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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

[Publication History: This report was originally published on Aug. 3, 2005 as GCMA Report #R-418. We added to and renumbered the report as NMA Report #R-315-G as part of our instructional material on Drug and Alcohol abuse.]

WHAT HAPPENS WHEN YOU'RE PAST "CRIMES" RETURN TO HAUNT YOU

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[NMA Comment: It is not the purpose of *this* report to criticize statutes, regulations, or Coast Guard policies. We will point out what they are, where they came from, and what you may expect from them.]

[NMA Comment: We suggest you review the following reports for our views on items covered in this report:

- NMA Report #R-436. Rev. 3, [The Coast Guard Appeals Process](#).
- NMA Report #R-448. Rev. 1, [Reconsider the Use of Assessment Periods in Merchant Mariner Credentialing](#).]

Mariners express fear about past run-ins with the law and how any one of them may affect their career "at sea" whether on the rivers, in inland waters, offshore, or on an international voyage. These run-ins could have occurred long ago or between merchant mariner credential renewals and can return to haunt you.

In the "good old days" the Coast Guard accepted almost everything a mariner told them and rarely questioned anything that appeared on company stationery with a signature.

When the Coast Guard was faced with using its funds to pay a fee of \$17 to conduct an FBI background check during the 1990s, they did not make the check and saved the seventeen dollars. And then came the terrorist attacks of Sept. 11, 2001. The Coast Guard dusted off Vietnam-era security regulations and overnight became our nation's security experts.

The changes that most affect our mariners did not happen overnight and the events of 9/11 did not cause all the changes. If you have a "record" – ranging from motor-vehicle violations to jail time, we suggest that you read this report to obtain some helpful background information.

DRIVING UNDER THE INFLUENCE COULD IMPAIR YOUR MARITIME CAREER

[Source: By Capt. Kelley Sweeney, *Professional Mariner Magazine*. Kelly Sweeney holds the licenses of master (oceans, AGT) and master of towing vessels (oceans), and regularly sails on a wide variety of commercial vessels. captswweeney@professionalmariner.com. *Emphasis is ours!*]

John, a third engineer I know, was recently hired to deliver a tug from Saint John, New Brunswick, Canada, to

Corpus Christi, Texas, but never made the trip. When the company found out he had been convicted of driving under the influence (DUI) in California four years earlier, they rescinded the job offer. That's because a DUI is a felony crime in Canada, so a merchant mariner who has been convicted of driving under the influence anywhere can be denied entry into the country, in accordance with the Canadian Immigration Act. John's DUI cost him a job at a time when work was scarce and he really needed the money.

Not only does this law apply to mariners trying to join a ship in Canada, it also applies to mariners working on vessels going into Canadian ports. An old shipmate of mine was master on a passenger vessel last summer on a trip from Florida to Canada. He told me that Canadian border officers pulled two galley crewmembers off the vessel after the ship docked. They were then sent back to the United States because a background check revealed the two had previous DUIs.

Australia and China also require anyone trying to enter their country to list all their prior convictions, including DUIs – and make it clear that anyone with a criminal record may be lawfully denied entry.

A commercial mariner can lose a lot more than a job opportunity because of DUIs. It could mean having a merchant mariner credential (MMC) taken away for one to three years – or even permanently. When applying for an original, upgrade or a renewal of an MMC, applicants must submit form CG-719B. On the form, they must answer whether they've ever been convicted of driving under the influence and authorize the U.S. Coast Guard to do a driving record background check. A detailed, written explanation of the circumstances surrounding every DUI conviction must also be submitted along with the application. What happens next will largely depend upon how many DUIs there have been, and how long ago the most recent one was. In accordance with 46 CFR §10.213, a DUI conviction within the last three years can result in the denial of an issuance of the credential until the applicant can show that he or she has been "rehabilitated."

Jerry, an AB I sailed with on a car ship, got a DUI a few months before he had to renew his MMC and as a result had to explain the circumstances when he submitted his application. Because he got the DUI such a short time before, in accordance with the guidelines found in table 46 CFR §10.213(c), the Coast Guard denied his application for a full year from the date of his conviction. During that time he completed a treatment program, went to Alcoholics Anonymous meetings weekly, worked at a local restaurant to make some money and to show he could keep a job – and didn't get so much as a parking ticket. At the end of the year he submitted all this proof of his "rehabilitation," plus a list of character references attesting to his sobriety. After a Coast Guard background check verified that his driving record was clean, his alcohol abuse had not continued and that he'd acted responsibly during his "rehabilitation," his MMC renewal was finally approved, allowing him to sail again on his ticket.

