



NMA REPORT #R-377, Rev. 3

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

ADMINISTRATIVE CLEMENCY

[Publication History: Our original report was introduced on Sept. 15, 2003. Revision #1 was completed on July 26, 2006. Revision #2 was dated Jan. 13, 2009. Revision #3 is dated Oct. 16, 2012. This report **cancels all previous versions** of NMA Report #R-377 as well as #R-377-A & #R-377-B.]

After a mariner runs afoul of the law and surrenders his/her license it ***may*** be possible to regain that license through a complex procedure known as "Administrative Clemency."

While both the Coast Guard and our Association take a dim view of drug and alcohol abuse on the job, the Coast Guard has outlined a procedure called "Administrative Clemency" by which a mariner may be able to secure the eventual return of his credential following conviction of drug, alcohol or other specific violations.

A handful of mariners who followed the procedure established by the Coast Guard recounted many of its twists and turns for us.

A number of Coast Guard offices provide information to mariners on Administrative Clemency. Unfortunately, we found mariners misinterpreted or misunderstood some of this information about administrative clemency.

The Coast Guard recently updated their regulations as brought to our attention by Mr. Jim Wilson at our local Marine Safety Unit. Although this may not be the information that mariners want to see, reading, understanding, and working with the Coast Guard is the only way to get your credential back.

Our Association will not second-guess the Coast Guard on their policy in regard to drugs or alcohol. If you have a question, talk with them directly.

Drug & Alcohol Regulations

The latest updated version of the regulations appear on the internet at: <http://www.ecfr.gov>

- Drug regulations appear at 46 CFR Part 16 ("Chemical Testing") and 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs". When reading these Department of Transportation regulations, do ***NOT*** read those on alcohol testing as they do not apply to mariners.)
- Alcohol regulations appear at 33 CFR Part 95 ("Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug"). These are the only Alcohol regulations that apply to mariners.

Related NMA Reports

R-315 (Series). Drugs & Alcohol.

- R-315. Rev.2. May 5, 2005. Drug Testing: Urine Specimen Collection. 13p. \$3.60.
- R-315-A. Dec. 26, 2004. Drug Testing Regulations: The Role of the Medical Review Officer (MRO). 13p. \$3.60.
- R-315-B. Dec. 27, 2004. Drug Testing: Refusal to Test. 9p. \$2.80.
- R-315-C, Rev. 1. May 30, 2007. Mariner Drug Cases. 29p. \$6.80.
- R-315-D. Dec. 28, 2005. Changes in Alcohol and Drug Testing Effective June 20, 2006. 10p. \$3.00.
- R-315-E. Nov. 2, 2006. Drug, Alcohol & Other Convictions and How They Affect Your License and MMD. 15p. \$4.00.
- R-315-F, Rev. 1. Aug. 2009. Marine Employers Drug Testing Guidance. [Reprint of USCG Pamphlet, Aug. 2009.J. 62p. \$13.40.
- R-315-G. Mar. 23, 2012. What Happens When Your Past "Crimes" Return to Haunt You? 16p. \$4.20.
- R-436. Rev. 3, Mar. 5, 2009. The Coast Guard Appeals Process. 10p. \$3.80.
- R-448. Rev. 1, July 9, 2011 Reconsider the Use of Assessment Periods in Merchant Mariner Credentialing. 11p. \$3.20.



To Whom It May Concern:

If your Coast Guard Credentials have been Revoked or Surrendered for drug violations, or drug test refusals, it is highly recommended that you read this and then MEET WITH A MEDICAL REVIEW OFFICER before starting the program. Medical Review Officers can be located at either of these links:

<http://www.mrocc.org/surch.asp>

<http://www.aamro.com/locate/>

If you have surrendered your license or merchant mariner's document (Z-card) to the Coast Guard, or if it was obtained by the Coast Guard through the revocation process, you no longer enjoy the privilege of obtaining any Coast Guard issued credentials. To regain that privilege, you must obtain permission from the Commandant of the United States Coast Guard. The process used to get this permission is called Administrative Clemency. This Administrative Clemency process is the only one available for you to regain your license or merchant mariner's document. The Administrative Clemency requirement does not depend on how long ago you lost your license or merchant mariner's document and there is no give and take in the process -- the process must be followed precisely and fully.

