R-315-E, an cancelled GCMA Report #R-345, dated Jan. 9, 2003 and GCMA Report #R-380, Rev. 1, dated Feb. 27, 2004. Updated CFR entries to new publication date.]

DRUG, ALCOHOL & OTHER CONVICTIONS AND HOW THEY AFFECT YOUR LICENSE AND MMD

Table of Contents

GCMA Asks the Coast Guard.....	1
Regulations on Eligibility for Mariner Credentials.....	2
GCMA Comments on Assessment Periods.....	6
The Marine Safety Manual	6
Your Rights of Appeal	10
Operating a Vessel While Under the Influence of Alcohol.....	11
Laws & Regulations on Suspension and Revocation.....	11
Marine Investigation Regulations: Personnel Action.....	12
Regulations on Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	12
Related Reports Available	15

GCMA ASKS THE COAST GUARD

Background

The answer to the question “What do you do with a drunken sailor” no longer is “Put him in the longboat ‘til he’s sober.” In this day and age, a mariner should be more concerned about how the Coast Guard will treat him when convicted of driving under the influence of intoxicants (DUI) or driving while intoxicated (DWI).

On June 28, 2002, at the request of one of our members, we posed the following hypothetical question to the Chief, Merchant Vessel Personnel and Investigation Branch, Eighth Coast Guard District. We did this because we want our mariners to understand how seriously the Coast Guard views both alcohol and how one drug convictions and how one careless act can ruin your entire career.

Our Question to the Coast Guard

- ?Joe is a Coast Guard-licensed mariner who also holds a merchant mariner’s document (MMD).
- ?Several months ago he was pulled over for driving

erratically on the highway.

?He had gone to a wedding reception and subsequently was cited for driving under the influence of alcohol (DUI/DWI). This was his first (____) offense.

?He went to court, pleaded guilty, paid a fine, and completed the required community service.

To this point, the Coast Guard probably had no knowledge of Joe’s problems with the local constabulary. However, realizing that he must renew his license and MMD in (____) years, he knows that something may happen as a result of his DUI/DWI arrest and conviction. What steps should Joe, a conscientious person, take in regard to protecting his Coast Guard license, and when is he expected to take those steps? Since Joe, like most mariners, lives from paycheck to paycheck, he is concerned that he may have to surrender his license and lose time off the job – something he can ill afford to do?

The Coast Guard Reply

[Editorial note: The Coast Guard reply dated December 24, 2002 is presented in its entirety. However, GCMA added referenced regulations, additional explanatory material, and emphasis by underlining, in certain places, for the benefit of our mariners.]

“I am writing in response to your letter of June 28, 2002, which requested answers to questions regarding a hypothetical situation involving a mariner who was charged and convicted of Driving While Intoxicated (DWI) or Driving Under Influence (DUI). Let me begin by stating that DWI/DUI cases involving mariners are not one-size fits all; each case is evaluated by the Coast Guard on its own merits. The following information should help your readers to gain a better understanding of the process by which the Coast Guard reviews and acts upon DWI/DUI conviction information.

“There are two scenarios when the Coast Guard would become involved in reviewing or investigating a mariner convicted of DWI/DUI:

“The **first scenario** entails the Coast Guard finding out about a mariner's DWI/DUI conviction (or driver’s license suspension due to refusal to submit to an alcohol intoxication test) during the course of their application for a Coast Guard credential. An applicant for a Coast Guard credential must disclose all criminal convictions on the application form. In addition, the Regional Exam Center (REC) performs a National Driver Register check on applicants in accordance with Title 46, United States Code Annotated, Section 7703(3), which reveals the applicant's DWI/DUI (and refusal to submit) record.

“Once a DWI/DUI conviction is identified, the REC evaluates the applicant's reported conviction and associated facts using the guidelines set forth in Title 46, Code of Federal Regulations (CFR) Subparts 10⁽¹⁾ and 12⁽¹⁾, and Volume III of the Coast Guard Marine Safety Manual, Chapter 3⁽¹⁾. The REC decides whether to assign an assessment period to further monitor the applicant's character, judgment, and suitability to hold a Coast Guard credential. The regulations and Marine Safety Manual guidelines require that the REC evaluate factors such as the age of the DWI conviction(s), the number of DWI convictions, the severity of the offense, the status of the applicant's driver license, and rehabilitation. To ascertain the facts of the case, the applicant is required to provide the

REC with documents such as traffic court disposition papers, conviction record, and parole records. Depending on the severity of alcohol abuse and the evaluations performed by medical treatment professionals, the mariner may be required to show evidence of rehabilitation. Acceptable evidence of reform/rehabilitation include the following: successful completion of an alcohol abuse, treatment or education program; long term active membership in therapy, such as Alcoholics Anonymous; and positive character references from responsible persons who can attest to the applicant's sobriety and character change since the conviction. ^[¹Editorial note: We printed all of these references in the pages following this letter.]

“Another factor that the Coast Guard considers is the state traffic court decision and order. These documents are reviewed, paying close attention to any resultant drivers license restrictions/suspensions and rehabilitation requirements imposed. Once all factors are evaluated, the Coast Guard Regional Exam Center informs the applicant what must be done, if anything, before issuance of the Coast Guard credential.

“After a complete review of the facts, the REC supervisor (under the authority of the Officer-in-Charge, Marine Inspection (OCMI)) makes a final determination of assigning an assessment period, or approving/denying the application. The purpose of an assessment period is to allow the applicant/mariner time to complete any rehabilitation requirements imposed, to monitor their sobriety and character, and to ascertain that the DWI/DUI conviction was an isolated incident. The mariner is afforded the opportunity to appeal the denial or assessment period in accordance with the appeal process outlined in Title 46 CFR Subpart 1.03⁽¹⁾; however, appeals must be valid and supported by evidence in order to be granted.

“The **second scenario** involves the Coast Guard learning about the DWI/DUI conviction outside of the application process. Although Coast Guard investigators do not proactively search for manners convicted of DWI/DUI, the conviction information is sometimes reported to them (by the mariner, his/her company, anonymous phone calls, etc). When information about a conviction involving a credentialed mariner is received, the Coast Guard is obligated to investigate.

“Upon learning of a conviction, Coast Guard investigators from the applicable Marine Safety Office will conduct an investigation to confirm the alleged conviction record. If a DWI/DUI conviction is found, the Marine Safety Office has several options:

- Take no action based on the age or circumstance of the conviction and subsequent rehabilitative action;
- Issue a Letter of Warning;
- File a complaint against the mariner for the conviction as outlined in Title 46, United States Code Annotated, Section 7703(3) and pursue administrative proceedings against their Coast Guard credential(s).

