

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Parts 10 and 12

[CGD 91-212]

RIN 2115-AD93

**National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents**

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes regulations to implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit it to review information from the National Driver Register on an applicant prior to issuing or renewing a license, certificate of registry (COR), or merchant mariner's document (MMD). This proposal also addresses OPA 90 provisions that permit the Coast Guard to review the criminal records of applicants prior to issuing a license, COR or MMD. In addition, it proposes regulations that permit criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date. The proposed rulemaking will provide the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

**DATES:** Comments must be received on or before June 12, 1995.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-212), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn.: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. James W. Cratty, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6740. This telephone records messages on a 24-hour basis.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-212) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all documents and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a public meeting would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, OPA 90 Staff, and Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G-LRA).

**Background and Purpose***1. General*

Under the authority of 46 U.S.C. 7101, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers. It also issues certificates of registry (CORs) to qualified staff officers such as pursers, medical doctors, and professional nurses.

The Coast Guard issues merchant mariner's documents (MMDs), with certain exceptions described in 46 U.S.C. 8701, to vessel personnel for service aboard U.S. flag merchant vessels of more than 100 gross tons which operate on waters other than rivers and lakes. The MMD serves as a certificate of identification and

qualification, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen. Many merchant mariners who hold licenses and CORs also hold MMDs.

All licensing and documentation transactions are processed at Coast Guard Regional Examination Centers (RECs) exercising the authority of the Officer in Charge, Marine Inspection (OCMIs).

Sections 4101 (a) and (b) and section 4102(e) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) amend 46 U.S.C. 7101, 7302, and 7109, respectively, to authorize the Coast Guard to conduct criminal record checks of any individual applying for a license, COR, or MMD; for a raise in grade of a license or COR; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. Individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they may present a risk to passengers, fellow crew members, or the safe operation of a vessel.

As amended, 46 U.S.C. 7101 and 7302 prohibit the Coast Guard from issuing a license, COR, or MMD to an applicant unless the applicant makes available to the Coast Guard any information contained in the National Driver Register (NDR) related to an offense committed by the applicant that is described in sections 205(a)(3) (A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note). These offenses are: operation of a motor vehicle under the influence of, or while impaired by, alcohol or a controlled substance; and any traffic violation(s) arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other motor vehicle offenses as specified in sections 205(a)(3) (A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Section 4105(b) of OPA 90 amends 23 U.S.C. 401 note, to require the Coast Guard to make the information received from the NDR available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying, suspending, revoking, or taking other action on that individual's license, COR, or MMD.

Before Congress enacted OPA 90, an individual who applied for a license, COR, or MMD was not required to provide the Coast Guard with NDR information. However, an applicant for a license or COR was asked on the application form if he or she had been convicted of any offense(s) other than minor traffic violation(s). Information provided by the applicant regarding conviction(s) for other than minor traffic violation(s), including Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), was used to evaluate the applicant's qualifications to hold a license or COR.

## 2. Criminal Record Review Under Current Regulations

### a. Licenses and CORs

The current regulations at 46 CFR 10.205, "Requirements for original licenses and certificates of registry," require the applicant to have his or her fingerprints taken during the application process. The Coast Guard uses the fingerprints to determine if a criminal record exists for the individual. Section 10.205(f)(2) authorizes the OCMI to reject an application if the criminal record check, or other information, indicates that an applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities associated with a license or COR. The OCMI notifies the applicant of the reason(s) for disapproval.

Section 10.205(f)(4) indicates that, in the event a license or COR has been issued before adverse information on the applicant's character or habits of life, or information indicating that the application is false or incomplete, is obtained the OCMI may notify the individual that the license or COR is null and void and direct the holder to return the license or certificate to the OCMI.

Under 46 CFR 10.209, "Requirements for renewal of a license," each renewal applicant must use a standard form furnished by the Coast Guard. The form asks the applicant to identify any criminal convictions or history of drug use. Under § 10.209(b), an applicant may not have his or her license renewed if facts which would render a renewal improper have come to the Coast Guard's attention.

The Coast Guard currently performs a license renewal criminal record check when an individual has identified a conviction or drug use on the application. In addition, the Coast Guard performs a criminal record check on applicants for renewal whom it

suspects have criminal records or a history of drug use. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101-653) recognizes these existing Coast Guard procedures.

Related regulations in 46 CFR part 10, "Requirements for raise of grade of a license" (§ 10.207) and "Issuance of duplicate of license or certificate of registry" (§ 10.219), currently do not address criminal record checks.

