

U.S. Department of
Homeland Security

United States
Coast Guard



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16721
CG-MMC Policy Letter
No. 03-23
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From: M. Medina
COMDT (CG-MMC)

To: National Maritime Center

Subj: Evaluation of Suitability for Applicants with Convictions for Sexual Assault

Ref: (a) Title 46 Code of Federal Regulations (CFR) 10.209(e)(1)
(b) Marine Safety Manual, Vol III, Marine Industry Personnel, COMDTINST
M16000.8B, CH-2.

1. **PURPOSE.** This policy letter provides guidance on safety and suitability determinations for applicants for Merchant Mariner Credential (MMC) with convictions for sexual assault (defined in enclosure (1)).
2. **ACTION.** The Coast Guard will use this policy when evaluating applications for a MMC subject to safety and suitability determinations under reference (a) when the criminal history record information (CHRI) indicates that the applicant has a previous conviction for a sexual offense in accordance with 46 U.S.C. 7511 (see enclosure (1) for text).
3. **DIRECTIVES AFFECTED.** The guidance provided in reference (b) is expanded upon to address the specific instances where applicants for an MMC have convictions subject to 46 U.S.C. 7511 which was enacted after the promulgation of reference (b).
4. **BACKGROUND.**
 - a. Title 46 U.S.C. 7511 was enacted by section 11602 of the Don Young Coast Guard Authorization Act of 2022 (Pub. Law 117-263, Division K). Section 7511(a) states that a merchant mariner credential “**shall be denied** to an individual who has been convicted” of specified sexual offenses. (**Emphasis added**) The disqualifying sexual offenses in 46 U.S.C. 7511(a) are:
 - i. A conviction under chapter 109A of title 18, U.S.C. (except for subsection (b) of section 2244 of title 18); or
 - ii. A substantially similar offense under State, local, or Tribal law.

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- b. Subsection (b) of 46 U.S.C. 7511 provides that a merchant mariner credential may be denied an individual with a conviction within 5 years of the application for:
 - i. Abusive sexual contact (defined in enclosure (1)) under subsection (b) of 18 U.S.C. 2244; or
 - ii. A substantially similar offense under State, local, or Tribal law.
 - c. Applicants who believe their CHRI is not accurate may follow the procedures for obtaining a change, correction, or update of an FBI criminal history record as set forth at 28 CFR 16.34.
5. DISCUSSION. The Coast Guard will review MMC applications from applicants with a conviction for a sexual offense under 46 U.S.C. 7511 using the following guidance.
- a. Convictions for offenses under 46 U.S.C. 7511(a). Applicants for a MMC that have a conviction for an offense under 18 U.S.C. Chapter 109A (except subsection (b) of 2244) will be denied.
 - b. Convictions under 46 U.S.C. 7511(b). If the mariner has a conviction less than five years old for sexual contact under 18 U.S.C. 2244(b), the mariner will be evaluated by the Coast Guard with a minimum assessment period of two years and maximum assessment period of five years. These assessment periods are established in accordance with 46 CFR 10.211(g) and 46 U.S.C. 7511(b). If the mariner was incarcerated, the assessment period begins upon release from incarceration. In this case, the maximum assessment period may need to be adjusted so that the maximum assessment does not exceed five years from the date of conviction specified in 46 U.S.C. 7511(b).
 - c. Substantially similar State, local, or tribal offenses. Because of the wide variety of State, local, and Tribal laws, it is impossible to provide a detailed and all-inclusive list of statutes that are substantially similar to the Federal statutes in 18 U.S.C. Chapter 109A. The following provides guidance on how to determine whether a State, local, or Tribal offense is substantially similar to a violation of 18 U.S.C. Chapter 109A.
 - i. Substantially similar to 46 U.S.C. 7511(a). Convictions for engaging in a sexual act or sexual contact where one or more of the following factors are present will be determined to be substantially similar to an offense under 18 U.S.C. Chapter 109A and will be evaluated in accordance with paragraph 5.a above. Factors to be considered are:
 - A. Force is used or threatened. [18 U.S.C. 2241(a), 2242(1), 2244(a)(1)-(2)]
 - B. The other person is rendered unconscious; or is administered (through force or without the knowledge of the other person) alcohol, a drug, or other intoxicant. [18 U.S.C. 2241(b), 2244(a)(1)]