If your license or merchant mariner's document was lost for drug related activities, the minimum waiting period is three years before you can submit your Clemency request. The minimum waiting period is also three years if you have lost your license or merchant mariner's document because of an assault with a dangerous weapon, misconduct resulting in loss of life or serious injury, rape or sexual molestation, murder or attempted murder, mutiny, perversion, sabotage, smuggling of aliens, incompetence, interference with master, ship's officers, or government officials in performance of official duties or wrongful destruction of ship's property. The three-year time period may be waived by the Commandant upon a showing by the individual that, since the occurrence upon which the revocation or surrender was based, the individual has demonstrated his good character in the community for a period exceeding three years. Jail time, or time spent avoiding prosecution, does not count as part of the three years.

If you lost your license or merchant mariner's document for reasons not specifically listed above, you may be eligible for Administrative Clemency after one year. Further, if your license or merchant mariner's document was taken or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant if you can show you have:

- (1) Successfully completed a bona fide drug abuse rehabilitation program;
- (2) Demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program and;
- (3) Are actively participating in a bona fide drug abuse-monitoring program.

If your license or merchant mariner's document was taken or surrendered for offenses related to alcohol abuse, the waiting period may be waived by the Commandant if you can show that you have successfully completed a bona fide alcohol abuse rehabilitation program and you are actively participating in a bona fide alcohol abuse monitoring program.

Your goal in submitting a clemency request is to show the Commandant that you can now be entrusted with a new license or merchant mariner's document. To do that, you must complete (as a minimum) every item on the enclosed checklist. ***This checklist is written for those mariners, whose license or merchant mariner's document was surrendered or revoked for drug type offenses.*** If this was not the reason it was revoked or surrendered, ask us for an explanation. Most of the requirements are the same. The checklist items are explained as follows:

1. *Rehabilitation:* You must complete a bona fide drug rehabilitation program. "Bona fide drug abuse rehabilitation program" is interpreted to mean a program certified by a governmental 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.

You may be able to get free or low cost assistance in this by contacting Magellan of Louisiana at 1-800-424-4399, <http://magellanoflouisiana.com/magellan-of-louisiana-en.aspx> and enter your zip code in the Provider Search tab.

or contacting the Louisiana Office of Behavioral Health at 225-342-2540 or online at <http://new.dhh.louisiana.gov/index.cfm/page/95/n/115>

or, nationwide at the Federal Behavioral Health Treatment Services 1-800-662-4357, <http://findtreatment.samhsa.gov/>

- a. You must include a letter from the program verifying your enrollment and completion date.
- b. You must demonstrate complete non-association with dangerous drugs for a minimum of 1-year following completion of this program before applying for Administrative Clemency. To demonstrate the non-association you must show a minimum of 12 RANDOM DOT drug screens distributed over the 12 month period.

2. *Aftercare:* Recent guidance from the Commandant indicates that your chances for clemency increase if you either remain in an aftercare program, one offered by the rehabilitation program or an organization such as Narcotics Anonymous; or as an alternative, provide a letter from the rehabilitation facility stating that after evaluating you, an aftercare program was not deemed necessary.

3. *Monitoring:* The Administrative Clemency package must include drug tests from a bona fide abuse-monitoring program. Bona fide drug abuse monitoring program is interpreted to mean a drug abuse-monitoring program that incorporates random, unannounced testing during that year. This normally means 12 tests during that year. It is the applicant's responsibility for obtaining copies of all drug tests and a letter from a Medical Review Officer stating that you are a low risk for relapse. A medical doctor certified as a Medical Review Officer may be able to assist you with this. A list of Medical Review Officers in

your area can be obtained at <http://www.mrocc.org/surch.asp> or 1-800-489-1839 or <http://www.aamro.com/locate/>.

4. *Letter to Commandant:* This is a letter from you requesting Administrative Clemency. This letter should specifically state what changes have occurred in your life since the incident, and how you have overcome the problem that resulted in the loss of your license or merchant mariner's document and why you are now fit to again possess a license or merchant mariner's document. If you are seeking a waiver of the 3-year waiting period, you must specifically request the waiver in this letter. The letter must also address your employment history since the surrender or revocation. A chronological history listing the dates held, name of business, and the position held is the preferred format. All periods of extended unemployment must be explained. **This letter should be submitted (with your package) to us**, and should be addressed to:

Commandant (G-MOA)
USCG, Room 2404
Attn: ACRB
2100 2nd Street SW
Washington, DC 20593-0001

5. *Criminal Background Check:* You must provide a criminal background check as part of your Administrative Clemency package. You shall first attempt to obtain the records from the appropriate agency, such as the State Police, District Attorneys Office, or Department of Motor Vehicles. If, even with your best efforts, you are unable to obtain these records, you must provide us written permission to conduct a criminal background check. Make sure that you sign and date your written statement giving us this permission.