### b. Merchant Mariner's Documents

The regulations contained at 46 CFR part 12, "Certification of Seamen," do not address fingerprinting an applicant for an MMD specifically for a criminal record check; however, under existing practice, the Coast Guard fingerprints an individual applying for his or her original MMD and performs a criminal record check on the applicant. The Coast Guard does not fingerprint and check the criminal record of a person obtaining a duplicate MMD or an additional MMD endorsement.

Under law existing prior to OPA 90, the Coast Guard was not required to consider the character and habits of life of an applicant for an MMD as it was for licenses and CORs. The only specific statutory provision concerning dangerous drug use or criminal convictions authorized the Coast Guard to deny an MMD to an applicant convicted for a dangerous drug offense within 10 years prior to the date of application (46 U.S.C. 7503). The Coast Guard may also deny an MMD to a person who has ever used or has ever been addicted to a dangerous drug unless the applicant provides satisfactory proof that he or she is suitable for employment in the merchant marine.

### 3. National Driver Register Access

The National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation (DOT) maintains the NDR, which is a nationwide repository of information on drivers. The NDR is part of a voluntary cooperative program that assists State motor vehicle driver licensing agencies and certain Federal agencies in gaining access to data on an individual's motor vehicle driving record. The NDR Act of 1982 prohibits the use of information in the NDR that is more than 3 years old, unless that information relates to a current suspension or revocation of the individual's license to operate a motor vehicle.

At present, access to the NDR must be made through participating States. DOT has proposed legislation to amend section 307 of the NDR Act of 1982 to allow direct NDR access by Federal

agencies. If the proposed legislation is enacted, the Coast Guard intends to adopt the direct access methodology.

## Discussion of Proposed Rules

In the discussion of the proposed rules, and the proposed rules themselves, the procedures incident to a criminal record check and those incident to obtaining information from the National Driver Register are treated separately. Although there are differences, the basic structure is the same: an applicant provides the Coast Guard with the means of searching a data base and the Coast Guard evaluates the information received to determine whether there is reason to deny a license, COR, or MMD to the applicant. The decision is based on the nature of the incidents reported, the number of incidents, and when the incident occurred. The Coast Guard is considering whether the processing of incidents reported under both systems can be consolidated in the final rule and welcomes comments and suggestions in this regard.

### 1. Criminal Record Review

Congress has provided for new requirements on all merchant mariners in order to promote a drug and alcohol-free maritime industry. These requirements focus on chemical testing, criminal record reviews, and NDR checks. The Coast Guard proposes to amend 46 CFR parts 10 and 12 to reflect its authority to review the criminal record of an individual applying for a license, COR, or MMD. The proposed rules would continue the existing requirements concerning criminal record checks for the issuance of original licenses or CORs and extend them to original issuance of MMDs.

The Coast Guard also would amend the appropriate sections of 46 CFR part 10 and 12 to allow criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date.

The Coast Guard believes that an applicant who has been convicted of violent criminal offenses or serious property-related offenses may pose a threat to ship personnel, passengers, the marine environment, and safe operation of the ship, and should not be given the duties and responsibilities of a licensed officer or holder of a COR or an MMD. Life on board a ship is unique in that the protections normally afforded the public (i.e., law enforcement) are not as readily available. Evidence that an applicant has criminal convictions must

be carefully weighed by the OCMi to ensure marine safety.

In order to provide specific guidance on who has a "conviction," the Coast Guard proposes to define "conviction" to include a finding of guilty by judgment or plea by a court of record in the United States. The definition would cover convictions for criminal felonies or misdemeanors or for offenses described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). It would also cover expungements, deferred adjudications, and other forms of plea agreements. An expungement of a conviction would not be considered unless the expungement was based upon a showing that the conviction was in error.

The tables in §§ 10.201(h) and 12.02-4(c) list minimum assessment periods after various criminal convictions before which an application will normally not be approved and the maximum periods that a conviction will normally be considered disqualifying. The lists are not intended to be comprehensive. They include major categories of criminal offenses. If an applicant has been convicted of an offense that does not appear on the list, the OCMi may establish the assessment period depending on the nature of the crime, using the list as a guide. Because licensed officers and individuals employed under CORs have greater responsibilities than MMD holders, additional categories of offenses have been included in Table 10.201(h).

An assessment period commences when an applicant with a conviction is no longer incarcerated or under supervised parole or probation. A period of unsupervised parole or probation would be counted as part of the assessment period. The OCMi will consider successful completion of all conditions of parole or probation as evidence that the applicant is suitable for service in the merchant marine.

In all cases where the application is complete and the applicant is required to complete an assessment period before issuance or renewal of a merchant mariner's credential, the OCMi would notify the applicant in writing stating the reason for denial and explaining the right to appeal and the appeal process as provided for in § 1.03 of this chapter.

