

## Coast Guard, DHS

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AUTHORITY: 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

SOURCE: CGD 82-002, 50 FR 32184, Aug. 9, 1985, unless otherwise noted.

### Subpart A—Purpose

#### § 5.3 Purpose of regulations.

The regulations in this part establish policies for administrative actions against mariners’ licenses, certificates or documents issued by the Coast Guard.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

#### § 5.5 Purpose of administrative actions.

The administrative actions against a license, certification or document are remedial and not penal in nature. These actions are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.

### Subpart B—Definitions

#### § 5.15 Investigating Officer.

An *investigating officer* is a Coast Guard official designated by the Commandant, District Commander, or the Officer In Charge, Marine Inspection, for the purpose of conducting investigations of marine casualties or matters pertaining to the conduct of persons issued a license, certificate or document by the Coast Guard. An Officer in Charge, Marine Inspection is an investigating officer without further designation.

#### § 5.19 Administrative Law Judge.

(a) An *Administrative Law Judge* shall mean any person designated by the Commandant pursuant to the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 46 U.S.C. 7703 or 7704.

(b) The Commandant has delegated to Administrative Law Judges the authority to admonish, suspend, with or without probation, or revoke a license, certificate or document issued to a person by the Coast Guard under any navigation or shipping law.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58341, Sept. 30, 2004]

#### § 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.

#### § 5.29 Negligence.

*Negligence* is the commission of an act which a reasonable and prudent

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person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

### § 5.31 Incompetence.

*Incompetence* is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.

### § 5.33 Violation of law or regulation.

Where the proceeding is based exclusively on that part of title 46 U.S.C. section 7703, which provides as a basis for suspension or revocation, a violation or failure to comply with 46 U.S.C. subtitle II, a regulation prescribed under that subtitle, or any other law or regulation intended to promote marine safety or protect navigable waters, the complaint must state the specific statute or regulation by title and section number, and the particular manner in which it was allegedly violated.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999; USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]

### § 5.35 Conviction for a dangerous drug law violation, use of, or addiction to the use of dangerous drugs.

Where the proceeding is based exclusively on the provisions of title 46, U.S.C. 7704, the complaint will allege *conviction for a dangerous drug law violation or use of dangerous drugs or addiction to the use of dangerous drugs*, depending upon the circumstances and will allege jurisdiction by stating the elements as required by title 46, U.S.C. 7704, and the approximate time and place of the offense.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

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### Subpart C—Statement of Policy and Interpretation

#### § 5.51 Construction of regulations.

The regulations in this part shall be construed so as to obtain a just, speedy, and economical determination of the issues presented.

#### § 5.55 Time limitations 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:

(1) When based exclusively on 46 U.S.C. 7704, service shall be within 10 years after the date of conviction, or at anytime if the person charged is a user of or addicted to the use of a dangerous drug.

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

(3) For an act or offense not otherwise provided for, the service shall be within three years after the commission of the act or offense alleged therein.

(b) When computing the period of time specified in paragraphs (a) (2) and (3) of this section there shall be excluded any period or periods of time when the respondent could not attend a hearing or be served charges by reason of being outside of the United States or by reason of being in prison or hospitalized.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

#### § 5.57 Acting under authority of license, certificate or document.

(a) A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document when the holding of such license, certificate or document is:

(1) Required by law or regulation; or  
(2) Required by an employer as a condition for employment.

(b) A person is considered to be acting under the authority of the license, certificate or document while engaged