“The investigating officer will usually discuss with the mariner the circumstances and conditions of their conviction, and any subsequent rehabilitation (similar to the REC evaluation above) before filing a complaint within the formal administrative proceedings system. The regulations that delineate the administrative proceedings process are found in Title 33 CFR, Subpart 20.

“If charged with an administrative complaint, the mariner will have the opportunity to appear before an Administrative Law Judge to decide (his) case. Prior to an administrative hearing, most cases are resolved using settlement agreements. In these cases, the Coast Guard and the mariner sign a settlement agreement to submit to the Administrative Law Judge for acceptance. Settlement agreements for DWI/DUI convictions typically require the mariner to be screened by a medical treatment professional(s), and then undergo some degree of rehabilitation. As with all DWI/DUI cases, the requirements for rehabilitation placed upon the mariner are based on the merits of the individual case and are very difficult to generalize. If appropriate, the mariner's Coast Guard credential(s) is temporarily suspended to allow time for appropriate rehabilitation and to verify that the conviction was an isolated incident.

“I hope that this enforcement summary helps you to understand the Coast Guard's process of evaluating cases involving DWI/DUI. As we discussed by phone, besides the required disclosure on the Coast Guard credential application, there are no regulatory requirements for a mariner to report to the Coast Guard his DWI/DUI offense immediately upon conviction. If you have any questions, please contact me at the number listed above. Sincerely, D. L. LeBlanc, Lieutenant Commander, U.S. Coast Guard, Chief, Merchant Vessel Personnel & Investigation Branch, By direction of the Commander, Eighth Coast Guard District.

References

The letter (above) referred to regulations and guidelines. Regulations, as found in the Code of Federal Regulations (CFR) are requirements that are enforceable by law. However, “guidelines” such as the Marine Safety Manual describe the way the Coast Guard expects its officers and employees to manage its internal programs such the programs that deal with merchant marine personnel.

REGULATIONS ON ELIGIBILITY FOR MARINER CREDENTIALS

[GCMA Comment: The term “Credentials” lumps together licenses, merchant mariner documents (“Z-cards”) and Certificates of Registry together under one word.]

[GCMA Comment: The Coast Guard in Title 46, Code of Federal Regulations, section 10.201 cites the regulations covering “eligibility for licenses...” These regulations apply to both original licenses and renewals.]

46 CFR §10.201(a) Each applicant shall establish to the satisfaction of the OCMI that he or she possesses all of the qualifications necessary (such as age, experience, character references and recommendations, physical health or competence and test for dangerous drugs, citizenship, approved training, passage of a professional examination, as appropriate, and, when required by this part, a practical demonstration of skills) before the OCMI will issue a license or certificate of registry.

46 CFR §10.201(b) No person who has been convicted

by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S. Code §30304) due to the addiction or abuse of alcohol is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

46 CFR §10.201(h) Criminal Record Review. The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

46 CFR §10.201(h)(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in §1.03 of this chapter apply. No examination will be given pending decision on appeal.

46 CFR §10.201(h)(2) The OCMI may use table 10.201(h) to evaluate applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMI will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the OCMI. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

46 CFR §10.201(h)(3) When an applicant has

convictions for more than one offense, the minimum assessment period will be the longest minimum in table 10.201(h) and table 10.201(i) based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 10.201(h) and table 10.201(i) based upon the applicant's convictions.

46 CFR §10.201(h)(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in table 10.201(h), or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMI will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMI is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMI.

46 CFR §10.201(h)(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section, the OCMI will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI will disapprove the application.

46 CFR §10.201(h)(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the OCMI will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMI has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMI disapproves an application based upon a conviction older than the maximum assessment period, the OCMI will notify the applicant in writing of the reason(s) for the disapproval. The OCMI will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in §1.03 of this chapter apply.

TABLE 10.201(h)--GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime ⁽¹⁾	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated).....	5 years	10 years.
Assault (simple).....	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons ⁽²⁾		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement).....	3 years	5 years.
Other crimes against property ⁽²⁾		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes ⁽²⁾		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety ⁽²⁾		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses.....	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials.....	1 year	10 years.
Dangerous Drug Offenses^{(3), (4), (5)}		
Trafficking (sale, distribution, transfer).....	5 years	10 years.
Dangerous drugs (Use or possession).....	1 year	10 years.
Other dangerous drug convictions ⁽⁶⁾		

¹ Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

² Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

³ Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense

while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

⁴ The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

⁵ Applicants must demonstrate rehabilitation under paragraph (j) of this section, including applicants with dangerous drug use convictions more than ten years old.

⁶ Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense.

46 CFR §10.201(i) National Driver Register. A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The OCMI may determine minimum and maximum assessment periods for NDR listed criminal convictions using table 10.201(h). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

46 CFR §10.201(i)(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in §1.03 of this chapter apply. No examination will be given pending decision on appeal.

46 CFR §10.201(i)(2) Prior to disapproving an application because of information received from the NDR, the OCMI will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The

REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

46 CFR §10.201(i)(3) The guidelines in table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under table 10.201(h) as applicable.

46 CFR §10.201(i)(4) An applicant may request an NDR file check for personal use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93-579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

46 CFR §10.201(i)(4)(i) Applicants should request Form NDR-PRV or provide the following information on a notarized letter:

- 10.201(i)(4)(i)(A)** Full legal name;
- 10.201(i)(4)(i)(B)** Other names used;
- 10.201(i)(4)(i)(C)** Complete mailing address;
- 10.201(i)(4)(i)(D)** Driver license number;
- 10.201(i)(4)(i)(E)** Eye color;
- 10.201(i)(4)(i)(F)** Social security number;
- 10.201(i)(4)(i)(G)** Height;
- 10.201(i)(4)(i)(H)** Weight; and
- 10.201(i)(4)(i)(I)** Sex.

10.201(i)(4)(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

TABLE 10.201(i)--GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL⁽¹⁾		
No. of conviction	Date of conviction	Assessment period
1.....	Less than 1 year.....	1 year from date of conviction
1.....	More than 1, less than 3 years	Application will be processed, unless suspension or revocation ² is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1.....	More than 3 years old.....	Not necessary unless suspension or revocation is still in effect.
2 or more.....	Any less than 3 years old	1 year since last conviction and at least 3 years from 2 nd most recent conviction, suspension or revocation is still in effect.
2 or more.....	All more than 3 years old.....	Application will be processed unless suspension

¹ Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

² Suspension or revocation, when referred to in table 10.201(i), means a State suspension or revocation of a motor vehicle operator's license.