6. *Employment Letters:* You should obtain letters of reference from each employer, since you lost your license or merchant mariner's document or for the past three years. These letters should address your work history and include your performance of duties, your interaction with fellow employees, whether or not you were subject to random drug testing, the duration of your employment, and the reason why you left. All letters should include the employer's daytime phone number and address.

7. *Application for License or Merchant Mariner's Document:* You must complete this application. An application can be obtained from a Coast Guard Regional Examination Center. License applicants should pay close attention to Section V. Merchant Marine Document applicants should pay close attention to question 2A and Section IV. **Applicants are not required to submit photos if you're applying for a license only, photos are required for a MMD. Physicals with the application are not required, unless revoked for incompetence.**

8. *Additional Information:* You may provide any other information that would help your clemency case (any community service, schools or college or vocational classes entered or completed). It is strongly recommended that you provide letters from reputable members of your community (clergymen, public officials, teachers, etc.), who can attest to your good character. These letters should be on standard-sized paper and address your prior drug problem. This is important for the letter to have meaning. Letters from family members are

acceptable, but the Commandant's Administrative Clemency Review Board would rather see letters from co-workers, supervisors, counselors, community leaders, etc. These letters should include a daytime phone number and an address for verification purposes.

a. NOTE: You are required to obtain and submit all the documentation and reference letters to us. Do not submit this documentation in a piece-meal fashion. It should all be provided at the same time.

b. Once all of the above items have been completed, you must submit your Administrative Clemency package to us at:

Commanding Officer
USCG Marine Safety Unit
Attn: Investigations Department
800 David Dr., Rm. 232
Morgan City, LA 70380-1304

From there, it will be forwarded to the Commandant.

9. *IMPORTANT*: If you do not fulfill all the requirements listed, we will reject your application. Further, if your clemency request is submitted to Coast Guard Headquarters and is rejected, you must wait at least one year before reapplying. It is Coast Guard Headquarters' goal to respond to you by letter within 20 working days of receipt of your application package.

This letter summarizes Commandant Policy on Administrative Clemency. We have added as Enclosure (3), the section from 46 Code of Federal Regulations that contains the Administrative Clemency rules.

Enclosure (3) 46 Code of Federal Regulations:

TITLE 46--SHIPPING

CHAPTER I--COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

PART 5--MARINE INVESTIGATION REGULATIONS--PERSONNEL ACTION--Table of Contents:

Subpart L--Issuance of New Licenses, Certificates or Documents After Revocation or Surrender

Sec. 5.901 Time limitations:

(a) Any person whose license, certificate or document has been revoked or surrendered for one or more of the offenses described in Sec. 5.59 and Sec. 5.61(a) may, three years after compliance with the Administrative Law Judge's decision and order or the date of voluntary surrender, apply for the issuance of a new license, certificate or document.

(b) The three-year time period may be waived by the Commandant upon a showing by the individual that, since the occurrence upon which the revocation or surrender was based the individual has demonstrated his good character in the community for a period exceeding three years.

(c) Any person whose license, certificate or document has been revoked or surrendered for one or more offenses which are not specifically described in Sec. 5.59 or Sec. 5.61(a) may, after one year, apply for the issuance of a new license, certificate or document.

(d) For a person whose license, certificate, or document has been revoked or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant upon a showing that the individual:

(1) Has successfully completed a bona fide drug abuse rehabilitation program;

(2) Has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program and;

(3) Is actively participating in a bona fide drug abuse monitoring program.

(e) For a person whose license, certificate or document has been revoked or surrendered for offenses related to alcohol abuse the waiting period may be waived by the Commandant upon a showing that the individual has successfully completed a bona fide alcohol abuse rehabilitation program and is actively participating in a bona fide alcohol abuse monitoring program.

(f) The waivers specified under subparagraphs (d) or (e) of this section may only be granted once to each person.

Sec. 5.903 Application procedures:

(a) An application form for a new license, certificate or document may be obtained from any Officer in Charge, Marine Inspections.

