

SUBCHAPTER F—VESSEL OPERATING REGULATIONS

PART 95—OPERATING A VESSEL WHILE INTOXICATED

Sec.

- 95.001 Purpose.
- 95.005 Applicability.
- 95.010 Definition of terms as used in this part.
- 95.015 Operating a vessel.
- 95.020 Standard of intoxication.
- 95.025 Adoption of State standards.
- 95.030 Evidence of intoxication.
- 95.035 Reasonable cause for directing a chemical test.
- 95.040 Refusal to submit to testing.
- 95.045 General operating rules for vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.
- 95.050 Responsibility for compliance.

AUTHORITY: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

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 intoxication 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 intoxicated.

(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.

§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.

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.

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

§ 95.015

33 CFR Ch. I (7–1–98 Edition)

States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

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

§ 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 a licensed individual), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

§ 95.020 Standard of intoxication.

An individual is intoxicated when:

(a) The individual is operating a recreational vessel and has an alcohol concentration of .10 percent by weight or more 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, April 21, 1988]

§ 95.025 Adoption of State standards.

(a) This section applies to recreational vessels on waters within the geographical boundaries of a State having a statute defining a percentage of alcohol in the blood for the purposes of establishing that a person operating a vessel is intoxicated or impaired due to alcohol.

(b) If the applicable State statute establishing a standard for determining impairment due to alcohol uses the terms "under the influence," "operating while impaired," or equivalent terminology and does not separately de-

fine a percentage of alcohol in the blood for the purpose of establishing "intoxication," the standard containing the highest defined percentage of alcohol in the blood applies in lieu of the standard in § 95.020(a). If the applicable State statute contains a standard specifically applicable to establishing intoxication, in addition to standards applicable to other degrees of impairment, the standard specifically applicable to establishing intoxication applies in lieu of the standard in § 95.020(a).

(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.

§ 95.030 Evidence of intoxication.

Acceptable evidence of intoxication 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, April 21, 1988; CGD 84-099, 53 FR 13117, Apr. 21, 1988]

§ 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, 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 intoxicated.

(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.

§ 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 a licensed individual), 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.

§ 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**Subpart A—General**

Sec.
96.100 Purpose.

96.110 Who does this subpart apply to?
96.120 Definitions.
96.130 Incorporation by reference.

Subpart B—Company and Vessel Safety Management Systems

96.200 Purpose.
96.210 Who does this subpart apply to?
96.220 What makes up a safety management system?
96.230 What objectives must a safety management system meet?
96.240 What functional requirements must a safety management system meet?
96.250 What documents and reports must a safety management system have?

Subpart C—How Will Safety Management Systems Be Certificated and Enforced?

96.300 Purpose.
96.310 Who does this subpart apply to?
96.320 What is involved to complete a safety management audit and when is it required to be completed?
96.330 Document of Compliance certificate: what is it and when is it needed?
96.340 Safety Management Certificate: what is it and when is it needed?
96.350 Interim Document of Compliance certificate: what is it and when can it be used?
96.360 Interim Safety Management Certificate: what is it and when can it be used?
96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?
96.380 How will the Coast Guard handle compliance and enforcement of these regulations?
96.390 When will the Coast Guard deny entry into a U.S. port?

Subpart D—Authorization of Recognized Organizations To Act on Behalf of the U.S.

96.400 Purpose.
96.410 Who does this subpart apply to?
96.420 What authority may an organization ask for under this regulation?
96.430 How does an organization submit a request to be authorized?
96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?
96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?
96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?
96.470 How does the Coast Guard terminate an organization's authorization?
96.480 What is the status of a certificate if the issuing organization has its authority terminated?