46 CFR §10.201(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant, such as:

46 CFR §10.201(j)(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

46 CFR §10.201(j)(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

46 CFR §10.201(j)(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

46 CFR §10.201(j)(4) Steady employment.

46 CFR §10.201(j)(5) Successful completion of all conditions of parole or probation.

[CGD 81-059 and CGD 81-059a, 52 FR 38623 and 38666, Oct. 16, 1987, as amended by CGD 81-059, 54 FR 133, Jan. 4, 1989; CGD 81-059a, 55 FR 14799, Apr. 18, 1990; CGD 91-223, 60 FR 4524, Jan. 23, 1995; CGD 91-212, 60 FR 65484, Dec. 19, 1995; CGD 95-062, 62 FR 34529, June 26, 1997; 64 FR 63213, Nov. 19, 1999; USCG-2005-22329, 70 FR 57183, Sept. 30, 2005]

[GCMA Comment: Refer to 46 CFR 12.02-4, "Basis for Denial of Documents," applies to merchant mariner documents (MMD or Z-cards) and is comparable to 46 CFR 10.201 for licensed officers (above).]

**GCMA COMMENTS ON
"ASSESSMENT PERIODS"**

GCMA Comment: Regardless of any benefits, the imposition of "Assessment Periods" has forced delays in the careers of many mariners and has discouraged others from pursuing a career in the merchant marine. It is an extra penalty targeting mariners that goes above and beyond the penalties posed by the judicial system. GCMA opposes the use of this tool by Regional Examination Centers.]

Background

The use of "Assessment Periods" came about in 1995 as an indirect result of the EXXON VALDEZ accident in 1989 and the alleged use of alcohol by the vessel's Master. The following statements appeared in the Federal Register in a rulemaking titled National Drivers Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner Documents."

Coast Guard arguments for imposing assessment periods appeared in the Notice of Proposed Rulemaking at 60 FR 13571-13572 on March 13, 1995 and in the Final Rule at 60 FR 65481 on December 19, 1995. Only five comments addressed the problem at the time that more or less gave the Coast Guard free reign to slap assessment periods in whole-year increments ranging from 1 to 10 years for a variety of offenses.

The Final Rule Stated, in part: "The Coast Guard established the assessment periods as guidelines for the OCMI when evaluating an applicant with criminal convictions."

[GCMA Comment: If these "guidelines" were designed are to be applied by the OCMI, they should not be delegated to his subordinates because of their severe economic impact on individual mariners.]

[GCMA Comment: The minimum "Assessment Period" is one year. This effectively delays or disrupts a mariner's employment for this length of time without providing any effective supervision whatever. This contributes to the current personnel shortage throughout the industry.]

[GCMA Comment: It is unfair to punish a person for the same offense twice. This is especially true if a mariner has already received judicial punishment and has completed his sentence.]

[GCMA Comment: Previous experience on the water is an industry asset. By imposing "Assessment Periods" the Coast Guard is depriving the marine industry of these assets and requires industry to train replacements. Given its hiring prerogatives, industry does not need the Coast Guard involvement in solving social problems it is not well equipped to handle.]

THE MARINE SAFETY MANUAL

[GCMA Comment: This section includes a reprint of most of Marine Safety Manual, Volume 3, Chapter 3. The Marine Safety Manual contains instructions to U.S. Coast Guard personnel on how the Commandant expects them to view issues surrounding drug and alcohol use and abuse as they relate to issuing licenses and documents to merchant marine personnel.]

**Evaluation of Character Issues
and Violations of Law**

A. Character and Violations of Law.

This chapter deals with the policies for rejecting⁽¹⁾ applications for all Merchant Mariner's Documents (MMDs), licenses and Certificates of Registry (CORs) when there is substantial evidence that the criminal convictions, character or habits of life warrant the rejection. The evaluator must consider all aspects of the applicant's record. The applicant's record of convictions are our best source to determine if the applicant should be rejected. However, in some cases, the evaluator may

have to make a determination from records other than convictions. There are few simple answers to whether an applicant is qualified. The evaluator should use any source available to determine the qualification of an applicant. See 46 CFR §10.103 and §12.01-6, for the court orders that are considered a conviction for the purposes of this chapter.

[⁽¹⁾ GCMA Comment: The Coast Guard places too much emphasis on “rejecting” mariner applications and too little emphasis in encouraging mariners to achieve success in their career.]

1. 46 U.S. Code §7101 authorizes the Secretary of the department or agency under which the Coast Guard is operating to issue licenses to applicants found qualified as to age, experience, professional qualifications, physical fitness, character and habits of life. In addition, the Coast Guard may issue a Certificate of Registry to applicants found qualified as to experience, knowledge, skill and character. 46 U.S. Code §7503(b)(1) provides that a license, COR or MMD application may be **denied** to any individual who, within ten years before making application, was convicted of violating a dangerous drug law of the United States. 46 CFR §10.201 and 46 CFR §12.02-4 address denial of license, COR, and MMD applications based upon narcotic convictions. Assessment periods are minimum and maximum periods of time over which the OCMI will consider a conviction(s) in the evaluation of an applicant for merchant mariner’s credentials. Definitive guidelines for assignment of assessment periods to be used for the evaluation of applicants with various criminal and driving convictions were published in a Final Rule on December 19, 1995. [60 FR 65478 dated December 19, 1995, "National Driver Registration and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner’s Documents"].
2. 46 U.S. Code §7503 provides that an applicant may be denied a license or COR or MMD if they have been a user of, or addicted to, a dangerous drug, unless the applicant provides satisfactory proof of cure. Dangerous drugs are defined in 46 U.S. Code §2101 and mean a narcotic or controlled substances including marijuana.
3. Before Congress enacted the Oil Pollution Act of 1990 (OPA-90), (Public Law 101-380), an individual who applied for a license, COR or MMD was not required to provide the Coast Guard with National Drivers Register (NDR) information. OPA-90 amended laws that now require the Coast Guard to review the applicant's driving record for certain NDR listed traffic offenses before issuing a license, COR or MMD. These offenses include operation of a motor vehicle while under the influence of, or while impaired by, alcohol or a controlled substance; any traffic violation(s) arising in connection with a fatal traffic accident, and reckless driving, or racing on the highways. Although an individual's motor vehicle record may not be directly related to his or her maritime career, a record of alcohol or drug related, or other motor vehicle offense(s) indicates that the

individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment. Information received from the NDR must be made available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying an application for a license, COR, or MMD.

