

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: Final rule.

SUMMARY: In furtherance of the President's Regulatory Reinvention Initiative, this rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit the Coast Guard 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 rulemaking 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 establishes 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. This rulemaking provides the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

EFFECTIVE DATE: January 18, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-212), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Walker, Marine Personnel Qualifications (G-MCO-1), (202) 267-0475. This telephone records messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Drafting Information. The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, Project Development Branch (G-MES-2) and

Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G-LRA).

Regulatory History

On March 13, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents" in the Federal Register (60 FR 13570). The Coast Guard received 29 letters commenting on the proposal. Several comments requested a public hearing. The Coast Guard determined that a public hearing is unnecessary and that all of the issues contained in the comments are addressed in this rulemaking.

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. Some individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they 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 (49 U.S.C. Chapter 303). 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 may not be directly related to his or her maritime career, a record of alcohol or drug-related motor vehicle offenses, 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 amended 46 U.S.C. Chapter 75, 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 has also been authorized to 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 Comments and Changes

Twenty-nine letters were received in response to the NPRM. The Coast Guard has considered all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue and are discussed as follows.

1. Coast Guard Authority

Seven comments suggested the regulations are intrusive into the lives of mariners and questioned the Coast Guard's authority to review information from the National Driver Register and review criminal record information in issuing licenses, CORs, or MMDs. OPA 90 authorized the Coast Guard to conduct criminal record checks and review information from the National Driver Register on any individual applying for a license, COR, or MMD; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. The Coast Guard is implementing these

provisions to exclude from holding merchant mariner credentials those individuals whose history indicates a lack of concern regarding the safety of themselves, others, the marine environment, and the safe operation of a vessel.

Two comments suggested that since the term "renewal" is not mentioned in 46 U.S.C. 7302(c) and (d), the review of criminal records and the National Driver Register only applies to original document applications. The Coast Guard disagrees. The review of criminal records and the NDR is relevant to all documents applied for under 46 U.S.C. 7302, including renewal of MMDs or endorsement of MMDs with a new expiration date. Similarly, in 46 U.S.C. 7101(h), individuals applying for a license or COR include all individuals applying for a raise in grade or renewal.

One comment stated that the Coast Guard, rather than the employer, is in the best position to monitor and provide assurance of rehabilitation for individuals with an alcohol or drug problem. The Coast Guard lacks the legal authority and resources to continuously monitor individuals with drug or alcohol problems. Checks can be made at a point convenient to the mariner and the Coast Guard, for example, renewal or raise in grade. Monitoring individuals is within the scope of employer responsibilities because the employer is more likely to evaluate an employee's work and conduct on a regular basis.

Two comments stated that the regulations are unnecessary because the merchant marine is self-regulating. The comments submitted that mariners who pose a threat to the safe operation of a ship, personnel, or passengers will be excluded by other mariners or employers. The Coast Guard determined that the mariners' or employer's ability to self-regulate cannot attain the scope of the Coast Guard's ability to regulate merchant marine personnel. Also, the Coast Guard has been delegated the authority of general superintendence over the merchant marine and merchant marine personnel in the interest of marine safety and seamen's welfare. The Coast Guard, as the agency authorized to issue merchant mariner's credentials, must ensure, to the best of its ability, that individuals who receive these credentials do not present a possible threat to personnel, passengers, or the safe operation of a vessel.

2. Relationship Between Convictions and Job Performance

Eight comments suggested that there is little or no relationship between a person's criminal or driving offenses on

land and their maritime related job performance. The Coast Guard disagrees. An individual's 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. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101-653) explains that alcohol impairment may have played a role in the Exxon Valdez incident. Motor vehicle offenses involving the abuse of alcohol and drugs may evince possible unsafe vessel operations. Congressional intent, as presented in the Conference Report on OPA 90, was to provide an additional tool in an effort to promote a drug- and alcohol-free workplace in maritime industry. Also, the Coast Guard concluded that applicants who have been convicted of violent criminal offenses or serious property offenses may pose a threat to ship personnel, passengers, the marine environment, and the safe operation of the ship. The Coast Guard may increase ship safety by denying seafarer's documents to individuals who demonstrate a lack of concern for safety through a record of criminal or motor vehicle offenses.

