

# Suspension and Revocation Process Guide for Administrative Law Judges

## Overview

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### Introduction

In May of 1999, the Part 20 rules for the Coast Guard Suspension and Revocation process was changed to create a more civil styled proceeding from the predecessor criminal styled proceedings. The Process Guide is intended to help facilitate the implementation and use of newer Part 20 rules.

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### Guidebook Purpose

This Chapter will familiarize you with the basic suspension and revocation process elements:

- Complaints
  - Answers
  - Default Judgments
  - Motions
  - Settlement Agreements and Consent Orders
  - Hearings
  - Proposed Findings of Fact and Conclusions of Law
  - Decisions and Orders
  - Appeals
- 

### Objectives

As an administrative law judge, you must understand the new procedural format in order to be able to:

- issue orders in uncontested cases
  - review and approve or deny settlement agreements
  - issue consent orders
  - review and approve or deny default judgment motions
  - issue default orders
  - prepare for the hearing
  - issue decisions
  - submit reports
  - prepare the administrative record
-

**In this  
guidebook**

This guide contains the following chapters.

<b>Topic</b>	<b>Chapter</b>
Suspension and Revocation Process	One
Complaints and Answers	Two
Default Judgments	Three
Settlement agreements	Four
Hearings	Five
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## Chapter 1

# The Suspension and Revocation Process

### Overview

The suspension and revocation process for the Part 20 rules are based on the procedures used in the Class II civil penalty process.

### Process

The following table sets out the basic phases of the Suspension and Revocation Process.

Phase	Description
Complaint	Investigating Officer prepares and files a complaint with the Docket Center and serves a copy on Respondent
Docketing	Docketing Center assigns a docket number and waits for a response from the Respondent
Answer	Respondent has 20 days to answer the complaint or file a motion to request an extension of time to file.
Prehearing	Preparation for the Hearing <ul style="list-style-type: none"><li>• Scheduling the Hearing</li><li>• Discovery<ul style="list-style-type: none"><li>• Witness Lists</li><li>• Exhibits</li><li>• Motions for Further Discovery (Optional)</li></ul></li><li>• Settlement Conferences (Optional)</li><li>• Prehearing Conferences (Optional)</li></ul>
Hearing	ALJ Presides over an evidentiary hearing <ul style="list-style-type: none"><li>• Witnesses testify</li><li>• Exhibits are received into evidence</li><li>• Arguments made</li></ul>
Post Hearing	Parties may file Proposed Findings of Fact and Conclusions of Law (may be waived)
Decision	The ALJ considers the evidence and issues a decision
Appeal	Parties may appeal the Decision to <ul style="list-style-type: none"><li>• Commandant of the Coast Guard</li><li>• National Transportation Safety Board</li><li>• Judicial Review</li></ul> Appeals to the Commandant must be filed within 30 days of service of the initial decision and order. Appeals to the National Transportation Safety Board, if applicable, must be filed within 10 days on the issuance of the Commandant's Decision.

## Answer Options

The following table sets out the possible responses to a complaint.

If the Respondent	Then the next Phase is
Fails to answer the Complaint	The Investigating Officer will file a Default Motion. <i>In absentia</i> hearings ARE NO LONGER USED.
Requests an extension of time to answer	An extension of the answer period.
Admits the allegations	ALJ Admission Order
Denies the allegations	ALJ assignment and hearing
Enters into a settlement agreement with the Investigating Officer	ALJ Consent Order for the Settlement Agreement

Note: If Respondent files only with the IO, Respondent should be reminded of the necessity of filing with the Docketing Center by either Notice or Order.

## Comparison between the New and Old S&R processes

The following table sets out the major differences between the newer Part 20 suspension and revocation process and the previous process in use since 1948.

Compare	Under the Old rules	Under the New rules
Initiating the case	IO issues a Charge Sheet (Notice of Hearing)	IO issues a Complaint
Scheduling the Hearing	IO schedules the hearing in the Charge Sheet for all cases	ALJ issues a scheduling order in contested cases
Prehearing Discovery	no discovery rules	each party must share witness lists and copies of all exhibits that the party intends to file at the hearing
Answer	Respondent answers at the initial hearing	Respondent files a written answer within 20 days
In Absentia Hearing	if Respondent fails to appear at a hearing, an <i>in absentia</i> hearing is held	if Respondent fails to appear at a hearing, a default motion is brought forward
Default	None	if Respondent fails to file a written answer, a default motion may be filed

**Statute  
Violated**

Investigating Officers use the following table to determine what statute to cite.

If the Coast Guard alleges	Then the I.O. cites the following Statute	And the following Regulation
Negligence	46 USC 7703(1)(B)	46 CFR 5.29
Misconduct	46 USC 7703(1)(B) and any Federal or State statute violated	46 CFR 5.27 and any Federal or State Regulation violated
Violation of Marine Safety Law or Regulation	46 USC 7703(1)(A)	46 CFR 5.33
Incompetence	46 USC 7703(1)(B)	46 CFR 5.31
Drug Use	46 USC 7704(c)	46 CFR 5.35
Drug Conviction	46 USC 7704(b) and any Federal or State drug statute violated	46 CFR 5.35
NDR Conviction	46 USC 7703(3) and State DWI statute violated	
Major Conviction	46 7703(2) and any Federal or State statute violated	

**Allegations**

The allegations are written in numbered paragraphs containing the:

- Jurisdictional facts and
- Facts constituting the alleged offense

**Jurisdictional  
Allegations -  
Drug Use**

The following jurisdictional allegations appear in the Drug Complaint Form

**JURISDICTIONAL ALLEGATIONS**

The Coast Guard alleges that:

1. Respondent's address is as follows:

STREET			
CITY		STATE	ZIP
TELEPHONE		FAX	

2. Respondent holds the following Coast Guard-issued credential(s):

<input type="checkbox"/> LICENSE NUMBER	<input type="checkbox"/> MMD NUMBER	<input type="checkbox"/> OTHER
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## Chapter 2

### Complaints and Answers

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#### Introduction

The Complaint and Answer are the foundational elements of the suspension and revocation process.

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#### Complaint

This initiates the Suspension and Revocation Case and is made up of the following elements:

- Caption
  - Introductory paragraph
  - Statute(s)/Regulation(s) violated
  - Allegations – jurisdictional and factual
  - Proposed Order (nature of the sanction requested)
  - Proposed date and location of the hearing
  - Name and address of:
    - Investigating Officer
    - MSO
  - Respondent's Options (rights and filing instructions)
  - Certificate of service
- 

#### Regulations

The regulations concerning Complaints and Answers are found at:

- 33 CFR 20.307 Complaint
  - 33 CFR 20.308 Answer
  - 33 CFR 20.302 Filing of Documents
  - 33 CFR 20.303 Form and Content of filed Documents
  - 46 CFR 5.107 Service of Complaint
- 

#### Forms

Investigating Officers use three forms for filing Complaints:

- Drug Complaint
- Non-Drug Complaint (acting under the authority offenses)
- Temporary Suspension

Investigating Officers have the option of preparing Complaints using the format set out in 33 CFR 20.303 that meet the requirements of 33 CFR 20.307.

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#### Docket Number and Case Number

The Docket Number is assigned by the Docketing Center

The Case or Activity Number is assigned by the MSO and is the Enforcement Activity Number assigned by MISLE.

**Jurisdictional  
Allegations  
Non-Drug**

The following jurisdictional allegations appear in the non drug Complaint form. Paragraph 3 has drop-down list showing the various "acting under the authority" scenarios presented in 46 CFR 5.57.

**JURISDICTIONAL ALLEGATIONS**

The Coast Guard alleges that:

1. Respondent's address is as follows:

STREET			
CITY		STATE	ZIP
TELEPHONE		FAX	

2. Respondent holds the following Coast Guard-issued credential(s):

<input type="checkbox"/> LICENSE NUMBER	<input type="checkbox"/> MMD NUMBER	<input type="checkbox"/> OTHER
---	-------------------------------------	--------------------------------

3. Respondent acted under the authority of that license, certificate or document, on \_\_\_\_\_, by:

<input type="checkbox"/> serving as _____	aboard the vessel _____	as required by law or regulation.
<input type="checkbox"/> engaging in official matters regarding that license, certificate or document by applying for renewal.		

**Jurisdictional  
Allegations -  
46 CFR 5.57**

Respondent was acting under the authority of his [license and/or document] by serving as [type of service] aboard the [vessel] as required by [46 CFR {Crew Requirement} or condition of employment]

Alternative jurisdictional allegation:

Respondent was acting under the authority of his [license and/or document] by [applying for renewal of a license, taking examinations for upgrading or endorsements, requesting duplicate or replacement licenses], at [REC or MSO].

**Factual  
Allegations**

The factual allegations are on page 2 of the complaint and written in simple paragraphs in plain English.