4. Persons who have a record of certain criminal convictions may be viewed as lacking appropriate character and hence denied the privilege to act as a licensed officer or MMD holder. Unacceptable character traits or habits of life may be demonstrated by criminal convictions for murder, assault, rape, theft, child molestation and related crimes, or through demonstrated repeated disregard for the rules and regulations of an orderly society (convictions for disorderly conduct, reckless driving and similar violations of law). Due to complex combinations of convictions and other variables, a simple matrix of acceptable versus unacceptable criminal backgrounds is not practicable. Each applicant must be evaluated individually to determine their qualification for a license, COR, or MMD. Factors to be considered should include at least the following:
 - a. Types of crimes and the number of convictions.
 - b. Recency of convictions.
 - c. Age at which the crimes were committed.
 - d. Evidence of frequent and repeated criminal activity includes misdemeanors and/or (felonies).
 - e. The extent of the connection between the crime and the license or COR and the safe and legal operation of a vessel.
 - f. Character references from responsible persons in extenuation and mitigation.
 - g. The length of time spent since release from incarceration or supervised parole.
5. Any applicant who holds or is eligible to renew a license, COR or MMD, who has been convicted of a drug related crime, or has admitted to using or been reported to have used narcotics, or has been convicted of an NDR related offense within the past three years will be referred to the Senior Investigating Officer (SIO) for an investigation prior to processing the applicant's requested transaction.
6. Evaluating the Crime(s): See section 3.C of this volume.
7. Evaluating Multiple Convictions: See section 3.C of this volume. Multiple convictions may indicate a history of flagrant disregard for the rules of an orderly society. In such cases, the minimum assessment period will be the longest minimum in the regulations, based upon the applicant's convictions. The maximum assessment period will be the longest shown in the regulations.
8. OCMI Discretion: Each case must be evaluated individually. The reason for any assessment period must be well documented in the applicant's file.

B. Guidelines For Rejecting Fraudulent Applications.
[GCMA Comment: Section omitted.]

C. Evaluation of Records of Convictions.

This section addresses various factors to consider when evaluating an applicant who has a criminal record, including DWI/DUI convictions. If the applicant holds or is eligible to renew a license, COR or MMD the SIO should be advised. The application process is then put on hold until the SIO advises on the outcome of an investigation. This requires close liaison between the Coast Guard Chief, Regional Exam Center and the SIO. If the application is for an initial license, COR, or MMD, the process is also placed on hold pending the outcome of a criminal and NDR records review by the REC.

1. Types of Convictions.

Criminal convictions may serve as the basis for disqualifying an applicant for a license, COR or MMD. Some examples of criminal convictions that may disqualify an applicant include convictions for violations of national security laws; capital offenses such as first degree murder; armed robbery; rape; assault with a deadly weapon; embezzlement; other serious felony crimes; and crimes of moral corruption (see section D). Other criminal convictions may also serve as grounds for disqualifying an applicant for a license, COR or MMD for a reasonable period of time (assessment period). During the assessment period the applicant is given the opportunity to demonstrate rehabilitation. A reasonable period of time is generally a number of years from the date of conviction or release from jail and/or supervised probation, whichever is later. (see section D).

2. Number of Convictions.

Multiple criminal convictions may be more of an indication of an applicant being unqualified than convictions for multiple criminal charges arising from a single criminal incident. In judging multiple convictions, care should be used to discern if the convictions arise from multiple charges for a single incident or numerous incidents of criminal activity or over a long period. A single incident can result in multiple convictions for different crimes. Convictions for robbery, drug possession, assault and rape may stem from one event. Closely related to multiple convictions for a single incident is the concept of repeat offenders. Persons with a long string of criminal convictions, particularly for such serious crimes as murder, theft, robbery or burglary, sodomy or even less serious crimes and violations showing a flagrant disregard for the rules of an orderly society are unsuitable to hold a license, COR or MMD. Such persons, by their habits of life, have demonstrated that they cannot be trusted by society in general; thus, absent suitable evidence of rehabilitation, they certainly cannot be entrusted to perform the duties of a merchant mariner.

3. Recency of Convictions.

Some persons rehabilitate themselves after conviction and become worthy of the trust required to hold a license, COR or document. A lack of recent convictions since any period of incarceration may be evidence of rehabilitation. However, generally, an assessment period should not be less than one year.

[GCMA Comment: What professional qualifications do these nameless Coast Guard employees at Regional Exam Centers have that qualifies them to deny employment to any person for a year – especially those who have paid their debt to society through the established legal system.]

[GCMA Comment: What costs accrue to a “lower-level” mariner for being out of work for a year?]

[GCMA Comment: How many years of “experience” is lost to the industry when qualified mariners face these bureaucratic hurdles?]

4. Additional Evidence of Rehabilitation or Reform.

In addition to time without subsequent convictions, there are other acceptable ways to demonstrate rehabilitation or reform. One of the most common is through the use of character references. These references should be carefully considered before being accepted. Parole officer recommendations may be considered. Character references which indicate knowledge of the applicant's convictions and attest to a demonstrated change in character or habits of life, with examples of how the applicant's behavior has changed, are generally more worthy than those which simply extol the applicant's virtues, e.g., those written without any knowledge of the applicant's history. Given the role drugs and alcohol often play in criminal activity, long-term participation in Alcoholics Anonymous, Narcotics Anonymous or other similar programs with support groups may be accepted as some evidence of rehabilitation or reform.

5. Relevance of the Offense to the License, COR, or MMD Applied for.

Special relevance resides in the presence or absence of opportunity for the holder of a license, COR, or MMD to repeat their previous crimes while on the job. For example, a conviction for drug trafficking is particularly relevant when an applicant has requested a license, COR or MMD. Having a seafarer's document presents the opportunity to smuggle and traffic in controlled substances. This type of activity could also lead to impairment of the seafarer caused by the use of a controlled substance and endanger life or property at sea.

6. Incarceration.

A period of time without conviction is evidence of reform only when there is opportunity to demonstrate a rehabilitated life style. Time in prison will not count toward any of the assessment periods suggested in these guidelines. A period of time to interact with society is necessary for a person to prove they can successfully abide by society's laws and regulations. However, consideration should also be given to bad acts while in prison. Prisoners commit crimes while incarcerated. Such a record of behavior may be considered as evidence of a lack of rehabilitation. Time in prison will not be considered for any assessment periods required before issuing a license, COR or MMD.

