



**AUTHORITY OF
LAW ENFORCEMENT
OFFICERS
ABOARD VESSELS:**

WHAT EVERY GREAT LAKES CAPTAIN NEEDS TO KNOW

2014 Edition

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I.

U.S. COAST GUARD

A. The Coast Guard’s Law Enforcement Authority is VERY BROAD

- 1) Overview: Coast Guard commissioned, warrant, and petty officers are authorized by law to *stop and go on board* a U.S. vessel at any time in U.S. waters to verify compliance with *all* U.S. laws (documentation, safety, environmental, maritime security, etc.). No search warrant, probable cause, or even reasonable suspicion of wrongdoing is required for an administrative safety and documentation inspection. The officer may go any place on the vessel necessary to examine documents or records, the vessel’s structure, or its equipment in order to conduct an administrative inspection.
 - a. The Coast Guard may not rummage through the private areas utilized by the vessel’s crew, such as footlockers, knapsacks or duffel bags, while conducting a safety and documents inspection.
 - b. If the officer sees (or smells) something during the course of the administrative inspection that provides *probable cause* to believe that criminal activity is occurring, the officer may search additional areas not normally examined during a safety and documentation inspection.
- 2) Terrorism. In the event of a possible or actual terrorist threat, the limitations discussed in this paper do not apply. Armed Coast Guard teams can go and search anywhere on the vessel.
- 3) Common Areas of the Vessel: Crewmembers have no reasonable expectation of privacy in “common areas” accessible to all crewmembers, such as cargo holds, engineering spaces, crew’s mess, or passageways. No one has standing to object to seizures of contraband or evidence of criminal activity found in “plain sight” in such areas where the officer has a right to be.
- 4) Crew Rooms:
 - a. Solo Room. A crewmember assigned solo to a room may have a legitimate expectation of privacy in the room and may be under no obligation to consent to a suspicionless search of the room. There may be exceptions:
 - i. If safety equipment or other structures or equipment involved in an administrative inspection are located in the room, the Coast Guard can enter the room during the inspection to examine the equipment or structure.

- ii. If the company's written policy reserves the right of the captain or officers to inspect crewmembers' rooms, the crewmember's expectation of privacy is reduced, and those officers can consent to a Coast Guard search of the room.
- b. Multi-Person Room. If more than one person is assigned to a room, either occupant may consent to a search of the common portions of the room (the captain and/or officers, also may consent if the company's policy gives them the right to inspect crewmembers' rooms).
- c. Lockers, Bags, etc. The Coast Guard cannot rummage through clearly private items, such as footlockers and duffel bags, unless (i) the officer has *probable cause* to believe they contain contraband or evidence of a crime [see "Drug-Sniffing Dogs," below], or (ii) the *owner consents* to the search.
 - i. In most circumstances, the captain or officers cannot authorize the Coast Guard to search a crewmember's private items, such as footlockers and duffel bags.

B. Drug-Sniffing Dogs.

- 1) During an administrative boarding and inspection, the Coast Guard may take a drug-sniffing dog with them in common areas, including passageways (and crew rooms, if company policy reserves the right of the captain and/or officers to inspect crew rooms). No warrant or suspicion of wrongdoing is required in order to use a dog or threaten to bring in a dog.
- 2) An "alert" by a drug-sniffing dog can provide probable cause to search otherwise private areas or items, such as a crewmember's footlocker or duffel bag.

C. Personnel from Other Law Enforcement Agencies Can "Tag Along"

- 1) Personnel from other law enforcement agencies, such as Customs, DEA, FBI, or local police, can accompany Coast Guard personnel on an administrative inspection of a vessel.
- 2) If such non-CG personnel see (or smell) something during the course of the administrative inspection that provides *probable cause* to believe that criminal activity is occurring, such officers may search additional areas and make arrests.

D. Searches of Crewmembers

- 1) If an officer investigating a crime has reasonable suspicion that a person may be carrying a weapon, the officer can conduct a pat-down or frisk of the person to determine if the person is in fact carrying a weapon.
- 2) The officer can remove any item that might be used as a weapon.
- 3) If during the pat-down the officer feels an object whose incriminating character is immediately apparent to the officer (such as a "hash pipe"), the officer can seize the item and arrest the person.

II.

