

**§ 5.31**

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]

**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

in official matters regarding the license, certificate or document. This includes, but is not limited to, such acts as applying for renewal of a license, taking examinations for upgrading or endorsements, requesting duplicate or replacement licenses, certificates or documents, or when appearing at a hearing under this part.

(c) A person does not cease to act under the authority of a license, certificate or document while on authorized or unauthorized shore leave from the vessel.

**§ 5.59 Offenses for which revocation of licenses, certificates or documents is mandatory.**

An Administrative Law Judge enters an order revoking a respondent's license, certificate or document when—

(a) A charge of misconduct for wrongful possession, use, sale, or association with dangerous drugs is found proved. In those cases involving marijuana, the Administrative Law Judge may enter an order less than revocation when satisfied that the use, possession or association, was the result of experimentation by the respondent and that the respondent has submitted satisfactory evidence that he or she is cured of such use and that the possession or association will not recur.

(b) The respondent has been a user of, or addicted to the use of, a dangerous drug, or has been convicted for a violation of the dangerous drug laws, whether or not further court action is pending, and such charge is found proved. A conviction becomes final when no issue of law or fact determinative of the respondent's guilt remains to be decided.

**§ 5.61 Acts or offenses for which revocation of licenses, certificates, or documents is sought.**

(a) An investigating officer seeks revocation of a respondent's license, certificate or document when one of the following acts or offenses is found proved:

- (1) Assault with a dangerous weapon.
- (2) Misconduct resulting in loss of life or serious injury.
- (3) Rape or sexual molestation.
- (4) Murder or attempted murder.
- (5) Mutiny.
- (6) Perversion.
- (7) Sabotage.

(8) Smuggling of aliens.

(9) Incompetence.

(10) Interference with master, ship's officers, or government officials in performance of official duties.

(11) Wrongful destruction of ship's property.

(b) An investigating officer may seek revocation of a respondent's license, certificate or document when the circumstances of an act or offense found proved or consideration of the respondent's prior record indicates that permitting such person to serve under the license, certificate or document would be clearly a threat to the safety of life or property, or detrimental to good discipline.

**§ 5.65 Commandant's decisions in appeal or review cases.**

The decisions of the Commandant in cases of appeal or review of decisions of Administrative Law Judges are officially noticed and the principles and policies enunciated therein are binding upon all Administrative Law Judges, unless they are modified or rejected by competent authority.

**§ 5.67 Physician-patient privilege.**

For the purpose of these proceedings, the physician-patient privilege does not exist between a physician and a respondent.

**§ 5.69 Evidence of criminal liability.**

Evidence of criminal liability discovered during an investigation or hearing conducted pursuant to this part will be referred to the Attorney General's local representative or other appropriate law enforcement authority having jurisdiction over the matter.

**§ 5.71 Maritime labor disputes.**

Under no circumstances will the Coast Guard exercise its authority for the purpose of favoring any party to a maritime labor controversy. However, if the situation affecting the safety of the vessel or persons on board is presented, the matter shall be thoroughly investigated and when a violation of existing statutes or regulations is indicated, appropriate action will be taken.