

June 2009

COAST GUARD

Administrative Law Judge Program Contains Elements Designed to Foster Judges' Independence and Mariner Protections Assessed Are Being Followed



GAO

Accountability * Integrity * Reliability

Highlights of [GAO-09-489](#), a report to congressional requesters

Why GAO Did This Study

The United States Coast Guard’s Administrative Law Judge (ALJ) program is designed to, among other things, promote safety at sea while protecting mariners’ rights and is composed of judges whose duties include presiding over cases involving mariners’ credentials. If a mariner does not meet certain requirements related to safety and security at sea, Coast Guard investigative officers are to serve the mariner with a complaint that lists the allegation(s) and initiate proceedings that can result in the mariner’s credential being suspended or revoked. GAO was asked to review elements of the ALJ program and this report addresses (1) the extent to which the ALJ program contains elements designed to foster the decisional independence of ALJs, (2) the extent to which the ALJ program includes protections for mariners and whether complaints and decisions include elements required by program regulations, and (3) the outcome of mariner suspension and revocation cases in recent years.

To conduct this study, GAO analyzed the laws, regulations, and policies governing the ALJ program. GAO also reviewed all suspension and revocation cases opened and closed from November 10, 2005, through September 30, 2008, to determine outcomes, and further reviewed a representative sample of these cases to determine whether complaints and decisions included the required elements. GAO supplemented these case reviews with interviews of Coast Guard ALJ program officials.

[View GAO-09-489](#) or [key components](#). For more information, contact Stephen L. Caldwell at (202) 512-8777 or caldwells@gao.gov.

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What GAO Found

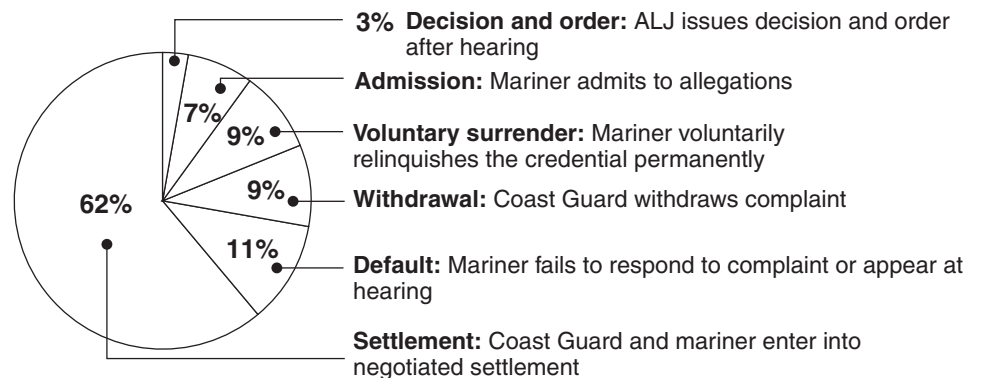
The Coast Guard’s ALJ program contains elements designed to foster the decisional independence of its judges by following Office of Personnel Management regulations governing the ALJs’ hiring and employment. These regulations are designed to ensure that the ALJs are not subject to undue influence from Coast Guard officials. For example, personnel actions against a judge, such as the removal of an ALJ, may only be taken through an independent agency, the Merit Systems Protection Board.

The Coast Guard’s ALJ program contains protections for mariners—such as the right to a hearing and representation—and complaints filed by the Coast Guard and decisions issued by ALJs that we reviewed generally included the required elements. In particular, GAO reviewed cases opened and closed from November 10, 2005, through September 30, 2008, and determined that (1) regulations governing complaints, which are intended to notify mariners of the allegations against them; and (2) regulations requiring ALJs’ decisions to contain certain elements, such as finding of fact, were being followed.

Based on GAO’s review of the 1,675 suspension and revocation cases opened and closed from November 10, 2005, through September 30, 2008, the majority (62 percent) resulted in settlement agreements; for example, a mariner may give up his or her credential while completing safety training. In these cases, the outcomes were determined through negotiations between the mariners and the Coast Guard. In contrast, 3 percent of the cases resulted in a hearing before an ALJ that ended with a decision and order—a decision presents the ALJ’s findings, while an order states the sanction, if any, imposed on the mariner. The remaining 36 percent of cases had a variety of outcomes. The disposition of all cases reviewed is shown below.

In commenting on a draft of this report, the Coast Guard generally concurred with the findings and believes that the report is both complete and accurate.

Disposition of the 1,675 Suspension and Revocation Cases Opened and Closed from November 10, 2005, through September 30, 2008



Source: GAO analysis of Coast Guard ALJ case outcomes.
 Note: Percentages do not add to 100 percent due to rounding.

Contents

Letter		1
	Background	4
	The Coast Guard's ALJ Program Contains Elements Designed to Foster the Decisional Independence of Its Judges	11
	Coast Guard's ALJ Program Contains Protections for Mariners' Interests and Complaints and Decisions That We Reviewed Generally Included the Required Elements	13
	Majority of Mariners' Cases Resulted in Settlement Agreements, with Relatively Few Decided by Coast Guard Judges	21
	Agency Comments	24
Appendix I	Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies	27
Appendix II	Objectives, Scope, and Methodology	40
Appendix III	Details Regarding the Sanction Outcomes of Mariners' Suspension and Revocation Cases	43
Appendix IV	Comments from the Department of Homeland Security	47
Appendix V	GAO Contact and Staff Acknowledgments	48
Related GAO Products		49
Table		
	Table 1: Administrative Procedures of the Coast Guard ALJ Program Compared to Three Other ALJ Programs in the Federal Government	30

Figures

Figure 1: Photographs Showing the Exxon Valdez and the Damage Caused as a Result of the Captain's Failure to Abide by Safety Standards	7
Figure 2: Disposition of the 1,675 Suspension and Revocation Cases Opened and Closed from November 10, 2005, through September 30, 2008	22
Figure 3: Sanction Outcomes of the 1,035 Suspension and Revocation Cases That Resulted in Settlement Agreements from November 10, 2005, through September 30, 2008	23
Figure 4: Disposition of the 45 Decision and Order Cases from November 10, 2005, through September 30, 2008	24
Figure 5: Sanction Outcomes of the 1,675 Suspension and Revocation Cases Opened and Closed from November 10, 2005, through September 30, 2008	44
Figure 6: Sanction Outcomes of 116 Admissions Cases Opened and Closed from November 10, 2005, through September 30, 2008	45
Figure 7: Sanction Outcomes of the 177 Default Cases Closed from November 10, 2005, through September 30, 2008	46

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United States Government Accountability Office
Washington, DC 20548

June 12, 2009

Congressional Requesters

The United States Coast Guard, a component within the Department of Homeland Security, is charged with ensuring that over 200,000 licensed merchant mariners are competent and their conduct promotes marine safety, security, and protection of the marine environment. If a mariner does not meet certain requirements related to safety and security at sea, Coast Guard investigative officers serve the mariner with a complaint, initiating proceedings that can result in the suspension or revocation of the mariner's credential, which would temporarily or permanently bar the mariner from working in a maritime position that requires that credential.

The Coast Guard's Administrative Law Judge (ALJ) program is composed of judges who, among other things, preside over cases involving the suspension and revocation of merchant marine credentials.¹ An ALJ's function as an impartial decision maker is similar to the role of a trial judge presiding over nonjury civil proceedings. ALJs preside in administrative proceedings that provide mariners the right to be represented by counsel and to call and cross-examine witnesses. Coast Guard ALJs review or preside over 600 suspension and revocation adjudications annually.²

Press reports and congressional hearings highlighted concerns about the decisional independence of ALJs in the Coast Guard ALJ system. As a

¹Suspension is the temporary forfeiture of a merchant mariner's credential, during which time the mariner is prohibited from employment that would require the credential. Revocation is the permanent relinquishment of the merchant mariner's credential, although in certain circumstances, a mariner whose credential has been revoked may apply to receive a new credential.

²In addition to the approximately 600 suspension and revocation cases Coast Guard ALJs hear each year, the ALJs hear other types of cases. From 2006 through 2008, Coast Guard ALJs annually adjudicated between 100 and 200 Transportation Security Administration (TSA) cases, between 55 and 75 National Oceanic and Atmospheric Administration (NOAA) cases, and between 14 and 25 Bureau of Industrial Security cases.

result, Congress asked us to review the Coast Guard's ALJ program.³ In particular, this report addresses the following questions:

- To what extent does the Coast Guard's ALJ Program contain elements designed to foster the decisional independence of ALJs?
- To what extent does the Coast Guard's ALJ Program include protections for mariners, and do complaints and decisions include elements required by the program's regulations?
- What is the disposition of Coast Guard ALJ suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008?

Appendix I discusses the similarities and differences in the structure and regulations governing the Coast Guard's ALJ program with those of ALJ programs in three other federal agencies—the U.S. Department of Agriculture (USDA), the U.S. Securities and Exchange Commission (SEC), and the National Transportation Safety Board (NTSB).

To address the first and second objectives, we analyzed the statutory provisions of the Administrative Procedure Act (APA), the Office of Personnel Management (OPM) regulations on administrative law judges, and Coast Guard regulations and policies and procedures governing administrative actions. Through reviews of the APA and pertinent OPM and Coast Guard regulations, we determined what structural elements are in place that are designed to foster the ALJs' decisional independence. We did not, however, assess whether the structural elements are effective at ensuring the ALJs' decisional independence.

For the second and third objectives, we initially obtained data from the Coast Guard ALJ program's case tracking database. Through discussions with knowledgeable officials from the Coast Guard's Office of Administrative Law Judges (OALJ), we determined that the database was not designed to capture all of the information necessary for addressing our specific objectives. In particular, the database was designed to function as a case tracking system and was not intended to capture the type of information that we were seeking. For example, outcomes were not

³Concurrent with our review, the Department of Homeland Security's Office of Inspector General is reviewing specific allegations of bias among the Coast Guard ALJs and will be issuing its own report on this issue later this year.

categorized in a way that was consistent with how we intended to report them. As a result, to address these objectives we performed a review of mariners' cases that had been completed in recent years. Due to a change in policy regarding the disposition of cases involving convictions for violations of drug laws that was effective from November 10, 2005, we limited the time frame for our case file reviews to those cases that were opened and closed from November 10, 2005, through September 30, 2008. To address the second objective, we selected a random, probability sample of 181 of the 1,675 closed cases to determine the extent to which certain mariner protections identified in Coast Guard procedures were documented in the mariners' case files. To address the third objective, we reviewed all 1,675 mariner case files to determine the procedural and sanction-based outcomes associated with the cases.⁴ To verify the outcomes were recorded accurately, we had a pair of independent analysts subsequently selected a random sample of 198 cases (from the population of 1,675 cases) and recorded their outcomes. Then, this same pair of analysts compared their results with the originally recorded outcomes for the same 198 cases. Based on the results of this comparison, we estimate that the error rate in recording case outcomes for the population (1,675) is 2 percent; and we are 95 percent confident that the actual error rate is less than or equal to 5 percent. Therefore, we conclude that the data generated from our analysis are sufficiently reliable for the purposes of our review.

In addition to the case file reviews, we also compared the structure and procedures of the Coast Guard's ALJ program to ALJ programs of three other federal agencies. In doing this comparison, we reviewed the regulations governing each of the programs and interviewed officials at each of the agencies. We did not perform a case file review of the other agencies to determine whether their procedures were being followed or evaluate the effectiveness of their adjudicatory processes. Rather, we summarized the structures and procedures and highlighted similarities and differences among the agencies' programs to provide context for the Coast Guard's ALJ program.