- Where/when the alleged actions occurred
- What occurred
- What damage occurred

**If the Coast Guard alleges**

**Then the facts should allege**

Drug Use	Type of drug test Date/Location of drug test Lab that conducted test Test results
Conviction Cases <ul style="list-style-type: none"> <li>• Drug</li> <li>• DWI</li> <li>• Etc.</li> </ul>	Type of Conviction Court Date/Location
Negligence	Location of casualty Date and time Weather/Sea Conditions
Negligence – Allison	Location of casualty Date and time Weather/Sea Conditions That the Coast Guard is relying on the Presumption of Negligence
Negligence – Grounding	Location of casualty Date and time Weather Sea Conditions Chart Number demonstrating that location is charted. That the Coast Guard is relying on the Presumption of Negligence
Violation of Law/Regulation	Date and time Cite Regulation or Statute by title and section number Facts of violation,
Misconduct	Date/Time/Location Cite statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources violated
Incompetence	Type <ul style="list-style-type: none"> <li>• Professional</li> <li>• Medical/Mental</li> </ul> Facts in support

## Options for Respondents

The last page of the Complaint contains what options the Respondent has available and details the Respondent's rights.

You must answer these allegations within 20 days. You can find the rules for Answers at 33 CFR 20.308.

If you admit the allegations, the ALJ will issue an order entering the proposed sanction.

If you deny the allegations, the ALJ will schedule a hearing on the matter.

You must deny each numbered allegation. General denials are not permitted.

If you do not file an answer, you may be found in default. Default constitutes an admission of all facts alleged in the complaint and a waiver of your right to a hearing. If the ALJ finds you in default, a decision will be issued against you without a hearing.

You may request a settlement agreement with the Coast Guard

If you and the Coast Guard reach agreement, a settlement agreement will be submitted to the Administrative Law Judge for review and approval. If the Administrative Law Judge approves, the Judge will issue an order implementing the agreement.

## Respondent's Rights

The Investigating Officer must advise the Respondent, in writing, of

- (1) The nature of suspension and revocation proceedings and the possible results thereof;
- (2) The right to have representation by counsel at the hearing, and that counsel may be, but need not be, a lawyer;
- (3) The right to have witnesses, records or other evidence subpoenaed.

46 CFR 5.107

*Continued on next page*

## Complaints and Answers, Continued

### Proposed Order

The Investigating Officer may use the Table of Average Orders or the Marine Safety Manual to determine the proposed order.

Investigating Officers should not mention Respondent's prior record in the Complaint. However, if they do, it does not disqualify the ALJ from proceeding with the case.

### Examples of Proposed Orders

- In consideration the facts alleged and the Respondent's record, the Coast Guard proposes an Outright Suspension of ---- Months.
- As required by 46 USC 7704, the Coast Guard seeks revocation of Respondent's Document.

### Proposed Location

In this paragraph (generally page 2 of the Complaint Form), the Investigating Officer gives the proposed dates and locations for a hearing. If there are issues with witness availability or any reasons why a specific location is desired, the Investigating Officer should mention them in this section.

#### PROPOSED HEARING LOCATION AND DATES

Location:

Dates: *1st Choice:*      *2nd Choice:*      *3rd Choice:*      *4th Choice:*

### Address

The upper left hand corner of the complaint contains the address, phone number, and any fax number of the MSO and the name, rank and title of the investigating officer who filed the Complaint.

### Serving the Complaint

The Investigating Officer may use any of the following methods to serve the Complaint

- Personal Service
- Certified Mail, Return Receipt Requested
- Express Courier Service with receipt capacity

**Note:** The old requirement for Certified Mail, Restricted Delivery, and Return Receipt has been eliminated.

**Filing with  
Docket Center**

One copy of the Complaint is filed with the ALJ Docketing Center at the following address:

ALJ Docketing Center  
U.S. Customs House  
40 S. Gay St., Room 412  
Baltimore, MD 21202

Filing may be made by Mail, Express Courier, or Fax.

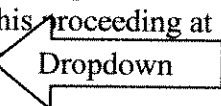
Once the ALJ is assigned, the assignment order will direct the parties where to file subsequent documents. A copy of all documents filed must be provided to the ALJ Docketing Center at all times.

**Certificate of  
Service  
Example**

The following format is used for the certificate of service on page 3 of the Complaint Form.

**CERTIFICATE OF SERVICE**

☐ I hereby certify that I have personally served the foregoing document[s] upon the Respondent.

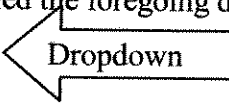
☐ I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by Certified Mail, Return Receipt 

Name of Party:

Name of Party:

Address:

Address:

☐ I hereby certify that I have filed the foregoing document[s] with the ALJ Docketing Center by Fax. 

Signed \_\_\_\_\_

Date June 6, 2006

*Investigating Officer for the United States Coast Guard*

**Answer**

The Investigating Officer supplies an Answer Form with the Complaint as follows:

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

NAME AND ADDRESS OF ATTORNEY OR RESPONDENT WITHOUT ATTORNEY:

FOR DOCKETING CENTER USE ONLY

ATTORNEY FOR (NAME):

COMPLAINANT:

United States Coast Guard

RESPONDENT:

DOCKET NUMBER

ANSWER

COAST GUARD CASE NUMBER

This Answer is filed in response to a Complaint issued by MSO \_\_\_\_\_ on \_\_\_\_\_.

☐ Respondent ADMITS all **jurisdictional allegations**.

☐ Respondent DENIES the following numbered paragraphs in the **jurisdictional allegations** and admits all others:

(NOTE: If Respondent states they lack sufficient knowledge or information to admit or deny a particular paragraph, the allegation is DENIED.)

☐ Respondent ADMITS all **factual allegations**.

☐ Respondent DENIES the following numbered paragraphs in the **factual allegations** and admits all others:

(NOTE: If Respondent states they lack sufficient knowledge or information to admit or deny a particular paragraph, the allegation is DENIED.)

☐ Respondent affirmatively alleges as a defense:

☐ Expiration of time limitation for service of complaint (46 CFR 5.55). ☐ Other. (Specify)

☐ Respondent agrees with the proposed order. ☐ Respondent wishes to be heard on the proposed order.

☐ Respondent agrees with the proposed hearing location and dates. ☐ Respondent proposes the following:

Hearing Location:

Dates:

First Choice

Second Choice

Third Choice

Fourth Choice

i. Respondent requests settlement discussions: ☐ Yes ☐ No

Done at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ or 20\_\_\_\_.

Type or print name

Signature of Respondent or representative

Type or print name

Signature of Respondent or representative

**CERTIFICATE OF SERVICE**

☐ I hereby certify that I have filed the foregoing document[s] with the Administrative Law Judge (ALJ) Docketing Center by:  
☐ Mail ☐ Express Courier Service ☐ Fax ☐ In Person

☐ I hereby certify that I have filed the foregoing document[s] with the U.S. Coast Guard Marine Safety Office (MSO) shown on Page 1 of the Complaint by: ☐ Mail ☐ Express Courier Service ☐ Fax ☐ In Person

Type or print name

Signature

Date

## Answers

The Respondent must file an answer with the Docketing Center within 20 days of service of the Complaint.

- If a respondent denies any allegation or requests a hearing:

If...	Then the Docketing Center
The Respondent admits all allegations	Assigns the case to the next available ALJ on the non-contested case rotation (Admissions track).
The Respondent denies any allegation or requests a hearing on the sanction	Assigns the case to an ALJ as a Contested Case.
The Respondent does not answer	Waits for the Investigating Officer to begin the Default Process. See Chapter 3.
No answer or default motion is filed within 120 days of service.	Administratively dismisses the case without prejudice.

## Where to find examples of Complaints

You can find examples of Complaints as follows.

# COMPLAINT TEMPLATE FOR DRUG CASES

PAGE 1 OF 3

<b>UNITED STATES OF AMERICA</b> <b>U.S. DEPARTMENT OF HOMELAND SECURITY</b> <b>UNITED STATES COAST GUARD</b>	
ADDRESS OF COAST GUARD MARINE SAFETY OFFICE (MSO):  INVESTIGATING OFFICER: TELEPHONE: COMPLAINANT: <b>United States Coast Guard</b>	FOR DOCKETING CENTER USE ONLY
RESPONDENT:	
<b>COMPLAINT</b>	DOCKET NUMBER  COAST GUARD CASE NUMBER

The Coast Guard has initiated an administrative proceeding against your license, certificate, and/or merchant mariners document (MMD).