3. The National Driver Register

Two comments indicated that the Coast Guard is only able to review information from the National Driver Register three years prior to the check. The comments noted that the information from an NDR file check would not cover the full 5 years between document renewal. The NDR Act prohibits the Coast Guard from gaining access to information more than three years old, unless the information is about a revocation or suspension of driving privileges still in effect (49 U.S.C. 30305(b)(5)).

One comment suggested that NDR checks may be a federalism issue, since most driving offenses are state offenses. The Coast Guard is among the authorized agencies granted access to the NDR. The NDR Act establishes guidelines for obtaining information from the NDR for the purposes of evaluating individuals who hold, or are applying for a license or certificate of registry under 46 U.S.C. 7101, or a merchant mariner's document under 46 U.S.C. 7302 (49 U.S.C. 30305(b)(5)).

One comment requested clarification of "racing on the highways." According to the National Highway Traffic Safety Administration, racing on the highways means formal or informal contest racing on a public highway.

Another comment stated that if the NDR is a voluntary system, the Coast Guard may not be able to check information from non-participating states. Since all of the states and the District of Columbia are participants in the NDR program, the Coast Guard can conduct checks on any individual in the United States with motor vehicle driving record information.

One comment noted a decision rendered on April 5, 1995, by the United States Circuit Court for the Fourth Circuit in a case entitled, *American Trucking Associations Inc. v. Federal Highway Administration*. In that case, the court's decision was based on the fact that off-duty alcohol use is generally not relevant criteria in determining eligibility for employment. In its decision, the court was interpreting the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102-143), which applied to the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the Federal Transit Administration, but not to the Coast Guard. This case involved preemployment testing requirements for alcohol use. This final rule is under separate authority and does not involve the preemployment testing of individuals for alcohol.

The Coast Guard is providing information to applicants who wish to conduct an NDR file check for their personal use. The NDR allows individuals to request a file check in accordance with the Federal Privacy Act of 1974 (Pub. L. 93-579). New sections 10.201(i)(4) and 12.02-4(d)(4) describe the procedures to follow to receive the results of a NDR file check. The information in a personal NDR file check is intended for use by the applicant only, and may not be used in the licensing and certification process.

The Coast Guard concluded the term "NDR listed convictions" needed further clarification. The final rule adds a definition for "NDR listed convictions" to its list of definitions in § 10.103 and § 12.01-6. The new definition will reflect the convictions in 49 U.S.C. 30304(a)(3)(A) and (B) which are authorized by the National Highway Safety Transportation Administration to be used by the Coast Guard to evaluate applicants for merchant mariner's documents.

In the NPRM, § 10.201(b) and § 12.02-4(a) did not discuss individuals with NDR convictions due to the addiction or abuse of alcohol. The Coast Guard added a statement to § 10.201(b) and § 12.02-4(a) to ensure individuals with such NDR convictions furnish satisfactory evidence of suitability for

service in the merchant mariner to be eligible for a license, COR, or a merchant mariner's document.

4. Past Offenses

Several comments recommended implementing these regulations in a prospective manner, where the Coast Guard would only consider offenses occurring after the effective date of the regulations. These comments stated that, in the past, many mariners have not challenged false charges due to their work schedule and the threat of loss of employment. The regulations allow mariners ample opportunity to provide the OCMI with evidence of suitability for service in the merchant marine, and to explain the circumstances of an offense. If the application is denied, an appeal process and reconsideration are available.