Having his MMC pulled because of a DUI cost my old shipmate a lot more than he ever imagined the night he was pulled over – almost a year's wages at sea and a permanent record. Today the stakes are even higher, because of the implementation of the medical standards detailed in Navigation and Vessel Inspection Circular (NVIC) 04-08. NVIC 04-08 lists over 200 medical conditions that require further review prior to the issuance of an MMC, including a history of alcohol and substance abuse. **It clearly states in the medical regulations that a history of alcohol abuse is considered a psychiatric disorder, one that can cause the Coast Guard to deem a person unfit to sail and deny issuance of his or her credential.**

A mariner with a DUI conviction is medically considered to be an alcohol abuser, according to the American Psychiatric Association standard definition (DSMIV) that the Coast Guard uses in NVIC 04-08. If the Coast Guard determines that an applicant for an MMC has a history of alcohol abuse in the last five years, as evidenced by multiple DUIs and/or other alcohol-related offenses, an evaluation from an addiction specialist such as a physician or other medical professional is required. If the evaluation shows that, in the opinion of the specialist, the mariner cannot be trusted to avoid alcohol problems while on board, he or she can be considered psychiatrically unfit to sail and denied an MMC – possibly for life.

Driving under the influence of alcohol is bad for many reasons: You can kill yourself or someone else, total your car and/or end up in jail. **U.S. merchant mariners convicted of driving under the influence will face professional consequences unheard of at any other time in maritime history.** The days of "what happens ashore stays ashore" are long gone, and the authorities have made it clear that alcohol abuse will not be tolerated either on or off the vessel. If you have a problem with alcohol, take responsibility and seek help through your company or union employee assistance program or through Alcoholics Anonymous – before you make a serious mistake.

Till next time I wish you all smooth sailin'. ■

EVALUATION OF CHARACTER ISSUES AND VIOLATIONS OF LAW

*[Source: We include Marine Safety Manual (MSM), Volume 3, Chapter 3 in its entirety. The MSM defines Coast Guard policy and explains how the Coast Guard expects their own civilian and military employees to interpret and carry out their legal responsibilities to superintend the merchant marine. Since mariners are on the “receiving end, the policies announced in this chapter predict the treatment you may expect to receive. We suggest that this is important information that each licensed or certificated mariner should be aware of. If you are in basic disagreement with these policies, you might want to seriously consider another line of work as you are unlikely to be successful in changing the policies, regulations, and laws (in that order). The pages fall under the category of “policies.” Note: Any emphasis by **bold underlining** is ours.]*

A. Character And Violations Of Law. This chapter deals with the policies for rejecting applications for all Merchant Mariner's Documents (MMDs), licenses and Certificates of Registry (CORs) when there is substantial evidence that the criminal convictions, character or habits of life warrant the rejection. The evaluator must consider all aspects of the applicant's record. The applicant's record of convictions are our best source to determine if the applicant should be rejected. However, in some cases, the evaluator may have to make a determination from records other than convictions. There are few simple answers to whether an applicant is qualified. The evaluator should use any source available to determine the qualification of an applicant. See 46 CFR 10.103 and 12.01-6, for the court orders that are considered a conviction for the purposes of this chapter.