Statutory Authority:	<input type="checkbox"/> 46 USC 7704(b) Conviction for a Dangerous Drug Law Violation <input type="checkbox"/> 46 USC 7704(c) Use of or Addiction to the Use of Dangerous Drugs
Regulatory Authority:	46 CFR 5.35

## JURISDICTIONAL ALLEGATIONS

The Coast Guard alleges that:

3. Respondent's address is as follows:

STREET			
CITY		STATE	ZIP
TELEPHONE		FAX	

4. Respondent holds the following Coast Guard-issued credential(s):

<input type="checkbox"/> LICENSE NUMBER	<input type="checkbox"/> MMD NUMBER	<input type="checkbox"/> OTHER
---	-------------------------------------	--------------------------------

1 PAGE(S) OF FACTUAL ALLEGATIONS FOLLOW

## SHORT TITLE OF CASE

U.S. Coast Guard v.

DOCKET NUMBER

COAST GUARD CASE NUMBER

**FACTUAL ALLEGATIONS—Use of or Addiction to the Use of Dangerous Drugs**

The Coast Guard alleges that:

1. On *(date)* Respondent took a Random drug test.
2. A urine specimen was collected by *(collector)* of *(company)*.
3. The Respondent signed a Federal Drug Testing Custody and Control Form.
4. The urine specimen was collected and analyzed by *(lab)* using procedures approved by the Department of Transportation.
5. That specimen subsequently tested positive for Amphetamines.

**FACTUAL ALLEGATIONS—Conviction for a Dangerous Drug Law Violation**

The Coast Guard alleges that:

1. within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the United States.

**PROPOSED ORDER**

The Coast Guard proposes revocation in accordance with 46 USC 7704.

**PROPOSED HEARING LOCATION AND DATES**

Location:

Dates: *1st Choice:*      *2nd Choice:*      *3rd Choice:*      *4th Choice:*

Received	For the U.S. Coast Guard
Respondent	Investigating Officer
Refused _____ IO's Initials _____	Date: June 6, 2006

SHORT TITLE OF CASE

DOCKET NUMBER:

U.S. Coast Guard v.

COAST GUARD CASE NUMBER:

**RESPONDENT'S INSTRUCTIONS****YOU MUST RESPOND TO THIS COMPLAINT WITHIN 20 DAYS**

1. You must answer these allegations within 20 days of receipt. The rules for Answers are at 33 CFR 20.308 and read as follows:

**§ 20.308 Answers.**

- (a) The respondent shall file a written answer to the complaint 20 days or less after service of the complaint. The answer must conform to the requirements of this subpart for filing and service.
  - (b) The person filing the answer shall, in the answer, either agree to the place of hearing proposed in the complaint or propose an alternative.
  - (c) Each answer must state whether the respondent intends to contest any of the allegations set forth in the complaint. It must include any affirmative defenses that the respondent intends to assert at the hearing. The answer must admit or deny each numbered paragraph of the complaint. If it states that the respondent lacks sufficient knowledge or information to admit or deny a particular paragraph, it denies that paragraph. If it does not specifically deny a particular numbered paragraph, it admits that paragraph.
  - (d) A respondent's failure without good cause to file an answer admits each allegation made in the complaint.
2. If you admit the allegations, an Administrative Law Judge (ALJ) will issue an order entering the proposed sanction.
  3. If you deny any allegations, an ALJ will schedule a hearing on the matter.
  4. You may request an extension of time to file your answer within 20 days. Each request must explain why more time is needed and will be ruled on by an ALJ.
  5. If you do not file an answer, request for extension, or attend any scheduled hearing, you may be found in default. Default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. If the ALJ finds you in default, a decision could be issued against you without any hearing.
  6. You may request a settlement agreement with the Coast Guard. If you wish to discuss a settlement, call the Coast Guard Investigating Officer shown on the first page of this Complaint.
  7. If you and the Coast Guard reach agreement, a proposed settlement agreement will be submitted to the ALJ for review and approval. If the ALJ approves the settlement, an order implementing the agreement will be issued.

**YOU HAVE THE RIGHT TO:**

1. have representation by counsel at the hearing, and that counsel may be, but need not be, a lawyer (**NOTE:** free legal aid may be available through the state bar or legal aid services);
2. have witnesses, records or other evidence subpoenaed;
3. examine witnesses;
4. cross-examine witnesses;
5. introduce relevant evidence into the record; and
6. testify to facts or relevant information on your own behalf.

**FILE YOUR ANSWER TO THIS COMPLAINT AT THE FOLLOWING ADDRESS:**

ALJ Docketing Center  
 U.S. Customs House  
 40 South Gay Street, Room 412  
 Baltimore, MD 21202-4022  
 Phone: (410) 962-5100  
 Fax: (410) 962-1742 or 962-1746

**FILE A COPY OF YOUR ANSWER TO THIS COMPLAINT WITH THE MARINE SAFETY OFFICE (MSO) AT THE ADDRESS SHOWN ON PAGE ONE OF THIS COMPLAINT.**

YOU MUST NOTIFY THE ALJ DOCKETING CENTER AND THE MSO ON PAGE ONE OF THIS COMPLAINT ANYTIME THERE ARE CHANGES TO YOUR MAILING ADDRESS AND/OR PHONE NUMBER.

Done at        this        day of        19        .

Signed \_\_\_\_\_  
Investigating Officer for the United States Coast Guard        Type or print name

**1.1        CERTIFICATE OF SERVICE**

- ☐ I hereby certify that I have personally served the foregoing document[s] upon the Respondent.  
☐ I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by Certified Mail, Return Receipt:

Name of Party:        Name of Party:  
Address:        Address:

- ☐ I hereby certify that I have filed the foregoing document[s] with the ALJ Docketing Center by Fax.

Signed \_\_\_\_\_ Date: June 6, 2006  
*Investigating Officer for the United States Coast Guard*

## COMPLAINT TEMPLATE FOR NON-DRUG CASES

Page 1 of 3

<b>UNITED STATES OF AMERICA</b> <b>U.S. DEPARTMENT OF HOMELAND SECURITY</b> <b>UNITED STATES COAST GUARD</b>	
ADDRESS OF COAST GUARD MARINE SAFETY OFFICE (MSO):   INVESTIGATING OFFICER: TELEPHONE: COMPLAINANT: <b>United States Coast Guard</b>	FOR DOCKETING CENTER USE ONLY     DOCKET NUMBER  COAST GUARD CASE NUMBER
RESPONDENT:  <b>COMPLAINT</b>	

The Coast Guard has initiated an administrative proceeding against your license, certificate, and/or merchant mariners document (MMD).

Statutory Authority:	46 USC 7703
Regulatory Authority:	46 CFR 5.27 Misconduct

### JURISDICTIONAL ALLEGATIONS

The Coast Guard alleges that:

4. Respondent's address is as follows:

STREET			
CITY	STATE	ZIP	
TELEPHONE	FAX		

5. Respondent holds the following Coast Guard-issued credential(s):

<input type="checkbox"/> LICENSE NUMBER	<input type="checkbox"/> MMD NUMBER	<input type="checkbox"/> OTHER
---	-------------------------------------	--------------------------------

6. Respondent acted under the authority of that license, certificate or document, on \_\_\_\_\_, by:  
☐ serving as \_\_\_\_\_ aboard the vessel \_\_\_\_\_ as required by law or regulation.

☐ engaging in official matters regarding that license, certificate or document by applying for renewal.

1 PAGE(S) OF FACTUAL ALLEGATIONS ARE ATTACHED

SHORT TITLE OF CASE  U.S. Coast Guard v.	DOCKET NUMBER
	COAST GUARD CASE NUMBER

### FACTUAL ALLEGATIONS—Negligence

1. The Coast Guard alleges that on *(date)* at *(location)* the Respondent:
2. ☐ was negligent. By committing an act or failing to perform an act that contributed to a collision between the vessel and
3. ☐ negligently operated the vessel by failing to post a lookout.
4. ☐ negligently *(Specify other negligence)*

### FACTUAL ALLEGATIONS—Misconduct

1. The Coast Guard alleges that on *(date)* at *(location)* the Respondent:
2. wrongfully

### FACTUAL ALLEGATIONS—Violation of Law or Regulation

1. The Coast Guard alleges that on *(date)* at *(location)* the Respondent:
2. violated Title United States Code by
3. This law was intended to promote marine safety or protect navigable waters.

