5(a)), and 40 CFR Part 51, the Administrator disapproved portions of the New York implementation plan which did not provide for the reporting of periodic increments of progress toward compliance by affected sources or categories of sources.

New York State, on January 17, 1974, submitted supplemental information which consisted of a revised Part 205 (Photochemically Reactive Solvents and Organic Solvents from Certain Processes—New York City Metropolitan Area) of Subchapter A, Chapter III, Title 6 of New York's Official Compilation of Codes, Rules and Regulations (6 NYCRR). The revision to the regulation, which became effective on January 28, 1974, changes the compliance date from December 31, 1974 to January 31, 1974.

On March 4, 1974 (39 FR 8175), the Environmental Protection Agency (EPA) announced that the above mentioned supplemental information would be available for public comment for a period of 30 days. The comment period ended on April 3, 1974 and no comments were received by the EPA Regional Office.

The compliance date revision for Part 205 eliminates the need for increments of progress, since 40 CFR 51.15(c) does not require such increments in cases where the final compliance date does not extend beyond January 31, 1974.

Therefore, the EPA disapproval of Part 205 of Title 6 of the New York Official Compilation of Codes, Rules and Regulations is revoked. This regulation shall become effective on October 17, 1974.

(42 U.S.C. 1857c–5)

Dated: September 11, 1974.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. In § 52.1670, paragraph (c) is amended by revising subparagraph (3) as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(3) October 26, 1973, November 27, 1973, January 17, 1974.

§ 52.1677 [Amended]

2. In § 52.1677, paragraph (b) is revised by deleting all reference to section 205.10(c).

[FR Doc.74–21502 Filed 9–16–74;8:45 am]

[FRL 264–3]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Thiabendazole

In response to a petition (PP4E1478) submitted by Dr. C. C. Compton, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR–4 Technical Committee, the U.S. Department of Agriculture, the Agricultural Experiment Station of Maine, the Maine Department of Agriculture, and the Maine Potato Commission, a notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of July 24, 1974 (39 FR 26917), proposing establishment of a tolerance for negligible residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) in or on the raw agricultural commodity potatoes, which have been grown from seed potatoes treated with the fungicide, at 0.1 part per million. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a (e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.242 is amended by inserting the new paragraph "0.1 part per million (negligible residue) * * *" after the paragraph "0.1 part per million for combined residues * * *", as follows:

§ 180.242 Thiabendazole; tolerances for residues.

* * * * *

0.1 part per million (negligible residue) in or on potatoes which have been grown from seed potatoes treated with thiabendazole.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before October 17, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, S.W., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on September 17, 1974.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a (e)))

Dated: September 12, 1974.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74–21507 Filed 9–16–74;8:45 am]

[FRL 264–5]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Isopropyl m-Chlorocarbanilate and Isopropyl Carbanilate; Interim Tolerances

In response to two petitions (PP's 2F1276 and 2F1277) submitted by PPG Industries, Inc., 1 Gateway Center, Pittsburgh, PA 15222, a notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of July 16, 1974 (39 FR 26044), proposing establishment of interim tolerances for residues of the herbicides isopropyl *m*-chlorocarbanilate (CIPC) and isopropyl carbanilate (IPC), respectively, in or on various raw agricultural commodities at various levels. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.319 is amended by alphabetically inserting two new items in the table as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
*	*	*	*
Isopropyl carbanilate (IPC)	Herbicide	5	Hay of alfalfa, clover, and grass.
		2	Alfalfa, clover, and grass.
		0.1	Flaxseed, lentils, lettuce, peas, safflower seed, spinach, and sugar beets (roots and tops).
		0.05	Eggs; milk; and the meat fat, and meat byproducts of cattle, goats hogs, horses, poultry, and sheep.
Isopropyl *m*-chlorocarbanilate (CIPC).	do	50	Hay o alfalfa, clover, and grass.
		20	Alfalfa, clover, and grass.
		0.3	Beans (dry and succulent), blackberries, blueberries, cranberries, peas (dry and succulent), raspberries, spinach, and sugar beet tops.
		0.1	Carrots, garlic, onions, rice grain, safflower seed, sugar beet roots, and tomatoes.
		0.05	Eggs; milk; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep.
*	*	*	*

Any person who will be adversely affected by the foregoing order may at any time on or before October 17, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, S.W., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on September 17, 1974.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: September 12, 1974.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-21505 Filed 9-16-74;8:45 am]

[FRL 264-6]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Perchloroethylene

No comments or requests for referral to an advisory committee were received in response to a notice published by the Environmental Protection Agency in the FEDERAL REGISTER of July 24, 1974 (39 FR 26918), proposing that perchloroethylene, when used as a solvent or cosolvent, be exempted from the requirement of a tolerance when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. The maximum percentage in the formulation is to be limited to 0.6 percent.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.1001 is amended by alphabetically inserting a new item in the table in paragraph (c), as follows:

§ 180.1001 Exemption from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
*	* *	* *
Perchloroethylene.	Not more than 0.6% of pesticide formulation.	Solvent, cosolvent.
*	* *	* *

Any person who will be adversely affected by the foregoing order may at any time on or before October 17, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on September 17, 1974.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a (e)))

Dated: September 12, 1974.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-21504 Filed 9-16-74;8:45 am]

[FRL 264-4]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Ethylene

In response to a petition (PP4E1457) submitted by the U.S. Department of Agriculture, a notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of July 15, 1974 (39 FR 25960), proposing establishment of an exemption from the requirement of a tolerance for residues of ethylene when used to stimulate witchweed germination in control programs. No requests for referral to an advisory committee were received. One comment was received from the North Carolina Department of Agriculture in support of the proposal.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.1016 is revised to read as follows:

§ 180.1016 Ethylene; exemption from the requirement of a tolerance.

Ethylene is exempted from the requirement of a tolerance for residues when:

(a) Used as a plant regulator on fruit and vegetable crops in conformity with good agricultural practice before or after harvest, or

(b) Injected into the soil to cause premature germination of witchweed in corn, cotton, peanut and soybean fields as part of the U.S. Department of Agriculture witchweed control program.

Any person who will be adversely affected by the foregoing order may at any time on or before October 17, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, S.W., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on September 17, 1974.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: September 12, 1974.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-21506 Filed 9-16-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-150]

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101-26.6—Procurement Sources of the Department of Defense

PURCHASE PROGRAMS OF THE DEFENSE FUEL SUPPLY CENTER

This amendment prescribes procedural changes concerning the fuel and petroleum purchase programs of the Defense Fuel Supply Center (DFSC), including a new due date for the submission of estimated requirements for lubricating oils (nonaircraft) and new DFSC correspondence symbols relating to certain programs.

1. Section 101-26.602-1 is amended as follows:

§ 101-26.602-1 Procurement of lubricating oils, greases, and gear lubricants.

(a) The Defense Fuel Supply Center will make annual procurements of lubricating oils, greases, and gear lubricants for ground type (nonaircraft) equipment and of aircraft engine oils on an annual program basis. Estimates of requirements for items covered by these programs will be solicited annually from agencies on record with the Defense Fuel Supply Center in time for the requirements to arrive at the Center on the following schedule:

	Purchase program	Due on or before
Lubricating oils (nonaircraft).	4.1	November 15.
Aircraft engine oils	4.2	June 15.
Grease and gear oils	4.4	October 15.

(b) Activities not on record but requiring procurement support shall submit requests to: Commander, Defense Fuel Supply Center, Attn: DFSC:PG, Cameron Station, Alexandria, VA 22314, on or before the requirement due dates specified in § 101-26.602-1(a). Submission of requirements is not required if:

* * * * *

2. Section 101-26.602-3 is amended as follows:

§ 101-26.602-3 Procurement of gasoline, fuel oil (diesel and burner), kerosene, and solvents.

(a) Estimates of annual requirements will be solicited annually by the Defense Fuel Supply Center from agencies on record so as to reach that activity approximately 45 days before the due date shown in Defense Fuel Supply Center geographic alignment of States set forth in § 101-26.602-3 (d) and (e). The requirements call will be accomplished by mailing a computer produced record of the file data for each delivery point that has been identified to each submitting addressee; instructions for validation and return will be included. Activities not on record but requiring procurement support shall prepare and submit estimates on DFSC Form 15:18, for petroleum fuel requirements, or on DFSC Form 15:20, for solvents, to the Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314. Illustrations of these forms are contained in § 101-26.4904. Copies may be obtained on request from: Commander, Defense Fuel Supply Center, Attention: DFSC:PE, Cameron Station, Alexandria, VA 22314.

* * * * *

(b) Agency requirements will be solicited for procurement by the Defense Fuel Supply Center and contracts resulting from these solicitations will be summarized in contract bulletins, separately for each Defense Fuel Supply Center geographic region, and distributed to agencies on record. Activities of agencies requiring additional contract bulletins shall submit requests to: Commander, Defense Fuel Supply Center, Attention: DFSC: PE, Cameron Station, Alexandria, VA 22314.

* * * * *

3. Section 101-26.602-4(d) is revised to read as follows:

§ 101-26.602-4 Procurement of coal.

* * * * *

(d) Copies of DD Form 416 may be obtained from: Commander, Defense Fuel Supply Center, Attention: DFSC: PH, Cameron Station, Alexandria, VA 22314.

* * * * *

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

Effective date. This regulation is effective September 17, 1974.

Dated: September 6, 1974.

ARTHUR F. SAMPSON,
Administrator of General Services.

[FR Doc.74-21267 Filed 9-16-74;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5433]

[New Mexico 16886]

NEW MEXICO

Powersite Restoration No. 585; Partial Revocation of Waterpower Designation No. 1, New Mexico No. 1 and Partial Revocation of Powersite Reserve No. 548

By virtue of the authority contained in section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1970), and pursuant to the determination of the Federal Power Commission in DA-84-New Mexico, it is ordered as follows:

1. The departmental order of August 7, 1916, creating Waterpower Designation No. 1, New Mexico No. 1, and the Executive Order of September 30, 1916, creating Powersite Reserve No. 548, are hereby revoked so far as they affect the following described land:

NEW MEXICO PRINCIPAL MERIDIAN

T. 23 N., R. 10 E.,
sec. 27, lot 1.

The area described aggregates 47.44 acres of land in Rio Arriba County.

In its determination DA-84-New Mexico, the Federal Power Commission determined that it had no objection to the revocation of Powersite Reserve No. 548 and Waterpower Designation No. 1 so far as they related to the above described land.

2. The State of New Mexico declined to exercise its preference right to select any or all of the lands involved for highway rights-of-way or material sites as provided by section 24 of the Federal Power Act of June 10, 1920, supra.

3. Subject to valid existing rights, the provisions of existing withdrawals and the requirements af applicable law, the lands shall at 10 a.m. on October 9, 1974, be open to the operation of the public land laws generally. All valid applications received at or prior to 10 a.m. on October 9, 1974, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands have been and will continue to be open to applications and offers under the mineral leasing laws, and to location and entry under the U.S. mining laws.

Inquiries concerning the lands should be addressed to Chief, Division of Technical Services, Bureau of Land Management, Post Office Box 1449, Santa Fe, New Mexico 87501.

JACK O. HORTON,
Assistant Secretary of the Interior.

SEPTEMBER 3, 1974.

[FR Doc. 74-21470 Filed 9-16-74;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74-119]

REVOCATION AND RECODIFICATION

The Coast Guard is revoking Part 170 and recodifying Parts 136, 137, and 143 of Title 46, Code of Federal Regulations, Parts 136, 137, and 143 are reissued as Parts 4, 5, and 9 respectively of Title 46.

46 CFR Part 170 contains the general provisions for the numbering of undocumented vessels, statistics on numbering, and "boating accident reports" and accident statistics. The substantive boating regulations that 46 CFR Part 170 is addressed to were revoked in the Federal Register issue of October 7, 1972 (37 FR 21404). Because of this revocation, 46 CFR Part 170 does not serve any useful purpose and is being revoked.

46 CFR Part 136, Marine Investigations Regulations, 46 CFR Part 137, Suspension and Revocation Proceedings, and 46 CFR Part 143, Extra Compensation for Overtime Services, now appear between Subchapter J, Electrical Engineering, and Subchapter M, Bulk Grain Cargoes, in Title 46. 46 CFR Parts 136, 137, and 143 are being reissued as 46 CFR Parts 4, 5, and 9 respectively in Subchapter A, Procedures Applicable to the Public, to which these parts are logically related. The recodification will promote reader understanding and facilitate reference.

Furthermore, 46 CFR 4.01-1 and 46 CFR 4.01-5 are revoked because they are references to 46 CFR Part 173 that has been revoked, and 46 CFR Part 136 that is recodified as 46 CFR Part 4 by this document.

Since these amendments are not substantive, notice and public procedure are unnecessary under 5 U.S.C. 553(b)(3)(B), and they are effective immediately under 5 U.S.C. 553(d)(3).

In consideration of the foregoing, Chapter 1, of Title 46, Code of Federal Regulations is amended as follows:

1. 46 CFR Part 170 is revoked.

(46 U.S.C. 1488, 49 CFR 1.46(b))

2. 46 CFR Part 4.01-1 and 46 CFR Part 4.01-5 are revoked and Parts 136, 137, and 143 of Title 46, Code of Federal Regulations are adopted as amendments to Subchapter A of the same title by adding them as new Parts 4, 5, and 9, respectively, as set forth below.

(46 U.S.C. 375, 416, 14 U.S.C. 633, 49 CFR 1.46(b))

Dated: August 30, 1974.

Effective date: This amendment is effective on September 13, 1974.

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

PART 4—MARINE INVESTIGATION REGULATIONS

AUTHORITY: The provisions of this Part 4 issued under sec. 2, 633, 63 Stat. 496, 545; 46 U.S.C. 375, 416, 14 U.S.C. 2, 633. Interpret or apply secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 54 Stat. 347, as amended, sec. 3, 70 Stat. 152, sec. 93 (e), (f), 63 Stat. 504, secs. 10-13, 18 Stat. 128, as amended, sec. 15, 38 Stat. 1184, as amended, sec. 4, 67 Stat. 462, sec. 3, 68 Stat. 675; 46 U.S.C. 239, 367, 526p, 1333, 390b, 14 U.S.C. 93 (e), (f), 33 U.S.C. 361-364, 365, 43 U.S.C. 1333, 50 U.S.C. 198.

Subpart 4.01—Authority and Scope of Regulations

§ 4.01-1 Authority and scope of regulations.

The regulations in this part promulgated pursuant to the provisions of R.S. 4450, as amended (46 U.S.C. 239), shall govern the conduct of investigations relating to:

(a) Marine casualties and accidents; and,

(b) Acts in violation of Title 46, U.S. Code, sections 170, 214, 215, 222, 224, 224a, 226, 228-234, 239, 240, 361, 362, 364, 367, 372, 373, 375-382, 384, 385, 390-390g 391, 391a, 392, 393, 399, 400, 402-416, 435-440, 451-453, 460-463, 464, 467, 470-481, 482, 489-498, or Title 50, U.S. Code, section 198, or any of the regulations issued thereunder; or,

(c) Acts of incompetency or misconduct committed by any licensed officer or holder of a certificate of service when such acts are committed in connection with any marine casualty or accident.

Subpart 4.03—Definitions

§ 4.03-1 Marine casualty or accident.

(a) The term "marine casualty or accident" shall mean any casualty or accident involving any vessel other than public vessels if such casualty or accident occurs upon the navigable waters of the United States, its territories or possessions or any casualty or accident wherever such casualty or accident may occur involving any United States' vessel which is not a public vessel. (See § 4.03-40 for definition of "Public Vessel.")

(b) A marine casualty of accident shall include any occurrence involving a vessel which results in damage by or to the vessel, its apparel and gear, and/or cargo, or injury or loss of life of any of its crew or passengers; and includes inter alia, collisions, strandings, groundings, founderings, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect and/or impair the seaworthiness thereof.

§ 4.03-5 Major marine casualty.

A casualty shall be considered a major marine casualty whenever it indicates serious damage to material and results in loss of life or serious injury to crew and/or passengers. A casualty may also be deemed a major marine casualty when the circumstances or unusal conditions thereof are of such a nature that the proper investigation cannot be accomplished solely by an investigating officer.

§ 4.03-10 Party in interest.

The term "party in interest" shall mean any person whom the Marine Board of Investigation or the investigating officer shall find to have a direct interest in the investigation conducted by it and shall include an owner, a charterer, or the agent of such owner or charterer of the vessel or vessels involved in the marine casualty or accident, and all licensed or certificated personnel whose conduct, whether or not involved in a marine casualty or accident is under investigation by the Board or investigating officer.