1. 46 U.S.C. Section 7101 authorizes the Secretary of the department or agency under which the Coast Guard is operating to issue licenses to applicants found qualified as to age, experience, professional qualifications, physical fitness, character and habits of life. In addition, the Coast Guard may issue a Certificate of Registry to applicants found qualified as to experience, knowledge, skill and character. 46 U.S.C. Section 7503(b)(1) provides that a license, COR or MMD application may be denied to any individual who, within ten years before making application, was convicted of violating a dangerous drug law of the United States. 46 CFR 10.201 and 46 CFR 12.02-4 address denial of license, COR, and MMD applications based upon narcotic convictions. Assessment periods are minimum and maximum periods of time over which the OCMI will consider a conviction(s) in the evaluation of an applicant for merchant mariner's credentials. Definitive guidelines for assignment of assessment periods to be used for the evaluation of applicants with various criminal and driving convictions were published in a Final Rule on December 19, 1995. [60FR65478 dtd December 19, 1995, "National Driver Registration and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents"].
2. 46 U.S.C. Section 7503 provides that an applicant may be denied a license or COR or MMD if they have been a user of, or addicted to, a dangerous drug, unless the applicant provides satisfactory proof of cure. Dangerous drugs are defined in 46 U.S.C. 2101 and mean a narcotic or controlled substances including marijuana.
3. Before Congress enacted the Oil Pollution Act of 1990 (OPA-90), (Pub. L. 101-380), an individual who applied for a license, COR or MMD was not required to provide the Coast Guard with National Drivers Register (NDR) information. OPA-90 amended laws which now require the Coast Guard to review the applicant's driving record for certain NDR listed traffic offenses before issuing a license, COR or MMD. These offenses include operation of a motor vehicle while under the influence of, or while impaired by, alcohol or a controlled substance; any traffic violation(s) arising in connection with a fatal traffic accident, and 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, or other motor vehicle offense(s) 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. Information received from the NDR must be made available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying an application for a license, COR, or MMD.

4. Persons who have a record of certain criminal convictions may be viewed as lacking appropriate character and hence denied the privilege to act as a licensed officer or MMD holder. Unacceptable character traits or habits of life may be demonstrated by criminal convictions for murder, assault, rape, theft, child molestation and related crimes, or through demonstrated repeated disregard for the rules and regulations of an orderly society (convictions for disorderly conduct, reckless driving and similar violations of law). Due to complex combinations of convictions and other variables, a simple matrix of acceptable versus unacceptable criminal backgrounds is not practicable. Each applicant must be evaluated individually to determine their qualification for a license, COR, or MMD. Factors to be considered should include at least the following:
 - a. Types of crimes and the number of convictions.
 - b. Recency of convictions.
 - c. Age at which the crimes were committed.
 - d. Evidence of frequent and repeated criminal activity (includes misdemeanors and/or felonies).
 - e. The extent of the connection between the crime and the license or COR and the safe and legal operation of a vessel.
 - f. Character references from responsible persons in extenuation and mitigation.
 - g. The length of time spent since release from incarceration or supervised parole.
5. Any applicant who holds or is eligible to renew a license, COR or MMD, who has been convicted of a drug related crime, or has admitted to using or been reported to have used narcotics, or has been convicted of an NDR related offense within the past three years will be referred to the Senior Investigating Officer (SIO) for an investigation prior to processing the applicant's requested transaction.
6. Evaluating the Crime(s): See section 3.C of this volume.
7. Evaluating Multiple Convictions: See section 3.C of this volume. Multiple convictions may indicate a history of flagrant disregard for the rules of an orderly society. In such cases, the minimum assessment period will be the longest minimum in the regulations, based upon the applicant's convictions. The maximum assessment period will be the longest shown in the regulations.
8. OCMI Discretion: Each case must be evaluated individually. The reason for any assessment period must be well documented in the applicant's file.

B. Guidelines For Rejecting Fraudulent Applications.

1. Original Applications. Failure to complete an initial application truthfully can lead to its consideration as fraudulent and to the voiding of any license, certificate, or document issued under such an application ab initio (as if never issued). When it has been determined that statements in an application were fraudulently made and not merely the result of unintended misstatement or misunderstanding, the

applicant shall be required to wait 12 months before he/she can reapply. If it is later determined that an initial license, COR or MMD, was issued based on fraudulent information, that license, COR, or MMD should be considered "null and void" and must be returned to the REC. After the assessment period expires, the applicant must start the application process from the beginning. When a license, COR or MMD is denied or declared "null and void", the OCMI shall advise the holder of the appeal rights contained in 46 CFR 10.204 and/or 46 CFR 12.02-25.

2. Subsequent Applications. A license, COR, or MMD shall not be reissued to an applicant if, during the re-application process, a fraudulent application is discovered. A license, COR, or MMD renewed by way of a fraudulent application may not be declared "null and void". Instead, the mariner must be provided with an administrative hearing conducted under 46 CFR Part 5 where the credential may be revoked for misconduct. Such cases should be referred to the SIO.