### FACTUAL ALLEGATIONS—Incompetence

1. The Coast Guard alleges that the Respondent is professionally incompetent:
2. due to

### PROPOSED ORDER

The Coast Guard proposes: ☐ Order in accordance with 46 CFR Table 5.569  
☐ Months Suspension on Probation for

### PROPOSED HEARING LOCATION AND DATES

Location:

Dates: 1st Choice: 2nd Choice: 3rd Choice: 4th Choice:

Received	For the U.S. Coast Guard
Respondent	Investigating Officer
Refused IO's Initials	Date: June 6, 2006

<b>SHORT TITLE OF CASE</b>	<b>DOCKET NUMBER:</b>
U.S. Coast Guard v.	<b>COAST GUARD CASE NUMBER:</b>

**RESPONDENT'S INSTRUCTIONS****YOU MUST RESPOND TO THIS COMPLAINT WITHIN 20 DAYS**

1. You must answer these allegations or request an extension within 20 days of receipt. The rules for Answers are at 33 CFR 20.308 and read as follows:

**§ 20.308 Answers.**

- (a) The respondent shall file a written answer to the complaint 20 days or less after service of the complaint. The answer must conform to the requirements of this subpart for filing and service.
  - (b) The person filing the answer shall, in the answer, either agree to the place of hearing proposed in the complaint or propose an alternative.
  - (c) Each answer must state whether the respondent intends to contest any of the allegations set forth in the complaint. It must include any affirmative defenses that the respondent intends to assert at the hearing. The answer must admit or deny each numbered paragraph of the complaint. If it states that the respondent lacks sufficient knowledge or information to admit or deny a particular paragraph, it denies that paragraph. If it does not specifically deny a particular numbered paragraph, it admits that paragraph.
  - (d) A respondent's failure without good cause to file an answer admits each allegation made in the complaint.
2. If you admit the allegations, an Administrative Law Judge (ALJ) will issue an order entering the proposed sanction.
  3. If you deny any allegations, an ALJ will schedule a hearing on the matter.
  4. You may request an extension of time to file your answer within 20 days. Each request must explain why more time is needed and will be ruled on by an ALJ.
  5. If you do not file an answer, request for extension, or attend any scheduled hearing, you may be found in default. Default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. If the ALJ finds you in default, a decision could be issued against you without any hearing.
  6. You may request a settlement agreement with the Coast Guard. If you wish to discuss a settlement, call the Coast Guard Investigating Officer shown on the first page of this Complaint.
  7. If you and the Coast Guard reach agreement, a proposed settlement agreement will be submitted to the ALJ for review and approval. If the ALJ approves the settlement, an order implementing the agreement will be issued.

**YOU HAVE THE RIGHT TO:**

1. have representation by counsel at the hearing, and that counsel may be, but need not be, a lawyer (**NOTE:** free legal aid may be available through the state bar or legal aid services);
2. have witnesses, records or other evidence subpoenaed;
3. examine witnesses;
4. cross-examine witnesses;
5. introduce relevant evidence into the record; and
6. testify to facts or relevant information on your own behalf.

**FILE YOUR ANSWER TO THIS COMPLAINT OR MOTION FOR AN EXTENTION WITH:**

ALJ Docketing Center  
 U.S. Customs House  
 40 South Gay Street, Room 412  
 Baltimore, MD 21202-4022  
 Phone: (410) 962-5100  
 Fax: (410) 962-1742 or 962-1746

**FILE A COPY OF YOUR ANSWER TO THIS COMPLAINT WITH THE MARINE SAFETY OFFICE (MSO) AT THE ADDRESS SHOWN ON PAGE ONE OF THIS COMPLAINT.**

YOU MUST NOTIFY THE ALJ DOCKETING CENTER AND THE MSO ON PAGE ONE OF THIS COMPLAINT ANYTIME THERE ARE CHANGES TO YOUR MAILING ADDRESS AND/OR PHONE NUMBER.

Done at            this            day of            19            .

Signed \_\_\_\_\_  
Investigating Officer for the United States Coast Guard      Type or print name

**CERTIFICATE OF SERVICE**

- ☐ I hereby certify that I have personally served the foregoing document[s] upon the Respondent.  
☐ I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by Certified Mail, Return Receipt

Name of Party:            Name of Party:  
Address:                    Address:

- ☐ I hereby certify that I have filed the foregoing document[s] with the ALJ Docketing Center by Fax.

Signed \_\_\_\_\_ Date June 6, 2006  
*Investigating Officer for the United States Coast Guard*

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

ADDRESS OF COAST GUARD MARINE SAFETY OFFICE (MSO):   INVESTIGATING OFFICER: TELEPHONE:	FOR DOCKETING CENTER USE ONLY
COMPLAINANT:  <p style="text-align: center;"><b>United States Coast Guard</b></p>	
RESPONDENT:	DOCKET NUMBER
COMPLAINT AND AFFIDAVIT—TEMPORARY SUSPENSION	COAST GUARD CASE NUMBER

UNDER THE STATUTORY AUTHORITY OF 46 USC 7702(d) AND THE REGULATIONS IN 33 CFR PART 20, SUBPART L, THE COAST GUARD IS TEMPORARILY SUSPENDING AND TAKING POSSESSION OF YOUR LICENSE, CERTIFICATE, AND/OR MERCHANT MARINERS DOCUMENT (MMD) ON .

YOUR ANSWER TO THIS COMPLAINT WILL BE FILED AT A PRE-HEARING CONFERENCE TO BE SCHEDULED BY AN ADMINISTRATIVE LAW JUDGE AS SOON AS PRACTICABLE.

### JURISDICTIONAL ALLEGATIONS

The Coast Guard alleges that:

1. Respondent's address is as follows:

STREET			
CITY	STATE	ZIP	
TELEPHONE	FAX		

2. Respondent holds the following Coast Guard-issued credential(s):

☐ LICENSE NUMBER
 ☐ MMD NUMBER
 ☐ OTHER

3. Respondent performs a safety sensitive function when acting under the authority of that license, certificate, or document by serving as \_\_\_\_\_ aboard the vessel \_\_\_\_\_ as required by law or regulation.

4. There is probable cause to believe that the Respondent:

<input type="checkbox"/> has performed the safety sensitive function in violation of law or Federal regulation regarding the use of alcohol or a dangerous drug.
<input type="checkbox"/> has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document.
<input type="checkbox"/> within the last 3 years has been convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982.

THE DURATION OF THIS TEMPORARY SUSPENSION SHALL NOT EXCEED 45 DAYS. AN EXPEDITED HEARING ON THIS MATTER SHALL BE HELD WITHIN 30 DAYS. THE COAST GUARD SHALL FILE THIS COMPLAINT WITH THE ADMINISTRATIVE LAW JUDGE (ALJ) DOCKETING CENTER AS SOON AS PRACTICABLE SO THAT AN ALJ CAN BE ASSIGNED AND A PRE-HEARING CONFERENCE SCHEDULED.

SHORT TITLE OF CASE	DOCKET NUMBER
U.S. Coast Guard v.	COAST GUARD CASE NUMBER

### FACTUAL ALLEGATIONS

The Coast Guard alleges that:

On *(date)* the Respondent

### PROPOSED ORDER

The Coast Guard proposes: ☐ Order in accordance with 46 CFR Table 5.569  
☐ Months Suspension on Probation for

### PROPOSED HEARING LOCATION AND DATES

Location:

Dates: *1st Choice:*      *2nd Choice:*      *3rd Choice:*      *4th Choice:*

Received	For the U.S. Coast Guard
<b>1.1.1.1 Respondent</b>	<i>Investigating Officer</i>
Refused _____ IO's Initials _____	Date: June 6, 2006

SHORT TITLE OF CASE U.S. Coast Guard v.	DOCKET NUMBER
	COAST GUARD CASE NUMBER

### RESPONDENT'S INSTRUCTIONS AND CERTIFICATE OF SERVICE

1. File your Answer to this Complaint at a pre-hearing conference to be scheduled by an Administrative Law Judge (ALJ) as soon as practicable.
2. If you admit the allegations, the ALJ will issue an appropriate order or schedule a hearing on the order.
3. If you deny the allegations, the pre-hearing conference will be used to:
  - a. identify and simplify the issues in dispute;
  - b. prepare an agreed statement of issues, facts, and defenses;
  - c. establish a simplified procedure appropriate to the matter;
  - d. fix a time and place for an expedited hearing 30 days or less after the temporary suspension; and
  - e. discuss witnesses and exhibits with the ALJ issuing an order directing the exchange of witness lists and documents.
4. Before the close of the pre-hearing conference, the ALJ shall issue an order setting forth any agreement reached by the parties. The order must specify the issues for the parties to address at the hearing.
5. If you do not attend a scheduled conference or hearing, you may be found in default. Default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. If the ALJ finds you in default, a decision could be issued against you without any hearing.
6. At any time you may request to have your license, certificate, or document returned to you on the grounds that the Coast Guard lacked probable cause for a temporary suspension. This request must be made in writing to the ALJ Docketing Center and explain why the Coast Guard lacked probable cause in this matter.  
 At any time you may request to discontinue the expedited hearing process and have the matter continue under standard procedures. This request must be made in writing to the ALJ Docketing Center and explain why an expedited hearing is inappropriate for this case.

#### YOU HAVE THE RIGHT TO:

1. have representation by counsel at the pre-hearing conference, and that counsel may be, but need not be, a lawyer (**NOTE:** free legal aid may be available through the state bar or legal aid services);
2. have witnesses, records or other evidence subpoenaed;
3. examine witnesses;
4. cross-examine witnesses;
5. introduce relevant evidence into the record;  
and
6. testify to facts or relevant information on your own behalf.