We conducted this performance audit from May 2008 to June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

⁴Procedural outcomes include courses of action, such as a negotiated settlement between a mariner and the Coast Guard, or a decision and order issued by an ALJ as a result of a hearing. A decision presents findings of law and fact, while an order states the sanction, if any, imposed against the mariner.

appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives. Appendix II provides additional details about our scope and methodology.

Background

Administrative Adjudications for the Federal Government

The Administrative Procedure Act (APA), enacted in 1946, established minimum uniform standards for agency adjudications. Before the enactment of the APA, the functions of investigation, prosecution, and adjudication were generally combined within a federal agency. Because federal agencies often promulgated policy through the adjudication process, agency heads had to control agency policy by overseeing adjudications. However, critics raised concerns that the fairness of the evidentiary fact-finding associated with adjudications may be jeopardized by the policy priorities of the agency head. The APA served to separate the fact-finding process and policy-making by establishing the position of the ALJ, which was to be insulated from undue agency influence and designed to oversee the fact-finding process. Specifically, the APA includes, among other things, requirements for ALJ appointment, pay, and tenure, as well as procedural requirements for adjudications over which ALJs preside, such as requirements related to evidence. At the same time, because ALJ decisions are subject to review within the agency, this process allows the agency head to maintain control over agency policy.

The APA has been implemented through OPM and agency-level regulations. Agencies that employ ALJs operate according to OPM regulations that govern the appointment, compensation, and removal of all ALJs in the federal government. Furthermore, each agency that conducts adjudications under the APA also has its own regulations or rules of practice, based on the APA, that govern its proceedings.

According to OPM's Central Personnel Data File, as of March, 2008, 30 federal agencies employed ALJs. The purpose and scope of the administrative proceedings vary greatly among agencies. For example, the Social Security Administration adjudicates non-adversarial cases involving disputes about individual disability claims, the National Labor Relations Board adjudicates cases involving allegations of unfair labor practices, and the Environmental Protection Agency adjudicates cases involving the

suspension and revocation of facility permits and violations of environmental regulations.

Several of the federal agencies that employ ALJs, including the Coast Guard, employ ALJs who adjudicate cases involving the suspension and revocation of credentials that are necessary for employment in a particular field. For example, USDA employs ALJs who hear cases involving individuals employed by firms that buy and sell perishable agricultural commodities and dealers and exhibitors of animals, among other things. The Securities and Exchange Commission's (SEC) ALJs handle cases involving individuals employed by broker-dealers and investment advisers.⁵ NTSB hears cases involving airmen, which include pilots, flight instructors, air traffic control-tower operators, and mechanics, among others. For more information about these agencies' ALJ programs, see appendix I.

The Coast Guard ALJ Program

The Coast Guard issues credentials that permit merchant mariners to engage in commerce at sea. There are several types of credentials that a mariner may need to be employed on a vessel. Mariners must meet certain requirements to obtain each type of credential, as well as ongoing requirements to continue operating under it. Merchant mariner documents are required for mariners that serve on merchant vessels of at least 100 gross tons, with some exceptions, and serve as certificates of identification and qualification. Licenses are required for officers, and certificates of registry are issued to medical personnel and pursers.⁶ Standards of Training, Certification, and Watchkeeping for Seafarers endorsements are issued to mariners who hold another merchant mariner credential and who meet international standards and serve aboard vessels to which the standards apply.⁷

The purpose of suspension and revocation proceedings is to promote safety at sea. If a mariner does not meet certain safety and security

⁵Broker-dealers are entities engaged in buying and selling securities, either for their own accounts or for the accounts of others.

⁶A purser is generally responsible for general administration and money-related tasks on a vessel.

⁷On March 16, 2009, the Coast Guard issued a rule consolidating the four mariner credentialing documents into one credential, the Merchant Mariner Credential, effective April 15, 2009. 74 Fed. Reg. 11,196 (Mar. 16, 2009).

requirements, the Coast Guard may initiate proceedings to suspend or revoke the mariner's credential. Federal law establishes circumstances in which the Coast Guard may, or must, suspend or revoke a mariner's credential. For example, the law provides that a credential may be suspended or revoked if the holder is convicted of certain driving offenses or poses a threat to the safety or security of a vessel or the marine environment.⁸ The law also provides that a credential must be suspended or revoked if it is shown at a hearing that the mariner has been convicted of violating a dangerous drug law within the prior 10 years and that a credential must be revoked if it is shown at a hearing that the mariner has been a user of, or addicted to, a dangerous drug, unless the mariner provides satisfactory proof that he or she is cured.⁹

The Coast Guard has issued regulations implementing the law, including that the Coast Guard may initiate an investigation when it appears that there are reasonable grounds to believe that a merchant mariner may have (1) committed an act of incompetence, misconduct, or negligence while acting under the authority of the credential; (2) violated any law or regulation intended to promote marine safety or to protect the navigable waters while acting under the authority of a credential; or (3) been convicted of a dangerous drug law violation or been a user of, or addicted to, a dangerous drug.¹⁰

An example of a case that demonstrates the importance of safety at sea is the case of the Exxon Valdez. Specifically, in March 1989, tank vessel Exxon Valdez struck Bligh Reef in Alaska; what followed was the largest oil spill in U.S. history. According to ExxonMobil, the company spent \$2.2 billion on cleanup. Finding that the master of the vessel had consumed alcohol within 4 hours of performing scheduled duties and had left the bridge of the ship before the accident, the Coast Guard ALJ suspended the master's license for 9 months, with an additional 3 months suspension if further violations of law governing his credential were proved. Figure 1

⁸46 U.S.C. § 7703.

⁹46 U.S.C. § 7704. Decisions of the Commandant on appeal have established precedent regarding the requirements of a settlement agreement to ensure that the mariner has been cured. Settlement agreements must, for example, require the successful completion of a drug rehabilitation program followed by a complete non-association with drugs for a minimum of 1 year, which includes participation in a drug abuse monitoring program. See *Coast Guard v. Sweeney*, Appeal No. 2535 (Feb. 18, 1992).

¹⁰46 C.F.R. § 5.101(a).

below shows photographs of the Exxon Valdez and the aftermath of its oil spill.

Figure 1: Photographs Showing the Exxon Valdez and the Damage Caused as a Result of the Captain's Failure to Abide by Safety Standards



Source: U.S. Coast Guard.

As of May 2009, the Coast Guard employs six ALJs; one Chief ALJ and five field ALJs. The Chief ALJ is located in Baltimore, Maryland. Field positions for ALJs are located in Alameda, California; New Orleans, Louisiana; New York, New York; Houston, Texas; Norfolk, Virginia; and Seattle, Washington (the Seattle position is vacant as of April 2009).¹¹ Coast Guard ALJs are assigned cases by the Chief ALJ, who reports to the Commandant of the Coast Guard. Cases are assigned to ALJs on a rotational basis, unless the case is contested and may lead to a hearing. Under those circumstances, the case is assigned to an ALJ based on geographic proximity to the mariner. The Coast Guard ALJ Docketing Center (located in Baltimore, Maryland), is the centralized office that handles the administrative duties related to suspension and revocation cases.

Coast Guard Administrative Proceedings

If a Coast Guard investigating officer determines that a suspension and revocation proceeding is appropriate, the officer serves a complaint on the mariner, which outlines the allegations against him or her. After the investigating officer has served the complaint, but before the mariner has taken any action, the officer may withdraw the complaint without any action by the ALJ if, for example, the officer is unable to locate the

¹¹According to Coast Guard ALJ officials, an ALJ accepted a position to be assigned to the Houston sector, effective May 2009.

mariner or if he or she determines that there is not sufficient evidence to pursue the case.

There are several actions that a mariner can take in response to a complaint. These actions include (1) not responding to the complaint (default), (2) admitting all the allegations (admission), (3) denying some or all of the allegations (denial and hearing), (4) entering into a settlement agreement (settlement agreement), or (5) voluntarily surrendering his or her credential rather than appearing at a hearing (voluntary surrender). In addition to these mariner actions, the Coast Guard can temporarily suspend a mariner's credential without a hearing (temporary suspension). Further details on each of these actions are addressed below.

Default

If the mariner does not respond to a complaint, the ALJ may issue a default order, which is considered an admission of the facts alleged in the complaint and a waiver of the right to a hearing on those facts.¹² Any time after a mariner has been found in default, the mariner may present good cause, such as evidence of being at sea, to set aside the default order. If the mariner does not submit an answer and the investigative officer does not file a motion for default within 180 days after the expiration of the answer period, the docketing center will administratively withdraw the complaint.

Admission

The mariner may file an answer admitting all of the allegations in the complaint, and the ALJ will issue an appropriate admissions order. For example, if the Coast Guard filed a complaint alleging that a mariner was negligent and proposed a 6-month suspension and the mariner admitted the allegation, the ALJ would then review the complaint and answer and, if proper, issue an order suspending the mariner's credential for 6 months.

Denial and Hearing

If the mariner wishes to deny any allegation, the mariner must file an answer to the complaint denying the allegation(s), and the mariner may request a hearing. At the hearing, the mariner (or his or her legal representative) and the investigative officer may present evidence in defense or support of the case and may conduct cross-examination of any evidence presented.¹³ The officer bears the burden of proving the case by a preponderance of the evidence; that is, the officer must prove that the

¹²33 C.F.R. § 20.310.

¹³33 C.F.R. § 20.801.

allegations are more likely to be true than not.¹⁴ If the mariner does not appear at a conference or a hearing and does not show good cause for failing to appear, the ALJ may issue a default order.¹⁵ After the hearing, the ALJ issues a decision and order,¹⁶ which must include the sanction, if any, imposed on the mariner.¹⁷

Settlement Agreement

If the mariner wishes to enter into a settlement agreement with the Coast Guard, the parties may submit a proposed settlement to the ALJ, who must approve the agreement.¹⁸ The settlement agreement may provide, for example, that in exchange for taking a maritime safety course, the proposed sanction of a 6-month suspension may be reduced to a 3-month suspension.

Voluntary Surrender

The mariner may also voluntarily surrender his credential in preference to appearing at a hearing. The mariner must sign a written statement affirming that the surrender is made voluntarily in preference to appearing at a hearing, that all rights to the credential are permanently relinquished, and that any rights to a hearing are waived.¹⁹

Temporary Suspension

In certain circumstances, such as when a mariner performs a safety-sensitive function on a vessel and there is probable cause to believe that the mariner has violated a law or regulation regarding the use of alcohol or a dangerous drug,²⁰ the Coast Guard may temporarily seize the mariner's credential without a hearing, so long as the ALJ holds a hearing within 30

¹⁴33 C.F.R. § 20.701.

¹⁵33 C.F.R. § 20.310(a).

¹⁶A decision presents findings of law and fact, while an order states the sanction, if any, imposed against the mariner.

¹⁷33 C.F.R. § 20.902.

¹⁸33 C.F.R. § 20.502.

¹⁹46 C.F.R. § 5.203. While a voluntary surrender is a permanent relinquishment of credentials, a mariner may also voluntarily deposit his or her credential in any case where there is evidence of mental or physical incompetence. The Coast Guard may accept such a deposit on the basis of a written agreement that specifies the conditions upon which the Coast Guard will return the credential. 46 C.F.R. § 5.201.