§ 4.03-15 Commandant.

The Commandant, U.S. Coast Guard, is that officer who acts as chief of the Coast Guard and is charged with the administration of the Coast Guard.

§ 4.03-20 Coast Guard district.

A Coast Guard district is one of the geographical areas whose boundaries are described in 33 CFR Part 3.

§ 4.03-25 District Commander.

The District Commander is the chief of a Coast Guard district and is charged with the administration of all Coast Guard responsibilities and activities within his respective district, except those functions of administrative law judges under the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1001 et seq.) and activities of independent units of the Coast Guard, such as the Coast Guard Yard and the Coast Guard Academy.

§ 4.03-30 Investigating officer.

An investigating officer is an officer or employee of the Coast Guard designated by the Commandant, District Commander or the Officer in Charge, Marine

Inspection, for the purpose of making investigations of marine casualties and accidents or other matters pertaining to the conduct of seamen. An Officer in Charge, Marine Inspection, is an investigating officer without further designation.

§ 4.03–40 Public vessels.

Vessels within the statutory exemptions of Title LII of the Revised Statutes of the United States (R.S. 4399–4500) (as amended) relating to the inspection of vessels, are public vessels, and therefore not subject to the regulations in this part. To be deemed public vessels such vessels must:

(a) Be used for a public purpose, not in trade or commercial service; and,

(b) Be owned outright by the United States; it is not sufficient that the United States holds the vessel under a bareboat charter.

Subpart 4.05—Notice of Marine Casualty and Voyage Records

§ 4.05–1 Notice of marine casualty.

The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest marine inspection office of the Coast Guard whenever the casualty results in any of the following:

(a) Actual physical damage to property in excess of $1500.00;

(b) Material damage affecting the seaworthiness or efficiency of a vessel;

(c) Stranding or grounding;

(d) Loss of life; or,

(e) Injury causing any persons to remain incapacitated for a period in excess of 72 hours; except injury to harbor workers not resulting in death and not resulting from vessel casualty or vessel equipment casualty.

§ 4.05–5 Substance of marine casualty notice.

The notice required in § 4.05–1 shall show the name and official number of the vessel involved, the owner or agent thereof, and insofar as is practicable, the nature and probable occasion of the casualty, the locality in which it occurred, the nature and extent of injury to personnel and the damage to property.

§ 4.05–10 Report by officer in charge of vessel in person.

(a) In addition to the notice required by § 4.05–1, the person in charge of the vessel shall, as soon as possible report in writing and in person to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival: *Provided*, That when from distance it may be inconvenient to report in person it may be done in writing only. The written report required for personal accident shall be made on Form CG–924E and submitted for each individual injured and each loss of life. For all other vessel casualties the written report shall be made on Form CG–2692.

(b) If filed without delay, the Form CG–924E or CG–2692 may also provide the notice required by § 4.05–1.

(Secs. 13, 17, 54 Stat. 166, as amended, 46 U.S.C. 526*l*(c))

§ 4.05–15 Voyage records, retention of.

(a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

(b) The investigating officer may substitute photostatic copies of the voyage records referred to in paragraph (a) of this section when they have served their purpose and return the original records to the owner or owners thereof.

§ 4.05–20 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, it shall be the duty of the person in charge of such vessel to report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG–2692 is required unless one or more of the results listed in section 4.05–1 occur.

§ 4.05–25 Reports when state of war exists.

During the period when a state of war exists between the United States and any foreign nation, communications in regard to casualties or accidents shall be handled with caution and the reports shall not be made by radio or by telegram.

Subpart 4.07—Investigations

§ 4.07–1 Commandant or District Commander to order investigation

(a) The Commandant or District Commander upon receipt of information of a marine casualty or accident, will immediately cause such investigation as may be necessary in accordance with the regulations in this part.

(b) The investigations of marine casualties and accidents and the determinations made are for the purpose of taking appropriate measures for promoting safety of life and property at sea, and are not intended to fix civil or criminal responsibility.

(c) The investigation will determine as closely as possible:

(1) The cause of the accident;

(2) Whether there is evidence that any failure of material (either physical or design) was involved or contributed to the casualty, so that proper recommendations for the prevention of the recurrence of similar casualties may be made;

(3) Whether there is evidence that any act of misconduct, inattention to duty, negligence or willful violation of the law on the part of any licensed or certificated man contributed to the casualty, so that appropriate proceedings against the license or certificate of such person may be recommended and taken under Title 46, U.S. Code, section 239;

(4) Whether there is evidence that any Coast Guard personnel or any representative or employee of any other government agency or any other person caused or contributed to the cause of the casualty; or,

(5) Whether the accident shall be further investigated by a Marine Board of Investigation in accordance with regulations in Subpart 4.09.

§ 4.07–5 Investigating officers, powers of.

(a) An investigating officer investigates each marine casualty or accident reported under §§ 4.05–1 and 4.05–10.

(b) Such investigating officer shall have the power to administer oaths, subpoena witnesses, require persons having knowledge of the subject matter of the investigation to answer questionnaires and require the production of relevant books, papers, documents and other records.

(c) Attendance of witnesses or the production of books, papers, documents or any other evidence shall be compelled by a similar process as in the United States District Court.

[CGFR 65–50, 30 FR 17099, Dec. 30, 1965, as amended by CGD–104R, 37 FR 14234, July 18, 1972]

§ 4.07–7 Opening statement.

The investigating officer or the Chairman of a Marine Board of Investigation shall open the investigation by announcing the statutory authority for the proceeding and he shall advise parties in interest concerning their rights to be represented by counsel, to examine and cross-examine witnesses, and to call witnesses in their own behalf.

§ 4.07–10 Report of investigation.

(a) At the conclusion of the investigation the investigating officer shall submit to the Commandant via the Officer in Charge, Marine Inspection, and the District Commander, a full and complete report of the facts as determined by his investigation, together with his opinions and recommendations in the premises. The District Commander shall forward the investigating officer's report to the Commandant with an indorsement stating:

(1) Approval or otherwise of the findings of fact, conclusions and recommendations;

(2) Any action taken with respect to the recommendations;

(3) Whether or not any action has been or will be taken under Part 5 of this subchapter to suspend or revoke licenses or certificates; and,

(4) Whether or not violations of laws or regulations relating to vessels have been reported on Form CG-2636, report of violation of navigation laws.

(b) Investigating officers in foreign ports shall forward their reports directly to the Commandant.

§ 4.07-15 Recommendations, action on.

Where the recommendations of an investigating officer are such that their accomplishment is within the authority of the District Commander or any of the personnel under his command, immediate steps shall be taken to put them into effect and his forwarding endorsement shall so indicate.

§ 4.07-20 Transfer of jurisdiction.

When it appears to the District Commander that it is more advantageous to conduct an investigation in a district other than in the district where the casualty was first reported, that officer shall transfer the case to the other district together with any information or material relative to the casualty he may have.

§ 4.07-25 Testimony of witnesses in other districts, depositions.

When witnesses are available in a district other than the district in which the investigation is being made, testimony or statements shall be taken from witnesses in the other districts by an investigating officer and promptly transmitted to the investigating officer conducting the investigation. Depositions may be taken in the manner prescribed by regulations in Subpart 4.12.

§ 4.07-30 Testimony of witnesses under oath.

(a) Witnesses to marine casualties or accidents appearing before an investigating officer may be placed under oath and their testimony may be reduced to writing.

(b) Written statements and reports submitted as evidence by witnesses shall be sworn to before an officer authorized to administer oaths and such statements and/or reports shall be signed.

§ 4.07-35 Counsel for witnesses and parties in interest.

(a) All parties in interest shall be allowed to be represented by counsel, to examine and cross-examine witnesses and to call witnesses in their own behalf.

(b) Witnesses who are not parties in interest may be assisted by counsel for the purpose of advising such witnesses concerning their rights; however, such counsel will not be permitted to examine or cross-examine other witnesses or otherwise participate in the investigation.

§ 4.07-45 Foreign units of Coast Guard, investigation by.

Investigations of marine casualties conducted by foreign units of the Coast Guard shall be in accordance with the regulations in this part and all actions taken in connection with the investigations of such marine casualties entered in the official log(s) of the vessel(s) concerned.

§ 4.07-50 Marine Board of Investigation, recommendations for.

When the District Commander is of the opinion, as a result of an investigation under § 4.07-1, or otherwise, that a marine casualty or accident is a major marine casualty (see § 4.03-5), that officer shall immediately inform the Commandant by dispatch with his recommendation whether a further investigation by a Marine Board of Investigation shall be conducted.

§ 4.07-55 Information to be furnished Marine Board of Investigation.

When a Marine Board of Investigation is convened in accordance with § 136.09-1, the investigating officer shall immediately furnish the board with all testimony, statements, reports, documents, papers, a list of witnesses including those whom he has examined, other material which he may have gathered, and a statement of any findings of fact which he may have determined. The preliminary investigation shall cease forthwith and the aforementiond material shall become a part of the Marine Board of Investigation's record.

Subpart 4.09—Marine Board of Investigation

§ 4.09-1 Commandant to designate.

If as a result of an investigation of any casualty, upon recommendation of a District Commander or upon receipt of information from any other source, it appears to the Commandant that a marine casualty or accident is a major casualty (see § 4.03-5) and that further investigation thereof would tend to promote safety of life and property at sea and would be in the public interest, the Commandant will designate an appropriate Marine Board of Investigation to conduct such investigation forthwith.

§ 4.09-5 Powers of Marine Board of Investigation.

Any Marine Board of Investigation so designated shall have the power to administer oaths, summon witnesses, require persons having knowledge of the subject matter of the investigation to answer questionnaires, and to require the production of relevant books, papers, documents or any other evidence. Attendance of witnesses or the production of books, papers, documents or any other evidence shall be compelled by a similar process as in the United States District Court. The chairman shall administer all necessary oaths to any witnesses summoned before said Board.

§ 4.09-10 Witnesses, payment of.

Any witness subpoenaed under § 4.-09-5 shall be paid such fees for his travel and attendance as shall be certified by the chairman of a Marine Board of Investigation or an investigating officer, in accordance with § 4.11-10.

§ 4.09-15 Time and place of investigation, notice of; rights of witnesses, etc.

Reasonable notice of the time and place of the investigation shall be given to any person whose conduct is or may be under investigation and to any other party in interest. All parties in interest shall be allowed to be represented by counsel, to cross-examine witnesses, and to call witnesses in their own behalf.

§ 4.09-17 Sessions to be public.

(a) All sessions of a Marine Board of Investigation for the purpose of obtaining evidence shall normally be open to the public, subject to the provision that the conduct of any person present shall not be allowed to interfere with the proper and orderly functioning of the Board. Sessions will not be open to the public when evidence of a classified nature or affecting national security is to be received.

§ 4.09-20 Record of proceedings.

The testimony of witnesses shall be transcribed and a complete record of the proceedings of a Marine Board of Investigation shall be kept. At the conclusion of the investigation a written report shall be made containing findings of fact, opinions, and recommendations to the Commandant for his consideration.

§ 4.09-25 U.S. Attorney to be notified.

The recorder of a Marine Board of Investigation shall notify the United States Attorney for the District in which the Marine Board of Investigation is being conducted of the nature of the casualty under investigation and time and place the investigation will be made.

§ 4.09-30 Action on report.

Upon approval of the report of a Marine Board of Investigation the Commandant will require to be placed into effect such recommendations as he may deem necessary for the better improvement and safety of life and property at sea.

§ 4.09-35 Preferment of charges.

(a) If in the course of an investigation by a Marine Board there appears probable cause for the preferment of charges against any licensed or certificated personnel, the Marine Board shall, either during or immediately following the investigation and before the witnesses have dispersed, apprise the District Commander of such evidence for possible action in accordance with Part 5 of this subchapter, without waiting for the approval of the report by the Commandant. Such action or proceedings shall be independent and apart from any other action which may be later ordered by the

Commandant or taken by other authorities.

Subpart 4.11—Witnesses and Witness Fees

§ 4.11-1 Employees of vessels controlled by Army or Navy as witnesses.

No officer, seaman, or other employee of any public vessel controlled by the Army or Navy (not including the Coast Guard) of the United States, shall be summoned or otherwise required to appear as a witness in connection with any investigation or other proceeding without the consent of the Government agency concerned.

§ 4.11-5 Coercion of witnesses.

Any attempt to coerce any witness or to induce him to testify falsely in connection with a shipping casualty, or to induce any witness to leave the jurisdiction of the United States, is punishable by a fine of $5,000.00 or imprisonment for one year, or both such fine and imprisonment.

§ 4.11-10 Witness fees, subsistence, and mileage.

(a) Duly subpoenaed witnesses, other than Government witnesses, in any investigation or other proceeding may apply for payment for their services as witnesses. Upon the submission of such a request for payment (Standard Form 1157), the chairman of a Marine Board of Investigation or the investigating officer will forward the request to the authorized Coast Guard certifying officer together with a statement that:

(1) The witness seeking payment was duly subpoenaed as a witness by the Coast Guard;

(2) The witness appeared pursuant to such subpoena; and

(3) The witness is entitled to the witness fees, and/or subsistence, and/or mileage claimed.

(b) Upon receipt of such claim (Standard Form 1157) with supporting statement, the Coast Guard authorized certifying officer may certify to the propriety of the claim according to the following scale and submit it to the appropriate disbursing officer for payment:

(1) A fee of $4 for each day or fraction thereof of attendance and for the time necessarily occupied in going to and returning from the investigation or hearing in the case of a witness called to testify as to the facts. A witness called to testify as an expert may be paid a higher fee provided such higher fee is approved by the Commandant prior to his appearance at the investigation or hearing.

(2) A subsistence allowance of $8 for each day or fraction thereof if the witness resides at a distance so far removed from the place at which the investigation, hearing or other proceeding was held as to prohibit his returning to his place of residence each day: *Provided*, That the witness was required to remain at the place at which the investigation, hearing or other proceeding was held for more than one day: *Provided further*, That in the case of employed merchant marine personnel their place of residence will be construed to be the vessel upon which they are employed, and in the case of unemployed merchant marine personnel their place of residence will be construed to be their actual place of residence when ashore, rather than the residence of their next of kin. In cases where subsistence allowance is payable, additional subsistence allowance of $8 per day may be paid for each day necessarily occupied in traveling from the place of residence to attend the investigation, hearing or other proceeding hereunder and return to such residence or place. No subsistence allowance for travel time shall be paid if witness is already present at place of investigation, hearing or other proceeding hereunder. In computing the subsistence allowance due a witness the day shall be regarded as beginning on the hour at which it was necessary for the witness to leave his home in order to arrive at the appointed time at the place where the investigation, hearing or other proceeding is held. The witness is to leave the place of investigation, hearing or other proceeding by the first available transportation after his dismissal.

(3) In computing the witness fee or the subsistence allowance, a fraction of a day will be considered as a whole day.

(4) Travel money at the rate of 8 cents per mile, not to exceed 100 miles, for actual travel from place of residence or place where subpoena was served to place at which the investigation, hearing or other proceeding was held. Travel money at the rate of 8 cents per mile, not to exceed 100 miles, is also allowed for the actual travel involved in return of witness to his place of residence, or if the subpoena was served at a place other than the witness's place of residence, to the place where said subpoena was served. All payments of travel money shall be computed on the basis of mileage by the shortest route. When a witness is furnished transportation by the Government no mileage allowance is authorized. If a witness is unable to furnish funds for transportation charges, Government transportation requests may be issued for his transportation, at the lowest first class rate available, to and from the place of investigation, hearing or other proceeding, in which case the mileage allowance is not authorized. When two or more witnesses are transported at the same time in the same privately owned vehicle, operated by one of the witnesses, the mileage allowance for only one witness is authorized.

(5) The fees provided in this section shall not apply in Alaska. In Alaska such witnesses are entitled to the witness fees and mileage prescribed for witnesses before the United States District Court in the judicial division in which the investigation, hearing or other proceeding is held, as set forth in 28 CFR 21.3.

Subpart 4.12—Testimony by Interrogatories and Depositions

§ 4.12-1 Application, procedure, and admissibility.

(a) Witnesses shall be examined orally, except that for good cause shown, testimony may be taken by deposition upon application of any party in interest or upon the initiative of the investigating officer or Marine Board of Investigation.

(b) Applications to take depositions shall be in writing setting forth the reasons why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition. Such application shall be made to an investigating officer or the Marine Board of Investigation prior to or during the course of the proceedings.

(c) The investigating officer or Marine Board of Investigation, shall, upon receipt of the application, if good cause is shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken, the name and place of the taking of such deposition and shall contain a designation of the officer before whom the witness is to testify. Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States.