#### CONTACT THE ALJ DOCKETING CENTER AT THE FOLLOWING ADDRESS:

ALJ Docketing Center, U.S. Customs House, 40  
 South Gay Street, Room 412, Baltimore, MD  
 21202-4022, Phone: (410) 962-5100, Fax: (410)  
 962-1742 or 962-1746

**YOU MUST NOTIFY THE ALJ DOCKETING CENTER AND THE MARINE SAFETY OFFICE ON  
PAGE ONE OF THIS COMPLAINT ANYTIME THERE ARE CHANGES TO YOUR MAILING  
ADDRESS AND/OR PHONE NUMBER.**

Done at \_\_\_\_\_ on \_\_\_\_\_.

Signed \_\_\_\_\_  
Investigating Officer for the United States Coast Guard Type or print name

**CERTIFICATE OF SERVICE**

- ☐ I hereby certify that I have personally served the foregoing document[s] upon the Respondent.  
☐ I hereby certify that I have filed the foregoing document[s] with the ALJ Docketing Center by the following method: Fax.

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
Investigating Officer for the United States Coast Guard

**DISPOSITION OF RESPONDENT'S CREDENTIALS**

I hereby certify that I have taken possession of and issued a receipt for the credentials shown on Page 1 of this Complaint.

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
Investigating Officer for the United States Coast Guard

## Chapter 3

### Admissions

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#### Introduction

The chapter describes how to process a case in which the Respondent filed an Answer that admitted the charges and does not request a hearing.

---

#### Regulations

The regulations that pertain to admissions are the following:

- 33 CFR 20.308
  - 46 CFR 5.567
  - 46 CFR 5.569
- 

#### ALJ Assignment

When a respondent files an admission answer, the ALJ Docketing Center assigns the case to the next available ALJ on the non-contested rotation list.

---

#### Review and Approval

The ALJ reviews the admission answer and if approved, issues an appropriate order.

You should review the admission for the following issues

- Did the respondent sign the answer?
  - Does the Complaint state an offense?
  - Is there jurisdiction over the respondent?
  - Does the law permit the proposed order?
    - Drug rehabilitation in conviction cases is appropriate in settlement agreement cases but not admission cases.
  - Is the proposed order appropriate under the circumstances?
- 

#### Order

Upon finding that Respondent has admitted the allegations, the ALJ issues a decision using the order admission form.

## Chapter 4

### Defaults

---

**Introduction** The default process replaces the *in absentia* hearing process previously used in suspension and revocation proceedings.

---

**Regulations** The regulations that pertain to default are the following:

- 33 CFR 20.310
- 33 CFR 20.705

---

**When can a default motion be filed?** The Investigating Officer may file a default motion if the Respondent:

- fails to file a timely answer to the complaint or, after motion,
- fails to appear at a conference or hearing without good cause shown

---

**How does the investigating Officer know if the Respondent failed to answer?** If the Investigating Officer does not receive a copy of the answer or a motion from Respondent within 25 days of serving the Complaint, he or she can contact the Docketing Center and if Respondent has not made any filing, the docket clerk will supply a Certificate of ~~Default~~ <sup>Answer</sup> to the IO indicating that the ALJ Docketing Center has not received an answer or motion in the case. ✓

**Motion** The Investigating Officer must file a motion to obtain a default order.

The standard default motion is a form generated motion. Otherwise, the Investigating Officer may file a motion that conforms to the requirements of 33 CFR 20.302, 20.303 and 20.304. An example of the Default Motion follows in this section.

The motion is normally filed with the ALJ Docketing Center as no answer has been received in the case.

The Investigating Officer serves a copy on the Respondent, using certified mail, express courier service or personal service.

---

**Response** The Respondent has 20 days to file a rely to a default motion. Upon expiration of the time period, the case is assigned to the next ALJ on the non-contested case list.

---



## Order

Upon finding the Respondent in default, the ALJ issues a decision.

If the ALJ finds...	Then the ALJ
the Respondent is in default	issues a decision against the Respondent.
that the Respondent had good cause not to answer or appear	Either sets aside the finding of default or denies the motion

---

### Setting aside defaults

With relaxed service rules there is a likelihood that defaults will be commonly set aside if Respondent can establish that he or she was at sea or otherwise unavailable.

A Respondent can file a motion or petition to reopen to set aside the default order. If you believe that the Respondent deliberately avoided service, you should deny the motion or petition. With good cause shown, the Respondent should be given an opportunity to be heard.

---

### Failure to appear

If a Respondent fails to appear at a hearing, the ALJ may enter a default order against a Respondent.

The ALJ will issue an order to show cause why the default should not be entered.

The respondent has 30 days to establish good cause for his or her failure to appear.

---

### What happens if the investigating officer doesn't file a default motion?

The case will be automatically dismissed without prejudice if no answer or default motion is filed with the Docketing Center in 90 days after expiration of the answer period.

---

### Where to find examples of default motions.

You can find examples of default motions and the template default order on the following pages.

# MOTION FOR DEFAULT ORDER TEMPLATE

PAGE 1 OF 2

UNITED STATES OF AMERICA U.S. DEPARTMENT OF HOMELAND SECURITY UNITED STATES COAST GUARD	
ADDRESS OF COAST GUARD MARINE SAFETY OFFICE (MSO):  INVESTIGATING OFFICER: TELEPHONE:	FOR DOCKETING CENTER USE ONLY
COMPLAINANT:  <b>United States Coast Guard</b>	
RESPONDENT:	DOCKET NUMBER
<b>Motion for Default Order</b>	COAST GUARD CASE NUMBER

The Coast Guard requests that a Default Order be issued in this case under 33 CFR 20.310.

The Coast Guard initiated an administrative proceeding seeking to revoke Respondent's License Number by filing a Complaint on

The Coast Guard served the Respondent with a copy of the Complaint in this action by Personal Service on . Proof of Service is attached as Exhibit 1.

This motion is made on the grounds that Respondent has failed to file an Answer to the Complaint in this proceeding and that the time allowed for filing an Answer has expired. The Respondent has not filed any Answer or requested an extension of time to file an Answer with the ALJ Docketing Center as of . Certification of docket record is attached as Exhibit 2.

This default constitutes an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing.

Therefore, the Coast Guard requests that the Administrative Law Judge issue a Default Order against the Respondent that imposes the order requested in the Complaint.

## PROPOSED ORDER

The Coast Guard proposes: ☐ Order in accordance with 46 CFR Table 5.569  
☐ Months Suspension on Probation for

For the U.S. Coast Guard

Investigating Officer

ate:

SHORT TITLE OF CASE  U.S. Coast Guard v.	DOCKET NUMBER
	COAST GUARD CASE NUMBER

**RESPONDENT'S INSTRUCTIONS AND CERTIFICATE OF SERVICE**  
**YOU MUST RESPOND TO THIS DEFAULT MOTION WITHIN 20 DAYS**

You must reply to this motion and file an answer to these allegations within 20 days of service. The rules for Default are at 33 CFR 20.310 and read as follows:

**§ 20.310 Default by respondent.**

- (a) The ALJ may find a respondent in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown.
- (b) Each motion for default must conform to the rules of form, service, and filing of this subpart. Each motion must include a proposed decision and proof of service under section 20.304(d). The respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.
- (c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of her or his right to a hearing on those facts.
- (d) Upon finding a respondent in default, the ALJ shall issue a decision against her or him.
- (e) For good cause shown, the ALJ may set aside a finding of default.

**YOU HAVE THE RIGHT TO:**

- have representation by counsel at the hearing, and that counsel may be, but need not be, a lawyer  
**(NOTE: free legal aid may be available through the state bar or legal aid services);**
- 2. have witnesses, records or other evidence subpoenaed;
- 3. examine witnesses;
- 4. cross-examine witnesses;
- 5. introduce relevant evidence into the record; and
- 6. testify to facts or relevant information on your own behalf.

**FILE YOUR REPLY TO THIS MOTION AT THE FOLLOWING ADDRESS:**

ALJ Docketing Center  
 U.S. Customs House  
 40 South Gay Street, Room 412  
 Baltimore, MD 21202-4022  
 Phone: (410) 962-5100  
 Fax: (410) 962-1742 or 962-1746

FILE A COPY OF YOUR REPLY TO THIS MOTION WITH THE MARINE SAFETY OFFICE (MSO) AT THE ADDRESS SHOWN ON PAGE ONE OF THIS MOTION.

YOU MUST NOTIFY THE ALJ DOCKETING CENTER AND THE MSO ON PAGE ONE OF THIS MOTION ANYTIME THERE ARE CHANGES TO YOUR MAILING ADDRESS AND/OR PHONE NUMBER.