²⁰Other circumstances in which the Coast Guard may temporarily seize a credential before holding a hearing include when a mariner performs a safety-sensitive function on a vessel and there is probable cause to believe that the mariner has been convicted of an offense that would prevent the issuance or renewal of the credential or, within 3 years prior to the start of the proceeding, has been convicted of certain driving-related offenses.

days and issues a decision 45 days or less after the temporary suspension.²¹ According to Coast Guard officials, a majority of cases that resulted in temporary suspensions were drug and alcohol-related cases.

Outcomes of Coast Guard ALJ Cases

Each mariner case has two types of outcomes, procedural and sanction. Procedural outcomes include courses of action, such as a negotiated settlement between a mariner and the Coast Guard, or a decision and order issued by an ALJ as a result of a hearing. The other types of outcomes—sanction outcomes—are the actions taken against the mariner’s credential and include penalties, such as suspension or revocation. Thus, for example, the outcome of a case may be that a mariner could enter into a negotiated settlement (procedural outcome) in which he or she agrees to a suspension of his or her credentials for a specified period of time (sanction outcome).

Procedures for Appeals

Once a Coast Guard ALJ has decided a case, either a mariner or an investigating officer may appeal the ALJ’s decision to the Commandant of the Coast Guard.²² The Commandant reviews the record on appeal to determine whether the ALJ committed an error in the proceedings and whether the ALJ’s decision should be affirmed, modified, reversed, or should be remanded for further proceedings. The Commandant then issues a written decision.

If the Commandant affirms an ALJ decision to revoke or suspend a credential, the mariner may then appeal the Commandant’s decision to NTSB.²³ NTSB may affirm the Commandant’s decision, set aside the Commandant’s decision and dismiss the case, or set aside the Commandant’s findings, conclusions, or order and remand the case to the Commandant for further consideration. A mariner or the Commandant

²¹33 C.F.R. §§ 20.1201, 20.1207, 20.1208.

²²The parties may appeal the following issues: whether each finding of fact is supported by substantial evidence; whether each conclusion of law accords with applicable law, precedent, and public policy; whether the ALJ abused his or her discretion; and the ALJ’s denial of a motion for disqualification. 33 C.F.R. § 20.1001.

²³49 U.S.C. § 1153. The grounds for appeal to NTSB are that a finding of a material fact is erroneous; a necessary legal conclusion is without governing precedent or is contrary to law or precedent; a substantial and important question of law, policy, or discretion is involved; or a procedural error that harmed the interests of the respondent has occurred. 49 C.F.R. § 825.15.

may seek judicial review of NTSB's decision in an appropriate U.S. court of appeals or the U.S. Court of Appeals for the District of Columbia Circuit.²⁴

The Coast Guard's ALJ Program Contains Elements Designed to Foster the Decisional Independence of Its Judges

The structure of the Coast Guard's ALJ program contains elements designed to foster the decisional independence of its judges through a series of administrative requirements related to appointment, pay, and tenure that are mandated by the APA and administered by OPM. In addition to regulations implemented by OPM, which govern ALJ programs for the federal government, the Coast Guard has issued additional regulations that govern its administrative proceedings and are designed to ensure judges' decisional independence. Both OPM and Coast Guard regulations stem from APA provisions, which in part are designed to foster the decisional independence of ALJs.

OPM Regulations Are Designed to Foster Judges' Decisional Independence

OPM regulations regarding the ALJ appointment processes are designed to ensure that ALJs are hired based on their merits and not for other reasons, such as political views or loyalties to a federal agency, thus fostering decisional independence. For example, OPM recruits and selects ALJs. Although each federal agency, including the Coast Guard, hires its own ALJs, OPM has been exclusively responsible for the initial examination, certification, selection, and determination of the compensation of ALJs for each federal agency that has an ALJ program. Under this process, OPM periodically conducts competitive examinations and uses the results of these examinations to rank applicants for ALJ positions according to their

²⁴There have been multiple decisions discussing whether a mariner may seek judicial review of an ALJ decision if he or she does not appeal the ALJ decision to the Commandant and whether a mariner may seek judicial review of the Commandant's decision if he or she does not appeal the Commandant's decision to NTSB, and the issue continues to be litigated. *See* Kinneary v. New York, 358 F. Supp. 2d 356 (S.D.N.Y. 2005) (stating that the respondent would not have been able to seek judicial review of the Commandant's decision, but rather that judicial review of final agency action would be from an order of NTSB); *Blackwell v. United States*, 586 F. Supp. 947 (S.D. Fla. 1984) (stating that because the respondent did not file a timely appeal with NTSB, he had failed to exhaust his administrative remedies); *but see* *Dresser v. Ingolia*, 2009 WL 139662 (5th Cir. 2009) (suggesting that, based on Coast Guard regulations providing that an ALJ's decision becomes final action of the Coast Guard 30 days after the date of its issuance, unless appealed to the Commandant, the ALJ's decision would have been final agency action and thus subject to judicial review if the respondent had not appealed the decision to the Commandant); *McDonald v. United States*, 2005 WL 1571215 (S.D. Tex. 2005) (holding that because the Vice Commandant's decision is final agency action, the respondent may seek judicial review of the decision without appealing to NTSB).

qualifications and skills. Applicants are to be licensed attorneys authorized to practice law in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court). Applicants who meet these minimum qualification standards and pass the examination are then assigned a score and placed on a register of eligible hires. Agencies, including the Coast Guard, then select an ALJ from the top three available candidates, taking into account the location, geographical preference, and veterans' preference rules. Additionally, agencies may appoint current or former ALJs from other federal agencies.

Once an ALJ is hired by a federal agency, OPM regulations regarding ALJ pay and performance are designed to preserve the ALJ's integrity, independence, and insulation from agency influence. For example, OPM regulations state that an agency may not rate the job performance of an ALJ, nor are agencies allowed to grant any monetary or honorary award or incentives to ALJs.²⁵ According to OPM regulations, OPM assigns each ALJ position to one of the three levels of pay (AL-3, AL-2, or AL-1).²⁶ The pay levels are determined based on the Executive Schedule, and advancement through the pay levels is primarily based on time served. These provisions are designed to prevent an agency from exercising influence over a judge by, for example, promising raises or bonuses if the ALJ finds in the agency's favor. We reviewed personnel files and verified that all of the Coast Guard ALJs that were serving at the time of our review were hired and paid under OPM regulations.²⁷

OPM regulations regarding ALJ tenure also serve as a protective measure that is designed to ensure decisional independence. Upon appointment, ALJs are given career appointments. As ALJ positions are granted career appointments, measures exist to protect them from being dismissed or removed from office without good cause and a hearing before an independent agency. For example, the APA, as amended, states that an agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an ALJ only for good cause and after a hearing before the Merit Systems Protection Board.²⁸

²⁵ 5 C.F.R. § 930.206.

²⁶ 5 C.F.R. § 930.205.

²⁷ GAO plans to issue another report regarding ALJ program management, hiring, and performance management later this year.

²⁸ 5 U.S.C. § 7521.

Coast Guard Regulations Contain Elements Designed to Foster Decisional Independence

In addition to OPM regulations, Coast Guard regulations include provisions designed to foster the decisional independence of the ALJs. For example, Coast Guard regulations state four key requirements to ensure the integrity and independence of its ALJs: (1) ALJs may not engage in ex parte communications;²⁹ (2) ALJs may not be responsible to or subject to the supervision or direction of those investigating for or representing the Coast Guard;³⁰ (3) Coast Guard officers, agents, and employees who investigate for, or represent the Coast Guard in any administrative proceeding, are prohibited from participating or advising in the decision of the ALJ, except as a witness or counsel in the proceeding;³¹ and (4) ALJs may disqualify themselves if they have a personal bias.³² These four requirements are designed to ensure that ALJs are protected from agency coercion or influence and that all persons related to the case are adequately informed in a fair manner. Additionally, Coast Guard's OALJ maintains a separate headquarters office in Baltimore, Maryland and reports directly to the Office of the Commandant.

Coast Guard's ALJ Program Contains Protections for Mariners' Interests and Complaints and Decisions That We Reviewed Generally Included the Required Elements

The Coast Guard ALJ program contains protections for mariners, and complaints filed by the Coast Guard and decisions issued by Coast Guard ALJs that we reviewed generally included the elements required by the program's regulations. Specifically, in reviewing closed cases, we found that regulations governing elements to be included in a complaint filed against a mariner and those required for an ALJ decision were being followed.

²⁹The APA provides that an ALJ may not engage in communications relevant to the merits of the proceeding with interested parties outside of the agency. 5 U.S.C. § 557(d)(1). The APA also provides that an ALJ may not consult a person or party on a fact in issue, unless the ALJ provides notice and opportunity for all parties to participate. 5 U.S.C. § 554(d)(1).

³⁰33 C.F.R. § 20.206(a).

³¹33 C.F.R. § 20.206(b).

³²33 C.F.R. § 20.204.

Coast Guard's ALJ Program Contains Procedures for Protecting Mariners' Interests

According to the Coast Guard, it is responsible for ensuring that merchant mariners' conduct promotes marine safety and security, among other things, and, as such, its ALJ proceedings are designed to protect the integrity of the credentials rather than to discipline or penalize merchant mariners. The Coast Guard also recognizes that mariners have interests in possessing their credentials, and the ALJ program has procedures that protect the mariners' interests. For example, the ALJ program allows mariners to dispute any allegations at administrative hearings, provides that mariners may be represented by attorneys at the hearings, and allows mariners to appeal ALJs' decisions. For a discussion of how the protections provided by the Coast Guard's ALJ program compare to those provided by the other ALJ programs that we reviewed (USDA, SEC, and NTSB), see appendix I.

APA Protections

Mariners are afforded specific rights in ALJ hearings under the APA.³³ For example, under the APA, mariners have the right to

- Submit evidence and argument in response to allegations;
- Be heard by a judge who is not subject to the supervision of an employee engaged in the investigation or prosecution of the case;
- Be accompanied, represented, and advised by counsel or other duly qualified representative;
- Inspect and copy certain, nonprivileged documents obtained or prepared in connection with the administrative proceeding, and to request the issuance of subpoenas; and
- Submit proposed findings of fact and conclusions of law before a decision is rendered in a particular case.

Coast Guard ALJ Program Protections

In addition to the protections afforded mariners under the APA, the Coast Guard has also implemented protections through the regulations that govern its administrative proceedings. For example, a complaint filed by the Coast Guard must contain certain elements, such as facts alleged against the mariner,³⁴ and the decision issued by the ALJ must contain certain elements, such as findings of fact, conclusions of law, and

³³5 U.S.C. § 554-557.

³⁴33 C.F.R. § 20.307.

sanctions, if ordered.³⁵ Other protections include the appeals process, expediting hearings, the ability to reopen a case, and issuance of temporary credentials.

Coast Guard ALJ Program Appeals Process

The Coast Guard ALJ program's appeal process is designed to protect the mariners' interests. In particular, any party may appeal the ALJ's decision to the Commandant of the Coast Guard on any of four issues: (1) whether each finding of fact is supported by substantial evidence; (2) whether each conclusion of law is consistent with applicable law, precedent, and public policy; (3) whether the ALJ abused his or her discretion; or (4) whether the ALJ's denial of a motion for disqualification was proper.³⁶ In reviewing the appeal, the Commandant reviews the record to determine whether the ALJ committed an error in the proceedings and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings, and the Commandant issues a written decision. If the Commandant affirms an ALJ decision to revoke or suspend a credential, the mariner may then appeal the Commandant's decision to NTSB.³⁷ The grounds for appeal to NTSB are that a finding of a material fact is erroneous; that a necessary legal conclusion is without governing precedent or is contrary to law or precedent; that a substantial and important question of law, policy, or discretion is involved; or that a procedural error that harmed the interests of the mariner has occurred.³⁸ NTSB may affirm the Commandant's decision; set aside the Commandant's decision and dismiss the case; or set aside the Commandant's findings, conclusions, or order and remand the case to the Commandant. A mariner or the Commandant may seek judicial review of NTSB's decision in an

³⁵33 C.F.R. § 20.902(a).

