

been in place since 1982. As stated in the response to the previous commenter, the Coast Guard has statutory authority to set fees for mariner services or things of value. 46 U.S.C. 2110.

One commenter noted that more than half of the personnel at Washington Island Ferry Line Inc., were not required to be licensed.

Mariners who require no license or MMC were not expected to follow the procedures in the interim rule.

However, mariners are encouraged to check with local authorities to see if a TWIC is necessary in a given port area.

One commenter expressed concern about raising the standards defining "conviction", which could disqualify some mariners from consideration when trying to obtain a credential. The commenter noted that there were situations where persons who have made mistakes, paid their debt to society and were living as responsible citizens, and they should be given a better opportunity to obtain a credential.

The Coast Guard agrees with this commenter, that persons who have been convicted in the past may in fact qualify for work as a mariner. Not all crimes serve as permanent disqualifiers, and there are procedures in place to allow for waivers or review of certain convictions when the individual can show that they are not a security or safety risk. Please see TSA appeal and waiver procedures for security threat assessments for individuals at 49 CFR Part 1515, see also Coast Guard Merchant Mariner Credential, criminal record review at 46 CFR 10.211.

Two commenters said credential renewals and upgrades needed to only establish that the candidate was the same person who received the original license and suggest the Coast Guard authorize employers to certify the identification of candidates. The commenters noted that employers were trusted to certify sea service and presence in a drug-testing pool.

Identification verification meets only half of the criteria for the process of obtaining a credential. Candidates must also give fingerprints so the authorities can conduct background checks. Also, TSA requires personal appearance at an enrollment center for fingerprinting and ID checks as part of the TWIC process. Please see the TWIC rulemaking for clarification.

One commenter wanted the Coast Guard to create an MMC that a mariner can carry in his or her pocket.

The NMC began issuing the MMC in early 2009 as a mariner's professional qualifications document. It incorporates the legacy license, MMD and/or Certificate of Registry as well as a

mariner's STCW endorsements. The TWIC now serves as the mariner's identity document. Please see the TWIC rulemaking for clarification.

One commenter took issue with the Coast Guard issuing an interim rule without seeking comment from industry.

Due to the immediate needs for heightened security measures to be implemented, the publication of an interim rule with a request for comments allowed the Coast Guard to immediately implement regulations needed to protect national security. However, the interim rule did allow for the public to comment on the rule before it became final. Those comments are summarized above. Since publication of the interim rule, the Coast Guard, TSA, and the Department of Homeland Security have considered and addressed the public's concerns in the regulations listed above in the "Background" section of this document, as these same concerns were raised upon promulgation of those other rules.

#### **Intent To Finalize; Request for Comments**

The Coast Guard invites further comments related to this Notice of Intent to finalize the one section of the January 13, 2006 interim rule that has remained unfinalized, 46 CFR 10.107(b): *Definitions in subchapter B*, specifically, the definition of "Dangerous drug". Written comments and responses related to finalizing this definition will be added to the docket number for this rulemaking (USCG-2004-17455). Upon close of the comment period, the Coast Guard will consider all comments received. We anticipate that we will be able to finalize 46 CFR 10.107(b) soon thereafter.

Dated: June 9, 2011.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards.*

[FR Doc. 2011-14920 Filed 6-15-11; 8:45 am]

**BILLING CODE 9110-04-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **46 CFR Part 12**

[Docket No. USCG-2003-14500]

RIN 1625-AA81

#### **Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs)**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of intent with request for comments.

**SUMMARY:** The Coast Guard is advising the public of its intent to finalize regulations previously published as an interim rule on January 6, 2004. The interim rule (IR) was published to enhance the application procedures for the Merchant Mariner Licensing and Documentation program, which were necessary to improve maritime safety and promote the national security interest of the United States, but was never published as a final rule. Because of the lapse in time since the interim rule publication, the Coast Guard is seeking comments from the public on one remaining section of the interim rule that has remained unfinalized. The Coast Guard intends to finalize this one section of the interim rule.