Done at \_\_\_\_\_ on \_\_\_\_\_

Signed \_\_\_\_\_

Investigating Officer for the United States Coast Guard

Type or print name

#### CERTIFICATE OF SERVICE

- ☐ I hereby certify that I have personally served the foregoing document[s] upon the Respondent.  
☐ I hereby certify that I have served the foregoing document[s] upon the following parties (or their designated representatives) to this proceeding at the addresses indicated by Certified Mail, Return Receipt

Name of Party: \_\_\_\_\_ Name of Party: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_

- ☐ I hereby certify that I have filed the foregoing document[s] with the ALJ assigned to this case by Fax.

Signed \_\_\_\_\_ Date June 6, 2006  
Investigating Officer for the United States Coast Guard

## Chapter 5

### Settlement Agreements

---

#### Introduction

This chapter describes the settlement agreement process in the Part 20 suspension and revocation process and establishes policies for settlements.

---

#### Background

The Administrative Procedure Act permits parties to settle administrative adjudications by consent of the parties. See 5 U.S.C. § 554. The Class II civil penalty rules authorize settlement agreements. In 1995, the Coast Guard began to permit settlement agreements in suspension and revocation cases. This process eliminated over 200 hearings a year. The new rules supercede previous policy letters issued by G-MOA (PCA) permitting settlement agreements.

---

#### Regulations

You can find the regulations concerning settlement agreements at:

- 33 CFR 20.501 Conferences
  - 33 CFR 20.502 Settlements
- 

#### When can Settlement Agreements be filed?

The parties can file a settlement agreement at any time after the Complaint is filed. It can also be filed with the Complaint.

If the parties file a settlement agreement before an ALJ is assigned, the Docketing Center assigns the case to the next ALJ on the non-contested case rotation and sends the case file to the ALJ office.

- You should process the settlement within one week of assignment and
- return the case file to the Docketing Center.

Anytime after an ALJ is assigned, the parties should file settlement agreements directly with the ALJ.

- A copy of the settlement agreement and motion must be sent to the Docketing Center upon receipt.
- A copy of the consent order or ruling that rejects the settlement agreement must be sent to the Docketing Center upon service to the parties.

A settlement agreement can be filed during a hearing.

---

#### Review and Approval

You must review and approve the settlement agreement.

You must review the agreement for the following issues :

- Did the appropriate parties sign the agreement?
- Does the Complaint state an offense?
- Is there jurisdiction over the Respondent?
- Does the law permit the order?
  - Drug Rehabilitation may be permitted in Conviction Cases
- Is the settlement fair under the circumstances?
- Is the settlement clear?
- You should not hold hearings to determine the competency of respondent.

---

<b>If</b>	<b>Then</b>
You reject the agreement	State your reasons in a ruling and return the agreement to the parties.
You accept the agreement	Use the template consent order. The order must not change the conditions of the agreement.

**What happens  
if a Respondent  
does not  
comply with  
the agreement?**

In drug cases, the agreement contains provisions requiring the surrender of Respondent's license and/or document during the pendency of the agreement and it should be self-enforcing. If respondent fails to establish cure, the document is automatically revoked.

If a respondent fails a drug test during the rehabilitation period and requests that the period of non-association be extended, the parties may file an amendment to the agreement with the ALJ. The MRO must concur with the assessment that the respondent is still a viable candidate for rehabilitation.

If the Coast Guard discovers the drug testing failure at the end of the period, the order of revocation should come into force as per the agreement.

Normally, the agreement contains the actions and penalty for any non-compliance on the part of Respondent. A show cause order may be required as a mechanism to enforce the agreement.

Consent Agreements **must not require reports to the ALJ** during the rehabilitation period. ALJ offices do not have adequate resources to serve as quasi-probation offices. You must not approve agreements that require routine reports or submissions to the ALJ.

Likewise, Administrative Law Judges **must not require** reports to be filed with investigating officers. If investigating officers want reports, they may require them in the agreement. The respondent has the responsibility to demonstrate successful completion of a drug rehabilitation program.

Administrative Law Judges must presume that Drug Rehabilitation Agreements, conforming to the examples provided, meet all Coast Guard drug-rehabilitation requirements and must be approved.

---

**Where to Find  
Examples of  
Settlement  
Agreements.**

You can find examples of settlement agreements and the template consent order on the following pages.

---

UNITED STATES OF AMERICA U.S. DEPARTMENT OF HOMELAND SECURITY UNITED STATES COAST GUARD	
ADDRESS OF COAST GUARD MARINE SAFETY OFFICE (MSO):  INVESTIGATING OFFICER: TELEPHONE: COMPLAINANT: <div style="text-align: center;"><b>United States Coast Guard</b></div>	FOR DOCKETING CENTER USE ONLY     DOCKET NUMBER  COAST GUARD ENFORCEMENT ACTIVITY NUMBER
RESPONDENT:	
<b>Motion for Approval of Settlement Agreement and Entry of Consent Order</b>	

1. The parties request that the Administrative Law Judge issue a Consent Order in this case under 33 CFR 20.502.
2. The Coast Guard initiated an administrative proceeding by filing a Complaint on \_\_\_\_\_ seeking to revoke License Number \_\_\_\_\_
3. The parties agree that settlement of this matter is in the public interest and that the filing of the attached Settlement Agreement and subsequent entry of a Consent Order without further litigation is the most appropriate means of resolution. The parties consent to the filing of this Settlement Agreement without a hearing on any issue of fact or adjudication on any issue of law.
4. The Respondent enters into this Settlement Agreement solely for the purpose of settling this matter. Without any hearing or litigation of any issue of fact or law, Respondent admits the jurisdictional allegations and factual allegations of the Complaint.
5. Respondent waives any right to a hearing, and waives any right to appeal.
6. This Settlement Agreement and Consent Order shall be binding on Respondent, and shall become effective on the date that it is filed with the Hearing Docket Clerk. Both parties agree that the decision in this case will have the same force and effect as would a decision made after a hearing. Both parties agree to bear their own costs including, but not limited to attorney's fees, in regard to this proceeding.
7. The terms of this Settlement Agreement and Consent Order constitute a full settlement of this proceeding with respect to the administrative claims and causes of action alleged in the Complaint. Therefore, both parties request that the Administrative Law Judge approve this settlement agreement and issue a Consent Order.

For the Respondent:  _____  Date:	For the U.S. Coast Guard:  _____  Date:
---	---

SHORT TITLE OF CASE  U.S. Coast Guard v.	DOCKET NUMBER
	COAST GUARD ENFORCEMENT ACTIVITY NUMBER

**Settlement Agreement  
Drug Use or Addiction**

The parties enter into this Settlement Agreement and agree to the following:

1. Respondent agrees that all of his Coast Guard issued Credentials are REVOKED, however, this revocation will be STAYED in order to permit Respondent to complete a drug rehabilitation program.

Respondent further agrees to:

- a. within 30 days of issuance of this agreement, enroll in a drug rehabilitation program certified by a governmental agency or accepted by an independent professional association and provide adequate evidence of enrollment;
- b. within 90 days of issuance of this agreement, successfully complete all elements or be making positive progress towards completion of all elements of the drug rehabilitation program and provide adequate evidence of completion or progress.
- c. attend a substance abuse monitoring program (such as AA/NA) for a minimum period of one-year following successful completion of the drug rehabilitation program;
- d. participate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of the drug rehabilitation program. During the drug-testing program, the Respondent must take at least                      random drug tests spread reasonably throughout the year, that are conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40;
- e. obtain and file a copy of the Medical Review Officer's (MRO) letter that indicates the Respondent is drug-free and the risk of Respondent's subsequent use of dangerous drugs is sufficiently low to justify return to work. The MRO who made the original positive determination in this matter must sign the Return-To-Work determination. The name and address of the MRO is as follows:

If the parties agree, a substitute MRO may be used in this matter. If the original MRO is not available, and the parties cannot agree to a substitute the ALJ will approve a substitute MRO,

- f. be subject to increased, unannounced testing for a period of up to 60 months in accordance with 46 CFR 16.201(f)(2). The MRO will determine the period and frequency of testing;
- g. pay all expenses associated with completion of items 1.a through 1.f.
- h. deposit all Coast Guard-issued Credentials including licenses, certificates, and/or documents with Marine Safety Office                      until successfully completing the terms of this agreement;

- i. not perform any function that requires a Coast Guard issued Credential.
- j. advise the Investigations Department at Marine Safety Office of any change of address and/or telephone number by mail;
- k. send all evidence and documentation required above to the Investigating Officer at the following address:

Commanding Officer  
U.S. Coast Guard Marine Safety Office

Attn: Investigations Department

2. The Coast Guard shall review the evidence and documentation and do one of the following:
  - a. Accept the evidence and notify the Respondent and Docketing Center of the successful completion and return the Respondent's credentials. The Docketing Center will update its records to reflect the successful completion.
  - b. Reject the evidence, notify the Respondent in writing of any deficiencies in the evidence and grant Respondent 30 days to correct the deficiencies; or
  - c. Reject the evidence and notify the Respondent and Docketing Center of the failure to complete and that an order of REVOCATION will be automatically invoked in accordance with paragraph 5 of this Agreement unless the Respondent requests a hearing before an Administrative Law Judge (ALJ) by filing a written request with the Hearing Docket Clerk within 10 days of receiving the notice of failure to complete.
3. If the Respondent requests a hearing before an ALJ, then the revocation will be stayed until the ALJ issues a final order. **The ALJ's ruling on this request and any subsequent hearing will be final.**
4. If the Respondent fails to provide evidence and documentation demonstrating completion of the conditions of this agreement by the date required by paragraph 5, then the Coast Guard will notify the Respondent and Docketing Center of the failure to complete and that an order of REVOCATION has been automatically invoked in accordance with paragraph 5 of this Agreement.
5. The parties stipulate that this paragraph and this table set forth the appropriate orders in this matter.