³⁶33 C.F.R. § 20.1001. A party may request that an ALJ disqualify himself or herself for personal bias or other valid cause. If the ALJ denies the request, the party may appeal that decision to the Commandant.

³⁷49 U.S.C. § 1133.

³⁸49 C.F.R. § 825.15.

appropriate U.S. Court of Appeals or the U.S. Court of Appeals for the District of Columbia Circuit.³⁹

According to Coast Guard officials, from November 10, 2005, through September 30, 2008, the Coast Guard Commandant made decisions on 29 appeals filed either by the mariner or the Coast Guard. In 9 instances, the Coast Guard appealed the ALJ decision; in 19 instances, the mariner appealed the ALJ decision, and in 1 case, both the Coast Guard and the mariner appealed the ALJ decision. Of the 9 cases in which the Coast Guard appealed the ALJ decision, the Commandant affirmed the ALJ decision in 6 cases and overturned the ALJ decision in 3 cases.⁴⁰ Of the 19 cases in which the mariner appealed the ALJ decision, the Commandant affirmed the ALJ decision in 16 cases and overturned the ALJ decision in 3 cases.⁴¹ In the case in which both the Coast Guard and the mariner appealed, the Commandant affirmed the ALJ decision.

According to the NTSB's Office of Administrative Law Judges (OALJ), from November 10, 2005, through September 30, 2008, NTSB decided two appeals of the Commandant's decisions. In both cases, NTSB denied the appeals and affirmed the Commandant's orders.

Expedited Hearing

While mariners generally have a right to a hearing before the suspension or revocation of their credentials, the Coast Guard may suspend or take immediate possession of a mariner's credential if the mariner performs a safety-sensitive function on a vessel and there is probable cause to believe the mariner violated law or federal regulations regarding alcohol or dangerous drug use, was convicted of an offense that would preclude issuance of a credential, was convicted of certain driving offenses, or is a

³⁹49 U.S.C. § 1153. There have been multiple decisions discussing whether a mariner may seek judicial review of an ALJ decision if he or she does not appeal the ALJ decision to the Commandant and whether a mariner may seek judicial review of the Commandant's decision if he or she does not appeal the Commandant's decision to NTSB, and the issue continues to be litigated. See note 24 for more information.

⁴⁰In each of these three cases, the Commandant overturned the ALJ decision and remanded the case to the ALJ for further proceedings consistent with the Commandant's decision.

⁴¹In two of these three cases, the Commandant overturned the ALJ decision and remanded the case to the ALJ for further proceedings. In the third case, the Commandant overturned the ALJ decision and dismissed the case.

security risk.⁴² Under these specific circumstances, the Coast Guard is to (1) immediately file a complaint with the ALJ Docketing Center, (2) hold an expedited hearing within 30 days of the temporary suspension, and (3) issue a decision within 45 days of the temporary suspension. According to Coast Guard officials, from November 10, 2005, through September 30, 2008, there were four cases in which mariners' credentials were temporarily suspended. In two cases, the mariner voluntarily surrendered the credential, in one case the mariner and the Coast Guard settled; and in one case, the ALJ issued a decision and order.

Reopening a Case

As a further protection, ALJs are permitted to reopen a case if it is believed that a change in fact or law warrants such a reopening or that it is in the public's interest to reopen the case in order to take additional evidence. Furthermore, any party may request to reopen a case within 30 days of the closing of the case, and a mariner may also—within 3 years after a suspension and revocation proceeding has resulted in a revocation of a credential—request to reopen the proceeding to modify the order of revocation. Requests of this type must clearly state why the basis for the revocation is no longer valid and how the issuance of a new license, certificate or document is compatible with the requirement of good discipline and safety at sea.⁴³ According to Coast Guard officials, from November 10, 2005, through September 30, 2008, ALJs issued five decisions on motions to reopen cases—ALJs denied motions to reopen in three cases, and granted motions to reopen in two cases. Similarly, if a mariner can show good cause, an ALJ may set aside a finding of default.⁴⁴ For example, ALJ program officials explained that because mariners are away at sea for extended periods of time, it is not unreasonable that complaints served upon their residences may not have reached them in a timely fashion. Consequently, ALJs are allowed the flexibility to set aside a default to allow the mariner to exercise his or her right to a hearing. According to Coast Guard officials, there were no defaults set aside in our date range.

⁴²46 U.S.C § 7702.

⁴³33 C.F.R. § 20.904(f).

⁴⁴33 C.F.R. § 20.310(e).

Temporary Credentials

Finally, as an added protection, a mariner who has appealed an ALJ decision suspending or revoking his or her credentials may apply for temporary credentials pending a decision on the appeal.⁴⁵ This application is made either to the ALJ or to the Coast Guard Office of Investigations and Analysis, depending on whether the case has already been transferred to the Coast Guard Chief Counsel. Temporary credentials are valid for 6 months or until the Commandant issues a decision on the appeal. However, if a decision has not been issued when a temporary credential expires, a mariner may request another temporary credential. A mariner who has appealed a decision of the Commandant affirming a suspension or revocation of his or her credential to NTSB is also eligible to apply for a temporary credential.⁴⁶ These requests must be submitted to the Office of Investigations and Analysis.

Select Mariner Protections We Assessed Are Being Followed

Based on our file reviews, we determined that regulations requiring that certain elements be included in a complaint against a mariner and in an ALJ decision were being followed. While other protections are to be in place, as addressed above, we could not objectively verify that they were followed based on our case file review. Under the ALJ program, Coast Guard regulations state that complaints filed against a mariner are to include the following elements:

- the type of case,
- the statute(s) or rule(s) allegedly violated,
- the pertinent facts alleged, and
- the order of suspension or revocation proposed by the Coast Guard.⁴⁷

⁴⁵ 46 C.F.R. § 5.707(a). A mariner whose credential was revoked as a result of a finding that the mariner was a user of, or addicted, to a dangerous drug or was convicted of a dangerous drug law is not eligible to apply for a temporary credential during the time an appeal to the Commandant or NTSB is pending. 46 C.F.R. §§ 5.707, 5.715.

⁴⁶ 46 C.F.R. § 5.715.

⁴⁷ 33 C.F.R. § 20.307(a).

Additionally, the Coast Guard investigative officer, as the filing party of the complaint, is to ensure that the complaint bears a signed certificate of service.⁴⁸

Just as the complaints filed against mariners are to contain specific elements, decisions rendered by ALJs are to also contain particular elements. After closing the record of the proceeding, Coast Guard regulations state that the ALJs are to prepare a decision that contains the following elements:

- a finding of fact on each material issue of fact and conclusion of law, as well as the basis for each finding;
- the disposition of the case, including any appropriate order necessary to achieve that disposition;
- the date on which the decision will become effective; and
- a statement of further right to appeal.⁴⁹

While the ALJ may render a decision orally from the bench, Coast Guard regulations provide that an oral decision is to also state the issues in the case and make clear, on the record, the ALJ's findings of fact and conclusions of law. When an ALJ renders an oral decision, the ALJ is to also prepare and serve a written order upon the parties after the conclusion of the hearing. In all cases, the ALJ is required to base the decision upon a consideration of the whole record of the proceedings.

We determined that almost all of the case files we reviewed contained the elements required to be included in a complaint against a mariner. Specifically, we analyzed a probability sample of 181 cases to determine the extent to which the case files contained documentation that included the required elements. Based on this sample, we estimate that

⁴⁸33 C.F.R. § 20.304(c). A certificate of service is a document signed by the investigative officer stating that he or she has served the complaint on the mariner. The officer may serve a complaint by personal service, certified mail with return receipt, or by express courier service with receipt capability.

⁴⁹33 C.F.R. § 20.902(a).

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- 100 percent of the complaints in the case files set forth the type of case;⁵⁰
 - 100 percent of the complaints in the case files set forth the statute(s) or rule(s) allegedly violated;
 - 100 percent of the complaints in the case files set forth the pertinent facts for the alleged violation;
 - 100 percent of the complaints in the case files set forth an order of suspension or revocation proposed by the Coast Guard; and
 - 95 percent of the complaints in the case files contain a completed certificate of service.⁵¹

We determined that all cases in which a decision was issued contained the elements required for an ALJ decision. Of the 1,675 cases opened and closed from November 10, 2005, through September 30, 2008, 45 ended with a decision made by an ALJ. Of these 45 cases, 36 cases contained written decisions issued after the hearing, while the remaining 9 cases contained oral decisions rendered at the conclusion of the hearing. Our review of the 36 case files with written decisions showed the following:

- 100 percent set forth findings on each material issue of fact and conclusions of law, as well as the basis for each finding;
- 100 percent set forth the disposition of the case, including the appropriate order;
- 100 percent provided the date upon which the decision became effective; and
- 100 percent included a statement of the parties' further right to appeal the decision.

⁵⁰For all estimates of 100 percent, we are 95 percent confident that the actual compliance rate is between 98.4 percent and 100 percent.

⁵¹Although 181 certificates of service were accounted for, we identified nine instances in which the certificate of service was not properly completed in that, for example, a box was left unchecked. We are 95 percent confident that the actual compliance rate for case files that contain a completed certificate of service is between 90 percent and 97.6 percent.

We also reviewed the 9 cases containing oral decisions provided at the conclusion of the hearing and found that all 9 contained a subsequent written order.

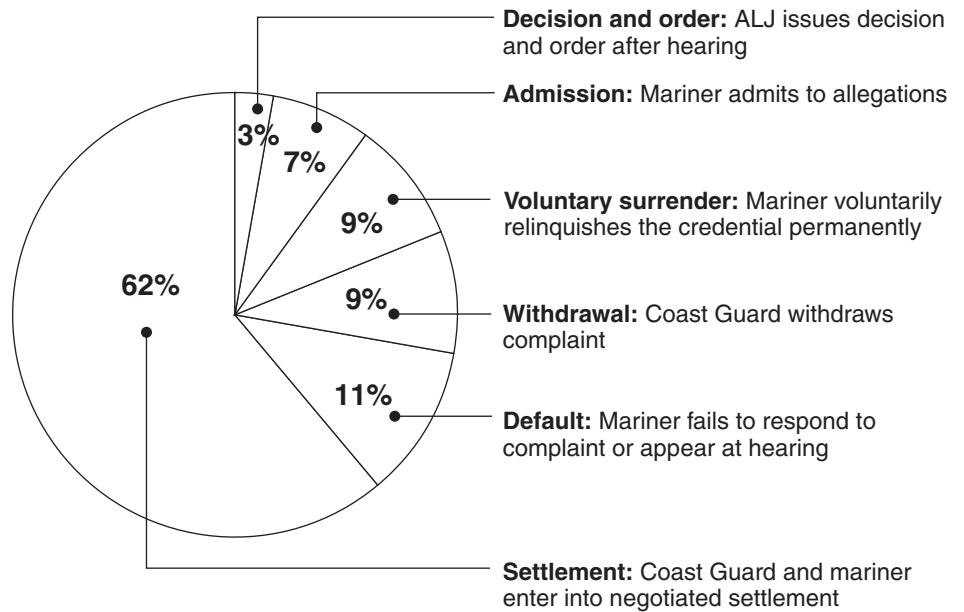
Majority of Mariners' Cases Resulted in Settlement Agreements, with Relatively Few Decided by Coast Guard Judges

In terms of procedural outcomes, the majority of cases we reviewed involving the possible suspension or revocation of mariners' credentials resulted in negotiated settlement agreements between the mariners and the Coast Guard. For the majority of these cases, the mariners received a stayed revocation in which they agreed to voluntarily relinquish their credentials pending completion of certain conditions—a sanction outcome. In contrast, relatively few cases resulted in a hearing in which a Coast Guard ALJ issued a decision and order. For about half of the cases resulting in a decision and order, the mariners received a sanction of revocation in which they were ordered to permanently forfeit their credentials.