1. Types Of Convictions. Criminal convictions may serve as the basis for disqualifying an applicant for a license, COR or MMD. Some examples of criminal convictions that may disqualify an applicant include convictions for violations of national security laws; capital offenses such as first degree murder; armed robbery; rape; assault with a deadly weapon; embezzlement; other serious felony crimes; and crimes of moral corruption (see section D). Other criminal convictions may also serve as grounds for disqualifying an applicant for a license, COR or MMD for a reasonable period of time (assessment period). During the assessment period the applicant is given the opportunity to demonstrate rehabilitation. A reasonable period of time is generally, a number of years from the date of conviction or release from jail and/or supervised probation, whichever is later. (see section D).

C. Evaluation Of Records Of Convictions. This section addresses various factors to consider when evaluating an applicant who has a criminal record, including DWI/DUI convictions. If the applicant holds or is eligible to renew a license, COR or MMD the SIO should be advised. The application process is then put on hold until the SIO advises on the outcome of an investigation. This requires close liaison between the Coast Guard Chief, Regional Exam Center and the SIO. If the application is for an initial license, COR, or MMD, the process is also placed on hold pending the outcome of a criminal and NDR records review by the REC.

2. Number Of Convictions. Multiple criminal convictions may be more of an indication of an applicant being unqualified than convictions for multiple criminal charges arising from a single criminal incident. In judging multiple convictions, care should be used to discern if the convictions arise from multiple charges for a single incident or numerous incidents of criminal activity or over a long period. A single incident can result in multiple convictions for different crimes. Convictions for robbery, drug possession, assault and rape may stem from one event. Closely related to multiple convictions for a single incident is the concept of repeat offenders. Persons with a long string of criminal convictions, particularly for such serious crimes as murder, theft, robbery or burglary, sodomy or even less serious crimes and violations showing a flagrant disregard for the rules of an orderly society are unsuitable to hold a license, COR or MMD. Such persons, by their habits of life, have demonstrated that they cannot be trusted by society in general; thus, absent suitable evidence of rehabilitation, they certainly cannot be entrusted to perform the duties of a merchant mariner.

3. Recency Of Convictions. Some persons rehabilitate themselves after conviction and become worthy of the trust required to hold a license, COR or document. A lack of recent convictions since any period of incarceration may be evidence of rehabilitation. However, generally, an assessment period should not be less than one year.

4. Additional Evidence Of Rehabilitation Or Reform. In addition to time without subsequent convictions, there are other acceptable ways to demonstrate rehabilitation or reform. One of the most common is

through the use of character references. These references should be carefully considered before being accepted. Parole officer recommendations may be considered. Character references which indicate knowledge of the applicant's convictions and attest to a demonstrated change in character or habits of life, with examples of how the applicant's behavior has changed, are generally more worthy than those which simply extol the applicant's virtues, e.g., those written without any knowledge of the applicant's history. Given the role drugs and alcohol often play in criminal activity, long-term participation in Alcoholics Anonymous, Narcotics Anonymous or other similar programs with support groups may be accepted as some evidence of rehabilitation or reform.

5. Relevance Of The Offense To The License, COR, or MMD Applied For. Special relevance resides in the presence or absence of opportunity for the holder of a license, COR, or MMD to repeat their previous crimes while on the job. For example, a conviction for drug trafficking is particularly relevant when an applicant has requested a license, COR or MMD. Having a seafarer's document presents the opportunity to smuggle and traffic in controlled substances. This type of activity could also lead to impairment of the seafarer caused by the use of a controlled substance and endanger life or property at sea.

6. Incarceration. A period of time without conviction is evidence of reform only when there is opportunity to demonstrate a rehabilitated life style. Time in prison will not count toward any of the assessment periods suggested in these guidelines. A period of time to interact with society is necessary for a person to prove they can successfully abide by society's laws and regulations. However, consideration should also be given to bad acts while in prison. Prisoners commit crimes while incarcerated. Such a record of behavior may be considered as evidence of a lack of rehabilitation. Time in prison will not be considered for any assessment periods required before issuing a license, COR or MMD.