OTHER FEDERAL LAW ENFORCEMENT AGENCIES

A. Customs and Immigration

- 1) The law enforcement functions of the former U.S. Customs Service and former U.S. Immigration and Naturalization Service (INS) have been transferred to (i) U.S. Immigration and Customs Enforcement (ICE), and (ii) U.S. Customs and Border Protection (CBP), both in the new Department of Homeland Security.
- 2) Customs Authority. Like the Coast Guard, ICE/CBP have broad authority of their own to board and inspect U.S. vessels, without any need for a search warrant, probable cause, or reasonable suspicion of wrongdoing:
 - a. Officers of the customs may at any time *stop and go on board* any vessel at any place in the U.S. and may examine the manifest and other documents and papers and examine, inspect, and search every part of the vessel, and any person, trunk, package, or cargo on board.
 - b. ICE/CBP officers may go on board any vessel arriving from a foreign port, whether directly or via another port in the U.S., and examine the documents, cargo, and contents of the vessel, as well as inspect, examine and search the persons, baggage and merchandise unladen from the vessel.
- 3) Immigration Authority. ICE/CBP officers have authority to board and search any vessel within the territorial waters of the U.S. for aliens and to interrogate any person believed to be an alien. No search warrant, probable cause, or reasonable suspicion of wrongdoing is required for such inspections and searches.
 - a. ICE and CBP also have authority to search, without a warrant, any person seeking admission to the U.S., together with the person's personal effects, if the officer has reasonable cause to suspect that grounds exist for denial of admission of the person to the U.S.

B. DEA/FBI

- 1) DEA and FBI have authority to conduct criminal investigations and enforce federal laws anywhere the U.S. has jurisdiction, including on U.S. vessels.
- 2) If a law enforcement officer has *probable cause* to believe contraband or evidence of a crime is aboard a vessel, there generally is no requirement for a warrant to search the vessel, which is highly mobile and could leave the jurisdiction before a warrant could be obtained.

III.

STATE, COUNTY, OR OTHER LOCAL LAW ENFORCEMENT OFFICERS

- A. Caution: It is impossible to provide any more than the most basic guidance in the event state, county, or other local law enforcement officers seek to come aboard commercial vessels for law enforcement purposes. The power of non-federal law enforcement officers to make searches and arrests is regulated by local law, which can vary from place-to-place, and legal

issues regarding their authority are too numerous to provide specific guidance that would apply in all circumstances.

- B. IF AT ALL POSSIBLE, CONTACT YOUR COMPANY’S LEGAL DEPARTMENT FOR ADVICE IF NON-FEDERAL LAW ENFORCEMENT OFFICERS SEEK TO COME ABOARD. See discussion in Part IV as to how to respond when law enforcement officers board.
- C. Determine why the officers want to come aboard (serve a warrant, question crewmembers, investigate a crime, “look around the vessel,” search the vessel, etc.):
- 1) Be Polite. Whether or not the officers have a warrant, the manner in which you treat the officers at the inception of their contact will set the tone for the remainder of your interaction with them. Be polite.
 - 2) Warrant. If a law enforcement officer arrives with a warrant to arrest a person or search any part of the vessel, *you must allow the officer to serve the warrant*. DO NOT INTERFERE WITH THE OFFICER! You might face criminal charges.
 - 3) No Arrest or Search Warrant. If local officers have no warrant, you are only obligated to allow them aboard *if* they have *probable cause* to arrest someone on board or to believe that contraband or evidence of a crime is aboard.
 - a. IF THE OFFICER INSISTS ON COMING ABOARD, unless instructed otherwise by your company — DO NOT INTERFERE WITH THE OFFICER EVEN IF YOU THINK THE OFFICER IS EXCEEDING HIS OR HER AUTHORITY. You probably are in no position to assess whether the officer has probable cause (and therefore has the right to come aboard despite your objections). Let the lawyers and the courts sort it out later; don’t compound the problem by risking unnecessary criminal charges against yourself.
 - b. Arrest Without a Warrant
 - i. Law enforcement officers generally may arrest a person without a warrant (1) for a *felony* committed in the officer’s presence, or (2) if the officer has *probable cause* to believe that a person has committed a *felony*.
 - ii. Law enforcement officers generally may arrest a person without a warrant (1) for a *misdemeanor* committed in the officer’s presence (“presence” = information acquired through any of the officer’s senses), or (2) for a breach of the peace committed in the officer’s presence or in his view.
 - c. Search Without a Warrant
 - i. If a law enforcement officer has *probable cause* to believe contraband or evidence of a crime is aboard a vessel, there generally is no requirement for a warrant to search the vessel, which is highly mobile and could leave the jurisdiction before a warrant could be obtained.

IV.

WHAT DO YOU DO IN THE EVENT OF A COAST GUARD ADMINISTRATIVE INSPECTION
OR ANY LAW ENFORCEMENT INVESTIGATION OR SEARCH?

