

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
Approximately 4,300 feet downstream of Rice Street	+1,658	Standing Rock Indian Reservation, ND and City of Solen
Approximately 7,700 feet upstream of Rice Street	+1,668	
<i>Grand River (at Bullhead):</i>		
Approximately 4,000 feet downstream of confluence of Rock Creek	+1,759	Standing Rock Indian Reservation, SD
Approximately 4,600 feet upstream of confluence of Stink Creek	+1,774	
<i>Grand River (at Little Eagle):</i>		
Approximately 3.4 miles downstream of the State Route 63	+1,638	Standing Rock Indian Reservation, SD
Approximately 2,000 feet upstream of Old Irrigation Dam	+1,651	
<i>Oak Creek:</i>		
Approximately 7,500 feet downstream of Sewage Lagoons	+1,622	Standing Rock Indian Reservation, SD
Approximately 2,900 feet upstream of Old Irrigation Dam	+1,646	
<i>Rock Creek:</i>		
At confluence with Grand River (at Bullhead)	+1,761	Standing Rock Indian Reservation, SD
Approximately 7,500 feet upstream of Bullhead Road	+1,793	

ADDRESSES

Standing Rock Indian Reservation, ND and SD

Maps are available for inspection at the Department of Tribal Land Management, South River Road, Fort Yates, North Dakota.

City of Solen

Maps are available for inspection at the Engineering Department, 306 Leach Street, Solen, North Dakota.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: December 24, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04-166 Filed 1-5-04; 8:45 am]

BILLING CODE 6718-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 12

[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: Interim rule with request for comments.

SUMMARY: This interim rule describes enhancements to the application procedures for the Merchant Mariner Licensing and Documentation program. These are necessary to improve maritime safety and promote the national security interests of the United States. The enhancements should serve these ends.

DATES: Effective Date: This interim rule is effective January 6, 2004.

Comments: Comments and related material must reach the Docket Management Facility on or before April 5, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2003-14500 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) Web Site: <http://dms.dot.gov>.
- (2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.
- (3) Fax: 202-493-2251.
- (4) Delivery: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.
- (5) Federal rulemaking Portal: <http://www.regulations.gov>.

Documents mentioned in this preamble as being available in the docket, are part of docket USCG-2003-14500 and will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call

Commander Dave Dolloff, Project Manager, National Maritime Center (NMC), Coast Guard, telephone 202-493-1021. If you have questions on viewing the docket, call Ms. Angela M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2003-14500), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8 1/2 by

11 inches, suitable for copying and electronic filing. If you submit them 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. We may change this rule in view of them.

Viewing comments and documents:

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one 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**.

Regulatory Information

On Thursday, February 20, 2003, the Coast Guard published, in the **Federal Register**, a Notice of Policy entitled: "Merchant Mariners" Documents: Forms and Procedures for Renewals and Issuances" [68 FR 8326]. This Notice informed the public that on February 3, 2003, the Coast Guard had suspended issuing all MMDs using a previous form (CG-2838 [Rev. 7-94]) and had begun renewing them using a new form (CG-2838 [Rev. 09/02]). On Tuesday, April 8, 2003, the Coast Guard issued another Notice of Policy, under the same title [68 FR 17064], announcing that it had begun to issue original MMDs on February 28, 2003, also using the new identification card. This new card is more tamper-resistant. Possession of the card continues to serve as verification of an individual's qualifications to work on board certain U.S.-flagged vessels.

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This interim rule instates changes previously announced and implemented that are necessary to protect the national security interests of the United States. The Coast Guard finds that notice before the effective date of these changes is unnecessary, impracticable, and contrary to the public interest, within the meaning of 5 U.S.C. 553(f)(B) of the Administrative Procedure Act (APA).

In response to national security concerns, the Coast Guard temporarily suspended issuing MMDs to examine the MMD program. Enhancements to the security procedures for issuing MMDs were made, and the Coast Guard resumed issuing the documents using the augmented procedures. The security-related processes needed to be implemented before the security-enhanced MMD cards could be issued; not issuing MMDs for a prolonged period would have been unacceptable and would have had a detrimental effect on merchant mariners who are required to possess these documents to obtain work on board vessels of 100 gross tons or more.