A few comments suggested that mariners would have altered their behavior if they had prior knowledge of the effect of off-duty conduct on employment. In the past, the Coast Guard has been conducting criminal record review for original applications for licenses and CORs, and under existing practice conducts a criminal record review of original applicants for MMDs. Applicants are already accountable for past behavior when they apply for their original documents. The Coast Guard is expanding its requirements to include spot-checks of individuals applying for a raise in grade of a license, COR, or MMD; an endorsement on a MMD with a new expiration date; and a renewal of a license, COR, or MMD. The NDR checks were created to identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs or the unsafe operation of a motor vehicle. The Coast Guard determined that the certification and licensing of persons involved with the abuse of these substances or the unsafe operation of a motor vehicle may lead to unsafe vessel operations.

Some comments discussed the Coast Guard's consideration of charges against mariners that have been stricken from the record through remediation or compensation and how this defeats public policy and discourages individuals from participating in remediation or compensation. As stated in the definition of "conviction" provided in this final rule, a later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error. The Coast Guard concluded that consideration of all convictions is

important to determining the character and habits of life of applicants for merchant mariner's credentials.

Four comments stated that denial of credentials on the grounds of a past offense is punishing an individual twice for the same offense, and for this reason the final rule is unconstitutional. The Coast Guard disagrees. Merchant mariner's credentials are certificates of qualification that authorize individuals to perform certain duties on a vessel. In the interest of marine safety, the Coast Guard examines applicants to determine their suitability to hold merchant marine credentials. Past offenses are a good indicator of whether a person is a possible threat to the safety of ship operation, personnel, the marine environment, or passengers. Basing the decision of whether to grant a merchant mariner's credentials on the factors articulated in this rule is not punishment of those whose applications are denied. It is instead a reasonable way to protect life and property at sea.

The Coast Guard added the statement, "Applicants must provide written disclosure for all prior convictions at the time of application," to § 10.201(h) and § 12.02-4(c). The sentence will provide consistency between this final rule and the current application procedures.

5. Assessment Periods

Five comments addressed the minimum and maximum assessment periods for which the OCMi will consider a conviction in the evaluation of an applicant for merchant mariner's credentials.

One comment expressed that the assessment periods appeared to be arbitrary. The Coast Guard has reviewed three reports from the U.S. Department of Justice, Bureau of Justice Statistics (BJS). These reports are entitled, "Recidivism of Prisoners Released in 1983", "Recidivism of Felons on Probation, 1988-1989," and "Recidivism of Young Parolees". The reports revealed high rates of rearrest for released prisoners, felons on probation, and young parolees. Based on a sample of State prisoners released in 1983, 62.5 percent were rearrested for a felony or serious misdemeanor within 3 years. Using a sample of felons sentenced to probation in 1986, a report found that 62 percent of the probationers either had a disciplinary hearing for violating a condition of their probation or were arrested for another felony within three years. Another BJS study, based on a sample of young parolees between the ages of 17 and 22, found that 69 percent of young parolees were rearrested for a serious crime within 6 years of their

release from prison. One of the reports found that of the prisoners in the study, those with a prior arrest for a violent offense had a greater likelihood of rearrest than other released prisoners. Therefore, the categories of violent crimes in Tables 10.201(h) and 12.02-4(c) have longer assessment periods. The Coast Guard determined that the assessment periods, as published in the NPRM, are a sufficient guideline for the OCMi to consider the convictions of applicants. The assessment periods take into account both recidivism of the categories of crimes and the consequences of their occurrence.

Several comments suggested reducing the length of the assessment periods and including supervised parole or probation as part of the assessment periods. The Coast Guard established the assessment periods as guidelines for the OCMi when evaluating an applicant with criminal convictions. The assessment periods do not prevent an individual from applying before the minimum assessment period has elapsed or between minimum and maximum assessment periods.

A person who applies before the minimum time period has elapsed must provide the OCMi with evidence of suitability for maritime employment. This final rule provides a list of factors in § 10.201(j) and § 12.02-4(e) for the OCMi to use as a guide in considering an applicant before the minimum assessment period has elapsed.

