

**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