7. Probation. An applicant's parole/probation status is a factor in deciding if the applicant is qualified. An applicant in a closely supervised parole/probation status is not as trusted by society as is someone on unsupervised parole/probation. Time on supervised parole/probation should be given less weight and may be excluded entirely from any assessment period. However, the OCMI may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. 46 CFR Parts 10.201(h)(2) and 12.02-4(c)(2) have been recently revised to clarify when assessment periods begin. Time on parole/probation may be considered for evidence of rehabilitation if all the conditions of the parole or probationary period were properly fulfilled. Conditions of the parole/probation should also be examined by contacting the appropriate court officer. Frequently conditions of parole/probation prohibit the individual from leaving the jurisdiction of the state or district in which the individual was convicted. This prohibits employment that is inconsistent with the conditions of the parole/probation.

D. Evaluating Criminal Behavior. The following guidelines should be applied when evaluating applicants with criminal convictions. When evaluating the criminal convictions record, remember they had their day in court, defended by legal counsel. Do not allow yourself to be placed in the position of retrying the evidence that led to the conviction. The applicant will generally try to minimize the outcome of the conviction by introducing their perception of why they were convicted. This view is self-serving. Convictions must be taken at face value. In most cases you should insist upon a copy of the court's Decision and Order (D&O) or its equivalent. The D&O will show the charges and their outcome. Some will be more detailed, giving a short background of the case. When evaluating the qualifications of an applicant for a license, COR or MMD use the factors of section 3.C. and 3.A.4. as your guide. The assessment periods listed in 46 CFR Part 10.201(h) and 12.02-4(c) respectively, should be considered as suggested minimums and maximums. The evaluator must use judgment in deciding reasonable assessment periods.

E. Dangerous Drug Offenses. 46 U.S.C. 7503 gives the Coast Guard authority to disqualify an applicant for a license, COR or MMD to any individual who has been convicted of a drug law violation within ten years

preceding the date of application or who has ever been a user of or addicted to the use of a dangerous drug, including marijuana. However, the authority to disqualify an applicant is qualified in several ways. First, the statutory time limit on considering a conviction of this sort is a maximum of ten years from the date of the conviction. Second, an applicant who has been addicted to or a user of a dangerous drug may be evaluated if the applicant provides satisfactory proof of cure.

1. Drug Use Or Addiction. Drug users must present strong evidence of reform/rehabilitation and a change in life-style in order to be considered for a license, COR or MMD. To show cure, as determined in the Vice Commandant's Decision on Appeal No. 2535 (SWEENEY), the RECs should consider the following information when reviewing applications of those who have been addicted to, or users of, dangerous drugs.

- a. Medical evidence of a cure. Cure is shown by completion of a bona fide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a government agency, such as a state drug/alcohol abuse administration or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO); and
- b. Evidence that following the successful completion of the drug rehabilitation program, the applicant has demonstrated a complete non-association with drugs for a minimum of one year (SWEENEY, supra) or in accordance with present regulatory time requirements (46 CFR, part 5). This includes participation in an active drug abuse monitoring program which incorporates random, unannounced testing during that year.

2. Drug Convictions. An applicant with one conviction, which is over a year old, for a small amount of marijuana may be eligible for a license or document before the expiration of a minimum assessment period. As an example, if the applicant completed any assigned periods of parole or incarceration and the conviction is over one year old with no other involvement (e.g., trafficking) the OCMI may consider issuing a license before the minimum assessment period has elapsed. Certain criteria must be met before this can take place. The OCMI must determine the applicant's involvement in the conviction. If the applicant was convicted of possession of a small amount of marijuana but did not use the drug and can furnish satisfactory proof from a drug counselor that the individual did not and is not using drugs, then the OCMI may issue the license or document. If an applicant has multiple convictions for drugs other than marijuana or trafficking, especially if the convictions are maritime related, the denial could extend to the full ten years. The length of time will be a function of the number and seriousness of the convictions and their relationship to the license, COR or MMD applied for.

3. Drug Arrests Without Convictions. Absent a conviction, admission of use or admission of addiction to dangerous drugs may be grounds for disqualifying an applicant for a license, COR or MMD. A person may truthfully answer "no" to questions on the application concerning convictions, however, an arrest(s) may be an indicator that the applicant is or was a user of the dangerous drugs indicated on the arrest record. As such, they may prompt the evaluator to ask further questions to determine if the applicant was or is a drug user. A delay in the issuance of a license or document pending the results of a criminal records check may be encountered.

F. Alcohol Related Convictions. Convictions for driving while intoxicated/driving under the influence are considered to be more than minor traffic violations and reflect unfavorably on the applicant's suitability to be entrusted with the duties and responsibilities of the license. They must be noted in Section VI of the application, or by a separate notation on the application. Applicants indicating conviction(s) of vehicular crimes shall be assigned minimum or maximum assessment periods in accordance with the regulations.