(d) The party desiring the deposition may submit a list of interrogatories to be propounded to the absent witness; then the opposite party after he has been allowed a reasonable time for this purpose, may submit a list of cross-interrogatories. If either party objects to any question of the adversary party, the matter shall be presented to the investigating officer or Marine Board of Investigation for a ruling. Upon agreement of the parties on a list of interrogatories and cross-interrogatories (if any) the investigating officer or Marine Board of Investigation may propound such additional questions as may be necessary to clarify the testimony given by the witness.

(e) The subpoena referred to in Subpart 5.15 of this subchapter together with the list of interrogatories and cross-interrogatories (if any) shall be forwarded to the officer designated to take such deposition. This officer will cause the subpoena to be served personally on the witness. After service the subpoena shall be endorsed and returned to the investigating officer or Marine Board of Investigation.

(f) When the deposition has been duly executed it shall be returned to the investigating officer or Marine Board of Investigation. As soon as practicable after the receipt of the deposition the investigating officer or Marine Board of Investigation shall present it to the parties for their examination. The investigating officer or Marine Board of Investigation shall rule on the admissibility of the deposition or any part thereof and of any objection offered by either party thereto.

Subpart 4.13—Disclosure of Records

§ 4.13-1 General.

(a) Upon oral or written inquiry to the Coast Guard, information as to the time, place, and general subject matter of investigations conducted under this part will be released except when such information is held confidential for security reasons. The inquiry should be made to the Officer in Charge, Marine Inspection, who has cognizance of the investigation.

(b) Other information with regard to such investigations which is required to be kept by the Coast Guard will be released only to the extent and under the conditions provided in this subpart.

§ 4.13-5 Applications.

(a) *Form*. The applications for access to and release of information may be made orally except when the regulations in this subpart require a written application for such record. When a written application is required, the application should be addressed to the Officer in Charge, Marine Inspection, or to the person designated as having authority to grant access to or release of information from such records. The written application shall be executed by the parties desiring the information or by any person designated to represent such party as described in § 4.13-10.

(b) *Contents*. The application shall:

(1) Clearly state or describe the information desired;

(2) Identify the applicant, and if the applicant is a representative of another, specify the nature of the representation and attach proof of designation when required;

(3) Set forth the interest of the applicant in the subject matter;

(4) The purpose for which the information is desired; and

(5) Whether or not the information or record sought is intended for use in prosecuting a claim against the United States.

§ 4.13-10 Designation of representatives.

(a) In any case when access to or release of information from any record is permitted to any party by this subpart, the permission shall extend, when such party is deceased or incompetent, to an executor, administrator, heir, guardian, trustee, or legal representative of such party: *Provided*, That the relationship is established by production of satisfactory documentary evidence.

(b) When access to or release of information from any record is sought by one acting as agent or attorney on behalf of any party recognized by regulations in this chapter, the representation as agent or attorney shall be established by the filing with the Officer in Charge, Marine Inspection, documentary proof of such representation. This proof may be in one of the following forms:

(1) A statement of authority in the handwriting of and signed by the party represented; or,

(2) A notarized statement of authority signed by the party represented; or,

(3) A copy of a contract or retainer signed by the party represented.

(c) This authorization shall contain a statement of the specific matters in which representation is authorized.

§ 4.13-15 Casualties involving loss of life.

(a) Records of investigations involving loss of life resulting from marine casualties are public records available for inspection, upon oral or written inquiry.

§ 4.13-20 Casualty investigation records.

(a) Records of investigation conducted by investigating officers pursuant to the provisions of this part, after action thereon by the District Commander, will be made available to parties in interest before such investigation upon oral or written inquiry. Such records will be made available to persons otherwise properly and directly concerned upon written application to the District Commander or the Officer in Charge, Marine Inspection, having cognizance of such investigation. If extra copies of the records are available, such copies may be furnished to parties in interest.

(b) The records of investigations of marine casualties made by investigating officers, which will be made available to persons properly and directly concerned, shall include notice of casualty or accident, statements and/or testimony of witnesses, exhibits, and any other evidentiary material presented in the investigations, and the findings of fact as determined by the investigating officers, but shall not include the opinions, conclusions, and recommendations of such officers. However, in casualties involving loss of life, the investigating officer's opinions, conclusions and recommendations will be released after final action thereon has been taken by the Commandant.

(c) The District Commander or his representative, upon inquiry, will advise persons properly and directly concerned as to whether or not further action will be recommended or instituted, such as appropriate suspension and revocation proceedings, citation for violation(s) involving fines or penalties, or a recommendation for referral of the record of investigation to the U.S. Department of Justice for further investigation and possible criminal action.

§ 4.13-25 Records of Marine Boards of Investigation.

(a) The record of investigation made by a Marine Board of Investigation will be made available to parties in interest at any stage of the Board's proceedings upon oral or written inquiry to the chairman: *Provided*, That such request does not, in any way, interfere with the proper and orderly functioning of the Board. After the Board has completed its investigation, the record will be made available to parties in interest upon oral or written inquiry to the District Commander or Officer in Charge, Marine Inspection, having cognizance of such investigation. Also, such records will be made available to persons otherwise properly and directly concerned upon written application to the District Commander or Officer in Charge, Marine Investigation, having cognizance of such investigation.

(b) Records of a Marine Board of Investigation shall include testimony and/or statements of witnesses, exhibits, records of investigation made by an investigating officer, and any other evidentiary material used by the Board in arriving at its determination.

(c) The report of a Marine Board of Investigation, consisting of the findings of fact, conclusions, opinions, and recommendations shall not become public or be made available until final action thereon has been taken by the Commandant. At such time the report will be made available in the same manner as provided for the record of investigation in paragraph (a) of this section.

§ 4.13-30 Records confidential.

(a) Except as specifically set forth in this subpart, all files, records, testimony, documents, reports, or other data pertaining to the internal management of the Marine Board of Investigation or to the investigation or disposition of charges or petitions during the non-public investigative stages of the investigation and before the institution of a Marine Board in the course of investigation, which have not been offered in evidence during the investigation or have not been made a part of the official record by stipulation, in Coast Guard Headquarters or in other offices, are administrative records and are not available to public inspection.

§ 4.13-35 Production upon compulsory process.

(a) When a request for information or material from a marine casualty investigation record is denied for any reason, the applicant shall be advised that the information or material may be produced upon service of a subpena duces tecum or an order from a court of competent jurisdiction if such information or material is not held confidential for security reasons.

§ 4.13-40 Costs.

The access to and release of information, as authorized in this subpart, shall be subject to the payment of costs. (See 33 CFR 1.25.)

Subpart 4.15—Persons in Service of Coast Guard

§ 4.15-1 Persons in service of Coast Guard.

(a) No person in the service of the Coast Guard shall, without prior approval of the Commandant, give any testimony with respect to any investigation or any other official proceedings in any suit or action in the courts. This applies equally to cases in state or Federal courts and to civil as well as criminal cases.

(b) In cases involving (1) civil litigation between private parties; or, (2) criminal matters before state courts; or, (3) civil litigation for or against the United States where Coast Guard personnel are called by parties opposing the United States; an affidavit by the litigant or his attorney setting forth the interest of the litigant and the information with respect to which the testimony of such Coast Guard officer or employee is desired must be submitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper. In addition to the permission required by this paragraph, the Commandant may insist that the appearance of the Coast Guard officer or employee as a witness be conditioned on the issuance of a subpena or subpena duces tecum (as appropriate) from a court of competent jurisdiction.

(c) In cases where the appearance of Coast Guard personnel is desired by Counsel representing the United States to support the affirmative claims or defenses of the United States in civil matters or on behalf of the United States in criminal matters no affidavit as described in paragraph (b) of this section shall be required, but the Commandant's prior approval must nevertheless be obtained, except in those cases where the Coast Guard personnel desired as witnesses file the original complaint or have made original inquiry into the subject matter which resulted in the filing of an original complaint.

Subpart 4.19—Construction of Regulations and Rules of Evidence

§ 4.19–1 Construction of regulations.

The regulations in this part shall be liberally construed to insure just, speedy, and inexpensive determination of the issues presented.

§ 4.19–5 Adherence to rules of evidence.

As hearings under this part are administrative in character, strict adherence to the formal rules of evidence is not imperative. However, in the interest of orderly presentation of the facts of a case, the rules of evidence should be observed as closely as possible.

Subpart 4.21—Computation of Time

§ 4.21–1 Computation of time.

The time, within which any act, provided by the regulation in this subchapter, or an order of the Marine Board of Investigation is to be done, shall be computed by excluding the first day and including the last unless the last day is Sunday or a legal holiday, in which case the time shall extend to and include the next succeeding day that is not a Sunday or legal holiday: *Provided, however,* That where the time fixed by the regulations in this subchapter or an order of the Board is five days or less all intervening Sundays or legal holidays, other than Saturdays, shall be excluded.

Subpart 4.23—Evidence of Criminal Liability

§ 4.23–1 Evidence of criminal liability.

If as a result of any investigation or other proceeding conducted hereunder, evidence of criminal liability on the part of any licensed officer or certificated person or any other person is found, such evidence shall be referred to the U.S. Attorney General.

PART 5—SUSPENSION AND REVOCATION PROCEEDINGS

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AUTHORITY: The provisions of this Part 5 issued under sec. 633, 63 Stat. 545, as amended, and sec. 6(b), 80 Stat. 938; 16 U.S.C. 375, 416, 14 U.S.C. 633, 49 U.S.C. 1655(b); 49 CFR 1.46(b) (35 F.R. 4959). Interpret or apply secs. 1, 2, 49 Stat. 1544, 1545, as amended, secs. 7, 17, 54 Stat. 165, as amended, 166, as amended, secs. 1, 2, 68 Stat. 484, as amended, sec. 3, 68 Stat. 675 sec. 3, 70 Stat. 152, sec. 4, 74 Stat. 260, as amended, secs. 551-559, 80 Stat. 38-388, as amended; 46 U.S.C. 216b, 239, 239a, 239b, 367, 390b, 404, 526f, 526p, 5 U.S.C. 551-559, 50 U.S.C. 198.

Subpart 5.01—Authority and Scope

§ 5.01-1 Authority for regulations.

(a) The authority to prescribe regulations generally with respect to navigation and vessel inspection is set forth in Title 46, U.S. Code, sections 375 and 416 (R.S. 4405, as amended, 4462, as amended). Under the provisions of Title 46, U.S. Code, section 372 (R.S. 4403, as amended), the Commandant, United States Coast Guard, superintends the administration of the navigation and vessel inspection laws, and is required to produce a correct and uniform administration of such laws, rules and regulations.

(1) Where the provisions in Title 46, U.S. Code, section 239, or other laws or regulations contain a reference to "title 52 of the Revised Statutes or of any of the regulations issued thereunder," or one similar to it, it is deemed to be a general reference to the applicable provisions in Title 46, U.S. Code, sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230-234, 239, 240, 361, 362, 364, 372, 375, 391, 391a, 392, 393, 399, 400, 402-414, 416, 435, 436, 451-453, 460, 461, 462, 467, 470-482, and 489-498, and the regulations issued thereunder, which are in this chapter.

(b) The mandatory provisions in Title 46, U.S. Code, section 239, govern suspension and revocation proceedings and are the basic authority therefor; while the Administrative Procedure Act Title 5, U.S. Code, sections 1001-1011, 50 Stat. 237-244) and Title 46, U.S. Code, section 239b (P.L. 500, 83d Cong., approved July 15, 1954, 68 Stat. 484), require the hearings in such proceedings to be presided over by an administrative law judge, before the Coast Guard may suspend or revoke a license, certificate, or document issued.

(c) Other marine safety laws and regulations in this chapter also provide authority for suspension or revocation of specific categories of licenses, certificates or documents issued by the Coast Guard or predecessor authorities. For examples, see Title 46, U.S. Code, sections 214, 224a, 226, 228, 229, 229c, 232, 234, 240, 246, 391a, 457, 526f, 672, or Title 33, U.S. Code, sections 153, 412, 435, 442, 1006.

(d) Other authority to promulgate regulations deemed appropriate to carry out the provisions of any law applicable to the Coast Guard or to issue rules, orders, and instructions, not inconsistent with law, is set forth in Title 14, U.S. Code, section 633.

§ 5.01-5 Assignment of functions.

(a) By Reorganization Plan No. 3 of 1946, effective July 16, 1946, the marine inspection functions of the former Bureau of Marine Inspection and Navigation and its officers and employees were transferred to the Commandant, United States Coast Guard. By Reorganization Plan No. 26 of 1950 (5 U.S. Code, Note under 241), effective July 31, 1950, the functions formerly vested in the Commandant, United States Coast Guard, were transferred to the Secretary of the Treasury with certain specified exceptions. The Secretary of the Treasury by a Treasury Department Order 120, dated July 31, 1950 (15 F.R. 6521), delegated to the Commandant the functions formerly performed by him under Reorganization Plan No. 3 of 1946. This included suspension or revocation of any license, certificate, or document issued by the Coast Guard or predecessor authorities under Title 46, U.S. Code, section 239. The Commandant delegates to administrative law judges the authority to suspend or revoke any license, certificate, or document issued to person by the Coast Guard or predecessor authorities under any navigation or vessel inspection law.

(b) The Acting Secretary of the Treasury in Treasury Department Order 167-9, dated August 3, 1954 (19 F.R. 5195), delegated to the Commandant, United States Coast Guard, the functions vested in the Secretary of the Treasury by Title 46, U.S. Code, sections 239a and 339b (P.L. 500, 83d Cong., approved July 15, 1954, 68 Stat. 484) to revoke a license, certificate, or document of a person convicted of a narcotic drug law violation or otherwise involved with narcotics. The Commandant delegates to administrative law judges the authority to revoke a license, certificate, or document issued to a person by the Coast Guard or predecessor authorities under any navigation or vessel inspection law.

(c) The Secretary of the Treasury by Treasury Department Order 167-20, dated June 18, 1956 (21 F.R. 4894), delegated to the Commandant, United States Coast Guard, the functions vested in the Secretary of the Treasury by Title 46, U.S. Code, sections 390-390g, 404, and 5261 (P.L. 519, 84th Cong., approved May 10, 1956, 70 Stat. 151-154). The Commandant delegates to administrative law judges the authority to revoke or suspend a license issued to a person by the Coast Guard under Title 46, U.S. Code, sections 390b, 404 and 5261.

§ 5.01-10 Purpose of regulations.

(a) The regulations establish policies and procedures for remedial action (in respect to licenses, certificates and documents already issued to persons) pursuant to the authority set forth in § 5.01-1, and the regulations prescribed thereunder by the Commandant which are in this part or in Part 1 of this chapter.

§ 5.01-15 Purpose of suspension and revocation proceedings.

(a) The suspension and revocation proceedings are for the purpose of assisting in carrying out the statutory duty of the Coast Guard to promote safety of life and property. This obligation extends to the interest of passengers, crews, cargoes, shipowners and the general public.

§ 5.01-20 Nature of suspension and revocation proceedings.

(a) The suspension and revocation proceedings are remedial and not penal in nature because they are intended to maintain standards of competence and conduct essential to the purpose stated in § 5.01-15 to promote the safety of life and property at sea by insuring that the licensed or certificated persons continue to be qualified to carry out their duties and responsibilities.

§ 5.01-25 Construction of regulations.

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

§ 5.01-30 Instituting suspension and revocation proceedings.

(a) Suspension and revocation proceedings shall be instituted by an investigating officer in any case in which it appears, as a result of any investigation made under this part or Part 4, that there are reasonable grounds to believe that the holder of a license, certificate or document issued by the Coast Guard or its predecessor authorities, has:

(1) Committed an act of incompetency, misconduct, negligence, or unskillfulness while acting under the authority of his license, certificate or document; or,

(2) Endangered life while acting under the authority of his license, certificate or document; or,

(3) Willfully violated any of the provisions of title 52 of the Revised Statutes or of any of the regulations issued thereunder; or

(4) Been convicted of a narcotic drug law violation, or has been a user of or addicted to the use of a narcotic drug,

so as to be subject to provisions of Title 46, U.S. Code, section 239b.

§ 5.01–35 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 held by him either when the holding of such license, certificate or document is required by law or regulation or is required in fact as a condition of employment. A person does not cease to act under the authority of his license, certificate or document while ashore on authorized or unauthorized shore leave from the vessel.

§ 5.01–40 Violation of law or regulation.

(a) Under Title 46, U.S. Code, section 239, suspension and revocation proceedings may be conducted, without regard to whether the person charged was in the service of a vessel at the time of the alleged offense, when the charge is a willful violation of any of the provisions of title 52 of the Revised Statutes or of any of the regulations issued thereunder.

