

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