The Procedural Outcome for the Majority of Mariners' Cases Was a Settlement Agreement

Based on our review of the procedural outcomes of the 1,675 suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008, we found that 1,035 cases (or 62 percent) resulted in settlement agreements, while 45 cases (3 percent) resulted in decisions and orders by ALJs. The remaining 595 cases (36 percent) resulted in a variety of outcomes. The results or disposition of all 1,675 cases are shown in figure 2.

Figure 2: Disposition of the 1,675 Suspension and Revocation Cases Opened and Closed from November 10, 2005, through September 30, 2008



Source: GAO analysis of Coast Guard ALJ case outcomes.

Note: Percentages do not add to 100 due to rounding.

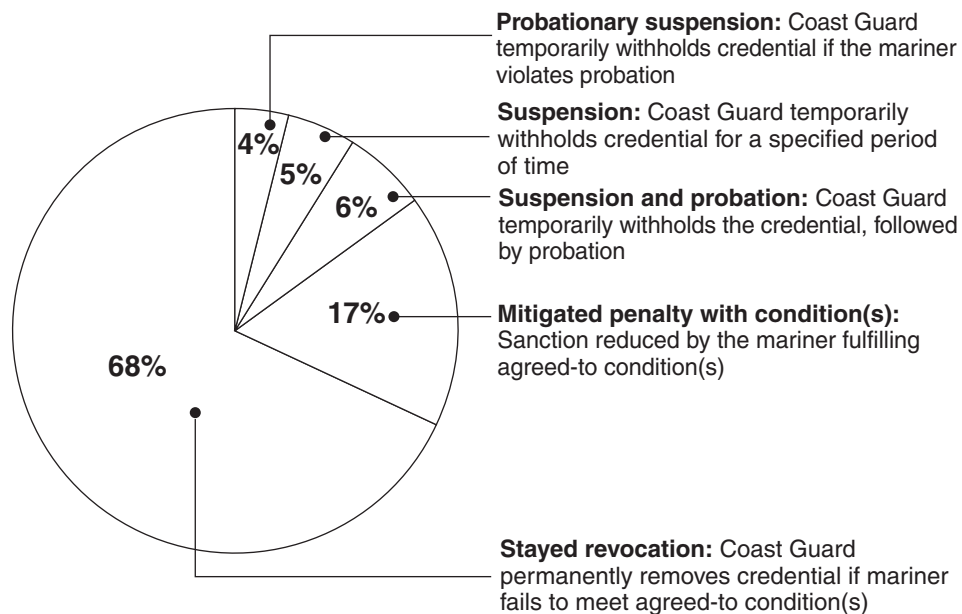
A logical explanation for the relatively large percentage of settlement agreements is that federal law and Coast Guard regulations require ALJs to revoke credentials in certain cases involving dangerous drug use. Specifically, if after a hearing it is proved that the mariner is a user of, or is addicted to, a dangerous drug, the ALJ is required to revoke the mariner's credentials.⁵² However, in these types of cases, a mariner may enter into a settlement agreement with the Coast Guard that imposes a sanction other than outright revocation. As a result, there is an incentive for mariners to settle in drug use cases.

⁵² 46 U.S.C. § 7704(c).

The Most Common Sanction for Settlement Agreement Cases Was a Stayed Revocation

Of the 1,035 cases that resulted in settlement agreements, the majority of these cases (68 percent) resulted in a sanction of a stayed revocation, as shown in figure 3. In a stayed revocation, a mariner temporarily relinquishes his or her credential and is required to comply with certain conditions before his or her credential is returned. This sanction may be used in settlement agreement cases where there is proof of dangerous drug use. In such cases, mariners must demonstrate cure from addiction to dangerous drugs by completing a series of requirements laid out in the settlement agreements before their credential can be returned.⁵³ During this time, the mariners cannot work in any position requiring mariner credentials. If the mariners complete the requirements, they are able to get their credentials back; otherwise, the credentials are forfeited.

Figure 3: Sanction Outcomes of the 1,035 Suspension and Revocation Cases That Resulted in Settlement Agreements from November 10, 2005, through September 30, 2008



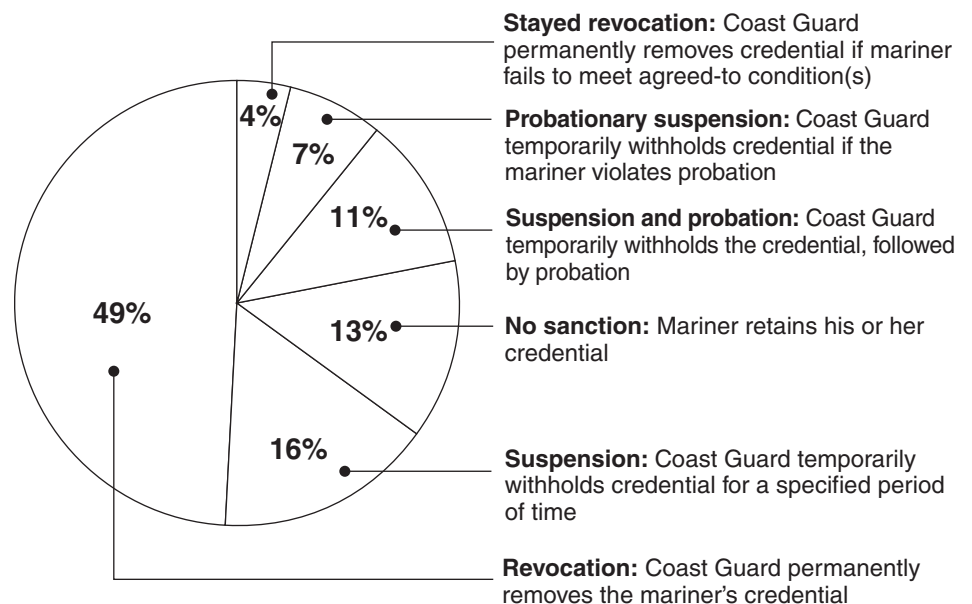
Source: GAO analysis of Coast Guard ALJ case outcomes.

⁵³In drug use cases, although a mariner may enter into a settlement agreement that imposes a sanction less than revocation, the mariner must demonstrate that he or she is cured before his or her credential is reinstated. As noted above, Commandant precedent describes the conditions that are to be included in such a settlement agreement, such as a drug rehabilitation program and a period of non-association with drugs, in order to ensure that the mariner is cured.

The Most Common Sanction Outcome for Decision and Order Cases Was a Revocation

Of the 45 cases that resulted in a decision and order by a Coast Guard ALJ, the most common sanction was revocation (49 percent), as shown in figure 4 below. In a revocation, mariners are ordered to permanently forfeit their credentials. Additionally, in 13 percent of the cases, the ALJ did not order a sanction, meaning that the mariners retained their credentials.

Figure 4: Disposition of the 45 Decision and Order Cases from November 10, 2005, through September 30, 2008



Source: GAO analysis of Coast Guard ALJ case outcomes.

Further details on the results of our case file reviews, specifically regarding sanctions outcomes, can be found in appendix III.

Agency Comments

In May 2009, we requested comments on a draft of this report from the Department of Homeland Security and the Coast Guard. The Coast Guard provided technical comments, which we have incorporated into the report, as appropriate. In addition to the technical comments, the Department of Homeland Security and the Coast Guard jointly provided an official letter for inclusion in this report. In the letter, the agencies noted that they generally concur with our findings and believe the report to be both complete and accurate. A copy of this letter can be seen in appendix IV.

We are sending copies of this report to the Secretary of Homeland Security, the Commandant of the Coast Guard, the Director of the Office of Management and Budget, and interested congressional committees. The report is also available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions concerning this report, please contact me at (202) 512-8777 or caldwells@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read "Stephen L. Caldwell", with a checkmark at the end of the signature.

Stephen L. Caldwell
Director, Homeland Security and Justice Issues

List of Congressional Requesters

The Honorable John D. Rockefeller IV
Chairman

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Bennie G. Thompson
Chairman

The Honorable Peter T. King
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Maria Cantwell
Chairman

The Honorable Olympia J. Snowe
Ranking Member
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Frank R. Lautenberg
Chairman

Subcommittee on Surface Transportation and Merchant Marine
Infrastructure, Safety, and Security
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Frank LoBiondo
Ranking Member

Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Steven C. LaTourette
House of Representatives

Appendix I: Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies

This appendix describes the structures and procedures of administrative law judge (ALJ) programs in three federal agencies to show how they compare to the Coast Guard's ALJ program. ALJs at each of these agencies hear cases involving the suspension and revocation of credentials that are necessary for employment in a particular field. This appendix (1) describes the types of cases that the ALJs at select federal agencies hear, (2) summarizes similarities and differences in the structures and procedures of the ALJ programs at each of the selected agencies, and (3) presents a more detailed description of the procedures involved in adjudications at each agency.

Types of Cases Heard by ALJs in Select Federal Agencies

Like the Coast Guard ALJs, ALJs at the U.S. Department of Agriculture (USDA), the Securities and Exchange Commission (SEC), and the National Transportation Safety Board (NTSB) hear cases related to the possible suspension and revocation of credentials required for employment in a particular field. Further details on each of these agency's ALJ programs are provided below.

U.S. Department of Agriculture

USDA hears cases involving individuals employed with firms that buy and sell perishable agricultural commodities and dealers and exhibitors of animals, among other things. For example, within USDA, the Animal and Plant Health Inspection Service (APHIS) regulates certain animal dealers and exhibitors, who are required to maintain licenses and meet certain standards. If a licensee does not meet the necessary standards, the dealer or exhibitor license may be suspended or revoked. Similarly, firms that buy and sell perishable agricultural commodities are regulated by USDA's Agricultural Marketing Service (AMS), and individuals that are responsibly connected to a firm that violates AMS regulations may be subject to employment restrictions, such as a prohibition on employment with another licensee for 1 year. In order to suspend or revoke an animal dealer or exhibitor license or to impose employment restrictions on individuals responsibly connected to violator firms, the responsible USDA component conducts an investigation, and the Office of General Counsel (OGC) within that component prepares a complaint and submits it to the Office of Administrative Law Judges (OALJ). A USDA ALJ then conducts the administrative proceeding between the agency, represented by the component OGC, and the licensee, who may also have legal representation.

**Securities and Exchange
Commission**

SEC handles cases including those involving individuals employed by broker-dealers and investment advisers.⁵⁴ Broker-dealers and investment advisers are required by federal law to comply with certain standards in order to, for example, prevent fraud, and if individuals associated with those firms do not meet or violate those standards, SEC may, among other sanctions, bar the individuals from associating with broker-dealers or investment advisers for a specified period of time. In order to impose this sanction, SEC's Division of Enforcement conducts an investigation, presents evidence to the commission, and if the commission decides to issue an order instituting proceedings, an SEC ALJ adjudicates the claim between the agency, represented by the SEC Division of Enforcement, and the regulated entity.