There are several purposes in establishing minimum and maximum assessment period guidelines in these tables. The tables give applicants specific notice that certain criminal convictions may delay issuance of merchant mariner's credentials and the approximate length of the delay they can expect. Following a conviction, a period of time must elapse for the

individual to demonstrate that he or she does not present a safety risk to fellow crew and passengers while at sea. The minimum periods, as proposed in the tables, are estimates of the time required to permit the OCMi to determine that, despite the criminal conviction, the applicant may now be entrusted with the duties and responsibilities of a merchant mariner. These estimates are based upon the nature of the criminal conviction, with longer periods required for convictions involving violence or drugs. The nature of violent or dangerous drug convictions are such that, for the Coast Guard to adequately safeguard the lives and well-being of crew and passengers, it must be reasonably confident that these types of offenses will not occur at sea.

In addition, a merchant mariner who holds a Coast Guard issued credential is responsible for knowing, and following, a large body of maritime law and regulation, much of it related to safety, health or environmental protection. Before issuing a credential, the Coast Guard must be satisfied that an applicant will obey these laws and regulations without direct and immediate oversight by a law enforcement agency. It would be imprudent, in such circumstances, to issue a credential to an applicant with a criminal record without first waiting beyond his or her court-ordered sentence to see whether the applicant was a trustworthy and responsible member of society absent the constraints of the criminal justice system. Recidivism among those with criminal convictions is a legitimate Coast Guard concern. The assessment periods provide a basis for excluding from the merchant marine those individuals who may have recidivist tendencies and a basis for concluding that these tendencies do not exist.

The guidelines in the tables are also intended to promote national uniformity of results with respect to review of criminal convictions in the issuance of merchant mariner's credentials. The tables are designed to provide guidance for the OCMi when he or she is faced with an applicant who has criminal convictions. This guidance will ensure that all applicants will be treated fairly and uniformly, regardless of where they apply.

The minimum assessment periods listed in the tables represent the shortest amount of time in which the applicant normally may demonstrate that he or she is now responsible enough to be entrusted with the duties of a merchant mariner. If a person applies before the minimum assessment period for his or her conviction has elapsed, then the

applicant must provide, as part of the application, compelling evidence of suitability for employment. Such evidence includes, but is not limited to, the following: proof of completion of an alcohol- or drug-abuse treatment or education program; active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous; character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine; steady employment; or successful completion of all conditions of parole or probation. Any application submitted prior to the minimum assessment period and which does not include such additional evidence of suitability for employment in the merchant marine will be considered incomplete and will not be processed.

If a person applies for a license, COR, or MMD during the time between the minimum and maximum assessment periods, the OCMi will consider the conviction along with other factors in determining whether to grant the credential. Normally, a single prior conviction older than the minimum assessment period would not be disqualifying unless the OCMi is aware of offsetting factors. Offsetting factors include multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMi considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMi may disapprove the application.

The maximum assessment periods in the tables will protect merchant mariners against arbitrary imposition of unreasonably long assessment periods. Following the maximum assessment period, the OCMi may not normally deny granting the license, COR or MMD. However, if an OCMi considered a prior criminal conviction older than the maximum assessment period in disapproving an application, then the OCMi would be required to inform the applicant, in writing, of the reasons for the decision, including the reasons why a conviction older than the maximum was still being considered. The OCMi would also be required to inform the applicant of the appeal procedures that apply.

The minimum assessment period for applicants with multiple convictions, whether at a single trial or separate trials, would be the longest minimum from among those listed in the tables for

the applicant's convictions. However, convictions of multiple offenses, whether at a single trial or separate trials, may be sufficient evidence that the applicant is not suitable for service in the merchant marine and may lead the OCMI to deny the application after the minimum assessment period and, in extraordinary cases, even after the maximum period in the tables has expired.

A mariner who already holds a license, COR, or MMD and who has been convicted of a drug offense(s) and who applies for reissue of that credential with a new expiration date including a renewal, raise of grade, or endorsement may have his or her application withheld. The OCMI will then take appropriate action under the marine investigation regulations for personnel actions which appear in 46 CFR part 5.

The Coast Guard solicits comments on the appropriateness of the criminal offense categories and assessment periods contained in Tables 10.201(h) and 12.02-4(c). The Coast Guard also solicits comments on the factors to be considered in determining suitability for service in the merchant marine contained in 10.201(j) and 12.12.02-4(e).