**DATES:** Comments must be received on or before August 15, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2003-14500 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Gerald Miente, Maritime Personnel Qualifications

Division, Coast Guard; telephone 202-372-1407, e-mail [Gerald.P.Miante@uscg.mil](mailto:Gerald.P.Miante@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2003-14500), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Select Document Type" drop down menu select "Proposed Rule" and insert "USCG-2003-14500" in the "Enter Keyword or ID" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

##### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Enter Keyword or ID" box insert "USCG-2003-14500" and click

"Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before July 6, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Mr. Gerald Miente, Maritime Personnel Qualifications Division, Coast Guard; at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

##### Abbreviations

§ Section symbol  
FR **Federal Register**  
MMD Merchant Mariner's Document  
NMC National Maritime Center  
REC Regional Examination Center  
TSA Transportation Security Administration  
TWIC Transportation Worker Identification Credential  
U.S.C. U.S. Code

##### Basis and Purpose

On January 6, 2004, the Coast Guard published in the **Federal Register** (69 FR 526) an interim rule with request for comments. The interim rule described enhancements to the application procedures for the Merchant Mariner Licensing and Documentation program, which were necessary to improve maritime safety and promote the national security interest of the United

States. However, subsequent rulemakings have addressed the majority of the interim rule provisions. As a result, the Coast Guard intends to finalize the single remaining section that has not been addressed in subsequent rulemakings.

The most recent significant rulemaking documents for rulemakings addressing the interim rule provisions are as follows<sup>1</sup>: (1) Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License (74 FR 13114); (2) Seafarer's Training, Certification and Watchkeeping Code (STCW Code) (75 FR 13715); (3) Maritime Identification Credentials (74 FR 2865); (4) Consolidation of Merchant Mariner Qualification Credentials (74 FR 11196); (5) Training and Service Requirements for Merchant Marine Officers (73 FR 52789); (6) Large Passenger Vessel Crew Requirements (74 FR 47729); and (7) Crewmember Identification Documents (74 FR 19135).

The one section of the January 6, 2004 interim rule that has remained unfinalized is 46 CFR 12.01-1(a)(1): Purpose of rules in this part, which states the rules are to provide a "comprehensive and adequate means of determining and verifying the identity, citizenship, nationality, and professional qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States". Our intent is to finalize this one remaining section of the interim rule, and we are asking for comment on this section only. You may submit a comment to the docket using one of the methods specified under **ADDRESSES**.

##### Discussion of Comments

As a result of our request for comments in the interim rule published on January 6, 2004 in the **Federal Register**, (69 FR 526), the Coast Guard heard from eight respondents representing mariners and the industry. The respondents submitted numerous comments addressing a wide range of issues related to the interim rule. A discussion of the comments follows.

One commenter requested a public hearing in order to "develop a complete and accurate record regarding the provisions and consequences of the interim rule."

The Coast Guard believes a public hearing is unnecessary. This rulemaking qualifies as an informal rulemaking

<sup>1</sup> To find all the rulemaking documents associated with the rulemakings listed here, you can view each rulemaking's docket on <http://www.regulations.gov>.

under Sec. 553 of the Administrative Procedure Act, and as such does not require formal hearing procedures. The Coast Guard believes that the commenter's desire for a complete and accurate record of rulemaking actions related to this interim rule is available in the public docket USCG-2003-14500, available online by going to <http://regulations.gov>, inserting USCG-2003-14500 in the "Keyword" box, and then clicking "Search."

One commenter looked favorably on the removal of the term "shipping commissioner" and the removal of social security numbers from the Merchant Mariners Documents (MMDs).

At each revision, the Coast Guard attempts to update terminology in its regulations. In this rulemaking specifically, we removed social security numbers from MMDs to safeguard mariners' personally identifiable information. We believe that changes such as these better serve the mariners.

One commenter said that the Coast Guard does not understand and fails to communicate with lower-level mariners.

The Coast Guard disagrees. The Coast Guard communicates with all branches of the maritime community through publications, Web sites, responses to inquiries, and other personal and mass media efforts. In fact, the Merchant Marine Personnel Advisory Committee has several "limited-service" mariners as members while several other members represent companies that employ these mariners. MERPAC periodically studies and discusses issues pertinent to limited-service mariner employment and advancement, such as Able Seamen Qualifications and ratings attaining Officer in Charge of a Navigational Watch and Officer in Charge of an Engineering Watch coming up through the hawsepipe.

One commenter warned that "adding extra and vague requirements to the already burdensome ones" will only serve to drive more people away from the maritime industry.

The Coast Guard agrees that excessive regulatory burdens must be avoided. However, extra security measures are a reality for all transportation sectors. Making ports, facilities, and vessels more secure is a part of doing business in today's world that cannot be avoided. New security measures take extra effort from all parties—government, industry, and the individual mariner—and we believe these measures are not excessive.