(b) The completed application and letter must be addressed to the Commandant, U.S. Coast Guard, 2100 2nd St. SW., Washington, DC 20593, and must be delivered in person to the nearest Officer in Charge, Marine Inspections.

(c) The letter is an informal request for the issuance of a new license, certificate or document and should include the following:

(1) A letter from each employer during the last three years attesting to the individual's work record.

(2) Information supportive of rehabilitation or cure when the license, certificate or document was revoked because of incompetence or association with dangerous drugs; and

(3) Any other information which may be helpful in arriving at a determination in the matter.

(d) The Officer in Charge, Marine Inspection, forwards the letter and application, together with an evaluation and recommendation, to the Commandant.

Sec. 5.905 Commandant's decision on application:

(a) The applicant's letter and application form, as well as the evaluation and recommendation, are referred to a special board appointed by the Commandant. The board examines all the material submitted with the application and such other information as may, in the judgment of the board, be considered appropriate. The board shall submit its findings and recommendations to the Commandant.

(b) The Commandant shall determine whether or not a new license, certificate or document will be issued. The applicant will be notified by letter of such determination.



FIGURE C5-1: Administrative Clemency Checklist

ADMINISTRATIVE CLEMENCY CHECKLIST

Before submitting the Administrative Clemency application to CG-545, OCMI's shall ensure that the following documentation is complete:

	Yes	No	N/A
Complete & signed application for an original License/MMD			
Letter from the applicant; includes waiver request Y / N			
_____ Letters from Employers (indicate # of ltrs)			
_____ Letters of character reference (indicate # of ltrs)			
FBI criminal background delivered to IO in sealed envelope			
Driving record from the State of _____			
Certificate/letter of completion of rehabilitation program if applicable			
12 random DOT drug tests spread reasonably throughout the 1 year period since completion of rehabilitation program if applicable			
Attendance at support group (AA/NA) for 1 year since completion of rehabilitation program with a minimum of 2 meetings per month if applicable			
Medical Review Officer (MRO) low risk letter if applicable			
Evaluation from a Substance Abuse Specialist (SAP) or MRO if applicable			
Remedial Training if applicable			
Therapy or professional counseling if applicable			
Physician's report if applicable			



FIGURE C5-2: Administrative Clemency Cover Sheets

Applicant's Letter

For an **applicant's letter** to be accepted the following format shall be followed:

1. The letter shall be legibly written or typewritten (preferred) on an 8.5" x 11" sheet(s) of paper;
2. The letter **must** address the applicant's prior problem and how he or she has overcome the problem, e.g. drug or alcohol rehabilitation, remedial training, counseling, etc., and how he or she intends to avoid the prior problem in the future;
3. The letter **must** also address the applicant's employment history since the surrender or revocation. A chronological listing to include: the dates employed, name of business, position held, and a point of contact for the employer (name and phone number) is the preferred format. All periods of extended unemployment, e.g. workmen compensation, welfare, medical reasons, etc., must be explained; and
4. If applicable, the letter must state that a waiver of the three-year waiting period is requested.

Applicant's Letter



Application for MMD/License

Applicants must provide a completed, signed application for MMD and/or license required for an original issue. All blocks must be completed. Any “Yes” answers in the convictions section shall be fully detailed in an attached statement. It is extremely important that the applicant provide full disclosure of ALL convictions and sufficient details on the circumstances associated with the other “Yes” answers. Applicants are not required to submit photos or physicals with the application. Physicals are only required for clemency requests for physical incompetence.

Application for MMD/License



Letters of Employment

For an applicant's **letter(s) of employment** to be accepted, the following format shall be followed:

1. The letter **shall** be legibly written or typewritten (preferred) on an 8" x 11" sheet(s) of paper, and on company letterhead if possible; and
2. The employer(s) **must** address the applicant's work history, e.g. performance of duties, interaction with fellow employees, etc.; whether the applicant is or was subject to random drug testing; duration of employment, and if no longer employed, the reason why the applicant left.
3. The letter **must** have the employer's contact information.

IOs shall contact each reference and make a notation at bottom of each letter stating that the information has been verified.

Letters of Employment



Letters of Reference

For an applicant's **letter(s) of references** to be accepted the following format shall be followed:

1. The letter shall be legibly written or typewritten (preferred) on an 8" x 11" sheet(s) of paper, and include a phone number where the individual may be reached during the day; and
2. Letters should address the applicant's prior problem. This is important for the reference letter to have any real meaning. The ACRB wants to see if others have noted how the applicant's lifestyle has changed. Letters from close family members are acceptable, however, the ACRB would prefer to see letters from coworkers, supervisors, drug and alcohol sponsors or counselors, community leaders, e.g. council members, church leaders.