Pursuant to 5 U.S.C. 553(d)(3) and for the reasons stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

46 U.S.C. 2103 gives the Secretary of the Department in which the Coast Guard is operating general superintendence over merchant marine personnel and authorizes the issuance of regulations promoting maritime safety interests. 46 U.S.C. Chapter 73 addresses MMDs and authorizes the Coast Guard to issue MMDs to qualified mariners. Mariners must hold MMDs to serve on board U.S.-flagged merchant vessels of 100 gross tons or more. (46 U.S.C. 8701). The MMD functions as a certificate of identification and a certificate of service, specifying each rating for which the holder is qualified (46 U.S.C. 7302(a)). Additionally, the MMD is issued with an appropriate endorsement, to qualified tankermen. An MMD may be issued for five years, and renewed for additional five-year periods (46 U.S.C. 7302(f)). Coast Guard regulations governing the certification of seamen, including issuance and renewal of MMDs, appear at 46 CFR Part 12.

46 U.S.C. 7302(d) allows the Secretary to review the criminal record of an individual who applies for an MMD. 46

CFR 12.02-4 states that the Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for an MMD. Moreover, 46 U.S.C. 7302(c) prohibits the Secretary from issuing an MMD unless the individual applying for the MMD makes available to the Secretary any information related to an offense described in section 205 of the National Driver Register (NDR) Act of 1982, as amended (49 U.S.C. 30304). Additionally, the President under the Magnuson Act, 50 U.S.C. 191, may institute such measures and issue such rules and regulations to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, to vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States. By Executive Order 10173 dated October 18, 1950, and subsequent Executive Orders, the President implemented his authority under the Magnuson Act by regulation at Title 33 CFR Part 6. 33 CFR 6.10-1 says that no person shall be issued a document required for employment on a merchant vessel of the United States, nor shall any person be employed on a merchant vessel of the United States unless the Commandant is satisfied that the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be adverse to the security of the United States.

The Coast Guard will implement the requirements of 33 CFR 6.10-1 to evaluate the character and habits of life of MMD applicants and the Board appeals process for persons refused issuance based on character and habits of life required by 33 CFR 6.10-9. For denials not based on character and habits of life, the Coast Guard will continue to use the process for certification of seamen set out in 46 CFR Part 12.

The purpose of this interim rule is to amend 46 CFR Part 12. Since February 3, 2003, all eligible mariners, renewing or conducting certain other transactions involving existing MMDs, have been receiving more tamper-resistant MMDs. After February 28, 2003, all eligible original MMD applicants have been receiving more tamper-resistant MMDs.

The more tamper-resistant MMDs are designed to address marine safety and national security concerns. The new MMDs are similar in appearance to the old ones, but embody several improvements for increased security, including features to deter counterfeiting and graphics that enhance the document's professional

appearance. The new MMD allows for a more detailed description of a mariner's qualifications than did the old one. Those renewing their documents will be subject to the renewal requirements set out in 46 CFR 12.02–27.

At the time of this rule, mariners may continue to apply for renewal of the MMD and certain other transactions involving an existing MMD by mail, but will have to make a personal appearance at least once during the application process, to have their fingerprints taken, show proof of identity, and return the old MMD to the Coast Guard. For their convenience, they may elect to make an appearance at any of the 17 Regional Exam Centers (RECs) in the United States.

To ensure the issuance of MMDs only to eligible mariners, the Coast Guard requires fingerprints, and the revalidation and update of the information provided on the original MMD application. We will verify the information provided and conduct a criminal record review and a safety and a security check of the applicant in accordance with applicable law. We may disapprove an application for an MMD if the criminal record review and safety and security check leads the Coast Guard to determine that the applicant's criminal record or character and habits of life demonstrate that the applicant is not a safe and suitable person. A safe and suitable person eligible for an MMD is a person who, as determined by the appropriate Coast Guard official, possesses the character and habits of life to warrant the belief that their presence aboard vessels of the United States is not adverse to the security of the United States. If an application is disapproved, the applicant will be notified, in writing, of the reason(s) for disapproval and of the appeal process available to him or her. The applicant will be notified in writing of the reason(s) for disapproval, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed. No MMD transactions will be performed pending a decision on an appeal.