## 2. National Driver Register Access

The Oil Pollution Act of 1990 (Pub. L. 101-380) amended 46 U.S.C. 7101 and 7302 to prohibit issuance of merchant mariner's credentials unless applicants make available information from the NDR. The conference report states: "The purpose of this section \* \* \* is to ensure that the Coast Guard can identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs. Abuse of these substances may evince possible unsafe vessel operations, leading to additional accidents and oil spills." (House Conf. Rep. No. 101-653, p. 128). The Coast Guard proposes to amend 46 CFR parts 10 and 12 to require an applicant for a merchant mariner's credential to make available to the Coast Guard, at the time of making an application, the information identified in section 205(a)(3) (A) or (B) of the NDR Act concerning his or her driving record. The applicant would be required to submit a pre-printed written consent form to the Coast Guard along with the application package. The OCMI would obtain checks of the NDR. The OCMI would not issue a license, COR, or MMD until it had received and reviewed the NDR report.

The NDR report contains basic descriptive data about an individual, the current status of an individual's license

to operate a motor vehicle, and an indication that a State may hold records regarding criminal or administrative action taken against an individual's license to operate a motor vehicle. The NDR report does not describe the substantive offense that forms the basis for a State's license action. The information required by section 205(a)(3) (A) or (B) of the NDR Act, in addition to covering conviction of motor vehicle offenses involving operation of a motor vehicle under the influence of or impaired by alcohol or a controlled substance, covers conviction of a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways. Each applicant will have an opportunity to review the NDR report and verify or refute any information in the report by obtaining appropriate State records. The OCMI will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

The holder of a merchant mariner's credential is closely involved with the safe operation of a vessel. Performance of many routine duties and all emergency duties affects the safety of the vessel. Unsafe performance of duties could produce catastrophic consequences. To help minimize the risk of unsafe operation, the Coast Guard may exclude from holding seafarer's credentials individuals who have demonstrated a lack of concern regarding the safety of themselves, others, or the marine environment. The amendments to 46 U.S.C. 7101 and 7302 reflect the conclusion that convictions of offenses listed in section 205(a)(3) (A) or (B) of the NDR Act may demonstrate such a lack of concern. Therefore, the OCMI will evaluate each NDR report to determine if there is evidence of a problem affecting the applicant's qualification to hold a merchant mariner credential.

The OCMI would use the following guidelines to evaluate applicants who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) or Table 12.02-04(d) as applicable.

### a. Single NDR Listed Conviction

An NDR check disclosing a single conviction could indicate a recurring problem or an isolated incident. A single conviction may reveal the early stage of a developing long-term problem or it may mean that an individual having a well-developed problem was caught only once. It could also indicate a single incident in which poor

judgment was exercised. In cases where a long-term problem is developing and corrective measures are not taken, additional time may result in subsequent convictions.

(1) *Single NDR listed conviction-less than 1 year old.* If the conviction is less than 1 year old, the application may be disapproved for a period of time sufficient to ensure that a subsequent incident does not occur (at least 1 year from the date of the conviction).

(2) *Single NDR listed conviction—more than 1 but less than 3 years old.* If the conviction is more than 1 year old, but less than 3 years old, the application would be processed unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

(3) *Single NDR listed conviction—more than 3 years old.* If the conviction is more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

### b. Multiple NDR Listed Convictions

Multiple (two or more) drug or alcohol related NDR listed convictions may indicate a problem with alcohol or with the illegal use of drugs. They may also indicate uncontrolled dependency (alcoholism), drug addiction, or irresponsibility and dangerous disregard for the safety of self and others. The OCMI will not issue a merchant mariner's credential to an applicant with multiple convictions unless the applicant shows that he or she is now suitable for employment in the merchant marine and has no further convictions for a period of time. Acceptable evidence of suitability for employment in the merchant marine include the following, as appropriate to the particular case: completion of an alcohol or drug-abuse treatment or education program; active membership in a rehabilitation organization such as Alcoholics Anonymous; and character references from persons who can attest to the length of the applicant's current period of sobriety and applicant's reliability.

(1) *Multiple NDR listed convictions—less than 3 years old.* If an applicant has multiple convictions within the last 3 years, the application may be denied unless it has been at least 1 year from the date of the last conviction or at least 3 years from the date of the second most recent conviction, whichever is longer.

(2) *Multiple NDR listed convictions—more than 3 years old.* For an applicant with multiple convictions, the most recent being more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES. The Evaluation is summarized as follows.

**1. Criminal Record Review**

Coast Guard costs attributable to implementing the provisions authorizing the criminal record review of applicants for licenses, CORs, and MMDs in sections 4101(a) and 4102(e) of OPA 90 will be incurred by the RECs and Coast Guard Headquarters. These costs are associated with reviewing and processing the criminal record review data through the Federal Bureau of Investigation (FBI). The REC will assume the primary responsibility for the final review of the criminal record report received from the FBI.