**National Transportation Safety
Board**

NTSB hears cases involving airmen, which includes pilots, air traffic control tower operators, and mechanics, among others. Airmen are required to obtain Federal Aviation Administration (FAA) issued certificates. If FAA determines that the suspension or revocation of an airman's certificate is necessary for aviation safety and the public interest, FAA may issue an order suspending or revoking the certificate. An airman may then appeal the order to an NTSB ALJ, who conducts the proceeding between the FAA Division of Enforcement and the certificate holder.

**Comparison of Structures
and Procedures of Select
Agencies' ALJ Programs**

The structure of each of the agencies (Coast Guard, USDA, SEC, and NTSB) is similar, in that it contains elements designed to protect ALJs from undue agency influence, as required by the Administrative Procedures Act (APA). For example, no ALJ may be subject to the supervision or direction of an employee engaged in an investigating or litigating function for the agency, and the agency cannot remove an ALJ from office without good cause and a hearing before an independent entity. However, these agencies are illustrative of one primary structural difference among ALJ programs. Like Coast Guard ALJs and ALJs at most federal agencies, the ALJs at USDA and SEC are located within the regulating agency. That is, the ALJs that adjudicate disputes between the

⁵⁴ Broker-dealers are entities engaged in buying and selling securities, either for their own accounts or for the accounts of others. In addition to associated persons of broker-dealers and investment advisers, the Commission has adjudicatory jurisdiction over the broker-dealers and advisers themselves, investment companies, transfer agents, municipal security dealers, and government security dealers, as well as their associated persons, and disciplinary jurisdiction over those who appear and practice before the Commission, such as accountants and attorneys.

regulating agency and the regulated individual are located within the regulating agency. In contrast, NTSB ALJs handle the adjudication of cases arising in another agency, FAA. Under this structure, which is called a split-enforcement model, the adjudicating agency is distinct from the regulating agency. That is, the ALJs that adjudicate disputes between the regulating agency and the regulated individuals are located within a separate agency.

Because the APA requires certain minimum procedures for these adjudications, the procedures associated with adjudications in each of these agencies are similar. For example, all of the agencies' regulations require the ALJs to consider the convenience of the parties when scheduling the date and location of hearings, require that ALJs include certain elements, such as findings of fact and conclusions of law, in their decisions, and provide a process by which an ALJ may be disqualified for bias. However, there are differences across the agencies. For example, the agencies have different procedures governing discovery, or the exchange of information between parties prior to adjudication. The Coast Guard and SEC require the parties to exchange certain information in all cases, whereas for USDA and NTSB proceedings, all discovery is discretionary, meaning that the ALJs order the parties to exchange certain information on a case-by-case basis. For example, the Coast Guard requires the parties to exchange the names of witnesses, a brief summary of their expected testimonies, and copies of each document to be introduced; with additional discovery being discretionary and requiring an ALJ order. SEC requires the agency to make available for inspection and copying documents collected during the investigation of the case, with some exceptions, but additional discovery is discretionary. No such requirements exist for USDA and NTSB proceedings.

The appeals process also differs across the agencies. The Coast Guard is the only agency that has a two-step appeals process after the ALJ decision, with one of the appeals to a separate agency. In this process, a party may appeal an ALJ decision to the Commandant, and, subsequently, in certain circumstances, the mariner may appeal the Commandant's decision to the full board at NTSB.⁵⁵ At USDA, a party may appeal an ALJ decision to the judicial officer, an employee designated by the Secretary of Agriculture to hear such appeals. At SEC, a party may appeal an ALJ decision to the full

⁵⁵The National Transportation Safety Board has five members, appointed by the President and confirmed by the Senate to serve 5-year terms.

Appendix I: Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies

commission. At NTSB, a party may appeal an ALJ decision to the full board. For a more detailed description of the procedures associated with administrative procedures at the Coast Guard, NTSB, USDA, and SEC, see table 1 below.

Table 1: Administrative Procedures of the Coast Guard ALJ Program Compared to Three Other ALJ Programs in the Federal Government

Topic	Coast Guard	NTSB	USDA	SEC
Representation of agency in adjudication	Coast Guard Investigating Officer	FAA Enforcement Division	Office of General Counsel (OGC) within USDA Responsible Component	SEC Division of Enforcement
Elements of complaint/order instituting proceedings	(1) Type of case (2) Relevant statute or rule (3) Pertinent alleged facts (4) Proposed sanction	Before issuing order, FAA advises respondent of charges or reasons for action. FAA order is refiled as complaint; no requirements in regulations.	(1) Nature of the proceeding (2) Identification of the complainant and respondent (3) Legal authority and jurisdiction under which proceeding is instituted (4) Allegations of fact and provisions of law that form basis for proceeding (5) Nature of the relief sought	(1) Nature of hearing (2) Legal authority and jurisdiction under which hearing will be held (3) Matters of fact and law to be considered and determined (4) Nature of any relief or action sought or taken The order instituting proceedings will also specify a period in which the ALJ will file an initial decision, which must be either 120, 210, or 300 days. The Chief ALJ must file a request with the commission for an extension.
Deadline to answer	20 days	20 days	20 days	20 days, except where a different period is provided by rule or by order
Default procedures for failure to answer complaint/order initiating proceedings	The agency files motion for default, to which respondent has 20 days to reply. If the respondent fails to reply, the ALJ issues default order.	N/A	If the respondent fails to answer complaint, the agency submits proposed decision, with a motion to adopt. The respondent has 20 days to file objections. If no meritorious objection filed, the ALJ grants motion to adopt proposed decision.	If respondent fails to answer complaint, the ALJ may decide the case against the respondent upon a consideration of the record, including the order instituting proceedings.

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
Procedure to set aside default order	Any time after the respondent has been found in default, the respondent may present good cause to set aside the default order.	N/A	Within 30 days of the issuance of the adopted decision, the respondent may appeal decision.	The respondent may, within a reasonable time after being found in default, request to set aside a default order for good cause.
Extensions of time	The ALJ may grant a request for extension to file a response.	The ALJ may grant an extension of time to file any document for good cause shown. However, no extension of time will be granted for the filing of a document to which a statutory time limit applies.	The ALJ may grant an extension of time to file a document for good cause shown.	The ALJ may shorten or extend any time limits, for good cause shown, but may not extend more than 21 days unless the ALJ sets forth the reasons that a longer period of time is necessary.
Settlements	The ALJ may approve settlement agreement between agency and respondent, ensuring, for example, that the complaint states an offense and that the law permits the settlement.	N/A	The ALJ must approve a settlement submitted in the form of a proposed decision unless an error is apparent on the face of the document.	The commission may approve an offer of settlement proposed by the respondent and submitted by the litigating entity with its recommendation to the commission.

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
Discovery	Unless the ALJ otherwise orders, at least 15 days prior to the hearing, each party must exchange the names of witnesses and a brief summary of their expected testimonies and copies of each document that parties intend to introduce. The ALJ may also order further discovery, such as depositions, interrogatories, and requests for documents.	At any time before the hearing, the parties may request the exchange of information, such as witness lists, exhibit lists, curricula vitae, and bibliographies of expert witnesses. Parties may also use interrogatories, requests for admissions, and other discovery tools. If there is a dispute between the parties, the ALJ may issue an order regarding discovery.	The ALJ may order parties to furnish outlines of the case or defense, the underlying legal theories, copies of or a list of documents that the parties anticipate introducing, and a list of anticipated witnesses. The ALJ may also order the taking of a deposition. At least 10 days prior to a hearing conducted by telephone, unless the hearing is scheduled to begin less than 20 days after the ALJ's notice stating the time of the hearing, each party must exchange a written narrative verified statement of the oral direct testimony of that party, each employee or agent of that party, and each expert witness that the party will call.	Unless otherwise ordered, no later than 7 days after service of the order instituting proceedings, the Enforcement Division must make available for inspecting and copying documents obtained by the division prior to the institution of proceedings in connection with the related investigation, with certain exceptions. The ALJ may also order any party to furnish appropriate information, such as an outline or summary of the case or defense, the underlying legal theories, copies and a list of documents to be introduced, and a list of witnesses, including a brief summary of their expected testimonies. Each party intending to call an expert witness must submit information about the witness, including a brief summary of the expected testimony, statement of the expert's qualifications, listing of other proceedings at which the expert has given testimony, and a list of the expert's publications. The ALJ may also order the taking of depositions.

Appendix I: Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies

Topic	Coast Guard	NTSB	USDA	SEC
Expedited procedure	Coast Guard may suspend and seize a credential without a hearing if the mariner performs a safety-sensitive function on a vessel and there is probable cause to believe that he has committed certain violations. Agency must immediately file a complaint, and the ALJ must conduct a pre-hearing conference as early as practicable, at which time the respondent enters his answer. As soon as practicable after the conference but no later than 30 days after the temporary suspension, the ALJ holds a hearing, and the ALJ must issue the decision 45 days or less after the temporary suspension. At any time, the respondent may request that the credential be returned on the grounds that the agency lacked probable cause to suspend the credential. At any time, the respondent may move to discontinue the expedited process and continue under standard procedure.	FAA may issue an emergency order, suspending a certificate immediately, upon determination that an emergency exists and safety in air commerce or air transportation requires the immediate suspension of the certificate. Respondent may file appeal within 10 days. FAA must serve complaint within 3 days of appeal. The respondent must file answer within 5 days of complaint. The hearing must be held no later than 30 days after the appeal was received, and oral decision is issued at close of the hearing. The respondent may appeal the ALJ's initial decision to the board within 2 days after decision. The respondent may also, within 2 days after the date of receipt of an emergency order, file a petition for review of the FAA determination that an emergency exists. The ALJ must decide petition within 5 days, and if the ALJ grants petition, respondent retains certificate until completion of appeal. Under certain circumstances, respondent may waive expedited proceedings.	N/A	Expedited procedures do not apply to cases involving persons associated with broker-dealers and investment advisers.

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
Hearing	The ALJ schedules date, time, and place of hearing, with due regard for the convenience of the parties.	The ALJ sets reasonable date, time, and place for hearing. In setting date, due regard must be given to the parties' discovery needs. In setting the place, due regard must be given to the location of the subject incident, the convenience of the parties and witnesses, and the conservation of agency funds.	The ALJ sets time, place, and manner for hearing with due regard for the public interest and convenience and necessity of parties. The ALJ will conduct hearing by audio-visual telecommunication (AVT) unless the judge determines that conducting the hearing by personal attendance of any individual is necessary to prevent prejudice to a party, is necessary because of a disability of any individual, or would cost less than conducting the hearing by AVT. The ALJ may conduct the hearing by telephone if it would provide a full and fair evidentiary hearing, would not prejudice any party, and would cost less than conducting a hearing by AVT or personal attendance. Within 10 days after the ALJ issues notice of hearing, any party may request that the ALJ reconsider the manner in which the hearing is to be conducted.	The ALJ sets time and place for hearing with due regard for the public interest and the convenience and necessity of the parties. The order instituting proceedings will specify a time period in which an initial decision must be filed, and the order instituting proceedings will also state the period in which the hearing will take place. Under the 120-day deadline, the hearing will take place within approximately 1 month; under the 210-day deadline, the hearing will take place within approximately 2 1/2 months; under the 300-day deadline, the hearing will take place within approximately 4 months.