- C. The other person was incapable of appraising the nature of the act; physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act or contact. This would include situations where the other person is voluntarily intoxicated. [18 U.S.C. 2242(2), 2244(a)(2)]
 - D. The other person is under the age of consent in that jurisdiction. [18 U.S.C. 2241(c), 2243(a), 2244(a)(3), 2244(a)(5)]
 - E. The sexual act or sexual contact is without the consent of the other person and may include cases where the consent was achieved via fraud or coercion. [18 U.S.C. 2242(3), 2244(a)(2)] or
 - F. The other person was a ward of the perpetrator, or in custody. [18 U.S.C. 2243(b)-(c), 18 U.S.C. 2244(a)(4), (a)(6)]
- ii. Substantially similar to 46 U.S.C. 7511(b). State, local, and Tribal offenses involving sexual contact without the consent of the other person and not involving one of the factors in subparagraph (i) will be treated as substantially similar to offenses under 18 U.S.C. 2244(b) and will be evaluated in accordance with paragraph 5.b above.
- d. Convictions for other sex offenses. Applications with convictions for sexual offenses other than those discussed above will be evaluated in accordance with the minimum and maximum assessment period in Table 1 to 10.211 or the maximum and minimum assessment set by the Coast Guard in accordance with footnote 2 to Table 1 to 10.211.
 - e. Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the conduct carry the same minimum and maximum assessment periods. See Footnote 1 to Table 1 to 46 CFR 10.211.
 - f. If the application is denied, the applicant shall be advised in writing of their appeal rights under 46 CFR 1.03-40 and the process for correcting CHRI under 28 CFR 16.34.
6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a regulation. It is not intended to, nor does it impose legally binding requirements on any party. This guidance represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and State regulators, in applying statutory and regulatory requirements. Alternative approaches for fulfilling this policy may be acceptable if the approach satisfies the requirements of the applicable statutes and regulations.
7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
- a. The development of this guidance and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Standards

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Evaluation and Development, Commandant (CG-REG). Pursuant to Department of Homeland Security Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), we have determined that this action is categorically excluded (CE) from further environmental analysis under paragraphs #A3, #L5 and #L56 in Appendix A, of Table 1 of DHS Directive Instruction Manual 023-01, Rev. 1. Our rationale for selecting these CEs is as follows. “Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies ... and other guidance ... that implement, without substantive change, statutory or regulatory requirements” or “...that interpret or amend and existing regulation without changing its environmental effect” are covered under DHS CE #A3. Promulgation of this policy and its associated guidance implements, without substantive change, the applicable Commandant Instruction or other federal agency regulations, procedures, manuals, and other guidance documents. Accordingly, Coast Guard CE #L5 applies. In addition, the policy letter includes elements that pertain to training, qualifying, licensing and disciplining maritime personnel. These latter aspects of the policy letter and its associated guidance are covered under Coast Guard CE #L56.

- b. This guidance will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this guidance must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates.
8. REQUEST FOR CHANGES. All requests for changes and questions regarding implementation of this policy and/or requests for changes should be directed to the Office of Merchant Mariner Credentialing (CG-MMC), at (202) 372-2357 or MMCPolicy@uscg.mil.

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Enclosure: (1) Statutory Language and relevant definitions

46 U.S.C. § 7511. Convicted sex offender as grounds for denial

(a) Sexual abuse. --A license, certificate of registry, or merchant mariner's document authorized to be issued under this part shall be denied to an individual who has been convicted of a sexual offense prohibited under--

- (1) chapter 109A of title 18, except for subsection (b) of section 2244 of title 18; or
- (2) a substantially similar offense under State, local, or Tribal law.

(b) Abusive sexual contact. --A license, certificate of registry, or merchant mariner's document authorized to be issued under this part may be denied to an individual who within 5 years before applying for the license, certificate, or document, has been convicted of a sexual offense prohibited under subsection (b) of section 2244 of title 18, or a substantially similar offense under State, local, or Tribal law.

Definitions

(1) The term “sexual act” means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; 18 U.S.C. 2246(2).

(2) The term “sexual assault” means any form of abuse or contact as defined in chapter 109A of title 18, or a substantially similar offense under State, local, or Tribal law. 46 U.S.C. 2101(45).

(3) The term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; 18 U.S.C. 2246(3).