

## SUBCHAPTER F—VESSEL OPERATING REGULATIONS

### PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

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AUTHORITY: 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.1.

SOURCE: CGD 84-099, 52 FR 47532, Dec. 14, 1987, unless otherwise noted.

#### § 95.001 Purpose.

(a) The purpose of this part is to establish under the influence of alcohol or a dangerous drug standards under 46 U.S.C. 2302 and to prescribe restrictions and responsibilities for personnel on vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code. This part does not pre-empt enforcement by a State of its applicable laws and regulations concerning operating a recreational vessel while under the influence of alcohol or a dangerous drug.

(b) Nothing in this part shall be construed as limiting the authority of a vessel's marine employer to limit or prohibit the use or possession of alcohol on board a vessel.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

#### § 95.005 Applicability.

(a) This part is applicable to a vessel (except those excluded by 46 U.S.C. 2109) operated on waters subject to the

jurisdiction of the United States, and to a vessel owned in the United States on the high seas. This includes a foreign vessel operated on waters subject to the jurisdiction of the United States.

(b) This part is also applicable at all times to vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-009, 53 FR 13117, Apr. 21, 1988]

#### § 95.010 Definition of terms as used in this part.

*Alcohol* means any form or derivative of ethyl alcohol (ethanol).

*Alcohol concentration* means either grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

*Blood alcohol concentration level* means a certain percentage of alcohol in the blood.

*Chemical test* means a test which analyzes an individual's breath, blood, urine, saliva and/or other bodily fluids or tissues for evidence of drug or alcohol use.

*Controlled substance* has the same meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

*Drug* means any substance (other than alcohol) that has known mind or function-altering effects on a person, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

*Intoxicant* means any form of alcohol, drug or combination thereof.

*Law enforcement officer* means a Coast Guard commissioned, warrant, or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or local law.

*Marine employer* means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

*Recreational vessel* means a vessel meeting the definition in 46 U.S.C. 2101(25) that is then being used only for pleasure.

**§95.015**

*State* means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

*Under the influence* means impaired or intoxicated by a drug or alcohol as a matter of law.

*Underway* means that a vessel is not at anchor, or made fast to the shore, or aground.

*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

*Vessel owned in the United States* means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

*Waters subject to the jurisdiction of the United States* means those waters described in §2.38 of this chapter.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, Apr. 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001; USCG-2001-9044, 68 FR 42601, July 18, 2003]

**§95.015 Operating a vessel.**

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.

(b) The individual is a crewmember (including an officer), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended at USCG-2006-24371, 74 FR 11211, Mar. 16, 2009]

**§95.020 Standard for under the influence of alcohol or a dangerous drug.**

An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08

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percent or more, by weight, in their blood;

(b) The individual is operating a vessel other than a recreational vessel and has an alcohol concentration of .04 percent by weight or more in their blood; or,

(c) The individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, Apr. 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§95.025 Adoption of State blood alcohol concentration levels.**

(a) This section applies to operators of recreational vessels on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol.

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in §95.020(a) of this part.

(c) For the purposes of this part, a standard established by State statute and adopted under this section is applicable to the operation of any recreational vessel on waters within the geographical boundaries of the State.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§95.030 Evidence of under the influence of alcohol or a dangerous drug.**

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

(a) Personal observation of an individual's manner, disposition, speech, muscular movement, general appearance, or behavior; or,

(b) A chemical test.

[CGD 84-099, 53 FR 13117, Apr. 21, 1988; CGD 84-009, 53 FR 13117, Apr. 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§ 95.035 Reasonable cause for directing a chemical test.**

(a) Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. Reasonable cause exists when:

(1) The individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code, or

(2) The individual is suspected of being in violation of the standards in §§ 95.020 or 95.025.

(b) When an individual is directed to undergo a chemical test, the individual to be tested must be informed of that fact and directed to undergo a test as soon as is practicable.

(c) When practicable, a marine employer should base a determination of the existence of reasonable cause, under paragraph (a)(2) of this section, on observation by two persons.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, Apr. 1, 1988]

**§ 95.040 Refusal to submit to testing.**

(a) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be under the influence of alcohol or a dangerous drug.

(b) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by the marine employer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§ 95.045 General operating rules for vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.**

While on board a vessel inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code, a crewmember (including an officer), pilot, or watchstander not a regular member of the crew:

(a) Shall not perform or attempt to perform any scheduled duties within four hours of consuming any alcohol;

(b) Shall not be intoxicated at any time;

(c) Shall not consume any intoxicant while on watch or duty; and

(d) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to be intoxicated.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended at USCG-2006-24371, 74 FR 11211, Mar. 16, 2009]

**§ 95.050 Responsibility for compliance.**

(a) The marine employer shall exercise due diligence to assure compliance with the applicable provisions of this part.

(b) If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not allow that individual to stand watch or perform other duties.

**PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS**

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