



NMA REPORT #R-377, Revision 2

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[Formerly Gulf Coast Mariners Association, Founded in 1999.]

ADMINISTRATIVE CLEMENCY

[**Publication History:** Our original report was introduced on Sept. 15, 2003 and **Revision 1** on July 26, 2006.]

[**NMA Comment:** The address of the Chief, Coast Guard Investigations Division is Commandant (CG-5451), U.S. Coast Guard Headquarters, 2100 Second St., SW, Washington, DC 20593-0001. Phone # 202-372-1031.]

After a mariner runs afoul of the law and surrenders his/her license it may be possible to regain that license through a complex procedure known as Administrative Clemency. A handful of mariners who followed the procedure established by the Coast Guard recounted many of its twists and turns for us. On June 18, 2003 our Association wrote to the former Office of Investigations and Analysis at Coast Guard Headquarters asking a number of questions under the Freedom of Information Act (FOIA). We incorporated the reply we received in this report as far as possible and subsequently edited it to reflect several recent changes. The report contains our opinion of the process. At the same time, we want to refer our readers to our Report #R-377-A for the most recent official Coast Guard correspondence on Administrative Clemency.

Our Original Letter to Coast Guard Headquarters – (edited and updated)

[Our Association] speaks on behalf of 126,000 lower-level/limited tonnage mariners serving on tugs, towboats, offshore supply vessels, small passenger vessels and other small craft throughout the United States.] As such, mariners often ask us to provide clear, meaningful information regarding controversial Coast Guard policies and practices. In order to do so, our Association seeks to disseminate only the correct and most up-to-date information available in regard to the Coast Guard's Administrative Clemency program.

It came to our attention that a number of Coast Guard offices provide information to mariners on Administrative Clemency, especially in drug-related cases. Unfortunately, we found mariners misinterpreted or misunderstood some of this information and indicated that it might not be accurate or consistent. The reason for this may be that there is limited local knowledge or interest in the program or that Coast Guard personnel called upon to answer questions on Administrative Clemency find it easier to shoot from the hip rather than focus clearly on the exact information they need to impart and the capacity of the mariner asking the question to absorb information that is often complicated and detailed. Refer to our Report #R-377-A for the exact information the Coast Guard requests of mariners seeking Administrative Clemency. Another reason for confusion may be a result of the constant rotation of personnel throughout the Coast Guard.

Horrible Examples: One REC provided a mariner with misleading information that held up his application for a number of months. Another investigating officer a thousand miles away failed to specify a key portion of the requirements that delayed another mariner for over a year. **[Item #1]** Still another mariner's⁽¹⁾ application was held in limbo for 6 years because he never received clear instructions that he could understand. ⁽¹⁾ *Mariner #82*

It would seem reasonable that the Coast Guard would provide a mariner convicted of an offense that results in revocation of his/her license or an MMD (i.e., a punishment that is remedial in nature) would provide complete and accurate information about Administrative Clemency at the time his license or MMD is surrendered since that may be the last time the Coast Guard has contact with that individual. **[Item #2].**

Although an Administrative Clemency program exists, it often appears that Coast Guard officials make the process just as difficult, cumbersome, and confusing as possible to determine that the affected mariners will never sail again. The attitude may be: "After all, this guy is just a low-life mariner and a convicted drug abuser and safety risk." **[Item #3].**

It is also quite clear through years of working with our mariners that many of them have difficulty with

complicated bureaucratic requirements including reading and interpreting a number of regulations and regulations written above the 12th grade reading level ó the highest level our computer program records. **[Item #4]**. This is why our Association stepped in to provide meaningful information we hope mariners can understand.

In light of the large number of drug cases that we hear about, it appears that there is need for a clear national policy detailing exactly how the Coast Guard handles administrative clemency cases rather than a patchwork quilt that discourages reformed mariners from reapplying for licenses if they succeed in turning their lives around and break their drug-use habit or addiction. **[Item #5]**

Let me make it clear that our Association unequivocally supports the existing drug laws and regulations in 46 CFR Part 16 and 49 CFR Part 40. Our purpose is to determine exactly what that policy is and all about it ó including such things as the goals and purposes of each requirement. **[Item #7]**.

At present, in response to continual inquiries on the subject, we provide revised 2009 ðAdministrative Clemencyö information provided by Mr. Jim Wilson at Marine Safety Unit (MSU) Morgan City as our **Report #R-377-A**. This is the latest Coast Guard information on the subject issued by an office that handles many drug cases.

We receive requests for information from other areas as well and want to be certain that ALL our mariners are treated consistently as well as fairly. **[Item #8]**.