§ 5.01–45 Violation of narcotic laws.

(a) Under Title 46, U.S. Code, section 239b, revocation proceedings may be conducted if the person charged holds a valid license, certificate or document issued by the Coast Guard or its predecessor authorities without regard to whether or not the holder was in the service of a vessel at the time of the alleged offense.

Subpart 5.02—Definitions of Terms Used

§ 5.02–1 Commandant.

(a) This term means the Commandant of the Coast Guard.

§ 5.02–5 Coast Guard District.

(a) A Coast Guard District is a geographical area which is assigned to a Coast Guard District Commander.

(b) For descriptions of the Coast Guard districts see 33 CFR Part 3.

§ 5.02–10 District Commander.

(a) This term means an Officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his respective district, which include the inspection, enforcement, and administration of Title 46, U.S. Code, sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230–234, 239, 240, 361, 362, 364, 372, 375, 381, 391, 391a, 392, 393, 399, 400, 402–414, 416, 435, 436, 451–453, 460, 461, 462, 464, 467, 470–482, and 489–498, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder, except those functions of administrative law judges under the Administrative Procedure Act (5 U.S.C. 1001–1011).

§ 5.02–15 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. 1001–1011) for the purposes of conducting hearings arising under Title 46, U.S. Code, section 239 or 239b.

§ 5.02–20 Investigating officer.

(a) An investigating officer is an officer or employee of the Coast Guard designated by the Commandant, District Commander or the Officer in Charge, Marine Inspection, for the purpose of making investigations of marine casualties and accidents or other matters pertaining to the conduct of seamen. An Officer in Charge, Marine Inspection, is an investigating officer without further designation.

§ 5.02–25 Marine inspection zone.

(a) A marine inspection zone is a geographical area within a Coast Guard District which is assigned to an Officer in Charge, Marine Inspection.

(b) For descriptions of marine inspection zone boundaries see 33 CFR Part 3.

Subpart 5.03—Statements of Policy and Interpretations

§ 5.03–1 Effect of Commandant's decisions in appeal or review cases.

(a) The decisions of the Commandant in cases of appeal or review of administrative law judges' decisions shall be officially noticed by and shall be binding upon all administrative law judges. The administrative law judges shall follow the principles and policies enunciated by the Commandant in such decisions unless they are modified or rejected by competent authority.

§ 5.03–3 Possession of narcotics; prima facie case.

When a charge of misconduct is supported by a specification alleging possession of narcotic drugs, including marijuana, or dangerous drugs, evidence or possession is enongh to support a finding of misconduct, unless the administrative law judge is satisfied by other evidence that the possession was not wrongful.

§ 5.03–4 Offenses for which revocation of licenses or documents is mandatory.

Whenever a charge of misconduct by virtue of the possession, use, sale or association with narcotic drugs, including marijuana, or dangerous drugs is found proved, the administrative law judge shall enter an order revoking all licenses, certificates and documents held by such a person. However, in those cases involving marijuana, where the administrative law judge is satisfied that the use, possession or association, was the result of experimentation by the person and that the person has submitted satisfactory evidence that such use will not recur, he may enter an order less than revocation.

§ 5.03–5 Offenses for which revocation of licenses or documents is sought.

(a) The Coast Guard will initiate administrative action seeking the revocation of licenses, certificates or documents held by persons who have been involved in acts of such serious nature that permitting such persons to sail under their licenses, certificates and documents would be clearly a threat to the safety of life or property.

(b) These offenses, which are deemed to affect safety of life at sea, the welfare of seamen or the protection of property aboard ship, are:

(1) Assault with dangerous weapon (injury).

(2) Malicious destruction of ship's property.

(3) Misconduct resulting in loss of life or serious injury.

(4) Molestation of passengers.

(5) Murder or attempted murder.

(6) Mutiny.

(7) Perversion.

(8) Possession, use, sale or association with drugs, including marijuana.

(9) Sabotage.

(10) Serious neglect of duty.

(11) Serious theft of ship's property or stores.

(12) Smuggling of aliens.

§ 5.03–7 Effect of court actions.

(a) Except for the serious offenses referred to in §§ 5.03–3, 5.03–5, and 5.03–10, the Coast Guard in other situations will take into consideration court convictions when determining whether or not to initiate administrative action seeking the suspension or revocation of licenses, certificates or documents.

§ 5.03–10 Court convictions in narcotic cases.

(a) After proof of a narcotics conviction by a court of record as required by Title 46, U.S. Code, section 239b, whether or not further court action is pending, the Coast Guard may take action based upon this conviction. After proof of alleged conviction or plea of "guilty," the administrative law judge shall enter an order revoking the seaman's licenses, certificates, and documents. A conviction becomes final when no issue of law or fact determinative of the seaman's guilt remains to be decided by the trial court.

(b) An order of revocation will be rescinded by the Commandant if the seaman submits satisfactory evidence that the court conviction on which the revocation is based has been set aside for all purposes (see § 5.20–190(b)). An order of revocation will not be rescinded as the result of the operation of any law providing for the subsequent conditional setting aside or modification of the court conviction, in the nature of the granting of clemency or other relief, after the court conviction has become final.

(c) After the conviction has become final within the meaning of paragraph (a) of this section, the conditional setting aside or modification of the conviction will not act as a bar to the subsequent revocation of a seaman's document under Title 46, U.S. Code, section 239b.

§ 5.03–15 Court of record.

(a) In the administration of Title 46, U.S. Code, section 239b, and this part, a "court of record" means a court:

(1) Which conforms with the common law principles in that it has a clerk, a seal, keeps a record of its procedings, and has the power to fine and imprison; and,

(2) Where its proceedings are, by law or usage in the State, District of Columbia, or Territory where rendered, recognized as conclusive evidence in other courts of that jurisdiction.

§ 5.03–20 **Maritime labor disputes.**

(a) Under no circumstances shall the statutory machinery of the Coast Guard be used for the purpose of favoring any party to a maritime or other labor controversy. However, if a situation affecting the safety of the vessel or persons on board is presented, and a complaint in writing is lodged, the matter shall be thoroughly investigated and when a violation of existing statutes or regulations is indicated appropriate action shall be taken.

§ 5.03–25 **Physician-patient privilege.**

(a) For the purpose of these proceedings, the physician-patient privilege is not considered to exist between a ship's physician and a seaman employed on the same ship.

Subpart 5.05—Investigations

§ 5.05–1 **Investigations made by investigating officer.**

(a) Investigations will be made by an investigating officer of:

(1) All acts in violation of any of the provisions of Title 46, U.S. Code, sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230–234, 239, 240, 361, 362, 364, 372, 375, 381, 391, 391a, 392, 393, 399, 400, 402–414, 416, 435, 436, 451–453, 460, 461, 462, 464, 467, 470–482, and 489–498 whether or not committed in connection with any marine casualty or accident; and

(2) All acts in violation of any regulation in this chapter or in 33 CFR Chapter I, whether or not committed in connection with any marine casualty or accident; and

(3) All acts of incompetency, negligence or misconduct, whether or not committed in connection with any marine casualty or accident, when committed by persons holding licenses, certificates or documents.

§ 5.05–5 **Powers of investigating officer.**

(a) In the conduct of an investigation, the investigating officer shall have the power to administer oaths, subpena witnesses, require persons having knowledge of the subject matter of the investigation to answer questions and require the production of relevant books, papers, documents, licenses, certificates, or other records.

§ 5.05–10 **Advising person of complaint.**

(a) The investigating officer conducting an investigation under this part will, where the person whose conduct is being investigated is available, advise such person informally of the substance of the complaint against him and afford him an opportunity to make such comment as he may desire.

§ 5.05–15 **Courses of action available.**

(a) During or at the conclusion of an investigation, the investigating officer shall take appropriate action as follows:

(1) *Prefer charges.* The investigating officer may prefer charges if he finds reasonable grounds to believe that a person holding a license, certificate or document has committed some offense or act, or has been convicted for a narcotic offense, or has failed to perform some duty, or is incompetent.

(2) *Recommend closing the case.* The investigating officer may recommend closing the case and taking no action on alleged acts if he finds that there is no:

(i) Basis for the complaint; or,

(ii) Jurisdiction; or,

(iii) Reasonable expectation that corrective measures could be accomplished.

(3) *Refer cases to others for further action.* The investigating officer may refer the case to the Commandant or to an Officer in Charge, Marine Inspection, at any port for completion of administrative action if he finds adequate basis for action and the person under investigation and/or witnesses are not then available.

(4) *Accept voluntary deposit of license, certificate or document.* The investigating officer may accept a voluntary deposit of a license, certificate or document from a person under investigation when there is evidence of physical or mental incompetence from any cause other than the use of, or addiction to narcotics.

(5) *Accept voluntary surrender of license, certificate or document.* The investigating officer may accept the voluntary surrender of a license, certificate or document when the person under investigation desires to avoid a hearing.

(6) *Give a warning.* The investigating officer may give a warning in writing to any person holding a license, certificate or document and recommend closing the case. Upon refusal to accept the written warning at the time the warning is given, it shall be withdrawn and the investigating officer may prefer charges. An unrejected warning will become a part of the person's record.

(b) When required, the investigating officer will also submit a report of investigation.

§ 5.05–17 **Charges and specifications.**

(a) A "charge" is a designation of an offense in general terms. The offense must be one within the purview of Title 46, U.S. Code, section 239 or 239b. A "charge" must be supported by one or more "specifications." Under no circumstances does a "charge" constitute evidence of guilt nor may any inference of guilt be drawn from the fact that the holder of a license, certificate, or document has been the subject of a "charge."

(b) A "specification" sets forth the facts which form the basis of the "charge." The purpose of a "specification" is to enable the person charged to identify the offense so that he will be in a position to prepare his defense. Each specification shall state:

(1) Basis for jurisdiction;

(2) Date and place of offense; and

(3) A statement of the facts constituting the offense.

§ 5.05–20 **Types of charges.**

(a) *General.* In lieu of or supplementary to the charges described in paragraphs (b) and (c) of this section, the charges may be:

(1) *Misconduct.* "Misconduct" is a human behavior which violates some formal, duly established rule, such as the common law, the general maritime law, a ship's regulation or order, or shipping articles. In the absence of such a rule, "misconduct" is human behavior which a reasonable person would consider to constitute a failure to conform to the standard of conduct which is required in the light of all the existing facts and circumstances.

(2) *Negligence or inattention to duty.* "Negligence" and "inattention to duty" are essentially the same and cover both the aspects of misfeasance and nonfeasance. They are therefore defined as the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances, would not fail to perform.

(3) *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 of same.

(b) *Violation of law or regulation.* Where the proceeding is based exclusively on that part of Title 46, U.S. Code, section 239, which refers to a willful violation of any of the provisions of title 52 of the Revised Statutes or of any of the regulations issued thereunder, the "charge" shall be "violation of statute" or "violation of regulation." The "specification" shall state the specific statute or regulation by title and section number, and the particular manner in which it was allegedly violated.

(c) *Narcotic drug law violation or use or addiction to use of narcotics.* Where the proceeding is based exclusively on the provisions of Title 46, U.S. Code, section 239b, the "charge" will be "conviction for a narcotic drug law violation" or "use of narcotics" or "addiction to use of narcotics," depending upon the circumstances. The "specification" will allege jurisdiction by stating the elements as required by Title 46, U.S. Code, sections 239 and 239b, and the approximate time and place of the offense.

§ 5.05–23 **Time limitations for service of charges and specifications.**

(a) The time limitations for service of various charges and specifications are as follows:

(1) For a charge and specification based exclusively on Title 46, U.S. Code, section 239b, service shall be within the time as set forth in this law; namely, 10 years after date of conviction in a

court of record subsequent to July 15, 1954, or at any time if a user of or addicted to the use of a narcotic drug after July 15, 1954.

(2) For a charge and specification describing one of the more serious types of offenses specified in § 5.03-5, service shall be within five years after the commission of the offense alleged therein.

(3) For a charge and specification describing an offense not otherwise provided for, the service shall be within three years after the commission of the offense alleged therein.

(b) When computing the period of time specified in this section there shall be excluded any period or periods of time when the person could not attend a hearing by reason of being in a foreign country or by reason of being in prison or asylum.

§ 5.05-25 Procedure preparatory to hearing.

(a) To institute hearing proceedings preparatory to hearing, the investigating officer shall prepare charges and specifications, as required, together with a notice of the time and place of the hearing.

(b) The notice of the time and place of the hearing and the original of the charges and specifications shall be served upon the person charged, either by personal service or certified mail with return receipt requested, notice to be signed by the addressee only.

(c) When service is by mail, it shall be sufficiently in advance of the time set for the hearing so as to give the person charged a reasonable opportunity to prepare his defense.

(d) When service is made personally upon the person charged, the person making such service shall give the original of the notice of the hearing, the charges and the specifications to the person charged, shall read them to such person if he cannot read, and shall make a record of the time and date of service. When personal service is made, the written acceptance on the reverse side of the form containing the charges and specifications shall be sufficient to show service as of the date on the face of the form unless otherwise indicated by separate notation thereon by the person effecting such service.

(e) Further, at the time of such service, whether personal or by registered mail, the person charged will be also advised with respect to:

(1) The nature of suspension and revocation proceedings and the possible results thereof.

(2) His right to have counsel represent him at the hearing, and that counsel may be a lawyer or any other person he desires to represent him.

(3) His right to have witnesses and/or records subpenaed in his behalf.

(f) If the offense alleged involves mental incompetence, the person charged shall be advised (when the service of the charge and specification and notice of hearing is made) to procure counsel to represent him.

§ 5.05-30 Evidence of criminal liability.

(a) If, as a result of any investigation, evidence of criminal liability on the part of any holder of a license, certificate or document, or any other person is found, such evidence shall be referred to the Attorney General, or his local representative.

(b) The investigating officer shall determine whether to institute suspension and revocation proceedings under Title 46, U.S. Code, section 239 or 239b, for use or addiction to the use of narcotics, before criminal action may be initiated or completed against the holder of a license, certificate or document, or to defer instituting such proceedings pending the outcome of the criminal action in a Federal or State court. One controlling factor will be whether or not the witnesses will be available if the hearing is delayed.

Subpart 5.10—Deposit or Surrender of License, Certificate or Document

§ 5.10-1 Voluntary deposit in event of mental or physical incompetence.

(a) A person may deposit his license, certificate or document with an investigating officer in any case where there is evidence of mental or physical incompetence for any reason other than when caused by use of, or addiction to, narcotics.

(b) A voluntary deposit is accepted on the basis of a written agreement which specifies the conditions accompanying the deposit. The original or a copy will be given to the person making the deposit. The Coast Guard agrees to return the license, certificate or document deposited by the person described therein when he obtains a certificate from the U.S. Public Health Service, or other authorized medical officer showing the person is considered to be fit for sea duty.

(c) Where the mental or physical incompetence of a holder of a license, certificate or document is caused by use of, or addiction to, narcotics, such person may only surrender such license, certificate or document in accordance with § 5.10-10.

§ 5.10-10 Voluntary surrender to avoid hearing.

(a) Any person may surrender his liense, certificate or document to an investigating officer in preference to appearing at a hearing.

(b) Whenever a person voluntarily surrenders his license, certificate or document, he shall sign a written statement containing the following stipulations that:

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

(2) All title to the license, certificate or document surrendered is permanently relinquished; and,

(3) His rights with respect to a hearing, appeal, and review are waived.

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

Subpart 5.13—Issuance of New Licenses, Certificates or Documents After Revocation or Surrender

§ 5.13-1 Time limitations.

(a) Any person whose license, certificate or document has been revoked or surrendered for one or more of the offenses described in §§ 5.03-3, 5.03-5, and 5.03-10, or for mental or physical incompetence resulting from use of, or addiction to, narcotics may after three years apply by letter and the application form requesting the issuance of a new license, certificate or document.

(b) Any person whose license, certificate or document has been revoked or surrendered for one or more offenses which are not specifically described in §§ 5.03-3 and 5.03-5 may after one year apply by letter and the application form requesting the issuance of a new license, certificate or document.

§ 5.13-5 Application.

(a) The letter and application shall be addressed to the Commandant, U.S. Coast Guard, Washington, D.C. 20226, but should be filed in person with the nearest Officer in Charge, Marine Inspection, since this officer will submit a preliminary evaluation and recommendation.

(b) The letter shall be an informal request for the issuance of a new license, certificate or document and shall transmit the following:

(1) A letter from each employer during time applicant was without a license or document, stating dates of employment and attesting to the satisfactory work record. (Times or periods of unemployment shall be satisfactorily explained in the letter.)

(2) At least three character references from responsible persons and stating how long they have known him.