1. Driving While Intoxicated/Driving Under The Influence Of Intoxicants (DWI/DUI). DWI/DUIs are serious matters and may indicate that an applicant should not be entrusted with the duties and responsibilities of a license, MMD or COR. Each applicant must be evaluated on an individual basis to determine if the DWI/DUI conviction(s) is indicative of a deeper problem affecting the applicant's qualification to hold a license, COR or MMD, or is the result of a single isolated failure of judgment. In evaluating applicants with DWI/DUI convictions, the evaluator must qualify the applicant based on the convictions, taking into consideration the number and severity of the convictions, recency of the convictions and evidence of rehabilitation/reform. The following guidelines offer additional factors for evaluating the qualification of an applicant with DUI/DWI convictions.

a. Single Conviction. A single DUI/DWI conviction within the past three years may indicate the early stage of a developing, long-term problem, or that the individual having a well-developed problem was only caught once, or that this was an isolated incident of poor judgment. The evaluator should attempt to identify which of the possible scenarios is applicable.

(1) In cases where a long-term problem is developing and the conviction is over one year old, but less than three, the application should be processed unless a suspension or revocation is still in effect for a state driver's license. The applicant should be put on notice, in a letter, that their license may be in jeopardy.

(2) If the conviction is more than three years old, a conviction clearance is normally not necessary.

(3) If the conviction is less than one year old, the application should be denied for a period of time sufficient to see if another incident will occur (at least one year from the date of the conviction).

b. Multiple Convictions. For multiple convictions, the most recent being more than three years old, the application should be processed. The applicant should be put "on notice", in a letter, that further occurrences may jeopardize their license. If the applicant has multiple convictions, with any within the last three years, the evaluator may consider disqualifying an applicant for the license for at least one year since the last conviction and at least three years since the second most recent conviction unless satisfactory cure is shown.

2. Rehabilitation Evidence. Acceptable evidence of rehabilitation/reform include the following: successful completion of an alcohol abuse treatment or education program; long term active membership in therapy, such as Alcoholics Anonymous; or positive character references from responsible persons who can attest to the applicant's long period of being sober and reliable and outlining the applicant's change in behavior since their offense.

G. Notice of Denial. In all cases when an applicant is denied a license, COR or MMD, they must be notified by letter. The letter must include the reason for the denial, any remedy (e.g. assessment period, time off parole/probation, etc.), the right to appeal and the appeal process.)

<p style="text-align: center;">NATIONAL DRIVER REGISTER AND CRIMINAL RECORD REVIEW IN ISSUING LICENSES, CERTIFICATES OF REGISTRY, OR MERCHANT MARINER'S CREDENTIALS</p>
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[Source: This is an excerpt from the Preamble to the Final Rule that appeared in the Federal Register of December 19, 1995 starting at 60 FR 65478. Note: The preamble explains some of the reasoning behind a

particular set of federal regulations and was prepared at the time the regulations were finalized and presented to the public. The regulations in this case appear at 46 CFR 10.102(h).]

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

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 committed by the applicant that is Documents" in the Federal Register (60 described in sections 205(a)(3)(A) or (B) (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.

[NMA Comment: The rulemaking process allows a public comment period after a Notice of Proposed Rulemaking (NPRM) is published. This takes place before a Final Rule is published.]

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.

[NMA Comment: In other words, the law became tougher after OPA-90. Although OPA-90 became law in 1990, the regulations used to enforce the Act only could be enforced after the “Effective Date” of Jan. 18, 1996.]

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....

[NMA Comment: After 9/11 the Coast Guard performed extensive criminal records checks on all merchant mariners – a change from the previous policy mentioned above.]

b. Merchant Mariner's Documents....

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 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 a person who 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.

2. Relationship Between Convictions and Job Performance

Eight comments suggested that there is little or no relationship between a person's criminal or driving offense on land and their maritime related job performance. The Coast Guard disagrees.

[NMA Comment: This is the way the Coast Guard addresses comments they receive during the Comment Period.]

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 maritime industry.

[NMA Comment: The Coast Guard's job is to enforce laws passed by Congress, and to interpret Congressional intent in the rulemaking process.]