If the Respondent...	then the Respondent's License will be...
fails to satisfactorily complete the conditions of 1.a (drug rehab enrollment) by _____,	REVOKED
fails to satisfactorily complete the conditions of 1.b (drug rehab completion) by _____,	REVOKED
fails to satisfactorily comply with the conditions of 1.c through 1.k at any time, but no later than _____,	REVOKED.
successfully completes these conditions to the satisfaction of the U.S. Coast Guard,	SUSPENDED OUTRIGHT for the period of deposit.

6. Nothing in this Settlement Agreement and Consent Order shall relieve Respondent of the duty to comply with all applicable provisions of any Federal, State, or local laws or statutes.

7. The terms of this Settlement Agreement and Consent Order constitute a full settlement of this proceeding with respect to the administrative claims and causes of action alleged in the Complaint.

8. The final completion date of this Settlement Agreement and the completion date of the stay in the Consent Order may, by mutual agreement of the parties, be extended by up to 90 days. The Coast Guard Investigating Officer shall file a notice of this extension with the ALJ Docketing Center. If the parties request an extension greater than 90 days, they must file a request with the ALJ Docketing Center for approval by an Administrative Law Judge, who may approve the extension only on a showing of good cause.

9. The parties understand that the Department of Transportation requires Return-to-Duty tests that are separate from and in addition to any testing required by this agreement. Those rules require the Respondent to complete at least 6 unannounced follow-up drug tests in the first 12 months following the Respondent's return to safety-sensitive functions. These rules are found at 46 CFR 16.201 and 49 CFR Part 40, Subpart O.

10. The parties to this agreement consent to the entry of this Settlement Agreement and subsequent Consent Order without further notice.

Respondent

Date:

By: \_\_\_\_\_

[Signature]

Address:

U.S. Coast Guard

Complainant

Date:

By: \_\_\_\_\_

[Signature]

Investigating Officer

US Coast Guard Marine Safety Office

CERTIFICATE OF SERVICE

☐ I hereby certify that I have filed the foregoing document[s] with the ALJ assigned to this case by Fax.

Signed \_\_\_\_\_

Date: June 6, 2006

*Investigating Officer for the United States Coast Guard*

## Chapter 6

### Hearings

**Introduction** The Hearing Process is essentially the same as the current process. The changes mostly involve the prehearing process.

**Regulations** You can find the regulations concerning hearings and prehearings at:

- 33 CFR Subpart F Discovery
- 33 CFR Subpart G Hearings
- 33 CFR 20.201 Assignment of ALJ
- 33 CFR 20.203 Unavailability of ALJ
- 33 CFR 20.501 Conferences

**Assignment of an ALJ** The Docketing Center assigns an ALJ to hear the case under 33 CFR 20.201. You will receive a copy of the assignment order. The order directs the parties where to file motions and other filings.

**Scheduling Order** The ALJ must consider the proposed hearing location and dates requested by the parties.

All copies of any orders must be filed with the ALJ Docketing Center.

**Scheduling Guidance** Schedule the case using the following timelines as guidance.

If the case is a...	Then the ALJ schedules the hearing to begin within...
Temporary suspension case	25 days from the temporary suspension
Simple S&R Case	45-60 days from assignment of the ALJ.
Complex S&R Case	30 days from close of discovery and no longer than 90 days from assignment.

**Mandatory  
Discovery**

If order to prevent surprise in these proceedings, the parties are supposed to share information about the evidence they intend to present at the hearing

In the scheduling order, the parties are directed within 15 days before the scheduled date of the hearing to provide the following:

- Witness List - Name of each witness and a brief summary of expected testimony
- Copies of each exhibit

We intend that these rules will simplify the hearing process and that submissions be kept to a minimum. You must not require the parties to submit trial briefs or memoranda or other submissions unless the case is complex.

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**Where to find  
examples of  
witness lists**

An example of a witness and exhibit list follows this section.

**Other (further)  
Discovery**

Any other discovery is to be only at the order of the ALJ and only if you determine that--

- It will not unreasonably delay the proceeding;
- The information sought is not otherwise obtainable;
- The information sought has significant probative value;
- The information sought is neither cumulative nor repetitious; and
- The method or scope of the discovery is not unduly burdensome and is the least burdensome available.

Parties must request further discovery **by motion**.

You can find the rules for discovery at Subpart F of the procedural rules.

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**Subpoenas**

The subpoena process is essentially unchanged. The Investigating Officer has separate subpoena authority under 46 CFR Part 4 and Part 5. Investigating Officers do not have to request subpoenas from the ALJ. The requirement that the Investigating Officer serve subpoenas on behalf of the Respondent in certain circumstances remains.

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**Witness Fees**

The party that called the witness must pay witness fees.

## Evidence

At this time, there are no changes to the evidence rules for suspension and revocation cases. The rules in Part 5 were moved to Part 20. When the plain language version of the rules is published changes will be considered.

One major difference presently being contemplated is the limitation on the admissibility of admissions made by a Respondent to investigating officers will only apply to investigations under 46 CFR Part 4 - Marine Casualties.

*statute requires release to public (may take years) when complete by CER.*

## Written Testimony

The rules permit testimony to be given by written testimony. The principal requirement is that the other party must be supplied with the written testimony prior to the hearing and the witness shall be or have been available for cross-examination.

Such testimony is useful for expert witnesses and technical witnesses. It is not very useful for witnesses who are testifying as to what they saw or heard.

## Reports and Filings

You must file a case progress report with the Docketing Center after each of the following events:

- Pre-hearing conference
- Hearing session
- Close of the record

You must file a copy of the following documents with the Docketing Center:

- Scheduling Orders (Both for pre-hearing conferences and hearings)
- Orders
- Rulings
- Decisions

You do not file the following documents with the Docketing Center:

- Subpoenas
- Witness and Exhibit lists
- Pre-hearing discovery filings
- Deposition transcripts

## Proposed Findings

Proposed findings of fact and conclusions of law are filed with the ALJ. The ALJ will establish a schedule for filing at the conclusion of the hearing. The method is the same as under the old rules.

An ALJ **must not require** submission of proposed findings of fact and conclusions of law.

**Oral Decisions** If both sides waive proposed findings and the case is simple, the ALJ may issue an order from the bench. The order is later reduced to writing but the findings of fact, conclusions and reasons are oral in the record. If parties wish a copy, they are transcribed.

**Decisions and Orders** You must use the following formats in Decisions and Orders

Paper Size	8.5 X 11 inch
Single or Double sided?	Single-sided
Spacing – General	double-spaced
Spacing - Quotations and Footnotes	single-spaced
Typestyle	Any clear typewritten or printed text
Margins	1.5" Left side 1" Right-side 1" Top and Bottom
Language	English Include a certified translation of any foreign language documents
Signature	The document must be signed by <ul style="list-style-type: none"><li>• Filing Party or</li><li>• Authorized Representative</li></ul>

**Caption** The Caption identifies case and type of filing.

Element	Function
Title	United States Coast Guard, Complainant, vs. Respondent's NAME, Respondent  Note: License & MMD Number are referenced in body of document, not in the case title.
Docket Number	Assigned by Docketing Center <b>(Do not use local Docket Numbers)</b>
Case Number	Enforcement Activity Number - Assigned by MSO
Type of Order	Complaint

**Introductory Paragraph** The introductory paragraph advises the Respondent of the authority for this administrative proceeding and whether the Coast Guard is seeking to suspend or revoke the Respondent's license or document.

**Preliminary  
Statement**

The preliminary statement explains the proceedings and includes the following:

- The parties and counsel involved;
- Type of case and allegations;
- Nature of answer;
- Dates and locations of hearings and pre-hearing conferences;
- A statement concerning any ex parte communications received in the course of the hearing (5 U.S.C. 557(d)(1)(C));
- Summary of evidence received including exhibits, depositions, stipulations;
- Whether proposed findings of facts, conclusions of law were received or were waived. If such proposals were received, the date they were filed shall be included

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**Findings of  
Fact**

You must list specific findings of evidentiary facts, pertaining to each allegation in numbered paragraphs. You should list facts chronologically if possible.