Because current Coast Guard regulations and practices require all applicants for the original issuance of licenses, CORs, or MMDs to submit to criminal record reviews by the taking of fingerprints, these costs are not newly incurred as a result of this proposed rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the proposed

requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on a MMD with a new expiration date; or renewal of a license, COR or MMD. The Coast Guard plans to spot-check the criminal records of individuals applying for these merchant mariner credentials. For the purpose of estimating costs, the Coast Guard has assumed that 1 of every 30 of these applicants will be spot-checked.

Approximately 10,881 licenses are expected to be renewed each year. An estimated 363 (10,881/30) spot criminal record checks will be performed on these applicants.

Approximately 18,000 MMDs are expected to be renewed each year. An estimated 600 (18,000/30) spot criminal record checks will be done on these applicants.

Approximately 300 CORs are expected to be renewed each year. An estimated 10 (300/30) spot criminal record checks will be performed on these applicants.

Approximately 3,740 raises of grade for license and COR endorsements are expected to be issued each year. An estimated 125 (3,740/30) spot criminal record checks will be performed on these applicants.

Approximately 4,025 supplemental MMD endorsements are issued each year. An estimated 134 (4,025/30) spot criminal record checks will be done on these applicants.

The total number of spot criminal record checks will amount to approximately 1,232 (See Table I.).

to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the license evaluation. Thus, only .72 percent of the applicants had actionable convictions on their records. Therefore, of the reissue and renewal applicants sampled, it is estimated that 99 will have records with the FBI, and a total of 9 of the 1,232 applicants will have records significant to the license evaluation. The Coast Guard estimates that the costs for the 99 applicants with convictions to furnish the necessary documents to exonerate themselves will be minimal. Costs are expected to total approximately \$19 per court record for aggregate annual respondent costs of approximately \$1,900.

The Coast Guard estimates that 75 percent, or 924, of the spot-checked applicants for a raise in grade of a license or COR, a renewal of a license or COR, or any MMD with a new expiration date will apply by mail. For those 924 applicants, the estimated costs include the time for the applicant to go to his or her local police department, submit to fingerprinting, and return to his or her residence. The Coast Guard estimates that this would take approximately 1.5 hrs. of the applicant's time. Total respondent costs are estimated to be \$22,700.

Twenty-five percent, or 308, of the spot-checked applicants are expected to choose to go to an REC to conduct their renewal transactions. For those 308 applicants, additional costs attributed to the criminal record check will be insignificant.

**2. National Driver Register Access**

The Coast Guard estimates that it will conduct 57,435 NDR checks annually for all individuals applying for the original issuance, renewal, or endorsement with a new expiration date of merchant mariner's credentials. The Coast Guard's costs for NDR checks involve providing an interface with the NDR computer and clerical resources to process record checks and notifications to applicants with NDR records. These costs are estimated to be \$120,000 annually, with the potential for substantial reduction in cost if direct access to the NDR data by the RECs is authorized. The RECs will write letters to those applicants who have a probable identification (hit), and review any associated court records as forwarded by applicants.

The Coast Guard estimates that initial computer hardware and software costs and necessary connection to the NDR will be under \$20,000. The Coast Guard estimates the annual cost of a dedicated telephone line from Coast Guard

TABLE I

Type of action	No. applicants	No. checked
License Renewal .....	10,881	363
MMD Renewals .....	18,000	600
COR Renewals .....	300	10
Raise of grade (licenses) and higher grade of COR .....	3,740	125
Supplemental endorsements (MMDs) .....	4,025	134
Total number of spot criminal record checks .....		1,232

It will cost the Coast Guard approximately \$16 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of \$19,700.

Based on a sample survey of the REC's experience with criminal records conducted by the Coast Guard in 1992, 8 percent of the applicants are estimated

Headquarters to the Commonwealth of Virginia will be \$12,000 (\$6/hr. x 8 hrs./day x 250 days/yr.). The initial annual Coast Guard REC costs are estimated to be \$58,354 (57,435 checks x 0.05 hr./check x \$20/hr. for a clerical employee, plus \$0.32/stamp x 2,872 hits). Initially, the Coast Guard will dedicate one full-time clerical employee at Coast Guard Headquarters to forward data to the Commonwealth of Virginia for processing. This cost is estimated to be \$40,000 (\$20/hr. for a clerical employee x 8 hrs./day x 250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the proposed rule is estimated to total approximately \$111,400.

Annual respondent costs associated with NDR checks include the time to fill out the NDR consent form which is considered to be insignificant. In 50 percent of the 2,872 hits, or 1,436 cases, applicants will have clean driving records and the OCMI will issue their merchant mariner's credentials without further expense. For the other 50 percent of applicants, or 1,436, costs are expected to be less than \$20.00 per court record submitted to the Coast Guard for estimated annual respondent costs of \$26,700.