- A. Vessel Security – Controlling Access to the Vessel. Follow the regular Vessel Security Plan procedures for identifying and documenting the identity of each visitor to the vessel.
- B. Routine Coast Guard Safety or Document Inspection. Cooperate with routine Coast Guard safety or document inspections; they are entitled to conduct these inspections. If you have any questions about the scope of the Coast Guard’s activities, contact your company’s legal department or a lawyer immediately for advice.
- 1) DO NOT INTERFERE WITH THE OFFICER! If you interfere with the officer’s activities, you may face felony charges.
 - 2) DO NOT ANSWER ANY QUESTION UNTRUTHFULLY! That is a felony!
- C. Criminal Law Enforcement Investigation or Search, With or Without a Warrant.
- 1) IN THE EVENT OF ANY CRIMINAL INVESTIGATION, CONTACT YOUR COMPANY’S LEGAL DEPARTMENT OR YOUR OWN ATTORNEY IMMEDIATELY FOR ADVICE. You need immediate advice as to what cooperation is appropriate.
 - 2) DO NOT INTERFERE WITH THE OFFICER! You could face felony charges.
 - 3) Interrogations of Crewmembers
 - a. If the law enforcement officer is investigating a possible violation of law, the officer may question crewmembers.
 - b. Everyone in the crew has the right to remain silent and refuse to answer questions in an investigation of a possible violation of law. BUT ONCE QUESTIONING BEGINS, YOU CANNOT TELL OTHERS TO BE SILENT OR OF THEIR RIGHT TO REMAIN SILENT — that might be interpreted as obstructing justice.
 - 4) Responding to Questions.
 - a. You and every member of the crew have the *right to remain silent* and *consult with an attorney* before answering questions.
 - i. Under the Fifth Amendment to the U.S. Constitution, you cannot be required to provide statements or evidence that might incriminate you. However, you need advice from an attorney about the scope of this right.
 - ii. If you are arrested or otherwise in custody, you will receive what are commonly called the *Miranda* warnings. You should know that you have the following rights pursuant to the Fifth Amendment to the United States Constitution:
 1. You have the right to remain silent (anything you say can and will be used against you in a court of law);
 2. You have the right to an attorney;

3. If you cannot afford an attorney, one will be provided for you at government expense;
 4. You will be asked if you understand these rights and if you wish to speak with the officer.
- iii. If you are not arrested or not otherwise in custody, you may speak with the officers if you choose to do so. If you do not wish to answer questions:
 1. You must expressly invoke your right to remain silent and should affirmatively state: “I wish to remain silent. I am invoking my Fifth Amendment right to remain silent.”
 2. Just remaining silent is not enough. You must verbally invoke your Fifth Amendment rights.
 - b. If you choose to answer questions (with or without the advice of counsel), you have only two options in responding to a law enforcement officer’s questions:
 - i. Answer truthfully.
 1. **DO NOT ANSWER ANY QUESTION FALSELY!** That is a felony! Remember Martha Stewart — she was convicted of perjury and obstructing an investigation by falsely answering the FBI’s questions about suspected insider securities trading (she was never even charged with insider trading itself).
 - ii. Invoke the right to remain silent. You may refuse to say anything further until you have consulted with an attorney to ascertain and protect your rights against self-incrimination. You may invoke this right at any time during the questioning, even if you have already answered some of the questions.

5) Mustering the Crew.

- a. If the officers demand that the entire crew be mustered, try to persuade them — for the safety of the engineering plant and the vessel — to permit an engineer to remain in the engine room, to be accompanied by one of their own officers.
- b. **DO NOT ATTEMPT TO CONTROL THE STATEMENTS OF OTHERS TO THE OFFICERS.** That might constitute an obstruction of justice, a felony!
- c. After mustering the crew, the Coast Guard often conducts an “initial safety inspection” to insure the safety of their boarding party, during which they may inspect all “person-sized compartments” including private spaces. The vessel master or representative may, at the boarding officer’s discretion, accompany the boarding team.

D. **WHEN IN DOUBT, CONTACT A LAWYER.**

V.

VESSEL GENERAL PERMIT ISSUES

A. General Overview

The second version of the Vessel General Permit (“VGP”) went into effect on December 19, 2013. Under the VGP, Great Lakes vessels must comply with limitations on 26 types of discharges “incidental to the normal operation of a vessel.” While untreated ballast water is not currently prohibited from being discharged by Lakers, best management practices must be observed. The VGP also requires use of “environmentally acceptable lubricants” on mechanical and other equipment that operates at the sea interface.

In addition to the limitations imposed by the VGP, Lakers must also comply with record-keeping and inspection requirements. Vessels must be self-inspected routinely, as well as annually, and written records of these inspections must be kept.

(1) U.S. EPA: The U.S. EPA has the authority to board all regulated vessels and conduct inspections to ensure compliance with all VGP conditions.

(2) U.S. Coast Guard: U.S. EPA has entered into a Memorandum of Understanding with the U.S. Coast Guard, giving the Coast Guard equal (if not, primary) authority to conduct VGP-compliance inspections.