The applicant may also apply for merchant mariner's credentials between the minimum and maximum assessment periods. During this period, the Coast Guard will issue a license, COR, or MMD to the applicant unless there are offsetting factors. Type of offsetting factors are listed in § 10.201(h)(5) and § 12.02-4(c)(5).

After further review, the Coast Guard determined that the OCMi would benefit from examining periods of supervised probation and parole as part of the assessment periods. Periods of supervised probation and parole, like periods of unsupervised probation and parole, allow individuals to adjust to civilian life. Therefore, the OCMi may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. The Coast Guard also revised § 10.201(h)(2) and § 12.02-4(c)(2) to clarify when the assessment period commences.

One comment objected to the evaluating factor in §§ 10.201(j) and 12.02-4(e) concerning membership in a rehabilitation group. The comment noted that many of these groups are anonymous and information on

membership and attendance is usually confidential or nonexistent. The Coast Guard will accept as proof of active membership a broad range of items, such as a letter from a counselor, or the signature or stamp of a secretary from the group an individual is attending.

6. Direct and Indirect Benefits

Three comments recommended supporting the benefit analysis in the NPRM with statistical data. The Coast Guard stated in the NPRM that the direct and societal benefits from this final rule are not quantifiable. Historical data are insufficient to perform an analysis of benefits. The Coast Guard concluded that even if maritime accidents are reduced by a small percentage, savings will accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

7. Additional Comments and Changes

Another comment suggested that the OCMi consider dangerous drug offenses more than ten years prior to the application for a license, COR, or MMD if there are subsequent dangerous drug offenses. The Coast Guard determined that consideration of dangerous drug convictions occurring ten years before application combined with subsequent violations are helpful in establishing a behavior pattern. The Coast Guard is amending § 10.201(h)(2) and § 12.02-4(c)(2) to include dangerous drug convictions occurring more than 10 years prior to the date of application if an individual has subsequent violations. Tables 10.201(h) and 12.02-4(c) were also amended to reflect the consideration of dangerous drug offenses more than 10 years old if there are subsequent dangerous drug offenses.

The Coast Guard determined that some NDR convictions could also be criminal convictions. When deciding on an appropriate assessment period, the OCMi should be able to use the guidelines found in the criminal conviction table and the NDR conviction table. Therefore, § 10.201(h)(3) and § 12.02-4(c)(3) were revised to add Table 10.201(i) and Table 12.02-4(d), respectively. Also, § 10.201(i) and § 12.02-4(d) were revised to allow the OCMi to use criminal conviction assessment period guidelines where appropriate.

The Coast Guard revised Tables 10.201(i) and 12.02-4(d) to clarify the assessment period for 2 or more motor vehicle convictions. The phrase "which ever is longer" was deleted from the assessment period of applicants for merchant mariner's documents, licenses, and certificates of registry with

2 or more motor vehicle convictions involving dangerous drugs or alcohol.

The Coast Guard revised § 10.201(j) and § 12.02-4(e) to include applicants who are users of, or addicted to dangerous drugs. This revision was made to ensure consistency with § 10.201(b) and § 12.02-4(e).

The other comments received were general in nature and supported this Coast Guard rulemaking.

Regulatory Evaluation

This final rule 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 final 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 rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on an 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.).

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 \$17 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of \$20,944.

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 to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the application evaluation. Thus, only 0.72 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 applicant 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 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 Headquarters to the Commonwealth of Virginia will be \$12,000 (\$6/hr.×8 hrs./day×250 days/yr.). The initial annual Coast Guard REC costs are estimated to be \$58,354 (57,435 checks×0.05 hr./check×\$20/hr. for a clerical employee, plus \$0.32/stamp×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×8 hrs./day×250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the 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 margin 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 and other seagoing personnel.