Also, the Coast Guard concluded that applicants who have been convicted of violent criminal offenses or serious property 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.

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. The Coast Guard determined that the certification and licensing of persons involved in 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 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.

[NMA Comment: Reporting ALL prior convictions was an important change in the application procedure that gradually crept in as new application forms were perfected. It was vigorously applied in the period following 9/11 as an additional security measure. The Coast Guard wants to know about everything in your record regardless of whether you gave them the information on previous applications.]

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 re-arrest for released prisoners, felons on probation, and young parolees. Based on a sample of State prisoners released in 1983, 62.5 percent were re-arrested 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 re-arrested 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 12.024(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.

[NMA Comment: This summarizes many of the points of the original rulemaking in 1995. The regulations have changed several times since then. The latest version of 46 CFR §10.201(h) Criminal Record Review" follow.]

COAST GUARD REGULATIONS

46 CFR §10.211 – Criminal record review.

- (a) The Coast Guard may conduct a criminal record review to determine the safety and suitability of an applicant for an MMC and any endorsements. An applicant conducting simultaneous MMC transactions will undergo a single criminal record review. At the time of application, each applicant must provide written disclosure of all convictions not previously disclosed to the Coast Guard on an application.
- (b) A criminal record review is not required for applicants seeking a duplicate MMC under §10.229.
- (c) *Fingerprints*. Beginning April 15, 2009, the Transportation Security Administration (TSA) will provide to the Coast Guard the applicant's fingerprints submitted by the applicant with his or her TWIC application and, if applicable, the applicant's FBI number and criminal record generated in the TWIC review process. This information, or the fingerprints taken by the Coast Guard at an REC, will be used by the Coast Guard to determine whether the applicant has a record of any criminal convictions.
- (d) When a criminal record review leads the Coast Guard to determine that an applicant is not a safe and suitable person or cannot be entrusted with the duties and responsibilities of the MMC or endorsement applied for, the application may be disapproved.
- (e) If an application is disapproved, the applicant will be notified in writing of that fact, the reason or reasons for disapproval, and advised that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.
- (f) No person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for an MMC, except as provided elsewhere in 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, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for an MMC, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (l) of this section. A conviction for a drug offense more than 10 years before the date of application will not alone be grounds for denial.
- (g) The Coast Guard will use table 10.211(g) to evaluate applicants 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 Coast Guard 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 Coast Guard. The assessment period may include supervised or unsupervised probation or parole.
- (h) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in table 10.211(g) and table 10.213(c) in §10.213 based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 10.211(g) and table 10.213(c) of §10.213 based upon the applicant's convictions.
- (i) If a person with a criminal conviction applies before the minimum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) 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 that are evidence of suitability for service in the merchant marine are listed in paragraph (l) of this section. The Coast Guard will consider the applicant's evidence submitted with the application and may issue the MMC and/or endorsement in less than the listed minimum assessment period if the Coast Guard is satisfied that the applicant is suitable to hold the MMC and/or endorsement 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 Coast Guard.
- (j) If a person with a criminal conviction submits their MMC application during the time between the minimum and maximum assessment periods shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section, then the Coast Guard will consider the conviction and, unless there are offsetting factors, will grant the applicant the MMC and/or endorsement 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 Coast Guard considers the applicant unsuitable for service in the merchant marine at the time of application, the Coast Guard may disapprove the application.

- (k) If a person with a criminal conviction submits their MMC application after the maximum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section has elapsed, then the Coast Guard will grant the applicant the MMC or endorsement for which he or she has applied unless the Coast Guard considers the applicant still unsuitable for service in the merchant marine. If the Coast Guard disapproves an applicant with a conviction older than the maximum assessment period listed in table 10.211(g), the Coast Guard will notify the applicant in writing of the reason(s) for the disapproval. The Coast Guard will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in subpart 1.03 of this chapter apply.
- (l) 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 has elapsed for his or her conviction, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors 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; and
 - (5) Successful completion of all conditions of parole or probation.

Table 10.211(g)—Guidelines for Evaluating Applicants for MMCs Who Have Criminal Convictions

Crime ¹	Assessment periods	
	Minimum	Maximum
Assessment Periods for Officer and Rating Endorsements		
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		
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		

Dangerous Drug Offenses³⁴⁵		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions ⁶		
Assessment Periods for Officer Endorsements Only		
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property ²		

Table notes

¹Conviction 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.