(c) The Officer in Charge, Marine Inspection, will forward the letter and application, together with a preliminary evaluation and recommendation, to the Commandant.

§ 5.13-10 Commandant's decision on application.

(a) Every letter and application received, as well as the preliminary evaluation and recommendation of an Officer in Charge, Marine Inspection, will be referred to a special board appointed by the Commandant. The board will examine all the material submitted with the application and such other information as may, in the judgment of the board, be considered necessary. The board shall submit its findings and recommendations to the Commandant.

(b) The Commandant shall determine whether or not the issuance of a new license, certificate or document shall be made.

Subpart 5.15—Subpenas and Service of Process

§ 5.15–1 Authority for subpenas.

(a) There is delegated to investigating officers and administrative law judges authority to issue subpenas under Title 46, U.S. Code, section 239, to command attendance of witnesses or the production of books, papers, documents, or any other evidence necessary.

§ 5.15–5 Form of subpena.

(a) Every subpena shall bear at least the name "United States Coast Guard", the word "subpena", and local Coast Guard address from which issued. It may be a letter or Form CG–2639B.

(b) Every subpena shall command the person to whom it is directed to attend at a specified time and place to give testimony or to produce books, papers, documents, or any other evidence, which shall be described with such particularity as necessary to identify what is desired.

§ 5.15–10 Issuance of subpenas.

(a) During the investigation and prior to the hearing, the investigating officer shall issue subpenas for the attendance of witnesses or for the production of books, papers, documents, or any other relevant evidence that he may need or that may be needed by the person charged.

(b) During the hearing, the administrative law judge shall issue subpenas for the attendance and the giving of testimony by witnesses or for the production of books, papers, documents, or any other relevant evidence, either upon his own motion or upon a request of either of the parties.

§ 5.15–15 Service of subpenas.

(a) Any person capable of reading and writing may serve a subpena upon the person named therein. Service of a subpena upon a person named therein shall be made by delivering such subpena to such person by personal service, or by certified mail with return receipt to be signed by the addressee only.

(b) The investigating officer shall serve or have served every subpena that he issues in his own behalf, or on behalf of the person charged when feasible.

(c) The person charged or his counsel is responsible for serving subpenas issued at his request by an administrative law judge. However, if the administrative law judge finds that the person charged or his counsel is physically unable to effect the service, despite diligent and bona fide attempts to do so, and if the administrative law judge further finds that the existing impediment to the services of the subpena is peculiarly within the authority of the Coast Guard to overcome, the administrative law judge will have the subpena delivered to such person as the District Commander may designate for the purpose of effecting service.

§ 5.15–20 Proof of service.

(a) The person serving a subpena shall make a written statement setting forth the date, time and manner of service and shall return such report with or on a copy of the subpena to the investigating officer or administrative law judge who issued it. In case of failure to make service of a subpena, the person assigned to serve such subpena shall make a written statement setting forth the reasons, which statement should be on the subpena or attached to it.

(b) When service of a subpena is made by certified mail with return receipt to be signed by the addressee only, the person mailing the subpena shall make a written statement on a copy of the subpena or attached to it, setting forth the date, time and place of Post Office where mailed, and Post Office number assigned thereto. If delivered, the receipt requested shall be returned to the investigating officer or administrative law judge who issued the subpena. In case the subpena is not delivered, any information reported by the Post Office regarding non-delivery shall be given to the investigating officer or administrative law judge who issued the subpena.

§ 5.15–25 Quashing a subpena.

(a) The person to whom a subpena is directed may, prior to or during the hearing, apply in writing to the administrative law judge conducting the hearing a request that the subpena be quashed or modified. The administrative law judge will notify the party for whom the subpena was issued.

(b) The administrative law judge shall rule on the matter promptly. He may quash the subpena if it is unreasonable or requires evidence not relevant to any matter in issue, or he may deny the request.

§ 5.15–30 Enforcement.

(a) Upon application and for good cause shown, or upon its own initiative, the Coast Guard will seek judicial enforcement of subpenas issued by investigating officers or administrative law judges. This may be done by making application to the United States District Court to issue an order compelling the attendance of, and/or giving of testimony by, witnesses.

Subpart 5.17—Witness Fees

§ 5.17–1 Witness's request for payment of fees.

(a) Duly subpenaed witnesses, other than government employees, may apply for payment for their services as witnesses by submitting a request for payment (Standard Form No. 1157) to the administrative law judge presiding over the hearing or to the investigating officer (28 U.S. Code, section 1821). The administrative law judge or investigating officer will forward the request to the Coast Guard authorized certifying officer together with a statement that:

(1) The witness seeking payment was duly subpenaed as a witness by the Coast Guard;

(2) The witness appeared pursuant to such subpena, the name of the person charged or under investigation, and the name of city and state where investigation or hearing was held; and,

(3) The witness is entitled to witness fees, and/or subsistence, and/or mileage allowance claimed.

(b) Upon receipt of the witness's claim (Standard Form 1157) with supporting statement, the Coast Guard authorized certifying officer may certify to the propriety of the claim according to the scale of fees, subsistence, and mileage in § 5.17–5, and submit it to the appropriate disbursing officer for payment.

(c) Government employees who are witnesses at a hearing or investigation may be paid travel expenses as provided by the Standardized Government Travel Regulations. Coast Guard personnel may be paid travel expenses as provided in the Coast Guard Travel Manual.

§ 5.17–5 Scale of fees, subsistence, and mileage.

(a) A subpenaed witness may be paid a fee of $4.00 for each day or fraction thereof of attendance and for time necessarily occupied in going to and returning from the place of hearing or investigation (28 U.S. Code, section 1821). A witness called to testify as an expert may be paid a higher fee provided such higher fee is approved by the Commandant prior to his appearance.

(b) A subsistence allowance of $8.00 for each day or fraction thereof may be paid if the subpenaed witness resides at a distance so far removed from the place at which the hearing or investigation was held so as to prohibit his returning to his place of residence each day, and if such witness was required to remain at the place where the hearing or investigation was held for more than one day. In a case where subsistence allowance is payable under this paragraph and the subpenaed witness is required to travel, a subsistence allowance of $8.00 per day may be paid for each day necessarily occupied in traveling from the place of residence to attend the hearing or investigation and return to such place: *Provided*, That no subsistence allowance for travel time shall be paid if the witness is already present at place of investigation or hearing at time of service of subpena.

(c) In computing the witness fee or the subsistence allowance, a fraction of a day will be considered as a whole day, the day will be considered as consisting of 24 hours, and a day will be regarded as beginning on the hour at which the witness had to leave his residence in order to arrive at the appointed time at the place where the investigation or hearing was held. After dismissal, the witness is assumed to leave the place of the investigation or hearing for his residence by the first available transportation, and the period of time will be terminated at the time of arrival at his residence.

(d) Travel money at the rate of 8 cents per mile, not to exceed 100 miles, for actual travel from place of residence or place where subpena was served to place at which the investigation or hearing was held may be paid to a subpenaed witness. Travel money at the rate of 8 cents per mile, not to exceed 100 miles, is also allowed for the actual travel involved in return of witness to his place of residence, or if the subpena was served at a place other than the witness's place of residence, to the place where said subpena was served. All payments of travel money shall be computed on the basis of mileage by the shortest route. When a witness is furnished transportation by the Government, no mileage allowance is authorized. If a witness is unable to furnish funds for transportation charges, Government transportation requests may be issued for his transportation, at the lowest first class rate available, to and from the place of hearing, in which case the mileage allowance is not authorized. When two or more witnesses are transported at the same time in the privately owned vehicle, operated by one of the witnesses, the mileage allowance for only one witness is authorized.

(e) The fees provided in paragraphs (a), (b), and (d) of this section shall not apply in Alaska. In Alaska subpenaed witnesses are entitled to the fees, subsistence, and mileage allowances to the same extent as may be prescribed for witnesses before the United States District Court in the judicial division in which the hearing is held. (See 28 CFR 21.3 for schedule of fees and allowances of witnesses in the District of Alaska.)

(f) In the case of employed merchant marine personnel their place of residence will be construed to be the vessel upon which they are employed, and in the case of unemployed merchant marine personnel their place of residence will be construed to be their actual place of residence when ashore at time of the investigation or hearing rather than the residence of their next of kin.

Subpart 5.20—Hearings

§ 5.20–1 General.

(a) A hearing in a suspension and revocation proceeding conducted under Title 46, U.S. Code, section 239 or 239b, is the adjudication of the case. It is presided over and is conducted under the exclusive administrative control of a civilian administrative law judge in accordance with applicable requirements in Title 5, U.S. Code, sections 1001–1011, inclusive (Administrative Procedure Act), and the regulations in this part. The administrative law judge shall regulate and conduct the hearing in such a manner so as to bring out all the relevant and material facts, and to insure a fair and impartial hearing.

(b) An administrative law judge shall not consult with any one concerning any fact in issue in a suspension and revocation proceeding unless, after notice, all parties are permitted to participate. An administrative law judge shall not informally obtain advice or opinions from the parties or their counsel or from any officer or employee of the Coast Guard as to the weight or interpretation to be given to evidence. The administrative law judge may at any time consult with or receive instructions from the Commandant.

(c) The procedure usually followed in a hearing is:

(1) Administrative Law Judge's opening statement.

(2) Appearances of persons at the hearing.

(3) Verification of currently valid license, certificate and/or document held by person charged.

(4) Administrative Law Judge advises person charged of his rights.

(5) Exclusion of witnesses from the hearing room.

(6) Preliminary motions, objections and/or corrections to the charges and specifications.

(7) Arrangement and plea of person charged.

(8) Opening statement of investigating officer.

(9) Opening statement by or on behalf of person charged or statements in mitigation if there has been a "guilty" plea.

(10) Submission of evidence.

(11) Argument by the investigating officer and argument by or on behalf of the person charged.

(12) Submission of proposed findings and conclusions by the investigating officer and/or by or on behalf of the person charged.

(13) Findings and conclusions of the administrative law judge.

(14) Prior record of the person charged.

(15) The complete decision of the administrative law judge.

(16) Service of the order or complete decision.

(17) Obtain or return the license, certificate or document, as appropriate.

(18) Advise the person charged of his right of appeal.

(19) Administrative Law Judge's declaration that the hearing is closed.

§ 5.20–5 Public access to hearings.

(a) Every hearing conducted by an administrative law judge shall be open to the public except when the administrative law judge finds that subject matter to be or being brought out in the evidence concerns classified matter relating to national security, or when other circumstances exist which court decisions have held to warrant a limitation or exception to the right of a public hearing.

(b) Representatives of the press shall not be excluded from a hearing unless the hearing concerns classified matter relating to national security.

§ 5.20–10 Continuance of a hearing.

(a) The administrative law judge may, for good cause to be shown in the record, either on his own motion or the motion of the investigating officer or person charged, continue the hearing from day to day or adjourn such hearing to a later date or to a different place by announcement at the hearing or by other appropriate notice. In making such determination, consistent with the rights of the person charged to a fair and impartial hearing, the administrative law judge shall give careful consideration to the future availability of witnesses and to the prompt dispatch of vessel or vessels on which the person charged and/or witnesses may be employed.

§ 5.20–15 Disqualification of administrative law judge.

(a) In any suspension and revocation proceeding conducted under this part, an administrative law judge may withdraw voluntarily from a particular case when he deems himself unqualified. In such event the administrative law judge shall immediately notify the Commandant of his desire to withdraw and his reasons.

(b) In any case the person charged or the investigating officer may, in good faith, request the administrative law judge to withdraw on the grounds of personal bias or other disqualification. The person seeking the administrative law judge's disqualification shall file with the administrative law judge a timely affidavit or statement sworn to before a Coast Guard officer or official authorized to administer oaths setting forth in detail the facts alleged to constitute the grounds for disqualification. The administrative law judge may file a response thereto and shall rule whether or not he considers himself disqualified.

(c) If the person seeking disqualification takes exception to the ruling of the administrative law judge, he may appeal such ruling to the Commandant. The administrative law judge shall immediately forward the affidavit or sworn statement with his decision. If the administrative law judge believes himself not disqualified and he so rules, the administrative law judge shall also have all matters relating to such claims of disqualification affirmatively appear in the record. The administrative law judge shall then proceed with the hearing unless it can be shown that a delay in the hearing pending a determination of the appeal will not interfere with the future availability of the person charged and witnesses, or the prompt dispatch of the vessel or vessels on which the person charged and/or witnesses may be employed.

§ 5.20–25 Failure of person charged to appear at hearing.

(a) In any case in which the person charged, after being duly served with the original of the notice of the time and place of the hearing and the charges and specifications, fails to appear at the time and place specified for the hearing, a notation to that effect shall be made in the record and the hearing may then be conducted "in absentia."

(b) The administrative law judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of hearing and the charges and specifications.

§ 5.20–27 Person charged may be required to submit to medical examination.

(a) In a hearing in which the physical or mental condition of the person charged is in controversy, the administrative law judge on his own motion may order the person charged to submit to a medical examination, or the investigating officer may submit a written petition requesting such person to be required to submit to a medical examination by a physician. The administrative law judge shall decide from the evidence or information submitted to him by the investigating officer whether or not to order the person charged to submit to an examination before a physician of the U.S. Public Health Service, and also to an examination before another physician if the person charged so desires and pays for the required examination.

(b) If the person named in the administrative law judge's order fails or refuses to submit to such duly ordered examination such failure shall receive due weight in determining the facts alleged in the specifications.

§ 5.20–30 Time and place of hearing.

(a) The hearing shall be held at the time and place specified in the notice of the hearing served upon the person charged by or under the direction of the investigating officer.

§ 5.20–35 Opening the hearing.

(a) The administrative law judge shall open the hearing at the time and place specified in the notice, administer all necessary oaths, and cause a complete record of the proceedings to be kept.

(b) The administrative law judge shall open the hearing with appropriate identification of the proceeding and announce the statutory jurisdiction under which the hearing is being conducted. The administrative law judge shall describe the nature of the proceedings and state that it is concerned solely with the rights of the person charged to continue holding specific license, certificate, and/or document, and any endorsement thereon, as the case may be, issued by the Coast Guard or by any predecessor authority.

§ 5.20–37 Appearances.

(a) The appearances of persons at the hearing shall be entered in the following order:

(1) The investigating officer;

(2) The person charged; and,

(3) The counsel for the person charged, if any.

§ 5.20–40 Verification of license, certificate or document.

(a) Since the proceeding involves a license, certificate or document issued by the Coast Guard, the administrative law judge shall require the person charged to produce and present to him at the opening of the hearing and on each day the hearing is in session thereafter, all valid licenses, certificates, and/or documents issued to the person charged. In the event that the person charged alleges he has lost any such license, certificate or document, the administrative law judge shall require the person charged to execute a lost document affidavit (Form CG–719E). The administrative law judge shall warn the person charged that a willful misstatement of any material item in such affidavit is punishable as a violation of a federal criminal statute.

(b) When a hearing is continued or delayed, the administrative law judge shall return the license, certificate, and/or document to the person charged upon demand: *Provided*, That such action shall not be taken if a prima facie case has been established that the person charged committed an offense which shows that he has such propensities and proclivities as to constitute a definite danger to the safety of life or property at sea.

§ 5.20–45 Rights of person charged.

(a) The administrative law judge shall advise the person charged of his rights to:

(1) Be represented by professional counsel, or any other person he may desire;

(2) Have witnesses and relevant evidence subpenaed;

(3) Examine witnesses, cross-examine witnesses testifying against him, and introduce relevant evidence into the record; and,

(4) Testify in his own behalf or remain silent.

(b) All matters on which the administrative law judge is required to advise the person charged shall affirmatively appear in the record.

§ 5.20–60 Witnesses excluded from hearing room.

(a) All witnesses shall be excluded from the hearing room prior to the taking of their testimony and the administrative law judge may separate government witnesses if he deems it desirable.

§ 5.20–63 Preliminary motions or objections.

(a) Any preliminary motion or objection shall be heard and disposed of by the administrative law judge.

§ 5.20–65 Correction or amendment of charges and/or specifications.

(a) The administrative law judge shall examine the charges and specifications to determine their correctness as to form and legal sufficiency.

(b) The administrative law judge may, on his own motion or the motion of the investigating officer or person charged, permit the amendment of charges and specifications to correct harmless errors by deletion or substitution of words or figures: *Provided*, That a legal specification is left remaining. Broad and liberal discretion shall be exercised by administrative law judges in permitting such amendments.

(c) When errors of substance are found in charges and specifications, the administrative law judges shall rule that the defective charge or specification is withdrawn. The investigating officer may then prepare and serve a new charge and specification on the person charged.