In Our Original FOIA Request....

1. We requested a copy of any/all Coast Guard policies regarding Administrative Clemency that are currently in force including policy letters, documents included in the Marine Safety Manual and any other policy documents. **[Refer to our Report #R-377-A.]**

2. It is our understanding that all Administrative Clemency cases make their way to Coast Guard Headquarters in Washington. We would like to determine which official or group of officials review the completed applications when they reach Headquarters. We would like to determine when action is taken on individual administrative clemency requests. For example: Within 30 days; quarterly; semi-annually; annually on (date). **[Item #9]**. We request all policies and documents that deal with the organization and operation of that particular office in question.

3. We also understand that these requests are reviewed at a local level. However, we are not certain which individuals are responsible for completing the review. For example, is it a Regional Examination Center or the Commanding Officer of a Marine Safety Office. **[Item #10]**.

4. We request representative EXAMPLES of how certain cases are handled to give us an insight into the problems that are resolved and the decisions that are made. We request that names be redacted and that the best examples be selected for us to cite to steer administrative clemency applicants in the right direction. **[Item #11]**.

5. We are not certain who in the chain of command and at what level has the authority to apply personal discretion to an application and, if so, what guidelines that individual is expected to follow. We would appreciate clarification for publication. **[Item #12]**.

6. Please detail any differences, if any, between how former license holders and holders of MMDs are handled under administrative clemency procedures. Our concern with licenses extends only to ðlower-levelö licenses. **[Item #13]**.

Headquarters Responds - Item by Item

Item #1: Coast Guard officers and civilian personnel at the [Investigations Division] at Coast Guard Headquarters **[now CG-5451]** control the administrative clemency policy and will make the final determination as to whether the ðclemency packageö you put together for their approval will fly or not. **They are the final authority.**

These people work with Investigating Officers at individual Marine Safety Offices throughout the country. In doing so, they run into people with a variety of approaches, some helpful and some that may not be. **CG-5451** does not have direct ðcommand authorityö over any of these people. This means that they may ðaskö but cannot ðorderö an Investigating Officer to do anything that person does not want to do.

Item #2. **CG-5451** provides each Marine Safety Office with instructions on how the program is supposed to operate. [The package of information from MSU Morgan City, LA in **our Report #R-377-A**] is an example of the type of information we believe every mariner who seeks administrative clemency should have.

Item #3. It may be hard for an Investigating Officer to be the õbad guyö who took away your license to now become the õgood guyö to help you get it back. If you encounter this type of hostility, which we have good reason to believe may exist, call the õAdministrative Clemencyö Program Director at Coast Guard Headquarters at (202) 372-1031 and discuss the problem as you see it with him directly. After all, he is the person who will review the “clemency package” that the Investigating Officer will help you put together. He assured us that he is not allowed to reflect any decision as to whether you are a õgood guyö or a õbad guy.ö However, you must prove to him (*in writing*) as you prepare your õclemency packageö that you are rehabilitated and can safely be entrusted with merchant mariner credentials.

Item #4. Your most significant problem is not writing a report but, rather, in following every step required in your rehabilitation program.

Item #5. The number of õclemency packagesö handled by *CG-5451* for the entire country only averages 2 to 3 per month. Even though there are certain fixed requirements in the program (i.e., rehabilitation + 1 year of õnon-associationö with drugs + criminal check + driverø license check), each õclemency packageö must be decided on its own merits. If the program was much larger, it might require more formal written policies extending beyond what is covered in [the information package in our Report #R-377-A.]

Item #8. Our complaints were based upon the õrun-aroundö reported by several of our mariners. This report focuses on delineating between the responsibility that a mariner must take for his own rehabilitation and the Coast Guardø responsibility for running this program to attain its legitimate goals. If you believe that you are getting the run around locally and are not making progress, speak with the program director at Headquarters.

Item #9. *You are responsible for preparing your “clemency package” and following the instructions of the local Investigating Officer (I/O) at the Marine Safety Unit level.*

The Investigating Officer is responsible for assembling your õclemency packageö and forwarding it to *CG-5451* at Coast Guard Headquarters in Washington. *You must follow his instructions.* If in doubt about any specifics, you can always call them at the number given above. The Investigating Officer should be able to tell you the date your clemency package was sent to *CG-5451* in Washington.