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

³Applicable 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 (f) of this section. Note: Applicants for reissue of an MMC with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a license, MMC, MMD, STCW endorsement or COR, may have their application withheld until appropriate action has been completed by the Coast Guard under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

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

⁵Applicants must demonstrate rehabilitation under paragraph (l) of this section, including applicants with dangerous drug use convictions more than 10 years old.

⁶Other dangerous drug convictions will be reviewed by the Coast Guard on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

[USCG-2006-24371, 74 FR 11216, Mar. 16, 2009, as amended by USCG-2006-24371, 74 FR 39218, Aug. 6, 2009]

APPEAL PROCEDURES

46 CFR §1.03-15 General.

- (a) Any person directly affected by a decision or action taken under this chapter or under chapter III of this title, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapter dealing with suspension-and-revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside, or revised.
- (b) When requesting that a decision or action be reconsidered or reviewed, as may be required by this subpart, such request must be made within 30 days after the decision is rendered or the action is taken.
- (c) When making a formal appeal of a decision or action, as permitted by this subpart, such appeal must be submitted in writing and received by the authority to whom the appeal is required to be made within 30 days after the decision or action being appealed, or within 30 days after the last administrative action required by this subpart. Upon written request and for good cause, the 30 day time limit may be extended by the authority to whom the appeal is required to be made.
- (d) A formal appeal must contain a description of the decision or action being appealed and the appellant's reason(s) why the decision or action should be set aside or revised.
- (e) When considering an appeal, the Commandant or a District Commander may stay the effect of a decision or action being appealed pending determination of the appeal.

- (f) While a request for reconsideration or review or a formal appeal is pending, the original decision or action remains in effect, unless otherwise stayed under paragraph (e) of this section.
- (g) The Commandant may delegate authority to act on administrative appeals under this subpart to the Assistant Commandant for Marine Safety and Environmental Protection, and appropriate office chiefs within Marine Safety and Environmental Protection.
- (h) Formal appeals made to the Commandant shall be addressed to:
 - (1) Commandant (CG-543) for appeals involving vessel inspection issues, load line issues, and vessel manning issues;
 - (2) Commandant (CG-52) for appeals involving vessel plan review or tonnage measurement issues;
 - (3) Commandant (CG-54) for all appeals involving suspension or withdrawal of course approvals, all marine personnel issues appealed from the National Maritime Center or from an OCMI through a District Commander, and all appeals regarding the documentation of a vessel under part 67 or part 68 of this title. All appeals regarding the documentation of a vessel under part 67 or part 68 of this title must be addressed to Commandant (CG-54d), Coast Guard Headquarters, 21002nd St. SW., Stop 7581, Washington, DC 20593-7581, and a copy of each such appeal must be sent to the National Vessel Documentation Center, 792 T J Jackson Drive; Falling Waters, WV 25419;
 - (4) Commandant (CG-521), for appeals involving the recognition of a classification society; or
 - (5) Commandant (CG-55) for appeals involving decisions or actions of the Director, Great Lakes Pilotage.
- (i) Failure to submit a formal appeal in accordance with the procedures and time limits contained in this subpart results in the decision or action becoming final agency action.
- (j) Any decision made by the Commandant, or by the Assistant Commandant for Marine Safety and Environmental Protection, or by an office chief pursuant to authority delegated by the Commandant is final agency action on the appeal.

[CGD 88-033, 54 FR 50376, Dec. 6, 1989]

46 CFR §1.03-40 Appeals from decisions or actions of the National Maritime Center.

Any person directly affected by a decision or action of an officer or employee of the National Maritime Center (NMC) involving any of the marine safety functions listed in §1.01-15(c) of this subpart may, after requesting reconsideration of the decision or action by the NMC, make a formal appeal of that decision or action, via the NMC, to the Director of Prevention Policy, Commandant (CG-54), in accordance with the procedures contained in §1.03-15 of this subpart. The decision of the Director of Prevention Policy, Commandant (CG-54), on such an appeal will constitute final agency action.

[USCG-2006-25535, 71 FR 48482, Aug. 21, 2006. Redesignated by USCG-2006-25535, 72 FR 7930, Feb. 22, 2007; USCG-2008-0906, 73 FR 56507, Sept. 29, 2008]