7. Probation.

An applicant's parole/probation status is a factor in deciding if the applicant is qualified. An applicant in a closely supervised parole/probation status is not as trusted by society as is someone on unsupervised parole / probation. Time on supervised parole / probation should be given less weight and may be excluded entirely from any assessment period. However, the OCMI may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. 46 CFR §10.201(h)(2) and §12.02-4(c)(2) have been recently revised to clarify when assessment periods begin. Time on parole / probation may be considered for evidence of rehabilitation if all the conditions of the parole or probationary period were properly fulfilled. Conditions of the parole / probation should also be examined by contacting the appropriate court officer. Frequently conditions of parole / probation prohibit the individual from leaving the jurisdiction of the state or district in which the individual was convicted. This prohibits employment that is inconsistent with the conditions of the parole / probation.

D. Evaluating Criminal Behavior.

The following guidelines should be applied when evaluating applicants with criminal convictions. When evaluating the criminal convictions record, remember they had their day in court, defended by legal counsel. Do not allow yourself to be placed in the position of retrying the evidence that led to the conviction. The applicant will generally try to minimize the outcome of the conviction by introducing their perception of why they were convicted. This view is self-serving. Convictions must be taken at face value. In most cases you should insist upon a copy of the court's Decision and Order (D&O) or its equivalent. The D&O will show the charges and their outcome. Some will be more detailed, giving a short background of the case. When evaluating the qualifications of an applicant for a license, COR or MMD use the factors of section 3.C. and 3.A.4. as your guide. The assessment periods listed in 46 CFR §10.201(h) and §12.02-4(c) respectively, should be considered as suggested minimums and maximums. The evaluator must use judgment in deciding reasonable assessment periods.

E. Dangerous Drug Offenses.

46 U.S. Code §7503 gives the Coast Guard authority to disqualify an applicant for a license, COR or MMD to any individual who has been convicted of a drug law violation within ten years preceding the date of application or who has ever been a user of or addicted to the use of a dangerous drug, including marijuana. However, the authority to disqualify an applicant is qualified in several ways. First, the statutory time limit on considering a conviction of this sort is a maximum of ten years from the date of the conviction. Second, an applicant who has been addicted to or a user of a dangerous drug may be evaluated if the applicant provides satisfactory proof of cure.

1. Drug Use or Addiction.

Drug users must present strong evidence of reform / rehabilitation and a change in life-style in order to be considered for a license, COR or MMD. To show cure, as determined in the Vice Commandant's Decision on Appeal No. 2535 (SWEENEY), the RECs should consider the following information when reviewing applications of those who have been addicted to, or users of, dangerous drugs.

- a. Medical evidence of a cure. Cure is shown by completion of a bona fide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a government agency, such as a state drug / alcohol abuse administration or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO); and
- b. Evidence that following the successful completion of the drug rehabilitation program, the applicant has demonstrated a complete non-association with drugs for a minimum of one year (SWEENEY, supra) or in accordance with present regulatory time requirements (46 CFR Part 5. This includes participation in an active drug-abuse monitoring program which incorporates random, unannounced testing during that year.

2. Drug Convictions.

An applicant with one conviction, which is over a year old, for a small amount of marijuana may be eligible for a license or document before the expiration of a minimum assessment period. As an example, if the applicant completed any assigned periods of parole or incarceration and the conviction is over one year old with no other involvement (e.g., trafficking) the OCMI may consider issuing a license before the minimum assessment period has elapsed. Certain criteria must be met before this can take place. The OCMI must determine the applicant's involvement in the conviction. If the applicant was convicted of possession of a small amount of marijuana but did not use the drug and can furnish satisfactory proof from a drug counselor that the individual did not and is not using drugs, then the OCMI may issue the license or document. If an applicant has multiple convictions for drugs other than marijuana or trafficking, especially if the convictions are maritime related, the denial could extend to the full ten years. The length of time will be a function of the number and seriousness of the convictions and their relationship to the license, COR or MMD applied for.

3. Drug Arrests Without Convictions.

Absent a conviction, admission of use or admission of addiction to dangerous drugs may be grounds for disqualifying an applicant for a license, COR or MMD. A person may truthfully answer "no" to questions on the application concerning convictions, however, an arrest(s) may be an indicator that the applicant is or was a user of the dangerous drugs indicated on the arrest record. As

such, they may prompt the evaluator to ask further questions to determine if the applicant was or is a drug user. A delay in the issuance of a license or document pending the results of a criminal records check may be encountered.

F. Alcohol Related Convictions.

Convictions for driving while intoxicated / driving under the influence are considered to be more than minor traffic violations and reflect unfavorably on the applicant's suitability to be entrusted with the duties and responsibilities of the license. They must be noted in Section VI of the application, or by a separate notation on the application. Applicants indicating conviction(s) of vehicular crimes shall be assigned minimum or maximum assessment periods in accordance with the regulations.

1. **Driving While Intoxicated/Driving Under the Influence of Intoxicants (DWI/DUI).**

DWI/DUIs are serious matters and may indicate that an applicant should not be entrusted with the duties and responsibilities of a license, MMD or COR. Each applicant must be evaluated on an individual basis to determine if the DWI/DUI conviction(s) is indicative of a deeper problem affecting the applicant's qualification to hold a license, COR or MMD, or is the result of a single isolated failure of judgment. In evaluating applicants with DWI/DUI convictions, the evaluator must qualify the applicant based on the convictions, taking into consideration the number and severity of the convictions, recency of the convictions and evidence of rehabilitation / reform. The following guidelines offer additional factors for evaluating the qualification of an applicant with DUI/DWI convictions.

a. **Single Conviction.**

A single DUI/DWI conviction within the past three years may indicate the early stage of a developing, long-term problem, or that the individual having a well-developed problem was only caught once, or that this was an isolated incident of poor judgment. The evaluator should attempt to identify which of the possible scenarios is applicable.

(1) In cases where a long-term problem is developing and the conviction is over one year old, but less than three, the application should be processed unless a suspension or revocation is still in effect for a state driver's license. The applicant should be put on notice, in a letter, that their license may be in jeopardy.

(2) If the conviction is more than three years old, a conviction clearance is normally not necessary.

(3) If the conviction is less than one year old, the application should be denied for a period of time sufficient to see if another incident will occur (at least one year from the date of the conviction).

b. **Multiple Conviction.**

For multiple convictions, the most recent being more than three years old, the application should be processed. The applicant should be put "on notice", in a letter, that further occurrences may jeopardize their license. If the

applicant has multiple convictions, with any within the last three years, the evaluator may consider disqualifying an applicant for the license for at least one year since the last conviction and at least three years since the second most recent conviction unless satisfactory cure is shown.