The dollar value of direct and societal benefits flowing from spot-checking applicants' criminal records and from reviewing applicants' NDR records are not quantifiable but may be substantial.

The Coast Guard anticipates that, as a result of this rule, a number of applicants will be identified, based upon their criminal record or adverse driving record, whose conduct indicates that they should not be trusted to safely perform shipboard duties. Those applicants will not be granted merchant mariner credentials.

Direct benefits would include the potential for—

- Fewer marine groundings and other accidents;
- Reduced property loss;
- Fewer releases of oil and hazardous materials into the marine environment; and
- Fewer injuries and reduced loss of life among merchant mariners.

The Coast Guard also anticipates several indirect benefits. Within the community of applicants for merchant mariner's credentials, knowledge of the Coast Guard's enhanced periodic record-checking program may dissuade recidivism among merchant mariners with past criminal, or serious traffic records. The program may also discourage some convicted criminals, dangerous drug users, and serious traffic offenders from seeking new credentials

or renewals, and may also encourage some applicants who are convicted criminals or dangerous drug users to truthfully complete questions that address these issues on the application forms. Dangerous drug users in the U.S. merchant marine may be encouraged to seek counseling and treatment before incurring a criminal record or dangerous drug history with the FBI. In addition, merchant mariners and prospective merchant mariners may be encouraged to maintain a satisfactory standard of personal conduct.

Historical data is insufficient to quantify benefits; however, should this program manage to save even one life per year at \$2.6 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

##### 1. Criminal Record Review

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.209, 10.805, 12.02-4, and 12.02-9. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115-0514.

Administration: U.S. Coast Guard.

Title: National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 gives the Coast Guard discretionary authority to review the criminal record of applicants for licenses, CORs, and MMDs. OPA 90 also gives the Coast Guard discretionary authority to review the criminal record of applicants for reissue of licenses, CORs, or MMDs with new expiration dates, including renewals, raises of grade, or endorsements.

Proposed use of information: An applicant who has been convicted of a serious crime may be found unfit to serve as a merchant mariner on a vessel for safety reasons.

Frequency of Response: Whenever a person applies for an original license, COR, or MMD; or whenever a person applies for a raise in grade of a license or COR; an endorsement of an MMD with a new expiration date; or renewal of a license, COR, or MMD, and that person is selected for a criminal record check.

Burden Estimate: The Coast Guard estimates that the cost to the applicants would be approximately \$19,700 per year for compliance with the criminal record review requirements of the proposed rule.

Respondents: The Coast Guard will spot-check the individual criminal records of applicants for reissue of licenses, CORs, or MMDs with new expiration dates, including renewals, raises of grade, and endorsements. An estimated 36,946 individuals will apply for these merchant mariner's credentials. Every 30th applicant will be screened, which will result in a total of 1,232 criminal record spot-checks performed.

Form(s): FBI Fingerprint Card FD-258 (Revision 12-29-82).

Average Burden Hours per Respondent: Negligible for 308 respondents and 1.5 hrs. for 924 respondents.

##### 2. National Driver Register Access

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02-4, and 12.02-9. The following particulars apply:

DOT No: 2115.

OMB Control Number: 2115-0514.

Administration: U.S. Coast Guard.

Title: National Driver Register and Criminal Record Review in Issuing

Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 requires that the Coast Guard not issue a license, COR, or MMD to an applicant unless that individual makes available to the Coast Guard any information contained in the NDR. Information contained in the NDR may indicate that an individual is not suitable for employment in the merchant marine. This information must be made available to the applicant for review and written comment before the Coast Guard uses the information as a basis for denying, suspending, revoking, or taking other action against an individual's license, COR, or MMD.

Proposed Use of Information: The Coast Guard will use the information in the NDR to assist it in determining whether an applicant is suitable for maritime employment. Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other specified motor vehicle offenses indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Frequency of Response: When an applicant applies for the original issuance or renewal of a license, COR, or MMD or raise in grade or endorsement of a license, COR, or MMD.

Burden Estimate: The Coast Guard estimates that costs to individuals and industry will be negligible. The Coast Guard expects to ask approximately 1,400 individuals to furnish court records to the Coast Guard for an estimated cost of \$26,700.

Respondents: The Coast Guard estimates that 57,435 merchant mariners will be affected annually by this rulemaking.

Form(s): NDR Consent and Authorization Form.

Average Burden Hours Per Respondent: Negligible for initial check; 0.5 hrs. for persons with probable identifications.

The Coast Guard has submitted the requirement to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirement should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

### Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this

proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Paragraph 2.B.2.1 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects

#### 46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

#### 46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

### PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7101, 7106, 7107, 7109, 7302, 7505, 7701; 49 CFR 1.46. Section 10.107 also issued under 44 U.S.C. 3507.