§ 5.20–75 Arraignment and plea.

(a) The administrative law judge shall read each charge and specification to the person charged and shall obtain from him or counsel a definite plea to each charge and specification. If the person charged does not make a definite plea, the administrative law judge shall enter a plea of "not guilty" and proceed with the hearing.

(b) If the person charged fails to appear at the hearing, the administrative law judge will comply with the procedures in § 5.20–25. If no valid reason to the contrary appears, the administrative law judge shall enter pleas of "not guilty" to all the charges and specifications, and shall then proceed with the hearing.

§ 5.20–77 Burden of proof.

(a) The investigating officer has the burden of proof and shall present his evidence first.

§ 5.20–80 Opening statement of investigating officer.

(a) If the person charged pleads "not guilty," the investigating officer shall make a brief statement outlining the basis for the preferment of the charges; particulars incident to the substance of the complaint; and a summary of matters expected to be proved.

(b) If the person charged pleads "guilty," the opening statement of the investigating officer shall contain a summary of the evidence upon which the charge and specification are based.

§ 5.20–85 Opening statement by or on behalf of the person charged.

(a) The person charged or his counsel shall be afforded an opportunity to state what he intends to establish. This may be waived or deferred at the option of the person charged.

(b) If the person charged pleads "guilty," he may present evidence or mitigating circumstances believed to be material. Should this presentation be inconsistent with a "guilty" plea, the administrative law judge shall reject the plea, change the plea to "not guilty" and proceed with the hearing.

§ 5.20–87 Coercion of witnesses.

(a) Any attempt to coerce any witness or to induce him to testify falsely, is an offense which may be punishable by fine of $5,000 or imprisonment for 5 years, or both fine and imprisonment. (See 18 U.S.C. 1505, 46 U.S.C. 239.)

§ 5.20–90 Witnesses.

(a) All witnesses shall be sworn, duly examined, and may be cross examined. At any time a witness is on the stand he may be questioned by an administrative law judge.

(b) The investigating officer or person charged who calls a witness shall begin his direct examination by identifying the witness. When possible, the witness will be required to identify the person charged.

(c) In any case where the person charged has entered a "guilty" plea, witnesses may be called to establish matters of aggravation or matters of mitigation.

§ 5.20–93 Witness's personal counsel.

(a) Any witness may have personal counsel to advise him as to his rights, but such counsel may not otherwise participate in the hearing.

§ 5.20–95 Evidence.

(a) In these administrative proceedings, strict adherence to the rules of evidence observed in courts is not required. All relevant and material evidence, oral or written, shall be received except that hearsay evidence shall be rejected if the declarant is readily available to appear as a witness. In deciding whether the declarant's testimony should be obtained, the importance of such evidence shall be balanced against the difficulty of producing the witness. Hearsay evidence shall be accorded such weight as the circumstances warrant, including consideration of whether it is opposed by other evidence. Irrelevant, immaterial and unduly repetitious evidence should be excluded.

(b) Findings must be supported by substantial evidence of a reliable and probative character. By this is meant evidence of such probative value as a reasonably prudent and responsible person is accustomed to rely on when making decisions in important matters. It is not limited to evidence which is considered to be competent evidence for the purpose of admissibility under the jury-trial rules.

(c) In conducting a hearing the administrative law judge will extend reasonable latitude to the person charged who does not have professional counsel to represent him. Investigating officers and counsel should be required to conform to the rules of evidence to a greater degree than persons charged without counsel.

§ 5.20–100 Documentary evidence generally.

(a) Except as modified by the regulations in this part, documentary evidence shall be admissible in accordance with the applicable rules of evidence, as set forth in § 5.20–95.

§ 5.20–102 Official notice by Commandant and administrative law judges.

(a) The Commandant and the administrative law judges shall consider the following without requiring the person charged or the Coast Guard to submit them in evidence:

(1) *Federal law.* The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts; Executive Orders and Proclamations; and of rules, regulations, orders and notices published by the Treasury Department or United States Coast Guard in the FEDERAL REGISTER.

(2) *State law.* The Constitution and public laws of each State.

(3) *Governmental organizations.* The organization, territorial limitations, officers, departments, and general administration of the Government of the United States, its territories, possessions and the Commonwealth of Puerto Rico; the several States; and foreign nations.

(4) *Coast Guard organization.* The Coast Guard's organization, administration, officers, personnel, and official publications pertaining to organization.

(5) *Commandant's decisions.* The Commandant's decisions in all appeal and review cases under this part. (See § 5.03–1).

(b) The Commandant and administrative law judges may, upon request, take official notice of those matters of which the courts usually take judicial notice, and matters which adjudicated cases recognize may be officially noticed by administrative agencies. However, the matters thus officially noticed by the administrative law judge shall be specified on the record. Either party shall be afforded an opportunity, on the record, to rebut such matters.

§ 5.20–105 Certification of court records.

(a) A copy of a court record such as the court conviction or judgment, shall be certified to be a true copy by the clerk or deputy clerk of the court and under the seal of the court, with or without the certification of the judge that the attestation by the clerk is in proper form.

§ 5.20–106 Certification of extracts from shipping articles, logbooks, etc.

(a) Extracts from records in the custody of the Coast Guard, shipping articles, and logbooks, shall be certified by an investigating officer or custodian of such records.

(b) Any commissioned officer of the Coast Guard is authorized to certify extracts from Coast Guard records, shipping articles, and logbooks as being true copies of the original by certifying that he has seen the original and compared the copy with it and found it to be a true copy. The officer so certifying shall subscribe his name, rank, and duty station.

§ 5.20–107 Admissibility and weight of entries from Official Logbooks.

(a) The Official Logbook of a vessel, or a duly certified copy of an entry made therein, shall be admissible in evidence, under authority of Title 28, U.S. Code, section 1732.

(b) An entry in an Official Logbook of a vessel made in substantial compliance with the requirements of Title 46, U.S. Code, section 702, in addition to being admissible in evidence, shall constitute prima facie evidence of the facts therein recited. However, an entry not made in substantial compliance with the requirements of Title 46, U.S. Code, section 702, while admissible, in evidence, does not constitute prima facie evidence of the facts therein recited.

§ 5.20–110 Use of judgments of conviction.

(a) The judgment of conviction by a Federal court is conclusive in proceedings under Title 46, U.S. Code, section 239, where acts forming the basis of the charges in a Federal court are the same. The person charged may not challenge the jurisdiction of a Federal or State court in proceedings under Title 46, U.S. Code, sections 239 and 239b.

(b) Where the acts involved in a judgment of conviction of a State court are the same as those involved in proceedings under Title 46, U.S. Code, section 239, the judgment of conviction is not conclusive of the issues decided. However, such judgment of conviction is admissible in evidence in the latter proceedings and constitutes substantial evidence adverse to the person charged.

(c) The judgment of conviction for a narcotic drug law violation by a Federal court or a State court of record is conclusive in proceedings under Title 46, U.S. Code, section 239b.

§ 5.20–115 Admissibility of reports of consul.

(a) The original or a duly authenticated copy of a report made by a consul or a vice consul of the United States shall be admissible in evidence.

§ 5.20–117 Admissibility of records of proceedings at Coast Guard investigations.

(a) The records of proceedings at Coast Guard investigations, including testimony and statements of witnesses and all exhibits received, are admissible in hearings conducted under this part, pursuant to stipulation by the investigating officer and the person charged.

(b) The stipulation shall be in writing, shall describe the specific portions of the record to be submitted as evidence, and shall be signed by the investigating officer and the person charged or his counsel. The stipulation and the portions of the records referred to therein shall upon presentation be made a part of the record of the hearing.

§ 5.20–118 Admissibility of seaman's Coast Guard records.

(a) The prior negative disciplinary record of the person charged is admissible as character evidence of his general good reputation.

(b) A commendatory record pertaining to the specific trait of character in question is admissible.

(c) No part of a prior disciplinary record may be used to show particular acts in order to refute directly evidence as to the good character of the person charged. However, it is admissible for the limited purposes of:

(1) Impeaching the credibility of the person charged on cross-examination after he has testified, on direct examination, that he has no prior disciplinary record.

(2) Impeaching the credibility of the person charged by showing offenses of such a nature as to indicate his general lack of veracity.

(3) Testing the qualifications of character witnesses who express opinions concerning the general good reputation of the person charged.

(4) Proving prior conduct tending to show guilty knowledge, design, intent,

motive, or the like, which is relevant to the offense alleged.

§ 5.20-120 Admissions by person charged during a Coast Guard investigation.

(a) No person shall be permitted to testify with respect to admissions made by the person charged during or in the course of a Coast Guard investigation except for the purpose of impeachment.

§ 5.20-125 Other admissions by person charged.

(a) Any person other than a Coast Guard investigating officer may testify as to admissions voluntarily made by the person charged in the presence of the witness other than during or in the course of an investigation by the Coast Guard.

§ 5.20-130 Impeachment of witnesses.

(a) A witness, including the person charged if he voluntarily testifies in his own behalf, may be impeached by proof of prior inconsistent statements, whether oral or written, which were made by him. However, before evidence of such inconsistent statements is admissible in evidence, a proper foundation must be established.

(b) Evidence of prior inconsistent statements by a witness is admissible for the limited purpose of impeaching the credibility of the witness.

(c) A party calling a witness or otherwise making a witness his own may, after orally pleading surprise, be permitted to impeach him in the discretion of the administrative law judge.

§ 5.20-135 Testimony of absent witnesses.

(a) The testimony of a witness other than the person charged taken under oath during a Coast Guard investigation may be received in evidence in lieu of the appearance of the witness when it is established to the satisfaction of the administrative law judge that:

(1) Whereabouts of the witness is unknown after diligent search; or,

(2) Witness is non compos mentis; or,

(3) Witness is deceased; or,

(4) Witness is ill or incapacitated to such an extent that neither his testimony nor a deposition can be taken; or,

(5) Witness is more than 100 miles from the place of hearing and at a place so remote and inaccessible as to make it impracticable to take his deposition.

(b) In considering the admissibility and credibility of the testimony taken under oath during an investigation and offered in evidence under paragraph (a) of this section, the administrative law judge shall consider the apparent trustworthiness of the testimony, and shall take into consideration whether or not the parties were represented or afforded the right to be present and to cross examine the witness.

§ 5.20-140 Testimony by deposition.

(a) Testimony may be taken by deposition upon application, and for good cause shown, by any party or upon the initiative of the administrative law judge.

(b) The application to the administrative law judge shall be in writing, setting forth the reasons why it should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, the time and place proposed for the taking of the deposition and whether it shall be by oral examination or written interrogatories.

(c) The administrative law judge will for good cause shown, serve upon the parties an order specifying the name of the witness, the time and place for taking the deposition, and a designation of a person before whom the witness is to testify. Such deposition may be taken before any person authorized to administer oaths.

(d) The party desiring a deposition by written interrogatories shall submit a list of interrogatories to be propounded to the absent witness; then the opposite party after he has been allowed a reasonable time for this purpose, may submit a list of cross-interrogatories. If either party objects to any question, the matter shall be presented to the administrative law judge for a ruling. Upon agreement of the parties on a list of interrogatories and cross-interrogatories (if any) the administrative law judge may propound additional questions.

(e) The subpena referred to in Subpart 57.15, of this part together with the list of interrogatories and cross-interrogatories (if any), shall be forwarded to the person designated to take such deposition. This person will cause the subpena to be served personally on the witness, and a copy shall be endorsed and returned to the administrative law judge.

(f) When the deposition has been transcribed, it shall be presented to the witness for examination and correction and then shall be subscribed by him. The person taking the deposition shall certify the signature of the witness. If for any reason the deposition or interrogatory is not subscribed by the witness, then the person taking the deposition shall recite under oath thereon the reason it is not subscribed.

(g) When the deposition has been duly executed it shall be returned to the administrative law judge. As soon as practicable after the receipt of the deposition the administrative law judge shall present it to the parties for their examination. The administrative law judge shall rule on the admissibility of the deposition or any part thereof and on any objections.

(h) In the event one party files interrogatories, the other party, in lieu of filing cross-interrogatories, may attend the taking of the deposition and cross-examine the witness.

§ 5.20-145 Argument.

(a) After all the evidence has been presented the parties may present oral and/or written argument in the following order:

(1) Opening argument by the investigating officer;

(2) Argument by the person charged or his counsel; and,

(3) Closing argument by the investigating officer.

§ 5.20-150 Submission of proposed findings and conclusions.

(a) The administrative law judge shall afford the investigating officer and the person charged reasonable opportunity to submit, either orally or in writing, proposed findings and conclusions with supporting reasons. If either party desires to submit such matter, the administrative law judge shall fix the time within which it shall be filed. Failure to comply within the time so fixed by the administrative law judge shall be regarded as a waiver of the right.

§ 5.20-155 Administrative law judge's decision.

(a) The administrative law judge shall render a decision consisting of:

(1) "Findings of Fact," including necessary evidentiary and ultimate facts pertaining to each specification;

(2) "Conclusions" as to whether or not the charges and specifications are found proved;

(3) "Rulings" on proposed findings and conclusions;

(4) "Opinion," discussing the reasons, precedents, legal authorities, or other basis for the findings, conclusions and order on all material issues of fact, law, or discretion, with such specificity as to advise the parties of their record and legal basis; and,

(5) "Order," reciting disposition of the case. The order is only given after consideration of the prior record of the person charged as provided in § 5.20-160.

(b) A separate conclusion shall be made by the administrative law judge on each charge and specification. A specification may alternately be found "not proved," "proved in part," "proved," or "proved by plea."

§ 5.20-160 Prior record.

(a) Except as provided for in § 5.20-118, the prior commendatory and/or disciplinary record of the person charged will not be disclosed to the administrative law judge until after he has made the conclusions as to each charge and specification, and then only if at least one charge has been found "proved."

(b) In order to expedite the administrative law judge's decision, if prior record is not available at the hearing, the person charged, if he consents, may be questioned under oath as to his prior record. Erroneous information given by the person charged shall be grounds for the administrative law judge to reopen the case and amend his order.

§ 5.20-165 Table of average orders.

(a) The Table 5.20-165 is for the information and guidance of administrative law judges. The orders listed for the various offenses are average only and should not in any manner affect the fair and impartial adjudication of each case on its individual facts and merits.

(b) The Table 5.20–165 is divided into seven groups. In the table, the first numeral indicates the period of suspension in months and when followed by a zero means an outright suspension. For example, 1–0 means a one-month suspension without probation. Where the first numeral is followed by a numeral other than zero, a probationary suspension is indicated. For example, 6–12 means a six-month suspension, with a twelve-month period of probation.