The Coast Guard also agrees with the commenter that "vague requirements" should be avoided. To make our requirements more clear, we have provided definitions of "safe and

suitable person", "criminal record check", and "National Driver Register (NDR)" with specific language in 46 CFR 10.107. Mariners who feel they were unfairly denied a credential can appeal under the process available from the Transportation Security Administration (TSA) (49 CFR 1515) and/or the Coast Guard (46 CFR 1.03). Those mariners who are not required to obtain a TWIC must still undergo another vetting process.

Five commenters stated that, in addition to the current 17 Regional Examination Centers (RECs), additional locations were needed for mariners to show proof of identity and be fingerprinted.

This comment has been overcome by events with the establishment of the TWIC rulemaking. Those mariners who are not required to obtain a TWIC must still undergo another vetting process, which requires a showing of proof of identity and provision of fingerprints. The Coast Guard agrees that maximizing the number of locations where this may be accomplished is best, and is evaluating the options available for how to best meet mariners' identification needs. However, this is beyond the scope of this rulemaking finalizing one remaining section: 46 CFR 12.01-1(a)(1): Purpose of rules in this part.

One commenter said the RECs are unable to provide adequate services to mariners while performing current duties and that the RECs' attempt "to accomplish even more with fewer resources is the basis of the current problem with the RECs."

One commenter predicted that the RECs will be unable to provide timely identification and fingerprinting services.

These comments have been overcome by events with the establishment of the TWIC rulemaking. Those mariners who are not required to obtain a TWIC must still undergo another vetting process.

One of these commenters also stated that evaluators should be trained, temporary licenses and documents should be issued, a hotline should be set up to receive credential-related inquiries, and that the licensing procedures should be simplified.

These subjects are not directly related to this rulemaking but were considered during subsequent revisions of the entire subchapter, 46 CFR subchapter B.

As part of documentation centralization at the National Maritime Center (NMC) in West Virginia, evaluators are being trained, and extra evaluators may be applied to any surges that might occur.

One commenter stated that 5-year renewals of MMDs and licenses should

be good for 5 full years with renewal dates falling on the mariner's birthday, and that current documents should be extended as necessary to implement this change.

Title 46 U.S.C. 7302(f) currently states that an MMD is valid for 5 years and may be renewed for an additional 5-year period. To help alleviate the problem created by the 5-year validity period, the NMC is issuing credentials that have a delayed start-date to coincide with the expiration date of the previous credential.

One commenter pointed out that the interim rule is unrealistic because it focuses on only one aspect of security without addressing other areas where enhanced security is necessary.

Two commenters expressed concern that mariners on deep-draft U.S. flag vessels pose the least risk to national security and that threats to national security lie in exceptions to documentation requirements for mariners on inland waters and/or those serving on vessels of less than 100 gross tons (GRT). The commenters recommended that persons on all types of vessels be required to undergo a security screening.

These comments have been overcome by events with the establishment of the TWIC rulemaking. In addition, there are approved courses available for company, facility, and vessel security officer training as well as security familiarization for other crewmembers.

One commenter pointed out that the Coast Guard should require criminal record disclosure in applications for mariner credentials, but should not continuously require repeated documentation of previously disclosed information.

The Coast Guard agrees that the application process should be updated and simplified. As one major step, the Coast Guard has centralized all mariners' credential records at the NMC. This new process may, in the future, negate the need for repeated collection of established reporting.

Two commenters called for a clear and workable appeals process in the event that a mariner is denied a credential. One of these commenters stated the Coast Guard can withhold any explanation of the reason for disproving an MMD.

The Coast Guard agrees with the commenters and has comprehensively revised the regulation. The Coast Guard has developed an appeals process for mariners who believe they were wrongly denied a credential. The appeal process is available from the TSA (See 49 CFR 1515) and/or the Coast Guard (See 46 CFR 1.03). Those mariners who

are not required to obtain a TWIC must still undergo another vetting process.

We received many comments relating to our estimates of costs in the interim final rule. Three commenters stated that applicant visits to an REC for the purposes of showing identification and fingerprinting could not be accomplished in 1 hour, and that the 1-hour approximation was underestimated.

Two commenters stated that 1-day round-trip travel does not constitute close proximity to an REC, and that the 100-mile average was unreasonable for 1-day round-trip travel to an REC.

Three commenters disagreed with the Coast Guard's travel cost estimate that most mariners live within 1-day round trip travel of an REC.

One commenter stated that several mariners in the Great Lakes Basin did not live in close proximity to an REC.

Another commenter stated that the assumptions used by the Coast Guard in calculating travel costs for applicants did not adequately reflect real travel costs in the Great Lakes.