2. In § 10.103, the definitions of "conviction" and "National Driver Register," are added to read as follows:

#### § 10.103 Definitions of terms used in this part.

\* \* \* \* \*

*Conviction* means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). Conviction of more than one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the

applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

\* \* \* \* \*

*National Driver Register* (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

\* \* \* \* \*

3. In § 10.201, paragraph (b) is revised and paragraphs (h), (i), and (j) are added to read as follows:

#### § 10.201 Eligibility for licenses and certificates of registry, general.

\* \* \* \* \*

(b) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

\* \* \* \* \*

(h) *Criminal record review.* The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in § 1.03 of this chapter

apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 10.201(h) will be used by the OCMi in evaluating applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMi will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 10.201(h) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in Table 10.201(h) or established by the

OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMi will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMi is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMi.

(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in Table 10.201(h) or established by the OCMi under paragraph (h)(2) of this section, the OCMi will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include

multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMi considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMi may disapprove the application.

(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in Table 10.201(h) or established by the OCMi under paragraph (h)(2) of this section has elapsed, then the OCMi will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMi has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMi disapproves an application based upon a conviction older than the maximum assessment period, the OCMi will notify the applicant in writing of the reason(s) for the disapproval. The OCMi will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime <sup>1</sup>	Assessment periods	
	Minimum	Maximum
<b>Crimes Against Persons</b>		
Homicide (intentional) .....	7 years .....	20 years.
Homicide (unintentional) .....	5 years .....	10 years.
Assault (aggravated) .....	5 years .....	10 years.
Assault (simple) .....	1 year .....	5 years.
Sexual Assault (rape, child molestation) .....	5 years .....	10 years.
Robbery .....	5 years .....	10 years.
Other crimes against persons <sup>2</sup>		
<b>Crimes Against Property</b>		
Burglary .....	3 years .....	10 years.
Larceny (embezzlement) .....	3 years .....	5 years.
Other crimes against property <sup>2</sup>		
<b>Vehicular Crimes</b>		
Conviction involving fatality .....	1 year .....	5 years.
Reckless Driving .....	1 year .....	2 years.
Racing on the Highways .....	1 year .....	2 years.
Other vehicular crimes <sup>2</sup>		
<b>Crimes Against Public Safety</b>		
Destruction of Property .....	5 years .....	10 years.
Other crimes against public safety <sup>2</sup>		

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS—Continued

Crime <sup>1</sup>	Assessment periods	
	Minimum	Maximum
<b>Crimes Involving National Security</b>		
Terrorism, Acts of Sabotage, Espionage and related offenses .....	7 years .....	20 years.
<b>Criminal Violations of Environmental Laws</b>		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials .....	1 year .....	10 years.
<b>Dangerous Drug Offenses<sup>3,4</sup></b>		
Trafficking (sale, distribution, transfer) .....	5 years .....	10 years.
Dangerous drugs (Use or possession) .....	1 year .....	10 years.
Other dangerous drug convictions <sup>5</sup>		

<sup>1</sup> Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

<sup>2</sup> Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

<sup>3</sup> Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

<sup>4</sup> The assessment period shall not exceed 10 years from the date of conviction.

<sup>5</sup> Other dangerous drug convictions are to be reviewed by the OCMI on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense.

(i) *National Driver Register.* A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting

simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the OCMI will

make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) as applicable.

TABLE 10.201(i).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL<sup>1</sup>

Number of convictions	Date of conviction	Assessment period
1 .....	Less than 1 year .....	1 year from date of conviction.
1 .....	More than 1, less than 3 years .....	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1 .....	More than 3 years old .....	Not necessary unless suspension or revocation is still in effect.
2 or more .....	Any less than 3 years old .....	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more .....	All more than 3 years old .....	Application will be processed unless suspension or revocation is still in effect.

<sup>1</sup> Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant.

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

4. In § 10.205, paragraph (f)(2) is revised and paragraph (k) is added to read as follows:

**§ 10.205 Requirements for original licenses and certificates of registry.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(2) The OCMI shall review the criminal record check of each applicant for an original license or certificate of registry according to the procedures set forth in 10.201(h).

\* \* \* \* \*

(k) *National Driver Register*. Each applicant for an original license or certificate of registry shall consent to an NDR check under § 10.201(i).

5. In § 10.207, paragraphs (h) and (i) are added to read as follows:

**§ 10.207 Requirements for raise of grade of license.**

\* \* \* \* \*

(h) *Criminal record review*. Each applicant for a raise of grade may be required to submit to a criminal record check under § 10.201(h).