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IOs shall contact each reference and make a notation at bottom of each letter stating that the information has been verified.

Letters of Reference



Criminal Background and Driving Record

The applicant is responsible for obtaining his/her driving record from their local Motor Vehicle Administration and submitting the results with the administrative clemency request.

For a criminal background check, the FBI requires a set of rolled, inked fingerprint impressions, name, date and place of birth to accompany the request. As of April 2008, the fee for each request is \$18.00 (see 28 CFR 16.33 for current fee) and should be paid in the form of a certified check or money order payable to the Treasury of the United States. This is not a quick process and the applicant should plan accordingly to obtain a copy of their record for submission with their clemency application. To ensure authenticity, the applicant should be directed to open the envelope containing the report only in the presence of the Investigating Officer. The applicant shall send his/her criminal background request to the following address:

Federal Bureau of Investigations
CJIS Division
Attention: SCU, Module D-2
1000 Custer Hollow Road
Clarksburg, West Virginia 26306-0171

Criminal Background and Driving Record



Proof of Cure for Drug Use

When revocation or surrender resulted from drug use, refusal to test, or violation of a dangerous drug law and mariner is determined to be a user, proof shall include:

1. Completion of a state or local government licensed or recognized primary rehabilitation program (inpatient or outpatient); **and**
2. One year of non-association with dangerous drugs following completion of the rehabilitation program. The one-year period can be included in any after care program directed by the rehabilitation center. Non-association shall be demonstrated by:
 - a. The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; **or**
 - i. If still employed within the marine industry, or any other transportation mode that requires random drug testing, and the applicant has received a letter from an MRO attesting that the applicant is a low risk to return to dangerous drug use, the IO may use those test results as part of the minimum 12 random tests required; **and**
 - b. Participation in AA/NA (or similar support group) meetings for the entire one-year-period at a minimum of two meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof shall be provided up to the time of application; **and**
3. A letter from a MRO attesting that the applicant is a low risk to return to drug-use in accordance with 46 CFR 16.201(f).

Proof of Cure for Drug Use



Proof of Cure for Conviction of a Dangerous Drug Law

When the revocation or surrender resulted from a conviction of a dangerous drug law or refusal to test, and it has been determined that he or she is not a user, proof shall include:

1. A recent SAP or MRO evaluation attesting that the applicant is not a user of, or addicted to dangerous drugs; **and**
2. One year of non-association with dangerous drugs. Non-association shall be demonstrated by:
 - a. The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; **or**
 - i. If still employed within the marine industry, or any other transportation mode that requires random drug testing, and the applicant has received a letter from a MRO attesting that the applicant is a low risk to return to dangerous drug-use, the IO may use those test results as part of the minimum 12 random tests required.
3. The one-year of non-association may be waived if:
 - - a. The applicant has been subjected to random DOT drug testing and has not tested positive or refused to take a test within the last year; **and**
 - b. The applicant provides at a minimum, six current random DOT tests; **and**
 - c. The applicant's employment history and personal references indicate a demonstrated change of lifestyle.

Proof of Cure for Conviction of a Dangerous Drug Law



Proof of Cure for Alcohol Related Offenses

When the revocation or surrender resulted from an alcohol related offense, proof shall include:

1. Completion of a state or local government licensed or recognized alcohol rehabilitation program;
and
2. Participation in AA meetings for one-year following completion of the rehabilitation program at a minimum of two meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof shall be provided up to the time of application.

Proof of Cure for Alcohol Related Offenses



Proof of Cure for Misconduct, Negligence, Violation of Law or Regulation

When the revocation or surrender resulted from Misconduct, Negligence, Violation of Law or Regulation, proof shall include evidence of:

1. Remedial training relating to the incident; **and/or**
2. Therapy or professional counseling.

Proof of Cure for Misconduct, Negligence, Violation of Law or Regulation



Proof of Cure for Physical or Mental Incompetence

When the revocation or surrender resulted from physical or mental incompetence, proof shall include:

A report from a physician specializing in the condition that resulted in the physical or mental incompetence. The report shall attest that the cause of the incompetence is no longer valid, and the applicant is fit for duty.

Proof of Cure for Physical or Mental Incompetence