2. **Rehabilitation Evidence.**

Acceptable evidence of rehabilitation / reform include the following: successful completion of an alcohol abuse treatment or education program; long term active membership in therapy, such as Alcoholics Anonymous; or positive character references from responsible persons who can attest to the applicant's long period of being sober and reliable and outlining the applicant's change in behavior since their offense.

G. Notice of Denial.

In all cases when an applicant is denied a license, COR or MMD, they must be notified by letter. The letter must include the reason for the denial, any remedy (e.g. assessment period, time off parole / probation, etc.), the right to appeal and the appeal process).

**YOUR RIGHTS OF APPEAL
(Extract From 46 CFR Subpart 1.03)**

[GCMA Comment: You may appeal any decision the Coast Guard makes. This extract from 46 CFR Subpart 1.03 contains your "Rights to Appeal" certain personnel decisions.]

[GCMA Comment: For "lower-level" mariners, one major drawback to the appeal process is that all appeals must be in writing. At GCMA we find this is a serious obstacle since many mariner do not express their thoughts well in writing. The process itself frequently changes and can be confusing to those who seldom use it.]

§46 CFR §1.03-15 General.

(a) Any person directly affected by a decision or action taken under this chapter or under chapter III of this title, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapter dealing with suspension-and-revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside, or revised.

(b) When requesting that a decision or action be reconsidered or reviewed, as may be required by this subpart, such request must be made within 30 days after the decision is rendered or the action is taken.

(c) When making a formal appeal of a decision or action, as permitted by this subpart, such appeal must be submitted in writing and received by the authority to whom the appeal is required to be made within 30 days after the decision or action being appealed, or within 30 days after the last administrative action required by this subpart. Upon written request and for good cause, the 30 day time limit may be extended by the authority to whom the appeal is required to be made.

(d) A formal appeal must contain a description of the

decision or action being appealed and the appellant's reason(s) why the decision or action should be set aside or revised.

(e) When considering an appeal, the Commandant or a District Commander may stay the effect of a decision or action being appealed pending determination of the appeal.

(f) While a request for reconsideration or review or a formal appeal is pending, the original decision or action remains in effect, unless otherwise stayed under paragraph (e) of this section.

(g) The Commandant may delegate authority to act on administrative appeals under this subpart to the Assistant Commandant for Marine Safety and Environmental Protection, and appropriate office chiefs within Marine Safety and Environmental Protection.

(h) Formal appeals made to the Commandant shall be addressed to...

(3) Commandant (G-PC), for all appeals involving suspension or withdrawal of course approvals, and all marine personnel issues that are appealed from the National Maritime Center or from an OCMI through a District Commander....

(i) Failure to submit a formal appeal in accordance with the procedures and time limits contained in this subpart results in the decision or action becoming final agency action.

(j) Any decision made by the Commandant, or by the Assistant Commandant for Marine Safety and Environmental Protection, or by an office chief pursuant to authority delegated by the Commandant is final agency action on the appeal.

[CGD 88-033, 54 FR 50376, Dec. 6, 1989, as amended by CGD 89-007, CGD 89-007a, 58 FR 60265, Nov. 15, 1993; CGD 96-041, 61 FR 50725, Sept. 27, 1996; CGD 97-057, 62 FR 51040, Sept. 30, 1997; CGD 95-010, 62 FR 67532, Dec. 24, 1997; USCG-1998-4442, 63 FR 52188, Sept. 30, 1998; USCG-1999-6216, 64 FR 53222, Oct. 1, 1999; USCG-2000-7790, 65 FR 58457, Sept. 29, 2000; USCG-2001-8894, 66 FR 31844, June 13, 2001; USCG 2003-15137, 68 FR 37093, June 23, 2003; USCG 2006-25535, 71 FR 48482, Aug. 21, 2006]

§46 CFR §1.03-20 Appeals from decisions or actions of an OCMI.

Any person directly affected by a decision or action of an OCMI may, after requesting reconsideration of the decision or action by the cognizant OCMI, make a formal appeal of that decision or action, via the office of the cognizant OCMI, to the District Commander of the district in which the office of the cognizant OCMI is located, or in the case of the Officer in Charge, Activities Europe, to the Atlantic Area Commander, in accordance with the procedures contained in §1.03-15 of this subpart.

[USCG-2006-24520, 71 FR 35818, June 22, 2006]

46 CFR §1.03-25 Appeals from decisions or actions of a District Commander.

Any person directly affected by a decision or action of a District Commander made pursuant to §1.03-20 of this subpart, may make a formal appeal of that decision or action, via the office of the cognizant District Commander, to the Commandant, in accordance with the procedures contained in §1.03-15 of this subpart....

46 CFR §1.03-45 Appeals from decisions or actions of

the National Maritime Center.

Any person directly affected by a decision or action of an officer or employee of the National Maritime Center (NMC) involving any of the marine safety functions listed in §1.01-15(c) of this subpart may, after requesting reconsideration of the decision or action by the NMC, make a formal appeal of that decision or action, via the NMC, to the Director of Inspection and Compliance, Commandant (G-PC), in accordance with the procedures contained in §1.03-15 of this subpart. The decision of the Director of Inspection and Compliance, Commandant (G-PC), on such an appeal will constitute final agency action.

[USCG-2006-25535, 71 FR 48482, Aug. 21, 2006]

OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL

Operating or serving as a crewmember on a commercial vessel while you are under the influence of alcohol violates a number of laws and regulations. This can and usually does lead directly to the suspension or revocation of a merchant mariner license and/or merchant document, and your ability to work on the water.

It often takes time, effort, and written proof of rehabilitation by health care professionals to regain your suspended or revoked license or merchant mariner document after an alcohol or drug conviction.

GCMA researched the applicable statutes and regulations to better inform our mariners how a conviction for being under the influence of alcohol may affect your future at sea.

This report deals with violating existing alcohol regulations. Violating alcohol regulations is relatively simple since alcoholic beverages are freely available over the counter. Alcohol use can include the drinking or swallowing of any beverage, liquid mixture or preparation including certain medications containing alcohol. The .04% alcohol threshold enforced on all licensed mariners leaves little room for experimentation.

In this paper we will discuss "the evils of alcohol" as professional counselors in rehabilitation programs have much greater insight into these problems than we do.