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, users of dangerous drugs, and serious traffic offenders from seeking new credentials or renewals, and may also encourage some applicants who are convicted criminals or users of dangerous drugs to truthfully complete questions that address these issues on the applications forms. Users of dangerous drugs 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 are insufficient to quantify benefits; however, should this program manage to save even one line per year at \$2.7 million per statistical life saved (which reflects a reasonable estimate of people's presumed 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

The costs to small entities will not be significant because the costs of spot-checking applicants' criminal records and reviewing NDR records will be borne by the Coast Guard. The Coast Guard expects the impact of this regulation on small entities to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers

are §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02-4, and 12.02-9. The corresponding OMB number is OMB Control Number 2115-0514.

Federalism

The Coast Guard has analyzed these regulations under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. Paragraph 2.B.2 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 amends 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," "National Driver Register," and "NDR listed convictions" 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 (49 U.S.C. 30304). 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's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI 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 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

- (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or
- (b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

* * * * *

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, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol 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. Applicants must provide written disclosure of all prior convictions at the time of application.

(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 OCMI may use Table 10.201(h) to evaluate 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. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the OCMI. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(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) and Table 10.201(i) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) and Table 10.201(i) 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 (e.g., 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 will 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 ¹	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
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 ² .		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property ² .		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes ² .		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety ² .		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials .	1 year	10 years.
Dangerous Drug Offenses^{3, 4, 5}		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions ⁶ .		

¹ 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.

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

³ 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.

⁴ The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

⁵ Applicants must demonstrate rehabilitation under paragraph (j) of this section, including applicants with dangerous drug use convictions more than ten years old.

⁶ 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 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 listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The OCMI may determine minimum and maximum

assessment periods for NDR listed criminal convictions using Table 10.201(h). 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 hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of 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.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93-579) by contacting the NDR at the following address:

National Driver Register, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

(i) Applicants should request Form NDR-PRV or provide the following information on a notarized letter:

- (A) Full legal name;
- (B) Other names used;
- (C) Complete mailing address;
- (D) Driver license number;
- (E) Eye color;
- (F) Social security number;
- (G) Height;
- (H) Weight; and
- (I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

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 ¹

No. 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 ² 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, 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.

¹ 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.

² Suspension or revocation, when referred to in Table 10.201(i), means a State suspension or revocation of a motor vehicle operator's license.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; 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, such as:

- (1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation 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 including parole or probation officers.

(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 may 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 in 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 of 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 or 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,” “National Driver Register,” and “NDR listed convictions” 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 (49 U.S.C. 30304). 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’s conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI 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 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, existing 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, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol 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. Applicants must provide written disclosure of all prior convictions at the time of application.

(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 Officer in Charge, Marine Inspection will use Table 12.02–4(c) to evaluate 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. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Officer in Charge, Marine Inspection. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(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) and Table 12.02–4(d) based upon the applicant’s convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) and Table 12.02–4(d) 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 (e.g., 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 reconsideration and 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 ¹	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
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 ² .		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes ² .		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety ² .		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses^{3,4,5}		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions ⁶ .		

¹ 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.

² 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.

³ 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.

⁴ The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

⁵ Applicants must demonstrate rehabilitation under paragraph (e) of this section, including applicants with dangerous drug use convictions more than ten years old.

⁶ 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 listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The Officer in Charge Marine Inspection may determine minimum and maximum assessment periods for NDR listed criminal convictions using Table 12.02-4(c). 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 hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of 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.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93-579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street SW., Washington, DC 20590.

(i) Applicants should request Form NDR-PRV or provide the following information on a notarized letter:

- (A) Full legal name;
- (B) Other names used;
- (C) Complete mailing address;
- (D) Driver license number;
- (E) Eye color;
- (F) Social security number;
- (G) Height;
- (H) Weight; and
- (I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

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 ¹

No. 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 ² 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, 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.

¹ 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.

² Suspension or revocation, when referred to in Table 12.02-4(d), means a State suspension or revocation of a motor vehicle operator's license.

(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; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; 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, such as:

- (1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation 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 including parole or probation officers.
- (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: December 12, 1995.

G.N. Naccara,

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

[FR Doc. 95-30677 Filed 12-18-95; 8:45 am]

BILLING CODE 4910-14-M