

§ 5.203

46 CFR Ch. I (10–1–13 Edition)

addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bona fide drug abuse rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty;

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State or local government investigation; and

(4) The holder has not voluntarily deposited or surrendered a credential or endorsement, or had a credential or endorsement revoked for a drug related offense on a prior occasion.

(c) Where the mental or physical incompetence of a holder of a credential or endorsement is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bona fide alcohol abuse rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender such credential or endorsement in accordance with § 5.203.

[CGD 84-099, 52 FR 47535, Dec. 14, 1987, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.203 Voluntary surrender to avoid hearing.

(a) Any holder may surrender a credential or endorsement to the Coast Guard in preference to appearing at a hearing.

(b) A holder voluntarily surrendering a credential or endorsement shall sign a written statement containing the stipulations that:

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

(2) All rights to the credential or endorsement surrendered are permanently relinquished; and,

(3) Any rights with respect to a hearing are waived.

(c) A voluntary surrender of a credential or endorsement to an investigating officer in preference to appearing at a hearing is not to be accepted by an investigating officer unless the investigating officer is convinced that the holder fully realizes the effect of such surrender.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.205 Return or issuance of a credential or endorsement.

(a) A person may request the return of a voluntarily deposited credential or endorsement at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of a credential or endorsement.

(b) Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the credential or endorsement will not be returned until the person:

(1) Successfully completes a bona fide drug abuse rehabilitation program;

(2) Demonstrates complete non-association with dangerous drugs for a minimum of six months after completion of the rehabilitation program; and

(3) Is actively participating in a bona fide drug abuse monitoring program.

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the credential or endorsement will not be returned until the person:

(1) Successfully completes a bona fide alcohol abuse rehabilitation program; and

(2) Is actively participating in a bona fide alcohol abuse monitoring program.

(d) The voluntary surrender of a credential or endorsement is the equivalent of revocation of such papers. A

holder who voluntarily surrenders a credential or endorsement must comply with provisions of §§ 5.901 and 5.903 when applying for the issuance of a new credential or endorsement.

[CGD 84-099, 52 FR 47535, Dec. 14, 1987, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

Subpart F—Subpoenas

§ 5.301 Issuance of subpoenas.

(a) Every subpoena shall command the person to whom it is directed to appear 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.

(b) The investigating officer may issue subpoenas for the attendance of witnesses or for the production of books, papers, documents, or any other relevant evidence needed by the investigating officer or by the respondent.

(c) After charges have been served upon the respondent the Administrative Law Judge may, either on the Administrative Law Judge's own motion or the motion of the investigating officer or respondent, issue subpoenas for the attendance and the giving of testimony by witnesses or for the production of books, papers, documents, or any other relevant evidence.

§ 5.303 Service of subpoenas on behalf of the respondent.

Service of subpoenas issued on behalf of the respondent is the responsibility of the respondent. However, if the Administrative Law Judge finds that the respondent or respondent's 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 service of the subpoena is peculiarly within the authority of the Coast Guard to overcome, the Administrative Law Judge will have the subpoena delivered to an investigating officer participating in the case for the purpose of effecting service.

§ 5.305 Quashing a subpoena.

Any person subpoenaed to appear to produce evidence at a hearing may request that the subpoena be quashed or modified using the procedures in 33 CFR 20.609.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

§ 5.307 Enforcement.

Upon application and for good cause shown, or upon its own initiative, the Coast Guard will seek judicial enforcement of subpoenas issued by investigating officers or Administrative Law Judges. This is done by making application to the United States District Court, through the office of the appropriate U.S. Attorney, to issue an order compelling the attendance of, and/or giving of testimony by, witnesses, or for the production of books, papers, documents, or any other relevant evidence.

§ 5.309 Proof of service.

(a) The person serving a subpoena 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 subpoena to the investigating officer or Administrative Law Judge who issued it. In case of failure to make service of a subpoena, the person assigned to serve such subpoena shall make a written statement setting forth the reasons the subpoena was not served. The statement should be placed on the subpoena or attached to it and returned to the investigating office or Administrative Law Judge who issued the subpoena.

(b) When service of a subpoena is made by certified mail with return receipt to be signed by the addressee only, the person mailing the subpoena shall make a written statement on a copy of the subpoena or attached to it, setting forth the date, time and location of the post office where mailed, the post office number assigned thereto. If delivered, the receipt requested shall be returned, by the person receiving the receipt, to the investigating officer or Administrative Law Judge who issued the subpoena. In case the subpoena is not delivered, any information reported by the post office regarding