LAWS & REGULATIONS ON SUSPENSION AND REVOCATION

[GCMA Comments: Statutes (e.g., U.S. Code) result from Acts passed by Congress while Regulations (e.g., CFR) are rules promulgated and enforced by the Coast Guard or other federal agencies. Both have the force of law.]

33 U.S. Code §7703. Bases for suspension or revocation

- (1) when acting under the authority of that license, certificate, or document-
 - (A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or
 - (B) has committed an act of incompetence, misconduct, or negligence;

- (2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; or
- (3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982(2) (23 U.S.C. 401 note). [(1)Mariners violating laws prohibiting the use of alcohol will be charged with "misconduct." (2)As part of the process of upgrading or renewing any license or merchant mariner document you must give the Coast Guard permission to review your motor vehicle license records. If this review uncovers convictions for DUI or DWI, it may delay the reissue of the license or MMD. Even worse than that, the Coast Guard may file charges against you for filing a fraudulent application. The law connecting your merchant mariner license or document with your driving record was passed in 1990 as a direct reaction to a reported case of intoxication involving the EXXON VALDEZ accident. Refer to 46 CFR §10.201(1) for details.]

**MARINE INVESTIGATIONS REGULATIONS
PERSONNEL ACTION**

46 CFR §5.27 Misconduct.

Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

[GCMA Comment: The Coast Guard can enforce a company rule regulating the use of alcoholic beverages on boats the company owns as a "ship's regulation" under 46 CFR §5.27 (above). The same is true of other written rules such as a Company Operations Manual.]

46 CFR §5.55. Time Limits for Service of a Complaint.

(a) The time limitations for service of a complaint upon the holder of a license, certificate or document are as follows:

(a)(1) When based exclusively on 46 U.S. Code §7704, service shall be within 10 years after the date of conviction, or at anytime the person charged is a user of or addicted to the use of a dangerous drug. [⁽¹⁾ i.e., *dangerous drug.s*]

(a)(2) For one of the misconduct offences specified in §5.59(a) or §5.61(a) service shall be within 5 years after commission of the offense alleged therein

[GCMA Comment: This question surfaced after the Coast Guard presented a mariner with a complaint that was over 2 years old. A portion of the regulation giving them the authority to do was cited above.]

46 CFR §5.203 Voluntary surrender to avoid hearing.

(a) Any holder may surrender a license, certificate or document to the Coast Guard in preference to appearing at a hearing.

(b) A holder voluntarily surrendering a license, certificate or document shall sign a written statement containing the stipulations that:

(b)(1) The surrender is made voluntarily in preference to appearing at a hearing;

(b)(2) All rights to the license, certificate or document surrendered are **permanently relinquished**; and, (b)(3) Any rights with respect to a hearing are waived.

(c) A voluntary surrender of a license, certificate, or document to an investigating officer in preference to appearing at a hearing is not to be accepted by an investigating officer unless the investigating officer is convinced that the holder fully realizes the effect of such surrender.

[GCMA Comment: In signing a "Settlement Agreement" with the Coast Guard a mariner agrees to give up certain rights. We recommend that you read GCMA Report #R-342, License Defense Insurance, before you find your credential is in jeopardy. Many mariners who are not represented by an attorney and do not fully comprehend how difficult it may be to regain their Coast Guard credentials.]

46 CFR §5.205 Return or issuance of a license, certificate of registry, or merchant mariners document.

(a) A person may request the return of a voluntarily deposited license, certificate, or document at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of a license, certificate, or document....

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(c)(1) Successfully completes a bona fide alcohol abuse rehabilitation program; and

(c)(2) Is actively participating in a bona fide alcohol abuse monitoring program.

(d) The voluntary surrender of a license, certificate, or document is the equivalent of revocation of such papers. A holder who voluntarily surrenders a license, certificate, or document must comply with provisions of Secs. 5.901 and 5.903 when applying for the issuance of a new license, certificate, or document.

**REGULATIONS ON OPERATING A VESSEL WHILE
UNDER THE INFLUENCE OF ALCOHOL OR A
DANGEROUS DRUG**

Table of Contents

Section (§).

95.001 Purpose.

95.005 Applicability.

95.010 Definition of Terms as Used In This Part.

95.015 Operating a Vessel

95.020 Standard for Under the Influence of Alcohol or a Dangerous Drug

95.025 Adoption of State Blood Alcohol Concentration Levels.

- 95.030 Evidence of Under the Influence of Alcohol or a Dangerous Drug.
- 95.035 Reasonable Cause for Directing a Chemical Test.
- 95.040 Refusal to Submit to Testing.
- 95.045 General Operating Rules For Vessels Inspected, or Subject to Inspection, Under Chapter 33 of Title 46 United States Code.
- 95.050 Responsibility for Compliance.

[Authority: 33 U.S. C. 2071; 46 U.S. C. 2302; Department of Homeland Security Delegation No. 0170. Source: CGD 84-099, 52 FR 47532, Dec. 14, 1987, unless otherwise noted.][66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001; 68 FR 42595, July 18, 2003]

33 CFR §95.001 Purpose.

(a) The purpose of this part is to establish under the influence of alcohol or a dangerous drug standards under 46 U.S. Code §2302 and to prescribe restrictions and responsibilities for personnel on vessels inspected,⁽¹⁾ or subject to inspection, under Chapter 33 of Title 46 United States Code. This part does not pre-empt enforcement by a State of its applicable laws arc regulations concerning operating a recreational vessel while under the influence of alcohol or a dangerous drug. [⁽¹⁾ Comment: There are different standards of intoxication for recreational vessels, commercial vessels, and for drivers of automobile. For commercial mariners it is .04% blood alcohol content (BAC).]

(b) Nothing in this part shall be cons)trued as limiting the authority of a vessel's marine employer to limit or prohibit the use or possession of alcohol on board a vessel. [Comment: Your boss may have "zero tolerance" and fire you if you show any alcohol content. If this is the case, the "zero tolerance" policy would prevail. Refer to the comment on 46 CFR 5.27 above.] [66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001]

33 CFR §95.005 Applicability.

(a) This part is applicable to a vessel (except those excluded by 46 U.S. Code §2109) operated on waters subject to the jurisdiction of the United States, and to a vessel owned in the United States on the high seas. This includes a foreign vessel operated on waters subject to the jurisdiction of the United States. [⁽¹⁾ The exclusion refers to public, non-commercial vessels.]