(i) *National Driver Register*. Each applicant for a raise in grade of a license shall consent to an NDR check under § 10.201(i) if the license is reissued with a new expiration date.

6. In § 10.209, paragraphs (i) and (j) are added to read as follows:

**§ 10.209 Requirements for the renewal of licenses and certificates of registry.**

\* \* \* \* \*

(i) Each applicant for a renewal may be required to consent to a criminal record check under § 10.201(h).

(j) Each applicant for renewal of a license or certificate of registry shall consent to an NDR check under § 10.201(i).

**PART 12—CERTIFICATION OF SEAMEN**

7. The authority citation for part 12 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

8. In § 12.01–6, the definitions of “conviction” and “National Driver Register” are added to read as follows:

**§ 12.01–6 Definitions of terms used in this part.**

*Conviction* means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

\* \* \* \* \*

*National Driver Register* (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

\* \* \* \* \*

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, paragraph (c) is redesignated as paragraph (b), and new paragraphs (c), (d) and (e) are added to read as follows:

**§ 12.02–4 Basis for denial of documents.**

(a) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for an original merchant mariner's document, except as provided by the provisions of paragraph (c) of this section. No person who has ever been

the user of, or addicted to the use of, a dangerous drug is eligible for a merchant mariner's document unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

\* \* \* \* \*

(c) *Criminal record review*. The Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for a merchant mariner's document issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If a criminal record check is required by the Officer in Charge, Marine Inspection, applicants shall provide fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if the individual's criminal record leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 12.02–4(c) will be used by the Officer in Charge, Marine Inspection in evaluating applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 12.02–4(c) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant

mariner's document before the minimum assessment period shown in Table 12.02-4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the

necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in Table 12.02-4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in Table 12.02-4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in Table 12.02-4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in Table 12.02-4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the appeal procedures contained in § 1.03 of this chapter apply.

TABLE 12.02-4(c).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE CRIMINAL CONVICTIONS

Crime <sup>1</sup>	Assessment periods	
	Minimum	Maximum
<b>Crimes Against Persons</b>		
Homicide (intentional) .....	7 years .....	20 years.
Homicide (unintentional) .....	5 years .....	10 years.
Assault (aggravated) .....	5 years .....	10 years.
Assault (simple) .....	1 year .....	5 years.
Sexual Assault (rape, child molestation) .....	5 years .....	10 years.
Other crimes against persons <sup>2</sup>		
<b>Vehicular Crimes</b>		
Conviction involving fatality .....	1 year .....	5 years.
Reckless Driving .....	1 year .....	2 years.
Racing on the Highway .....	1 year .....	2 years.
Other vehicular crimes <sup>2</sup>		
<b>Crimes Against Public Safety</b>		
Destruction of Property .....	5 years .....	10 years.
Other crimes against public safety <sup>2</sup>		
<b>Crimes Involving National Security</b>		
Terrorism, Acts of Sabotage, Espionage and related offenses .....	7 years .....	20 years.
<b>Dangerous Drug Offenses<sup>3 4</sup></b>		
Trafficking (sale, distribution, transfer) .....	5 years .....	10 years.
Dangerous drugs (Use or possession) .....	1 year .....	10 years.
Other dangerous drug convictions <sup>5</sup>		

<sup>1</sup> Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

<sup>2</sup>Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

<sup>3</sup>Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

<sup>4</sup>The assessment period shall not exceed 10 years from the date of conviction.

<sup>5</sup>Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) *National Driver Register.* A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting simultaneous merchant mariner's

credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the

information available to the applicant for review and written comment. The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 12.02-4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under Table 12.02-4(c) as applicable.

TABLE 12.02-4(d).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL <sup>1</sup>

Number of convictions	Date of conviction	Assessment period
1 .....	Less than 1 year .....	1 year from date of conviction.
1 .....	More than 1, less than 3 years .....	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1 .....	More than 3 years old .....	Not necessary unless suspension or revocation is still in effect.
2 or more .....	Any less than 3 years old .....	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more .....	All more than 3 years old .....	Application will be processed unless suspension or revocation is still in effect.

<sup>1</sup> Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document. This list is intended as a guideline. The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate.

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

10. In § 12.02-9, paragraphs (g) and (h) are added to read as follows:

**§ 12.02-9 Application for documents.**

\* \* \* \* \*

(g) Each applicant for an original merchant mariner's document may be required to submit to a criminal record check as required by § 12.02-4(c).

(h) Each applicant for an original merchant mariner's document or a merchant mariner's document reissued with a new expiration date shall comply with the NDR requirements in § 12.02-4(d).

Dated: March 6, 1995.

**J.C. Card,**

*Rear Admiral, U.S. Coast Guard Chief, Office  
of Marine Safety, Security and Environmental  
Protection.*

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