When your package arrives at *CG-5451*, the Program Director will review it. If it is missing anything, it may be sent back to the Marine Safety Unit. However, if it is a õcleanö package (i.e., as a result of both your work and the work of the Investigating Officer) the Program Director will prepare it for a meeting of the three-member Review Board. The whole process at Headquarters should be completed within about a month and you will have a decision. If it is approved, you will receive clemency. If it is not approved, you will receive the reasons for its disapproval and/or further instructions.

Item #10. The Investigating Officer at the Marine Safety Unit and NOT the Regional Exam Center are in charge of administering the Administrative Clemency program. One of our mariners experienced a needless delay when he was sent to a REC.

Item #11. We already have several cases in our files, and they are õhorror stories.ö We were never provided with additional examples we requested.

Item #12. The Investigating Officer at the local Marine Safety Unit and CG-5451 at Headquartersí and nobody else. Donø even ask anyone else about this unique and highly specialized program if you want a straight answer. However, after reading this report and the Coast Guardø information package in our Report #R-377-A you may know more about Administrative Clemency than some Investigating Officers who may have little experience with the program because of the relatively small number of administrative clemency cases.

Item #13. This reflects our membership that works primarily on commercial vessels of less than 1,600 GRT.

Item #14. The Administrative Clemency policy is õconstantly evolving.ö This is what makes it so hard to pin down. For example, the information in our Report #R-377-A is much clearer than information provided us five years ago.

Item #15. The Administrative Clemency Board consists of three Coast Guard military or civilian personnel who have experience while holding a Coast Guard license. They will meet and discuss each package that has been reviewed by their Program Director. If your package is not complete, they will never see it. The emphasis is for the mariner to dot the i and cross the t correctly.

Item #16. The majority of Administrative Clemency cases are substance-abuse related. The first step towards rehabilitation is to select a suitable program run by a Substance Abuse Professional (SAP). Go to <http://www.saplist.com> on the internet to find out what is available in your area.

A real problem exists because every program is different. You will have to do your own shopping. Your goal is to obtain certification (i.e., a letter) that states that you have completed the full rehabilitation program.

First step should be to contact a drug and alcohol abuse specialist (usually a person with a college degree) who can evaluate your problem and then direct you to a program that you can take and have a reasonable chance of finishing. Like visiting any doctor, you can always go to someone else for a second opinion. You must find a program that has hours you can meet and costs you can afford. State and local governments offer these programs as do private for-profit organizations. This is a big choice and it is all yours. However, be sure to check with your investigating officer to be sure your choice is acceptable to them. They cannot recommend any given program but they can accept (or reject) your choice.

You will have to pay for every step of the program, so make realistic choices. There are no freebies.

Some rehab programs take longer to complete than others. ***The Coast Guard exercises no control over these programs. They merely accept or reject the results that are reported to them.*** Programs in some urban areas may be faster than some programs in rural areas. You must live with your selection, so make it carefully!

Item #17. After you complete rehab and obtain your certificate of completion, then you must prove to the satisfaction of the Coast Guard that you are no longer associated with drugs or alcohol for 1 year. This requires you to take approximately⁽¹⁾ 12 random drug tests and they must be DOT drug tests over the one-year period. These tests must be truly random. ^[⁽¹⁾ The number is not set in stone, but 12 drug tests reflects greater commitment to proving you are drug-free than, say, 8 tests. ***All tests must be DOT tests with negative results.***]

Some employers (or other reputable third parties) may agree (in writing) to ensure that you are given random tests. However, it is your responsibility to see that these tests are spaced so they are truly random as substantiated in the final clemency package you submit. The local Investigating Officer, the national Program Director, and/or the Review Board may question you about testing that has left large gaps in time on one hand, or may simply be too predictable and, therefore not truly random in nature. The responsibility for providing convincing proof is yours, not theirs! Proof = written evidence.

Item #18. Character references: You must provide a reasonable number of recent character references that show that you have turned your life around (i.e., changed for the better) or that you have demonstrated good character and work habits within your one-year non-association with drugs or alcohol. They should come from people you see and contact on a regular basis such as your supervisor at work, an authority in your church, synagogue or mosque, or other significant person in your life. Expect that the Investigating Officer will contact any of these letter-writers to verify the letter and determine its truthfulness and comment on it in your clemency package. Obtaining a letter from the Mayor, a Congressman, or other government official you may know slightly or not at all is ***NOT*** what the Review Board is looking for. They want to know about YOU and how you have changed, become more stable, and have given up bad habits so that you may again be entrusted with the duties and responsibilities of holding a license. Remember, there is only one chance in your lifetime to seek administrative clemency. There is no third chance. Although it may take time to prepare and perfect your package it is time well spent if your motivation is honest and sincere.