(3) State; Local: Each state has the right to attach separate and additional conditions to those imposed under the VGP. State and local regulators have the authority specified by their own state law to board vessels for VGP-related or other environmental regulatory purposes.

B. Inspection

WHENEVER AN AGENT FROM ANY REGULATORY AUTHORITY ANNOUNCES AN INTENTION TO CONDUCT AN INSPECTION ABOARD YOUR VESSEL, NOTIFY THE APPROPRIATE SHORESIDE PERSONNEL FOR YOUR COMPANY.

You should comply with VGP-related Coast Guard inspection requests and directives in much the same way you would for any other form of Coast Guard inspection. The Coast Guard has the right to board your vessel for the purpose of inspecting the vessel’s compliance with VGP requirements, which includes inspection of systems and record-keeping.

C. Record-Keeping

Records kept in compliance with the VGP must be available to USCG, U.S. EPA or state/local agencies boarding the vessel. Records maintained pursuant to VGP record-keeping requirements for Great Lakes vessels should be contained in the appropriate Ship’s Log Book designated for this purpose. Follow your company’s VGP Compliance Manual to make sure that these records are maintained in accordance with applicable regulations.

D. Staffing for An Inspection

- Before any inspection occurs, designate roles for the members of the vessel’s inspection team.
- Check with appropriate shoreside personnel for your company for assistance with identifying vessel officers for the inspection team.
- A two-person vessel inspection team is ideal – one officer from the engine department who has knowledge of the systems subject to the VGP, and another officer who has primary responsibility for VGP record-keeping.
- Do NOT include unlicensed crewmembers in the inspection team.

E. Documenting the Inspection

- Follow the regular Vessel Security Plan procedures for identifying and documenting the identity of each visitor to the vessel.
 - Request and retain a business card from each inspector.
- Keep a record of the time when the inspector arrives aboard the vessel and the time when the inspector departs the vessel.
- If the inspector takes photographs, take duplicate photographs with your phone or another camera, if available.
- Request copies of photographs and/or videos taken by the inspector.
- Keep a record of all locations visited by the inspector, even if no photographs were taken.

F. General Environmental Inspection Guidelines

- The inspecting agency may or may not give prior notice of its intent to inspect. Inform the appropriate shoreside personnel for your company of any announcement of an inspection.
- Generally, cooperation with the inspecting agency is advised.
 - Be professional and courteous
 - Do not volunteer information or speculate
 - Do not answer any question untruthfully
 - Do not admit guilt or responsibility
 - Avoid sarcasm
- Be sensitive to the following:
 - If there is an ongoing criminal or enforcement case, an inspection could be used as further evidence against the Company or vessel officers.
 - Could confidential business information be compromised during the inspection?
 - Is the inspection posing an unreasonable interference with the vessel’s operations?

G. Records Inspections

- Use discretion in granting inspectors access to written records.
 - Only information specifically requested should be provided.
 - Records required to be kept by state or federal law, regulation or permit must be provided.
 - Ensure at least one other vessel officer is familiar with VGP-related records.

- If the governmental inspector makes copies of records, retain a duplicate copy of everything the inspector requests.

H. Interviews of Employees

- One spokesperson should be designated to communicate with the inspector. The vessel's inspection team should be prepared in advance to respond to the inspector's questions. Generally, the inspection team or spokesperson should be prepared to answer basic questions related to where records are kept and be able to accompany the inspector to the area in the vessel where a specific system is located.
- If an inspector requests interviews of ship's officers (other than the inspection team), ask the inspector to refrain until you have contacted your Company for approval, since attendance of legal counsel may be desirable.
- If the inspector attempts to interview unlicensed crewmembers, ask the inspector to refrain until legal counsel can be present.
- Non-management employees may decline to be interviewed, but ship's officers are prohibited from instructing unlicensed crewmembers to refuse to be interviewed.

I. After the Inspection

- At the closing conference with the inspector, request the following:
 - Inspector's findings and conclusions
 - Copy of written inspection report
- Do NOT admit guilt.
- If appropriate, take corrective measures while the inspector is present or commit to do so promptly.
- Create an inspection summary:
 - Prepare the summary immediately after the inspection
 - Make it factual and detailed (refer to "Documenting the Inspection," section V.E, above)
 - Avoid speculation, drawing conclusions, determining fault, making admissions or saying anything that you or your company would be embarrassed for the inspecting agency to see (anything you write may later have to be disclosed to the inspecting agency)
 - Provide your memorandum to the appropriate shoreside personnel for your company, who should in turn provide it to legal counsel.

J. Criminal Investigations

In the event of a criminal environmental investigation or search, see "Criminal Law Enforcement Investigation or Search, With or Without a Warrant", section IV.C, above.

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