TABLE 5.20-165—SCALE OF AVERAGE ORDERS

Type of Offense	Number of times committed				
	First	Second	Third	Fourth	Fifth
Group A (1) (offenses committed within 3 years are to be considered as repeated):					
Absent over leave	[1] Adm.	1-0	3-0	6-0	[1] Rev.
Absent without leave	Adm.	1-0	3-0	6-0	Rev.
Failure to join (domestic)	Adm.	1-0	3-0	6-0	Rev.
Inattention to duty (unintentional)	Adm.	1-0	3-0	6-0	Rev.
Violation of a regulation (unintentional)	Adm.	1-0	3-0	6-0	Rev.
Group A (2) (offenses committed within 3 years are to be considered as repeated):					
Creating a disturbance aboard ship due to intoxication	Adm.	2-0	4-0	Rev.	--------
Failure to join (foreign)	Adm.	2-0	4-0	Rev.	--------
Failure to perform duty	Adm.	2-0	4-0	Rev.	--------
Group B (time between offenses not to have any bearing when considering whether man is repeater):					
Attempt to illegally take or smuggle property ashore	642	6-0	Rev.	--------	--------
Desertion (domestic)	642	6-0	Rev.	--------	--------
Failure to report marine casualty	642	6-0	Rev.	--------	--------
Failure to manifest	642	6-0	Rev.	--------	--------
Neglect of duty	642	6-0	Rev.	--------	--------
Possession of intoxicating liquor	642	6-0	Rev.	--------	--------
Possession of firearms	642	6-0	Rev.	--------	--------
Sleeping on watch	642	6-0	Rev.	--------	--------
Use of profane and threatening language to superior	642	6-0	Rev.	--------	--------
Violation of a regulation (intentional)	642	6-0	Rev.	--------	--------
Wilful disobedience of a lawful order	642	6-0	Rev.	--------	--------
Group C (time between offenses not to have any bearing when considering whether man is repeater):					
Assault	10	4-0	Rev.	--------	--------
Group D (time between offenses not to have any bearing when considering whether man is repeater):					
Inattention to duty (intentional)	30	12-0	Rev.	--------	--------
Illegal possession of cargo or ship's property	30	12-0	Rev.	--------	--------
Neglect of duty; damage to vessel, cargo or personnel (ordinary negligence)	30	12-0	Rev.	--------	--------
Pilfering cargo or ship's equipment	30	12-0	Rev.	--------	--------
Refusing to perform duty	30	12-0	Rev.	--------	--------
Sale of ship's property	30	12-0	Rev.	--------	--------
Theft	30	12-0	Rev.	--------	--------
Group E (time between offenses not to have any bearing when considering whether man is repeater):					
Assault and battery	60	Rev.	--------	--------	--------
Assault with dangerous weapon (no injury)	60	Rev.	--------	--------	--------
Destruction of ship's cargo or property	60	Rev.	--------	--------	--------
Desertion (foreign)	60	Rev.	--------	--------	--------
Continued disobedience of lawful order	60	Rev.	--------	--------	--------
Embezzling ship's cargo or property	60	Rev.	--------	--------	--------
Neglect of duty; damage to ship, cargo or persons (gross or wilful)	60	Rev.	--------	--------	--------
Interference with master, ship's officer, or Government official in performance of official duties	60	Rev.	--------	--------	--------
Smuggling of property	60	Rev.	--------	--------	--------
Sale of intoxicating liquor	60	Rev.	--------	--------	--------
Group F:					
Assault with dangerous weapon (injury)	Rev.	--------	--------	--------	--------
Malicious destruction of ship's property	Rev.	--------	--------	--------	--------
Misconduct resulting in loss of life or serious injury	Rev.	--------	--------	--------	--------
Molestation of passengers	Rev.	--------	--------	--------	--------
Murder or attempted murder	Rev.	--------	--------	--------	--------
Mutiny	Rev.	--------	--------	--------	--------
Perversion	Rev.	--------	--------	--------	--------
Possession, use, sale or association with drugs, including marijuana	Rev.	--------	--------	--------	--------
Sabotage	Rev.	--------	--------	--------	--------
Serious neglect of duty	Rev.	--------	--------	--------	--------
Serious theft of ship's property or stores	Rev.	--------	--------	--------	--------
Smuggling of aliens	Rev.	--------	--------	--------	--------

[1] Abbreviation for "Admonition."
[2] Abbreviation for "Revocation."

§ 5.20–170 Order.

(a) If no charge is found "proved," the order of the administrative law judge shall state that the charge or charges are "dismissed."

(b) If a charge is found "proved," the administrative law judge shall order an admonition, suspension with or without probation, or revocation.

(c) An order shall be directed against all licenses, certificates, and/or documents, except that in cases of negligence or professional incompetence, the order may be made applicable to specific licenses or documents in qualified ratings.

(d) When an administrative law judge determines that the person charged is professionally incompetent in the grade of the license, certificate or document he holds, but is considered competent in a lower grade, the administrative law judge may revoke the license, certificate or document and order the issuanace of one of a lower grade.

(e) In a decision rendered in the United States, an order of revocation or outright suspension shall direct the person charged to surrender his license, certificate and/or document immediately. Any domestic order should state that it is effective on service and that the license, certificate and/or document affected is:

(1) Revoked; or,

(2) Suspended outright until a specified period after surrender; or,

(3) Suspended for a specified period subject to a specified period of probation; or,

(4) A combination of subparagraph (2) of this paragraph and a probationary suspension, as indicated in subparagraph (3) of this paragraph, extending from the beginning of the outright suspension until a specified period after the termination of the outright suspension.

(f) In a decision rendered outside of the United States, an order shall differ only in that a revocation or outright suspension is not to be effective until the date of arrival of the person charged in the United States.

§ 5.20–175 Delivery of order and complete decision.

(a) Whenever possible, the administrative law judge shall prepare in writing his complete decision, including the order, and personally deliver it to the person charged or his authorized representative at the final session of the hearing. The decision, including the order, is effective on the date of such delivery.

(b) If it is not possible for the administrative law judge to deliver his complete written decision at the final session of the hearing, he shall render his oral decision on the record, then prepare the order in writing and personally deliver it to the person charged or his authorized representative. The decision, including the order, is effective upon such delivery of the written order. When the written decision is available, the administrative law judge will cause it to be delivered to the person charged or his authorized representative.

(c) If it is not possible for the administrative law judge at the conclusion of the hearing to render an oral decision on the record and to follow the procedures provided for in paragraph (a) or (b) of this section, the written decision, including the order, shall be delivered to the person charged or his authorized representative, at the earliest possible date, either personally or by certified mail with return receipt required to be signed only by the person charged or his authorized representative. The signed acknowledgement or the affidavit of personal delivery, or the return receipt shall be made a part of the record and shall determine the effective date of the decision, including the order, unless good cause is shown why this date should not apply.

(d) As used in this section, the phrase "authorized representative" means any person who has been authorized, as shown by the hearing record, to receive service and take an appeal on behalf of the person charged.

§ 5.20-180 Notification of right to appeal.

(a) The person charged shall be advised by the administrative law judge of his right to appeal in accordance with Subpart 5.30 of this part. The administrative law judge shall also advise the person charged that if such appeal is not taken within the time limit specified in Subpart 5.30 of this part it will not be accepted.

§ 5.20-185 Completion of the hearing.

(a) Upon completion of the procedures in this subpart, the hearing is completed.

§ 5.20-190 Modification of administrative law judge's order and decision.

(a) After an administrative law judge renders his order and decision, it may be modified or changed pursuant to procedures set forth in paragraph (b) of this section, or in Subpart 5.25 of this part for reopening of hearings, or in Subpart 5.30 of this part for appeals, or in Subpart 5.35 of this part for review of administrative law judge's decisions. In the absence of any such procedures, the decision of the administrative law judge is final and binding.

(b) When the proceeding under the provisions of Title 46, U.S. Code, section 239b, is based on a narcotics conviction as referred to in § 5.03-10, rescission of the revocation of a license, certificate or document will not be considered, unless the applicant submits a specific court order to the effect that his conviction has been unconditionally set aside for all purposes. The Commandant reserves the personal right to make the determination in such case.

Subpart 5.25—Reopening of Hearings

§ 5.25-1 Petition to reopen hearing.

(a) At any time prior to a final decision on appeal or within one year from the date of service of the administrative law judge's decision, a person found guilty of any offense may petition to reopen the hearing on the basis of newly discovered evidence.

(b) If at the time the petition is filed an appeal to the Commandant from the administrative law judge's decision has not been filed, the petition to reopen the hearing shall be considered by an administrative law judge. If an appeal to the Commandant has been filed, the petition to reopen the hearing shall be considered by the Commandant.

§ 5.25-5 Form of petition.

(a) The petition shall be in letter form, typewritten or written in a legible hand, and addressed to the administrative law judge or the Commandant, as appropriate.

(b) The petition shall contain the following:

(1) A descriptive identification of the hearing desired to be reopened, including place of hearing, full name of person found guilty, number and description of license and/or document involved, the name of the administrative law judge and date of the decision.

(2) An affirmative declaration that no appeal has been taken pursuant to Subpart 5.30 of this part, or if an appeal has been taken, the date and with whom such appeal was filed.

(3) A statement setting forth why the evidence would probably produce a different result favorable to the person found guilty.

(4) A statement as to whether or not the additional evidence was known to the petitioner at the time of the hearing, and if applicable, reasons why the petitioner, with due diligence, could not have discovered such new evidence prior to the date the hearing was completed.

(5) A statement setting forth briefly and specifically:

(i) The precise nature and purpose of such additional evidence; and,

(ii) The names and addresses of persons to be called as witnesses and the time and place when such witnesses will be available to testify personally or by deposition.

§ 5.25-10 Action on petition.

(a) After the receipt of the petition, an investigating officer shall be afforded a reasonable time within which to file an answer in writing on the merits of the petition. The decision on the petition will be based on a consideration of the petition, the record of the hearing, and the answer, if any.

(b) The petition shall only be granted when new evidence is described which has a direct and material bearing on the issues, and when valid explanation is given for the failure to produce this evidence at the hearing.

(c) The administrative law judge or the Commandant shall render a decision in writing, either granting or denying the petition.

(d) If the administrative law judge grants the petition, he shall reopen the hearing to permit the offer of new evidence described in the petition.

(e) If the petition is granted by the Commandant, he will remand the case to an administrative law judge with directions to reopen the hearing.

(f) On the basis of the record of the original hearing and the new evidence received, the administrative law judge shall either affirm the original decision or withdraw the original decision and render a new one.

(g) The petition, and answer, if any, the administrative law judge's or Commandant's decision, and the additional evidence will be added to the original record.

(h) The filing of a petition to reopen the hearing shall not stay an existing order of the administrative law judge.

(i) If a petition to reopen a hearing is filed within 30 days after the service of the administrative law judge's decision, it will toll or defer the running of the 30-day statutory period of appeal as provided in Subpart 5.30 of this part until an administrative law judge has acted on the petition.

§ 5.25-15 Appeal from action on petition.

(a) If the petition to reopen the hearing is denied by the administrative law judge, the person found guilty may appeal to the Commandant within 30 days from the date of service of the denial of the petition. The review by the Commandant on this appeal will be limited to the issue raised by the petition. Other grounds for appeal must be in accordance with Subpart 5.30 of this part.

(b) If the petition to reopen the hearing is granted and a previous finding of "proved" is affirmed by the administrative law judge, the person found guilty may appeal the decision as provided for in Subpart 5.30 of this part.

Subpart 5.30—Appeals

§ 5.30-1 Time for filing, contents, etc.

(a) A person found guilty by an administrative law judge may, within 30 days after the date of the order of the administrative law judge is effective, take an appeal to the Commandant. This appeal shall be taken by filing a notice of appeal with the administrative law judge who heard the case or with any Officer in Charge, Marine Inspection, for forwarding to such administrative law judge.

(b) The notice of appeal shall:

(1) Be typewritten or written legibly;

(2) Be addressed to the Commandant; and,

(3) Set forth the name of the appellant, the number and description of license, and/or document involved, nature of the charge, the order, and the administrative law judge who made the decision.

(c) The notice of appeal may contain a statement of grounds for appeal and/or exceptions. The appellant may file with the notice of appeal a brief or memorandum in elaboration of the matters set forth in the notice of appeal. The notice of appeal may contain a request for transcript of the hearing. No request for such transcript will be accepted unless it is submitted with the notice of appeal.

(d) The administrative law judge shall promptly transmit the notice of appeal and his action, if any, on a request for a temporary document to the Commandant. He will also transmit a complete transcript of the hearing and any material received in support of the appeal to the Commandant.

(e) After the appellant or his counsel has received a transcript of the record, any exceptions submitted shall be identified by specific citations to pages in the transcript and shall contain legal and other authorities relied upon to support such exceptions.

(f) The only matters which will be considered by the Commandant on appeal are:

(1) Exceptions properly raised by the appellant as indicated in paragraph (e) of this section;

(2) Clear errors in the record; and,

(3) Jurisdictional questions.

(g) In the preparation of an appeal, administrative law judge will assist the appellant beyond the point of informing him of the proper form to be used and the applicable regulations.

§ 5.30–3 Time in which to complete appeal.

(a) Appellant may submit grounds for appeal and exceptions to the administrative law judge's decision, whether or not any such matter was filed with the notice of appeal. This matter must be submitted within 60 days after receipt of the transcript of the hearing record, or, if no transcript was requested within 60 days of the date of effective service of the decision. Nothing further will be received and considered as a part of the appeal record after the applicable time has elapsed unless it is extended by the Commandant.

(b) Prior to the expiration of the applicable 60-day period of extension thereof as set forth in paragraph (a) of this section, at least one ground for appeal or exception to the administrative law judge's decision must be filed in support of the notice of appeal. Failure to do so will result in one of the following:

(1) Termination of the case by written notice to the appellant or his counsel, that the decision of the administrative law judge constitutes the final agency action on the merits of the case; or,

(2) Consideration of the appeal on the merits of the case and publication of the Commandant's decision without prior notice to the appellant or his counsel. This will only be done when some clear error appears in the record or when the case presents some novel policy consideration.

§ 5.30–5 Record for decision on appeal.

(a) The transcript of hearing, together with all papers and exhibits filed, shall constitute the record for decision on appeal.

§ 5.30–10 Action on appeal.

(a) The Commandant may affirm, reverse, alter, or modify the decision of the administrative law judge, or he may remand the case for further hearing. The decision of the Commandant on appeal shall be final in the absence of a remand.

§ 5.30–15 Temporary documents.

(a) Any person who has appealed from a decision suspending or revoking his document may file a written request for a temporary document with the Administrative Law Judge who rendered the decision or with any Officer in Charge, Marine Inspection, for forwarding to such Administrative Law Judge. The request will be granted by the Administrative Law Judge except (1) when the hearing transcript has been forwarded to the Commandant, or (2) when, in the opinion of the Administrative Law Judge, the order of suspension or revocation rests upon a finding of guilty for a serious offense of such a character that the presence of the person charged on board a vessel, either immediately or for the indefinite future, would be incompatible with the requirements of safety of life or property at sea, or for a serious offense found by the Administrative Law Judge to have been committed willfully.

(b) If the transcript has been forwarded to the Commandant, or if the request is denied by the Administrative Law Judge, the request shall be forwarded by the Administrative Law Judge to the Commandant for final action. A temporary document may be issued in the discretion of the Commandant, except where such action, in the opinion of the Commandant, would be incompatible with the requirements of safety of life or property at sea.

(c) A temporary document shall be subject to such terms and conditions as the Commandant or Administrative Law Judge may prescribe. However, all such documents shall provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary document expires before the Commandant's decision is rendered, it may be renewed, after authorization by the Commandant, by the issuance of a new temporary document by an Officer in Charge, Marine Inspection.

(d) Copies of the temporary documents issued shall become a part of the record on appeal.

§ 5.30–20 Appeal cases remanded for further proceedings.

(a) When the Commandant renders a decision remanding a case for further proceedings, the remand is directed to the administrative law judge. The administrative law judge shall notify the parties and set a date for continuance of the proceedings. In the absence of specific directions from the Commandant, the administrative law judge shall either reopen the former hearing or conduct a new hearing.

(b) If the hearing is reopened, the evidence in the prior hearing shall be evaluated together with the new evidence submitted.

(c) In a new hearing, the evidence in the prior hearing may be used for purposes of impeachment. Evidence in the prior hearing may be stipulated as a part of the record of the new hearing.

(d) The administrative law judge shall render either an entirely new decision or a decision incorporating by reference his original decision as necessary.

§ 5.30–25 Commandant's decisions on appeals.

(a) The Commandant's Decisions on Appeals are the final actions taken by the Coast Guard in appeals under the suspension and revocation proceedings provided by this part. These Decisions are issued seriatim and are public records.

(b) The Commandant's Decisions on Appeals are available for reading purposes at Coast Guard Headquarters, and at Offices of District Commanders and Officers in Charge, Marine Inspection.

§ 5.30–30 Appeals to the National Transportation Safety Board

(a) The rules of procedure for appeals to the National Transportation Safety Board from decisions of the Commandant, U.S. Coast Guard, sustaining orders of revocation of licenses, certificates, documents, and registers are in 14 CFR Part 425. These rules give the party adversely affected by the Commandant's decision 10 days after service upon him or his attorney of the Commandant's decision to file a notice of appeal with the Board.

(b) In all cases under this part which are appealed to the National Transportation Safety Board under 14 CFR 425, the Chief Counsel of the Coast Guard is designated as the representative of the Commandant for service of notices and appearances. Communications should be addressed to Commandant (CL), Washington, D.C. 20591.

(c) In cases before the National Transportation Safety Board the Chief Counsel of the Coast Guard may be represented by others designated "of counsel."

(d) It should be noted that 14 CFR Part 425 is limited to Commandant's Decisions sustaining orders of revocation by administrative law judges. The National Transportation Safety Board in 14 CFR Part 400 (32 FR 12839) has delegated to the Commandant, U.S. Coast Guard, all of its review authority in section 5(b)(2) of the Department of Transportation Act (49 U.S.C. 1544(b)(2)) in other Coast Guard matters, which include Commandant's Decisions sustaining orders suspending licenses, certificates, documents, and registers in proceedings under this part.

Subpart 5.35—Review of Administrative Law Judge's Decisions in Guilty Cases

§ 5.35–1 Commandant's review.

(a) Any decision of an administrative law judge, in which there has been a guilty finding, may be called up for review by the Commandant on his own motion, or direction, within sixty (60) days, after the decision is announced or has been made effective, whichever date is later. On occasion, such action may be taken upon recommendation of the District Commander within whose jurisdiction the decision of the administrative law judge was announced. As used in the regulations in this part the phrase, "on his own motion" means by the Commandant's direction or order, without other procedural formality.