Appendix I: Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies

Topic	Coast Guard	NTSB	USDA	SEC
Decision	ALJ decision must include a finding on each material issue of fact and conclusion of law, as well as the basis for each finding; the disposition of the case, including any appropriate order; the date upon which the decision is effective, and statement of the respondent's right to appeal. The ALJ may issue an oral decision at the close of the hearing, in which case ALJ must state the issues in the case and make clear, on the record, the findings of fact and conclusions of law.	ALJ decision must include findings and conclusions upon all material issues of fact, credibility of witnesses, law and discretion, as well as the reasons for each finding and conclusion. The ALJ may issue an oral decision at the close of the hearing.	The ALJ may issue a decision orally at the close of the hearing or within a reasonable time after the closing of the hearing, and a copy of the decision — written or oral — must be furnished to the parties.	ALJ initial decision must include findings and conclusions, and the basis for the findings and conclusions, as to all the material issues of fact, law, or discretion, and the appropriate order, sanction, relief or denial of relief. Decision must also state the respondent's right to appeal, as well as the time period, not to exceed 21 days, within which an appeal may be filed.
Review of a ruling prior to close of proceeding	The Commandant may not review a ruling prior to the close of the proceeding.	ALJ rulings prior to close of proceeding may not be appealed except in extraordinary circumstances and with the consent of the ALJ. Such appeals may only be allowed if the ALJ finds that it is necessary to prevent substantial detriment to the public interest or undue prejudice to a party.	The ALJ may request that the judicial officer make a determination on a motion, request, objection, or other question.	The ALJ may request that the commission review a ruling prior to the close of the proceeding if the ruling would compel testimony of commission members, officers, or employees or the production of documentary evidence in their custody or if the ALJ believes that the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate review of the order may materially advance the completion of the proceeding. The commission will grant a petition to review such an order only in extraordinary circumstances. The commission may, at any time, on its own initiative, direct that any matter be submitted to it for review.

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
Disqualification of ALJ	The ALJ may disqualify himself at any time. Until the filing of the decision, any party may request that the ALJ disqualify himself for personal bias or other valid cause. If the ALJ does not disqualify himself, the moving party may appeal to the Commandant once the hearing has concluded.	The ALJ must withdraw from a proceeding if, at any time, he deems himself disqualified. If the ALJ does not withdraw, and if an appeal from the ALJ's initial decision is filed, the board will, if requested by the party, determine whether the ALJ should have withdrawn.	No ALJ can be assigned to serve in any proceeding that has any pecuniary interest in any matter or business involved in the proceeding, is related within the third degree by blood or marriage to any party, or has any conflict of interest that might impair the ALJ's objectivity. Any party may request that the ALJ withdraw from the proceeding because of an alleged disqualifying reason. The ALJ may either rule on the request or request that the Secretary decide the issue.	The ALJ must withdraw if he believes himself to be disqualified from considering a matter. Any party that has a reasonable, good faith basis to believe that an ALJ has a personal bias or is otherwise disqualified from hearing a case may make a request to the ALJ that the ALJ withdraw.
Entity deciding appeals of ALJ decisions	The ALJ decision may be appealed to the Commandant of the Coast Guard. <hr/> The decision of the Commandant may be appealed to NTSB.	Full board	USDA judicial officer	Full commission
Deadline to appeal	To Commandant: 30 days <hr/> To NTSB: 10 days	10 days	30 days	Time period specified in initial decision, not to exceed 21 days, unless a party has filed a motion to correct a manifest error in the initial decision, in which case a party has 21 days from the date of the ALJ's order resolving the motion to correct.
Issues to appeal	To Commandant: (1) Whether each finding of fact is supported by substantial evidence (2) Whether each conclusion of law accords with applicable law, precedent, and policy (3) Whether the ALJ abused his discretion (4) The ALJ's denial of a request for disqualification	(1) Whether the findings of fact are each supported by a preponderance of reliable, probative, and substantial evidence (2) Whether conclusions are made in accordance with law, precedent, and policy (3) Whether the questions on appeal are substantial (4) Whether prejudicial procedural errors	The decision, any part of the decision, or any ruling by the ALJ.	Any issue

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
	<p>To NTSB, in a case in which the credential was suspended or revoked:</p> <p>(1) Whether a finding of material fact is erroneous</p> <p>(2) Whether a necessary legal conclusion is without governing precedent or is contrary to law or precedent</p> <p>(3) A substantial and important question of law, policy, or discretion is involved</p> <p>(4) Whether a prejudicial procedural error has occurred</p>	occurred		
Discretion to grant review	<p>To Commandant: No</p> <hr/> <p>To NTSB: No</p>	No	No	<p>Yes; the commission has discretion in determining whether to grant review. The commission considers: whether the petition makes a reasonable showing that a</p> <p>(1) a prejudicial error was committed in the conduct of the proceeding, or</p> <p>(2) the decision embodies a finding or conclusion of material fact that is clearly erroneous, a conclusion of law that is erroneous, or an exercise of discretion or decision of law or policy that is important and that the commission should review.</p>

Appendix I: Comparison of the Structure and Procedures of Administrative Law Judge Programs at Select Federal Agencies

Topic	Coast Guard	NTSB	USDA	SEC
Oral argument	To Commandant: No To NTSB: Each party may request to present an oral argument, and NTSB will grant the request for good cause.	NTSB may order oral argument, in response to a request or on its own initiative, if NTSB determines that oral argument is necessary.	Each party may request to present an oral argument, and the judicial officer may grant, deny, or limit any request.	Each party may request to present oral argument, and the commission may, in response to a request or on its own initiative, order oral argument with respect to any matter. The commission will order oral argument if the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument. Motions for oral argument on whether to affirm part or all of the initial decision of an ALJ will be granted unless exceptional circumstances make oral argument impractical or inadvisable.
Review on own initiative	The Commandant may call up for review any decision of an ALJ in which there has been a finding that an allegation was proved.	NTSB may not review an ALJ decision on its own initiative.	The judicial officer may not review an ALJ decision on his own initiative.	The commission may, on its own initiative, order the review of any initial decision, or any portion of an initial decision, within 21 days after the end of the period established for filing an appeal

**Appendix I: Comparison of the Structure and
Procedures of Administrative Law Judge
Programs at Select Federal Agencies**

Topic	Coast Guard	NTSB	USDA	SEC
Reopening proceedings/ requests for reconsideration	Within 30 days after the close of the hearing, any party may request to reopen the proceeding. The ALJ may reopen the proceeding upon belief that any change in law or fact or the public interest warrants reopening it. Within 3 years after a proceeding has resulted in revocation of a credential, a respondent may request that the proceeding be reopened to present evidence that the order of revocation is no longer valid and that the issuance of a new credential is compatible with the requirement of good discipline and safety at sea. At any time, a party can request to reopen a case if the order rests on a specified conviction that has been unconditionally set aside by a court.	Before filing an appeal to the board, a party may request a reconsideration of the ALJ's decision. Within 30 days after the board's order on appeal, a party may petition the board for rehearing, reargument, reconsideration, or modification of the board order on appeal.	Within the period of time fixed by the ALJ, any party may propose corrections to the transcript or recording of the hearing, and as soon as practicable after the close of the hearing, the ALJ must issue an order making any corrections to the transcript or recording that the ALJs finds are warranted. A party may request to reopen a hearing to take further evidence at any time prior to the issuance of the decision of the judicial officer. Within 10 days after the judicial officer's decision, a party may petition to rehear or reargue the proceeding or to reconsider the decision of the judicial officer.	Within 10 days of the initial decision, a party may file a motion to correct a manifest error of fact in the initial decision. A brief in opposition may be filed within 5 days of a motion to correct, and the ALJ must rule on the motion within 20 days of the filing of the brief in opposition. Within 10 days after the commission's order, a party may request a reconsideration of the commission's decision.
Judicial review	A respondent or the Coast Guard may seek judicial review of NTSB's decision.	A party may seek judicial review of a final order of the board.	A respondent may seek judicial review of the final decision of the judicial officer on appeal.	A respondent may seek judicial review of the final order of the commission.

Source: GAO analysis based on a review of pertinent agency regulations.

Note: For purposes of this table, "board" refers to the National Transportation Safety Board, and "commission" refers to the Securities and Exchange Commission.

Appendix II: Objectives, Scope, and Methodology

This report addresses three objectives:

- To what extent does the Coast Guard's Administrative Law Judge (ALJ) Program contain elements designed to foster the decisional independence of ALJs?
- To what extent does the Coast Guard's ALJ Program include protections for mariners and do complaints and decisions include elements required by the program's regulations?
- What is the disposition of Coast Guard ALJ suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008?

To address the first and second objectives, we analyzed the statutory provisions of the Administrative Procedure Act (APA), the Office of Personnel Management (OPM) regulations on administrative law judges, and Coast Guard regulations and policies and procedures governing administrative actions. We also interviewed Coast Guard Office of Administrative Law Judges (OALJ) officials to discuss Coast Guard administrative procedures and ALJ hearing process. Through reviews of the APA and pertinent OPM and Coast Guard regulations, we determined what structural elements are in place that are designed to foster the ALJs' decisional independence. We did not, however, assess whether the structural elements are effective at ensuring the ALJs' decisional independence.

To address the second and third objectives, we initially obtained data from the Coast Guard ALJ program's case tracking database. Through discussions with knowledgeable officials from OALJ, we determined that the database was not designed or sufficiently reliable for addressing our specific objectives. In particular, the database was designed to function solely as a case tracking system and was not intended to capture the type of information that we were seeking. For example, outcomes were not categorized in a way that was consistent with how we intended to report them. As a result, we performed a case file review of open and closed mariner cases that had been completed in recent years. Due to a change in policy regarding the disposition of cases involving convictions for violations of drug laws effective November 10, 2005, we limited the time frame for our case file reviews to those cases that were opened and closed from November 10, 2005, through September 30, 2008. We used September 30, 2008, as the ending date for our case file selections because we began our review of cases in October 2008. This resulted in a review of 1,675 cases for our first objective. Then, to address the second objective, we

selected a random, probability sample of 181 of the 1,675 closed cases to determine the extent to which certain mariner protections were being followed. In particular, we reviewed these cases to determine whether specific protections identified in Coast Guard procedures were documented in the mariners' case files.

To address the third objective, an analyst reviewed all 1,675 mariner case files to determine the procedural and sanction-based outcomes associated with the cases. To verify the outcomes were recorded accurately, a pair of independent analysts subsequently selected a random sample of 198 cases (from the population of 1,675 cases) and recorded their outcomes. Then, this same pair of analysts compared their results with the originally recorded outcomes for the same 198 cases. Based on the results of this comparison, we estimate that the error rate in recording case outcomes for the population (1,675) is 2 percent; and we are 95 percent confident that the actual error rate is less than or equal to 5 percent. Therefore, we conclude that the data generated from our analysis are sufficiently reliable for the purposes of our review.

In conducting a comparison of the structure and procedures of the Coast Guard's ALJ program to those of the ALJ programs of the three other federal agencies—the U.S. Department of Agriculture, U.S. Securities and Exchange Commission, and the National Transportation Safety Board—we reviewed the regulations governing each of the programs and interviewed officials at each of the agencies. We selected these agencies because their ALJs hear cases involving the possible suspension or revocation of credentials necessary for employment in a particular field. We did not perform a case file review to determine whether the procedures were being followed or evaluate the effectiveness of their adjudicatory processes. Rather, we summarized the structures and procedures, highlighting similarities and differences between the agencies' programs to provide context compared to the Coast Guard's ALJ program.