You must:

- address all the relevant issues presented by the record
- include facts sufficient to establish jurisdiction
- make specific findings as to the credibility of witnesses if oral testimony is conflicting or subject to doubt of its credibility. See Generally, Appeal Decisions 2489 (JUSTICE); 2472 (GARDNER).

Findings must be supported by and in accordance with the reliable, probative, and substantial evidence as prescribed by 46 CFR 5.63, i.e., by a preponderance of the evidence. See also 5 U.S.C. § 556; Steadman v. S.E.C., 450 U.S. 91, 67 Law. Ed. 2d 69, 101 S.Ct. 999 (1981); Appeal Decision 2468 (LEWIN).

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**Conclusions of Law** You must include in your conclusion of law all the relevant issues presented by the record. A particular conclusion of law may render certain issues and findings immaterial, or vice versa.

You may find an allegation:

- proved
- not proved
- proved in part

If you find the jurisdictional allegation proved, you should similarly state:

I find that the Respondent and the subject matter of this hearing are clearly within the jurisdiction vested in the Coast Guard under Section 7703, Title 46, United States Code (or under 46 U.S.C. 7704, if appropriate).

**Ruling on Proposed Findings of Fact and Conclusion of Law**

You must issue specific rulings on each proposed Finding of Fact and Conclusion of Law as required by the Administrative Procedure Act, 5 U.S.C. § 557.

This requirement "will be satisfied if such decisions in some way indicate the ruling of the agency or such officer upon each requested finding or conclusion or exception presented to the agency or to such officer. The purpose of this requirement is 'to preclude later controversy as to what the agency had done.'" U.S. Att'y. Gen., Manual on the Administrative Procedure Act, 86 (1947), (reprinted in ACUS, Federal Administrative Procedure Sourcebook, 135 (1985)) (quoting H.R. Rep. No 1980, 79th Cong. 2d Sess. fn. 19 (1946) (Sen. Doc. No 248, 79th Cong. 2d Sess. 288 (1946))).

You should issue these ruling in an appendix so that the decision reads better. You are not required to discern and thus rule on a parties' proposed findings if not adequately enumerated or identified either by specific topic or issue.

**Opinion**

You must detail the reasons on which you based your decision.

If you make your decision clear to a lay person, then it should be clear to any reviewing authority. Your opinion should be consistent with agency precedent. Your audience is often a mariner who is representing him or herself. You should write to that audience.

**Order**

The order must apply to all licenses, certificates, and/or documents, except that in cases of negligence or professional incompetence, you may direct the order against specific licenses or documents in qualified ratings.

You should describe the period of suspension terms in specified periods of time, not specific dates. 46 CFR 5.567(c) and (e).

An order of revocation or outright suspension must direct the Respondent to surrender his or her license, certificate and/or document immediately upon service of the order to a Coast Guard Marine Safety Office, Coast Guard Activity or Regional Examination Center. 46 CFR 5.567(d).

In cases involving special circumstances, you may order surrender on a certain date. 46 CFR 5.567(d).

**Note:** An Administrative Law Judge has authority to tailor the order appropriately in cases involving seasonal activity. See Appeal Decision 1793 (FARIA); Appeal Decision 1883 (TREVOR); and Appeal Decision 1887 (VIGILANT) Appeal Decision 2475 (BOURDO).

<b>If the allegations are</b>	<b>Then the ALJ</b>
Proved	Can order any of the following: <ul style="list-style-type: none"><li>• an admonition (setting forth the offense(s) for which the Respondent is admonished);</li><li>• outright suspension;</li><li>• suspension on probation;</li><li>• combination of both;</li><li>• stayed revocation; or</li><li>• revocation</li></ul>
Proved and are in violation of a previously-ordered period of probation	Issues the order, noting that the previously ordered probation is revoked, and the sanction remitted on such probation is in force and represents a part of the sanction ordered in the instant case. <u>See Appeal Decision 2481 (CROWLEY);</u>
Proved and concerns cases of negligence	May issue an order directed against specific licenses or documents in qualified ratings. 46 CFR 5.567(b),
Proved and you determine that the Respondent is professionally incompetent in the grade of the license, certificate or document he or she holds, but is considered competent in a lower grade	May issue an order revoking the current license, certificate or document and ordering the issuance of one in a lower grade.
Not proved	Must issue and order of dismissal.

An order of revocation, or outright suspension, shall direct the Respondent to surrender his or

her license, certificate and/or document immediately upon service of the order. 46 CFR 5.567(d). Additionally, it should be pointed out in the order that failure to comply therewith may subject the respondent to penalties prescribed by 18 U.S.C. 2197. In cases involving special circumstances, the order may provide for surrender on a certain date. 46 CFR 5.567(d). Note: an "Administrative Law Judge has authority to tailor the order appropriately in cases involving seasonal activity." See Appeal Decision 1793 (FARIA); Appeal Decision 1883 (TREVOR); and Appeal Decision 1887 (VIGILANT). Appeal Decision 2475 (BOURDO).

In the event an order is tailored to include a specific period of probation, the Respondent should be warned as follows:

<b>If</b>	<b>Then</b>	<b>And</b>
you violate the terms of this probation	the Coast Guard may bring a suspension and revocation proceeding against you	the suspended period of suspension may be put in force
another suspension and revocation proceeding is proved for violations during the period of probation.	the Coast Guard will request that the probationary suspension be enforced.	the minimum period of suspension that can be ordered is the [period of probationary suspension]. The actual period will likely be higher.

Witness and Exhibit List

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## Chapter 7

### Appeals

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**Introduction** This Chapter details the appeals process. Under the new Part 20 Rules, the agency as well as the Respondent has a right of appeal. Also, the Investigating Officer is involved in the appeals process and can file briefs on appeal.

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**Regulations** You can find the pertinent regulations for appeals in the following places:

- 46 CFR 5.701
- 33 CFR 20.1001

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**Where are appeals filed?** Notices of Appeal and associated briefs are filed with the ALJ Docketing Center.

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**When can parties file an appeal** Any party can file after the ALJ issues the Decision and Order in the case. The appellant must file a Notice of Appeal within 30 days of issuance of the decision.

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**What are the grounds for appeal** Parties can appeal the following issues:

- Whether each finding of fact is supported by substantial evidence.
- Whether each conclusion of law accords with applicable law, precedent, and public policy.
- Whether the ALJ abused his or her discretion.
- The ALJ's denial of a motion for disqualification.

**How do parties file an Appeal** Parties use the following steps to file an appeal.

Step	Action
1	File a Notice of Appeal within 30 days of issuance of Decision
2	Request a Transcript from the Court Reporter.
3	Prepare your brief The brief must detail the-- (i) Basis for the appeal; (ii) Reasons supporting the appeal; and (iii) Relief requested in the appeal.  When the appellant relies on material contained in the record for the appeal, the appellate brief must specifically refer to the pertinent parts of the record.
4	File the brief with the Docketing Center within 60 days of service of the Decision. If a party cannot make the deadline, they may request an extension with the hearing docket clerk.
5	Review the reply brief if necessary request leave to file an additional brief.

**Examples** An examples of a Notice of Appeal follows in this section.

**The Appellate Process** This table outlines the major stages in the Appellate process.

Stage	Description
1	Notice - Must to filed within 30 days of Decision
2	Preparation Stage - Receive and review transcript and decision and writing appellate brief
3	Appellate Brief - Must be filed within 60 days of Decision
4	Reply Brief - Must be filed within 35 days of Appellate Brief
5	Appellate Record is Forwarded from Docketing Center to Chief Counsel
6	Chief Counsel prepares Appeal Decision for Commandant
7	Commandant review and approval
8	Service of Appeal Decision
9	Appeal to NTSB - Must be Filed in 10 days.

<b>Appellate record</b>	<p>Coast Guard case files are normally kept in the field office pending appeal notification. After a party files a notice of appeal, the Hearing Docket Clerk will notify you to prepare the administrative record.</p> <p>You must compile the administrative record and submit it to the ALJ Docketing Center within 30 days.</p> <p>The administrative record consists of the following sections.</p> <ul style="list-style-type: none"><li>• Decision and Order</li><li>• Pleadings</li><li>• Motions</li><li>• Rulings and Orders</li><li>• Exhibits</li><li>• Transcript</li></ul> <p>If not previously ordered, your paralegal specialist must order the transcript with two copies to be sent to the Docketing Center. The use of IMPAC card is authorized without G-CJ approval if the cost is under \$2,500. If the cost is over \$2,500, notify C-CJ to prepare a purchase request.</p>
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**Appeal  
Decisions**

Appeal Decisions are available at [www.uscg.mil](http://www.uscg.mil) and [www.dot.gov](http://www.dot.gov)

Notice of Appeal