(b) This part is also applicable at all times to vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code. [CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-009, 53 FR 13117, Apr. 21, 1988]

33 CFR §95.010 Definition Of Terms As Used In This Part.

- Alcohol concentration means either grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.
- Blood alcohol concentration (BAC) level means a certain percentage of alcohol in the blood.
- Chemical test means a test which analyzes an individual's breath, blood, urine, saliva and/or other bodily fluids or tissues for evidence of drug or alcohol use.
- Controlled substance has the same meaning assigned by

21 U.S. Code §802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

- Drug means any substance (other than alcohol) that has known mind or function-altering effects on a person, specifically including any psychoactive substance, and including, but not limited to, controlled substances.
- Intoxicant means any form of alcohol, drug or combination thereof.
- Law enforcement officer means a Coast Guard commissioned, warrant, or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or local law.
- Marine employer means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.
- Recreational vessel means a vessel meeting the definition in 46 U.S. Code §2101(25) that is then being used only for pleasure.
- State means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.
- Under the influence means impaired or intoxicated by a drug or alcohol as a matter of law.
- Underway means that a vessel is not at anchor, or made fast to the shore, or aground.
- Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.
- Vessel owned in the United States means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.
- Waters subject to the jurisdiction of the United States means those waters described in §2.38 of this chapter.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, April 21, 1988; 66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001; 68 FR 42595, July 18, 2003]

33 CFR §95.015 Operating A Vessel.

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.

(b) The individual is a crewmember⁽¹⁾ (including a licensed individual), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel. [⁽¹⁾The Coast Guard considers you a crewmember as long as you are assigned to a vessel. By finishing your watch, or completing a day's work does not affect your assignment as a crewmember of that vessel even though you may be off duty. You are still subject to this regulation if you go up to the local watering hole and pop a few cold ones! If you do not return, you may be charged with desertion.]

33 CFR §95.020. Standard For Under The Influence Of Alcohol Or A Dangerous Drug. An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08 percent or more, by weight, in their blood;

(b) The, individual is operating a vessel **other than a recreational vessel**⁽¹⁾ and has an alcohol concentration of **.04** percent by weight or more in their blood; or,

⁽¹⁾*Vocabulary: Other than a recreational vessel = means a commercial vessel. 0.04% BAC applies to all commercial vessels. This is half the amount that applies to operating a recreational vessel or to driving an automobile in most states. However, 0.04% BAC also applies to commercial drivers licenses under DOT regulations. Refer to 49 CFR §383.51.]*

(c) The individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is **apparent by observation**.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, April 21, 1988; 66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001]

33 CFR §95.025. Adoption Of State Blood Alcohol Concentration Levels.

(a) This section applies to operators of **recreational vessels**⁽¹⁾ on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol. ⁽¹⁾*This difference is significant since many mariners own or use recreational vessels.]*

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in §95.020(a) of this part.

(c) For the purposes of this part, a standard established by State statute and adopted under this section is applicable to the operation of any recreational vessel on waters within the geographical boundaries of the State.

[66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001]

33 CFR §95.030. Evidence of Under the Influence of Alcohol or a Dangerous Drug.

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

(a) Personal observation of an individual's manner, disposition, speech, muscular movement, general appearance, or behavior; or,

(b) A **chemical test**.⁽¹⁾

⁽¹⁾*If you fail a chemical test (of refuse to take it for any reason whatsoever), this is Prima Facie evidence that you are DUI. The significance of this is that it will be up to you to prove that you were not DUI because the chemical test is all the Coast Guard investigating officer has to provide the Administrative Law Judge to prove that you were DUI.*

WARNING: By refusing to take a required drug and/or alcohol test or even being perceived as refusing to be tested, you place yourself in an indefensible position. Refer to GCMA Report #R-315-B, Drug Testing: Refusal to Test] [CGD 84-099, 53 FR 13117, April 21, 1988; CGD 84-009,

53 FR 13117, Apr. 21, 1988; 66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001]

33 CFR §95.035. Reasonable Cause for Directing a Chemical Test.

(a) Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. Reasonable cause exists when:

(a)(1) The individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code, or

(a)(2) The individual is suspected of being in violation of the standards in §§95.020 or 95.025.

(b) When an individual is directed to undergo a chemical test, the individual to be tested must be informed of the fact and directed to undergo a test as soon as is practicable.⁽¹⁾

⁽¹⁾*Refusal to test is a key concept in drug and alcohol testing and has cost many mariners their credentials. Refer to GCMA Report #R-315-B, Drug Testing: Refusal to Test]*

(c) When practicable, a marine employer should base a determination of the existence of reasonable cause, under paragraph (a)(2) of this section, on observation by two persons.

[CGD 84-099, FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, Apr. 1, 1988]

33 CFR §95.040. Refusal to Submit to Testing.

(a) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be under the influence of alcohol or a dangerous drug.

(b) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by the marine employer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding.⁽¹⁾ ⁽¹⁾*If you refuse to take either a drug or alcohol test, be ready to say "goodbye" to your license or document.]*

[66 FR 1859, Jan. 10, 2001; 66 FR 9658, Feb. 9, 2001]

33 CFR §95.045. General Operating Rules for Vessels Inspected, or Subject to Inspection, Under Chapter 33 of Title 46 United States Code.

While on board a vessel inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code, a crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew:

(a) Shall not perform or attempt to perform any scheduled duties within four hours of consuming any alcohol;

(b) Shall not be intoxicated at any time;

(c) Shall not consume any intoxicant while on watch or duty; and

(d) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to be intoxicated.

33 CFR §95.050. Responsibility for Compliance.

(a) The marine employer shall exercise due diligence to assure compliance with the applicable provisions of this part.

(b) If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not

allow that individual to stand watch or perform other duties.

[GCMA Comment: "The provisions of 49 CFR Part 40 regarding alcohol testing and reporting of alcohol tests do NOT apply to the Coast Guard or to marine employers. Only the drug testing provisions of 49 CFR Part 40 apply to the Coast Guard and marine employers... " This means that only the regulations of 33 CFR Part 95 apply to alcohol testing according to 69 FR 6576, Feb. 11, 2004.]

RELATED REPORTS AVAILABLE

GCMA R-315 Series of Reports on Drugs & Alcohol

- £ **R-315**, Rev. 1. Drug Testing: Urine Specimen Collection.
- £ **R-315A**. Drug Testing Regulations: The Role of the Medical Review Officer (MRO)
- £ **R-315B**. Drug Testing: Refusal to Test
- £ **R-315-C**. Mariner Drug Cases.
- £ **R-315-D**. Changes in Alcohol and Drug Testing Effective June 20, 2006.
- £ **R-342**, Rev. 3. License Defense and Income Protection Insurance.