(b) The processes in effect with respect to the preparation and presentation of the record on appeals by merchant seamen, shall apply to the consideration of cases brought up on review by the Commandant.

§ 5.35–5 Record for decision on review.

(a) The transcript of hearing, together with all papers and exhibits filed, shall constitute the record for consideration on review.

§ 5.35-10 Scope of review.

(a) The review will be restricted to questions of law, fact, and policy.

§ 5.35-15 Action on review.

(a) In no case will the review by the Commandant be followed by any order increasing the severity of the administrative law judge's original order.

(b) The Commandant may adopt in whole or in part the findings, conclusions, and basis therefor stated by the administrative law judge, or he may make entirely new findings on the record, or he may remand the case to the administrative law judge for further proceedings.

(c) The decision of the Commandant, on review, shall be final in the absence of a remand.

§ 5.35-20 Commandant's Decisions on Review.

(a) The Commandant's Decision on Review sets forth the rulings which shall be the governing precedents in future cases on the same type of facts. These Decisions are issued seriatim and are public records.

(b) The Commandant's Decisions on Review are available for reading purposes at Coast Guard Headquarters, and at Offices of District Commanders and Officers in Charge, Marine Inspection.

Subpart 5.50—Disclosure of Information

§ 5.50-1 Public information.

(a) Upon inquiry information may be released as to whether an investigation of a specified complaint is in progress, or that charges have been preferred, or that an investigation has been closed.

(b) Upon inquiry information may be released as to scheduled times of hearings and the substance of charges to be considered.

(c) Upon inquiry information disclosed at public hearings before administrative law judges may be released so long as the cases have current public interest. Such information regarding cases no longer having current public interest will not be released unless otherwise provided for in this subpart or Subpart 5.55 of this part.

§ 5.50-5 Public records.

(a) There shall be maintained as public records available for inspection at Coast Guard Headquarters, in each district office, and in each marine inspection office, a file of the Commandant's Decisions on Appeal or Review.

(b) There shall be maintained as public records available for inspection at Coast Guard Headquarters a file of the decisions of administrative law judges.

(c) There shall be maintained as public records available for inspection in the Office of the District Commander a file of copies of decisions of administrative law judges rendered within such district.

§ 5.50-10 Administrative records.

(a) All files, records, testimony, documents, reports, or other data pertaining to an investigation to determine whether or not a hearing should be instituted, are administrative records. They are not public records available for inspection.

Subpart 5.55—Release of Records

§ 5.55-1 Public records.

(a) Upon written application, copies of public records referred to in Subpart 5.50 of this part may be obtained by persons properly concerned because of litigation or other reasonable collateral interest in the proceedings.

§ 5.55-5 Hearing transcript to appellant.

(a) A copy of the complete hearing transcript will be given to an appellant when it is requested in accordance with § 5.30-1.

§ 5.55-10 Hearing transcript to other persons.

(a) Upon written application, a complete copy of, or excerpts from, a hearing record may be obtained by persons properly concerned because of litigation or other reasonable collateral interest in the proceedings: *Provided*, That the record has been transcribed and copies are available.

§ 5.55-15 Written applications.

(a) A written application required by this subpart shall be addressed to the person in charge of the office where such records are maintained. The application shall be made by the party desiring the record or his authorized representative and shall:

(1) Identify the applicant (submit proof if representing another person);

(2) Specify the material desired;

(3) State the reason for the request; and,

(4) State whether or not the material is intended for use in litigation involving the United States.

§ 5.55-20 Action on written applications.

(a) The person to whom a written application for the release of records is addressed shall comply with the request if it meets the requirements of this subpart. Otherwise, the request shall be denied or, in doubtful cases, referred to the Commandant for determination.

§ 5.55-25 Authorized representatives.

(a) When the release of records is provided for in this subpart, such records may be obtained by an agent or attorney whose authority to act on behalf of another person is established by:

(1) A signed statement by the party represented or,

(2) A statement, on the hearing record, by the party represented; or,

(3) A copy of a contract of retainer signed by the party represented.

(b) When the release of records is provided for in this subpart, such records may be obtained by an executor, administrator, heir, guardian, trustee or other legal representative of a deceased or incompetent person: *Provided*, That proof of the relationship is submitted.

§ 5.55-30 Production upon compulsory process.

(a) When a request for records is denied for any reason, the applicant shall be advised that the records may be obtained by service of a subpena duces tecum or an order from a court of competent jurisdiction. However, if the information desired is classified for security reasons or by virtue of a specific law or executive order the applicant shall also be advised that such subpena or court order should be addressed to the Commandant.

§ 5.55-35 Persons directly concerned.

(a) Appellants in these proceedings are the only persons considered to be directly concerned and, therefore, entitled to free copies of these records as a matter of right upon proper request.

§ 5.55-40 Costs.

(a) The release of records authorized by this subpart shall be subject to the payment of costs prescribed in 33 CFR 1.25 with the exception of hearing transcripts furnished to appellants.

Subpart 5.60—Persons in Service of Coast Guard

§ 5.60-1 Testimony by Coast Guard personnel.

(a) Except as provided in paragraph (c) of this section, no person in the service of the Coast Guard shall, without prior approval of the Commandant, give any testimony with respect to any investigation or any other official proceedings in any suit or action in the courts. This applies equally to cases in State or Federal courts and to civil as well as criminal cases.

(b) In cases involving (1) civil litigation between private parties; or, (2) criminal matters before State courts; or, (3) civil litigation for or against the United States where Coast Guard personnel are called by parties opposing the United States, an affidavit by the litigant or his attorney setting forth the interest of the litigant and the information with respect to which the testimony of such Coast Guard officer or employee is desired must be submitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper. In addition to the permission required by this paragraph, the Commandant may insist that the appearance of the Coast Guard officer or employee as a witness be conditioned on the issuance of a subpena or subpena duces tecum (as appropriate) from a court of competent jurisdiction.

(c) In cases where the appearance of Coast Guard personnel is desired by counsel representing the United States to support the affirmative claims or defenses of the United States in civil matters or on behalf of the United States in criminal matters, no affidavit as described in paragraph (b) of this section shall be required, but the Commandant's prior approval must be nevertheless obtained, except in those cases where the Coast Guard personnel desired as witnesses file the original complaint or have made original inquiry into the subject matter which resulted in the filing of an original complaint.

PART 9—EXTRA COMPENSATION FOR OVERTIME SERVICES

AUTHORITY: The provisions of this Part 9 issued under 46 U.S.C. 416. Interpret or apply sec. 6, 49 Stat. 1385, as amended; 46 U.S.C. 382b.

§ 9.1 Extra compensation; Coast Guard civilian personnel.

Civilians assigned to the duties formerly assigned to local inspectors and their assistants, United States shipping commissioners and their deputies and assistants prior to Reorganization Plan No. 3 of 1946 (3 CFR, 1946 Supp.), and customs officers and employees, while performing duties in connection with the inspection of vessels or their equipment, supplying or signing on or discharging crews of vessels, at night or on Sundays and holidays, shall receive extra compensation to be paid by the master, owner, or agent of the vessel to the local United States collector of customs or his representative. (See § 9.16.)

§ 9.2 Payment although no actual service performed.

The rates of extra compensation are payable in cases where the services of officers or employees have been duly requested and the officers or employees have reported for duty, even though no actual service may be performed.

§ 9.3 Overtime earnings not basis for overtime under Federal Employees Pay Act of 1945.

Overtime, Sunday, and holiday services which are covered by payments under this part shall not also form a basis for overtime or extra pay under the Federal Employees Pay Act of 1945.

§ 9.4 Waiting time; actual report for duties.

Extra compensation for "waiting time" will not be allowed unless and until an officer or employee actually reports for duty.

§ 9.5 Night, Sunday, and holiday defined.

(a) For the purpose of this part the word "night" shall mean the time between 5 p.m. of any day and 8 a.m. of the following day.

(b) The term "holiday" shall mean only national legal public holidays, viz., January 1, February 22, May 30, July 4, the 1st Monday in September, November 11, the 4th Thursday in November, December 25, and such other days as may be declared legal public holidays by an act of Congress or by an Executive order of the President of the United States.

(c) The term "Sunday" shall include the first day of each calendar week.

§ 9.6 Rate for night service.

The rate of extra compensation for authorized overtime services performed at night on any week day is hereby fixed at one half the gross daily rate of regular pay of the employee who performs the services for each 2 hours of compensable time, any fraction of 2 hours amounting to at least one hour to be counted as 2 hours. In computing the amount earned, each 2 hours is the time period for the purpose of computation, at least one hour means the minimum service in each period for which extra pay may be granted. If service continues beyond a 2 hour period, it must extend for at least one hour into the following 2 hour period to be entitled to extra pay for the second period. When the overtime extends beyond 5 p.m., payment of extra compensation from 5 p.m., for services consisting of at least one hour is authorized, even though such services may not actually begin until 7 p.m., 9 p.m., or later: *Provided*, That the officer rendering the service remained on duty from 5 p.m., in which case the time between 5 p.m., and the time of beginning the actual service shall be computed as waiting time; and where the actual services begin as late as 9 p.m., there should be an affirmative statement that the officer was required to remain on duty between 5 p.m., and 9 p.m., if a charge for waiting time is made. The maximum amount of extra compensation which may be paid an employee for services during one night shall not exceed two and one-half times the gross daily rate of his regular pay.

§ 9.7 Rate for Sunday or holiday services.

The rate of extra compensation for Sunday or holiday services is hereby fixed at twice the gross daily rate of regular pay of the employee who performs the service, for any and all services totaling an aggregate of not more than nine hours, with one hour for food and rest, during the 24 hours from midnight to midnight of the Sunday or holiday including actual waiting time and time required for travel between posts of duty but not including other time not spent at the post of duty. This rate shall apply regardless of the length of time served within the aggregate of the aforesaid 9 hours, whether it is served continuously or in broken periods, and whether it is served for one or more applicants. Services in excess of an aggregate of the aforesaid 9 hours performed during the 24 hours of a Sunday or holiday shall be compensated on the same basis as overtime services performed at night on a weekday, the time between the completion of the aggregate of the aforesaid 9 hours and midnight being considered as the hours of a night. The maximum amount which may be paid an employee for services performed during the 24 hours of a Sunday or holiday shall not exceed four and one-half times the gross daily rate of his regular pay.

§ 9.8 Broken periods.

In computing extra compensation where the services rendered are in broken periods and less than 2 hours intervene between such broken periods the time served should be combined with the waiting time and computed as continuous service.

§ 9.9 Two hours between broken periods.

Where 2 hours or more intervene between broken periods, one-half day's extra pay will be allowed for each distinct 2-hour period or part of a 2-hour period, if wating time and actual service rendered within each period consists of at least 1 hour.

§ 9.10 Waiting time.

The same construction should be given the act when charging for waiting time as governs the charge for services actually rendered. No charge should be made unless after having reported for duty the waiting time amounts to at least one hour.

§ 9.11 Proration of charges.

If services are performed for two or more applicants during one continuous tour of overtime duty, the charge for the extra compensation earned shall be prorated equitably according to the time attributable to the services performed for each applicant.

§ 9.12 Travel status overtime.

When employees are in travel status, overtime shall apply the same as at official station.

§ 9.13 Congressional appropriations necessary.

Payment of extra compensation for overtime services shall be subject to appropriations being made therefor by Congress.

§ 9.14 Assessment and collection of fees.

Assessment and collection of fees against steamship companies for overtime services shall be made even though the payment to employees for such services may not be made until funds are appropriated for that purpose.

§ 9.15 Application form.

An application on a form prescribed by the Commandant of the Coast Guard, shall be filed with the office being requested to furnish overtime services before such assignment can be made.

§ 9.16 Billing for services.

Overtime services shall be billed to the steamship companies on collection voucher provided for that purpose. Remittance shall be made by postal money order or certified check payable to the "Collector of Customs, Treasury Department" and forwarded to that officer at the port indicated on the voucher, who shall in turn deposit such remittance to a properly designated receipt account.

§ 9.17 Protests.

Protests against the exaction of extra compensation shall be forwarded to the Commandant of the Coast Guard.

[FR Doc 74-21163 Filed 9-16-74;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 69-19; Notice 9]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice amends 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to waive the requirement that there be a 4-inch minimum spacing between a front turn signal and a low-beam headlamp whenever the turn signal lamp's photometric output is at least two and one-half times the minimum required. The amendment is effective October 17, 1974.

Interested persons have been afforded an opportunity to participate in the making of the amendment by a notice of proposed rulemaking (Docket No. 69-19; Notice 3) published on October 25, 1972 (37 FR 22801), and due consideration has been given to the comments received in response to the notice.

In order to enhance detectability of front lamp function by oncoming drivers at a distance, Standard No. 108 through its incorporation of SAE Standard J588d, "Turn Signal Lamps," requires at least 4 inches of spacing between a front turn signal lamp and a low beam headlamp. However, as part of Notice 3, the NHTSA proposed in paragraph S8.12 that turn signal lamps and low beam headlamps could be closer if the candlepower output of the turn signal lamp is at least two and one-half times that specified for yellow turn signal lamps in the SAE standard. Mercedes-Benz of North America has asked the NHTSA to make an early decision on the proposal to facilitate its product development plans.

Comments in general supported the proposal. Some requested removal of the 4-inch limitation regardless of turn signal photometric output. Others felt that the photometric values of all front turn signal lamps should be two and one-half times the present minimum. The NHTSA has decided to amend the standard primarily as proposed, but with reference to the grouped test points of Figure 1 of the standard rather than to the individual test points of J588.

In consideration of the foregoing, 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, is amended by adding new paragraph S4.3.1.7 to read:

S4.3.1.7 The requirement that there be not less than 4 inches between a front turn signal lamp and a low beam headlamp, specified in SAE Standard J588d, "Turn Signal Lamps," June 1966, shall not apply if the sum of the candlepower values of the turn signal lamp measured at the test points within each group listed in Figure 1 is not less than two and one-half times the sum specified for each group for yellow turn signal lamps.

Effective date: October 17, 1974. Because the amendment relieves a restriction without imposing new requirements on any person, it is found for good cause shown that an effective date earlier than 180 days after the issuance of the amendment is in the public interest.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on September 12, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.74-21445 Filed 9-16-74;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

[No. 34178 (Sub-No. 2)]

ACCOUNTING FOR INCOME TAXES; INTERPERIOD TAX ALLOCATION, DEFERRED TAXES

At a General Session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 9th day of August, 1974.

Miscellaneous Amendments

Consideration having been given to the matters and things involved in this proceeding, and the said Commission, on the date hereof, having made and filed a report[1] herein containing its findings and conclusions, which report is hereby made a part hereof:

It is ordered, That the request of the State of Michigan, Public Service Commission, for oral hearings and a delay in the disposition of this proceeding be, and it is hereby, denied.

It is further ordered, That Parts 1201 through 1210 of Title 49 of the Code of Federal Regulations be, and they are hereby, revised to read as set forth below.

It is further ordered, That the prescribed amendments shall be effective January 1, 1974, and that all carriers except those subject to Part 1204 shall recognize the accumulated provision for deferred taxes as of December 31, 1973, by direct charge (credit) to retained income and contra credit (charge) to the appropriate deferred tax account(s) as established in the attached appendices.

And it is further ordered, That service of this order shall be made on all affected carriers; and to the Governor of every State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(Authority: (5 U.S.C. 553, 559; 49 U.S.C. 12, 20, 304, 913, 1012.))

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

PART 1201—UNIFORM SYSTEM OF ACCOUNTS—RAILROAD COMPANIES

LIST OF INSTRUCTIONS AND ACCOUNTS

Under "General Instructions" amend line item "1-11 *Accounting for the Investment Tax Credit*" to read:

1-11 Accounting for income taxes.

Under "Income Accounts" the following revisions are made:

After line item "532 *Railway tax accruals*" add:

533 Provision for deferred taxes.

Amend line item "590 Federal income taxes on extraordinary and prior period items" to read:

590 *Income taxes on extraordinary and prior period items.*

After line item "590 *Income taxes on extraordinary and prior period items*" add:

591 *Provision for deferred taxes—extraordinary and prior period items.*

Under "General Balance Sheet Accounts" add the following immediately after line item "758 *Accrued depreciation; leased property*":

* * * * *

714 Deferred income tax charges.

* * * * *

744 Accumulated deferred income tax charges.

* * * * *

762 Deferred income tax credits.

* * * * *

786 Accumulated deferred income tax credits.

[1] Report filed as part of the original document.