One commenter stated that the cost in the interim rule looked at the cost on a 5-year basis, but in the long term, there was an enormous cost impact for all mariners given the multiple renewals required during the course of a career.

One commenter stated that the Coast Guard's analysis was not correct to say, "not all mariners will incur costs from this rule." The commenter further stated that every mariner seeking a new or reissue MMD was going to incur costs.

One commenter stated that the hours spent traveling should be acknowledged as the opportunity cost of the individual's wages.

Five commenters said the costs to mariners and the total cost of this rulemaking were underestimated.

One commenter wanted clarification on the application of convictions for misdemeanors and was concerned about its effect on recruitment and retention.

One commenter suggested that anyone who was denied a credential because of a safety and security check should be advised in writing as to the reason without exception.

One commenter said that an administrative law judge should make final decisions on appeals.

One commenter argued that the definition of the term "safety and security check" should include a statement on the extent of the check that may be performed.

These comments have been overcome by events with the establishment of the TWIC rulemaking. Those mariners who are not required to obtain a TWIC must still undergo another vetting process.

However, we note that the regulatory evaluations which accompanied the TWIC rulemaking considered many of the comments regarding cost estimation we received here.

One commenter believed that regulations in effect prior to the interim rule create a presumption of adequacy, and that further safety and security checks were unnecessary.

The Coast Guard does not agree. As part of the Coast Guard's goal of increasing security in all aspects of the maritime domain, all mariners who then held an MMD were screened to determine if they presented a potential security risk to our nation. As a result, the Coast Guard found instances where an applicant had been issued a credential and was later found to pose a threat to security. The prior regulations did not require mariners to have their fingerprints taken at the RECs, and it allowed a candidate to submit a fingerprint card from an uncontrolled location. Similarly, the prior regulations allowed renewal of documents by mail and an applicant's identity could not be verified. The new regulations require a candidate's presence before the Coast Guard or its authorized agent to be certain that the person applying for the document can validate his or her identity and the fingerprints are indeed those of the applicant.

Three commenters believed that the regulation concerning a "safe and suitable person" and one's "character and habits of life" was vague, lacked criteria for making this determination, and did not provide adequate safeguards to the mariner. Additionally, one of these commenters added that the "character and habits of life" standard would infringe on the mariners' First Amendment rights and ignored the Supreme Court's limiting construction.

The Coast Guard agrees and changes to the terms were made with the Consolidation of Merchant Mariner Qualification Credentials final rule. 74 FR 11196.

One commenter believed that the requirement in 46 CFR 12.02-4(a) was too harsh.

One commenter wanted clarification regarding 46 CFR 12.02-4(c) as it related to applicants who have been arrested but not convicted.

One commenter suggested revising 46 CFR 12.02-9(a), which read, "The Coast Guard may refuse to process an incomplete MMC application." by replacing the word "process" with the words "issue a credential based upon".

One commenter asked for a definition for the word "incomplete" in 46 CFR 12.02-9(a).

These subjects are not directly related to this rulemaking but were addressed with the Consolidation of Merchant Mariner Qualification Credentials final rule, which removed and reserved 46 CFR 12.02-4 and 12.02-9. (74 FR 11196). Application regulations for all endorsements are now contained in 46 CFR 10.209.

#### **Intent To Finalize; Request for Comments**

The Coast Guard invites further comments related to this Notice of Intent to finalize the one section of the January 6, 2004 interim rule that has remained unfinalized, 46 CFR 12.01-1(a)(1): *Purpose of rules in this part*. Written comments and responses related to finalizing 46 CFR 12.01-1(a)(1) will be added to the docket number for this rulemaking (USCG-2003-14500). Upon close of the comment period, the Coast Guard will consider all comments received. We anticipate that we will be able to finalize 46 CFR 12.01-1(a)(1) soon thereafter.

Dated: June 9, 2011.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards.*

[FR Doc. 2011-14921 Filed 6-15-11; 8:45 am]

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 15**

[ET Docket Nos. 11-90 and 10-28; FCC 11-79]

### **Operation of Radar Systems in the 76-77 GHz Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission proposes to amend rules to enable enhanced vehicular radar technologies in the 76-77 GHz band to improve collision avoidance and driver safety. Vehicular radars can determine the exact distance and relative speed of objects in front of, beside, or behind a car to improve the driver's ability to perceive objects under bad visibility conditions or objects that are in blind spots. These modifications to the rules will provide more efficient use of spectrum, and enable the automotive and fixed radar application industries to develop enhanced safety measures for drivers and the general public. The Commission takes this action in