We also conducted outreach efforts to several mariner associations—to include American Maritime Officers; the Inland Boatman's Union; the Marine Engineers Beneficial Association; the International Organization of Master's, Mates, & Pilots; Seafarers International Union; and the U.S. Merchant Marine Academy—and attorneys to obtain their perspectives on Coast Guard structure and procedures, administrative actions, and ALJ hearing process. We identified mariner associations and attorneys through Internet searches and referrals obtained from interviews and agency contacts. We focused our outreach efforts on those associations and attorneys that represented or provided legal support to mariners who

experienced a Coast Guard administrative action. Because the input we received from the various mariner associations and attorneys was varied and did not have a consistent message, we were not able to draw any conclusions from their input and so we did not include their comments in the report. This outreach effort, however, did provide us with important contextual information how mariner associations and attorneys perceived the Coast Guard's ALJ program.

We conducted this performance audit from May 2008 to June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

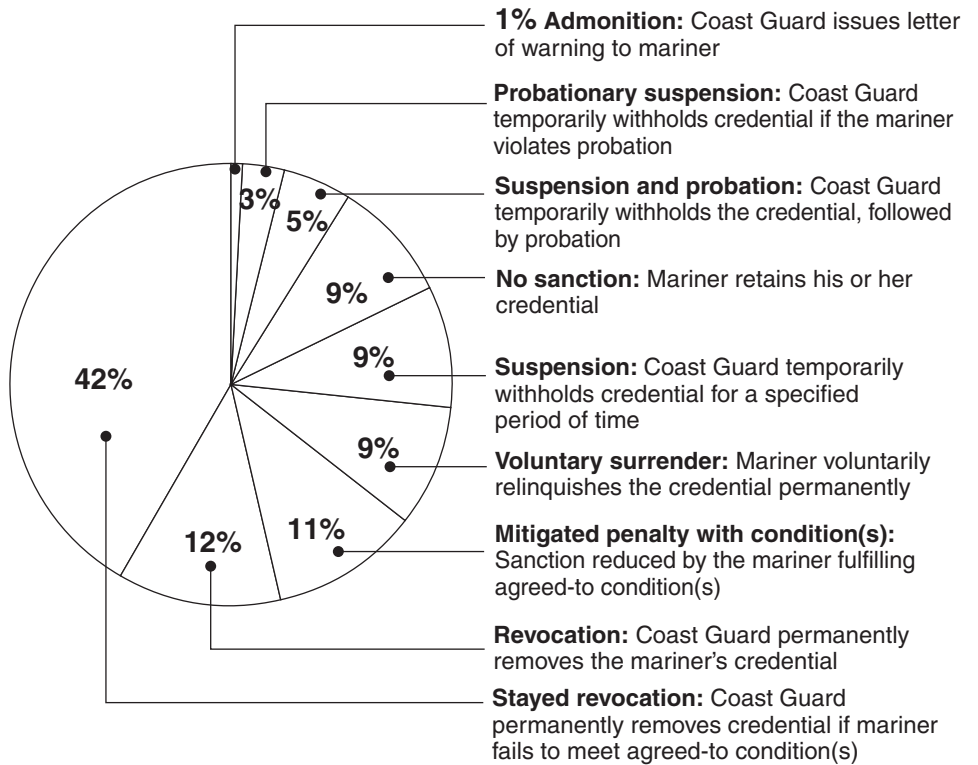
Appendix III: Details Regarding the Sanction Outcomes of Mariners' Suspension and Revocation Cases

The purpose of this appendix is to provide additional analyses regarding the sanction outcomes of all suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008. Specifically, in this appendix, we first provide additional details on the disposition of sanction outcomes for all 1,675 cases, and then we provide additional details on the sanction outcomes for two subsets (or types of procedural outcomes) cases—admissions and defaults.

Sanction Outcomes of All Cases Reviewed

We reviewed case files from the total universe of 1,675 suspension and revocation cases that were opened and closed and found that 705 cases (42 percent) resulted in stayed revocations in which mariners agreed to voluntarily relinquish their credentials pending completion of certain conditions. In 205 cases (12 percent), the sanction was revocation in which the mariner's credential is permanently retracted by the Coast Guard. In 181 cases (11 percent) the sanction was a mitigated penalty with condition, in which the penalty was reduced upon the mariner fulfilling a stipulated condition. Figure 5 shows the range of sanction outcomes for all 1,675 cases reviewed.

Figure 5: Sanction Outcomes of the 1,675 Suspension and Revocation Cases Opened and Closed from November 10, 2005, through September 30, 2008

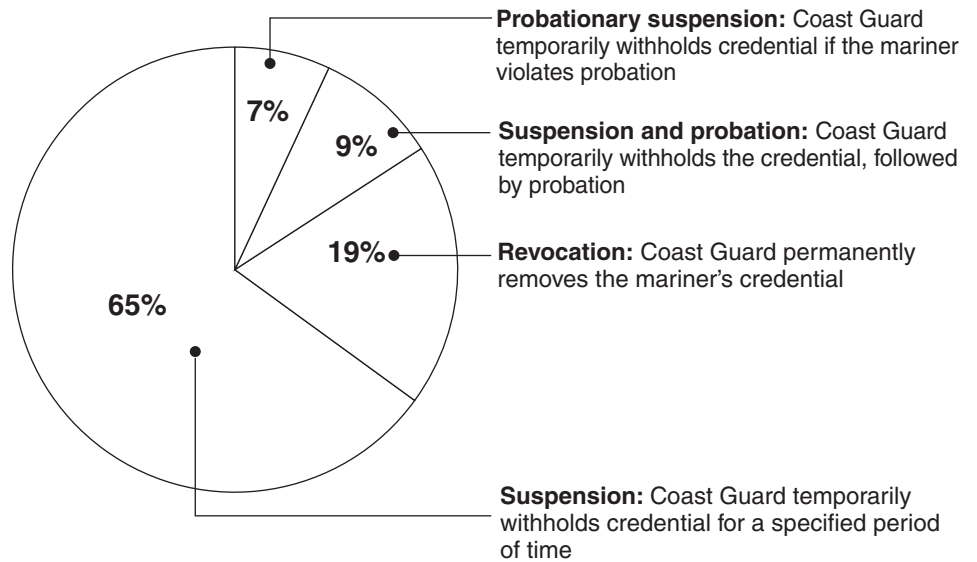


Source: GAO analysis of Coast Guard ALJ case outcomes.
 Note: Percentages do not add to 100 due to rounding.

Sanction Outcomes of Admissions Cases

Our review of the suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008, showed that there were 116 cases in which mariners admitted to the allegations. Figure 6 shows the sanction outcomes by percentage of admissions cases. For example, the majority (65 percent) of admissions cases resulted in mariners receiving a suspension, in which their credentials were temporarily withheld by the Coast Guard for a specified period of time.

Figure 6: Sanction Outcomes of 116 Admissions Cases Opened and Closed from November 10, 2005, through September 30, 2008



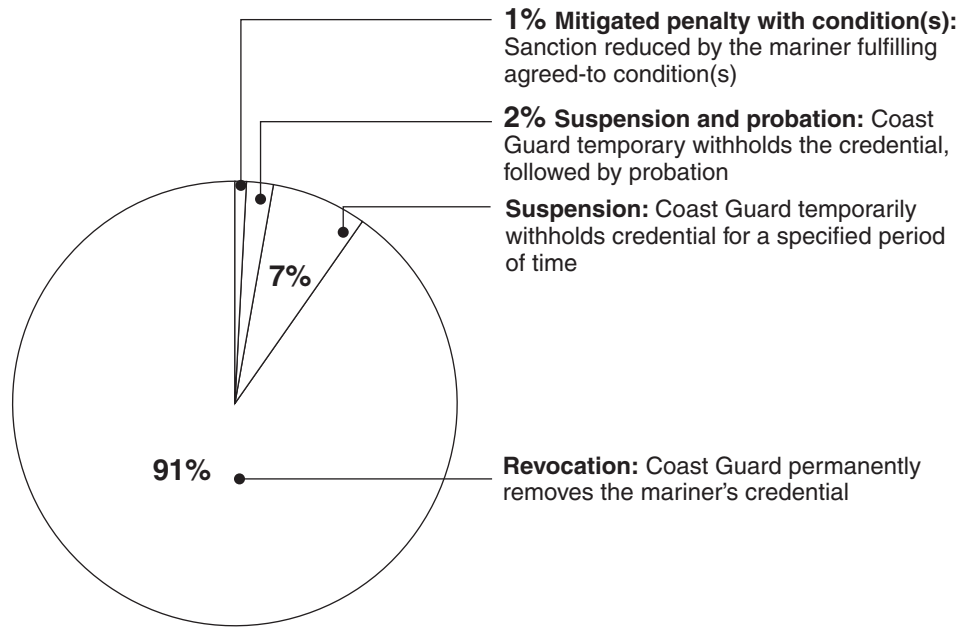
Source: GAO analysis of Coast Guard ALJ case outcomes.

Sanction Outcomes of Default Cases

Our review of the 1,675 suspension and revocation cases that were opened and closed from November 10, 2005, through September 30, 2008, showed that there were 177 default cases, in which a mariner did not respond to a complaint sent by the Coast Guard or appear at a conference or hearing. Figure 7 shows the sanction outcomes by percentage of default cases. For example, the majority (91 percent) of default cases resulted in mariners having their credentials revoked. Under this sanction, a mariner's credentials are permanently retracted by the Coast Guard.

Appendix III: Details Regarding the Sanction Outcomes of Mariners' Suspension and Revocation Cases

Figure 7: Sanction Outcomes of the 177 Default Cases Closed from November 10, 2005, through September 30, 2008



Source: GAO analysis of Coast Guard ALJ case outcomes.

Appendix IV: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 2, 2009

Mr. Stephen L. Caldwell
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Caldwell:

RE: Draft Report GAO-09-489, Coast Guard: Administrative Law Judge Program Contains Elements Designed to Foster Judges' Independence and Mariner Protections Assessed Are Being Followed (GAO Job Code 440725)

The Department of Homeland Security, particularly the Coast Guard, appreciates the opportunity to review and comment on the U.S. Government Accountability Office's (GAO's) draft report referenced above. Coast Guard officials generally concur with the findings and believe the report is both complete and accurate. There are no recommendations requiring attention. The program works as intended—mariners' rights are protected as noted by GAO while safety at sea is promoted.

GAO found that the Administrative Law Judge Program contains elements designed to foster the decisional independence of its judges. These elements include Office of Personnel Management and Coast Guard regulations which GAO found were being followed. GAO also found that the program contains protections for mariners and that regulations for protecting those interests are being followed.

Coast Guard officials noted that GAO audit team members examined nearly 1,700 case files as part of the review and appreciated their thoroughness.

Sincerely,

A handwritten signature in black ink that reads "Gerald E. Levine".

Gerald E. Levine
Director
Departmental GAO/OIG Liaison Office

www.dhs.gov

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Stephen L. Caldwell (202) 512-8777 or caldwells@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christopher Conrad, Assistant Director, and Josh Diosomito, Analyst-in-Charge, managed this review. Michael Blinde, Julian King, and Jeff Jensen made significant contributions to the work. Tracey King provided legal and regulatory support; Lara Kaskie provided assistance in report preparation; William Bates and Stan Kostyla assisted with design, methodology, and data analysis; and Lydia Araya helped develop the report's graphics.

Related GAO Products

Military Personnel: DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Face Implementation and Oversight Challenges. [GAO-08-924](#). Washington, D.C.: Aug. 29, 2008

Coast Guard: Observations on the Fiscal Year 2009 Budget, Recent Performance, and Related Challenges. [GAO-08-494T](#). Washington, D.C.: Mar. 6, 2008.

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