

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