If you would like more information on the background of this rulemaking, and of the Coast Guard's licensing and documentation program, refer to the Notices discussed in the *Regulatory Information* or contact the offices noted in **FOR FURTHER INFORMATION CONTACT**. For questions on submitting an application for the issuance of an MMD, call your nearest REC, a list of which appears in 46 CFR 12.01–7, or on the

internet at <http://www.uscg.mil/STCW/index.htm>.

Discussion of Interim Rule

This rulemaking identifies the authorities for evaluating mariner applications with respect to qualifications and character and habits of life, which may disqualify a mariner from receiving an MMD and modifies certain application and administrative processes involved in issuing MMDs. It will—

- Provide new definitions of the terms “conviction”, “safety and security check”, and “safe and suitable person”;
- Require that an applicant disclose foreign and military convictions on the application;
- Describe the criminal record review and a safety and security check conducted on MMD applicants;
- Require that an applicant provide fingerprints during the application process for an MMD in a form and manner specified by the Coast Guard;
- Require that the applicant appear in person at an REC at least one time during the application process to prove their identity and submit fingerprints in a form and manner specified by the Coast Guard;
- Describe authority for the Coast Guard to review and deny issuance of an MMD for applicants whose “character and habits of life” are adverse to the security of the United States;
- Describe how an applicant may “prove” identity and require applicant to produce two forms of identification, one of which must contain a picture;
- Describe acceptable forms for proof of citizenship;
- Remove from 46 CFR 12.02–13 reference to “Shipping Commissioner”;
- Remove from 46 CFR 12.02–17 the requirement that a fingerprint be affixed to an MMD form;
- Eliminate the requirement that a mariner's Social Security Number (SSN) be placed on the MMD;
- Replace the term “missing” in 46 CFR 12.02–23 with the term “lost”;
- Remove the description of internal Coast Guard administrative procedures from 46 CFR 12.02–24 and require the applicant to communicate the loss of an MMD to the Coast Guard by letter;
- Require the submission of a complete application before processing; and,
- Require the surrender of an old MMD to the Coast Guard on issuance of a new one.

Regulatory Evaluation

This interim rule is not a “significant regulatory action” under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Moreover, the Office of Management and Budget (OMB), under that Order, has not reviewed it. And it is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

A draft Regulatory Evaluation under the regulatory policies and procedures of DHS follows:

Costs

This interim rule will amend certain requirements in 46 CFR Part 12 for how merchant mariners and prospective mariners will apply for MMDs.

This interim rule will require all applicants to process MMDs at an REC. The rule requires an applicant to appear at least once in the application process, even if making an application by mail, and requires that fingerprinting to be conducted by the Coast Guard for all types of MMD applications.

The total annual population of affected MMD applicants is 28,243 mariners. This total includes 11,210 applicants for original (new) MMDs and 17,033 applicants for reissued (renewal and duplicate) MMDs. This is based on 2002 data received from the Coast Guard's National Marine Center (NMC).

Not all mariners incur cost from this interim rule. The subset of the affected population that incurs costs comprises those mariners who (1) previously applied for original MMDs by mail and were not fingerprinted at an REC, and (2) previously applied for reissue MMDs and were not fingerprinted at an REC.

From discussions with the Coast Guard's NMC, we estimate the percentage of mariners who apply for original MMDs and incur a cost to be 20 percent of the 11,210 original MMD applicants, or 2,242 mariners ($0.20 \times 11,210$ original MMD applicants = 2,242 mariners).

We also estimate the percentage of mariners who apply for reissued MMDs and incur a cost to be 70 percent of the 17,033 reissue MMD applicants, or 11,923 mariners ($0.70 \times 17,033$ reissue MMD applicants = 11,923 mariners).

Based on the percentage of applicants who incur a cost discussed above, the total annual quantity of mariners who incur a cost by this final rule is 14,165 mariners (2,242 original MMD applicants + 11,923 reissue MMD applicants = 14,165 total mariners).

The period of analysis is from 2003 to 2007. We use a five-year period because all current documented mariners must renew their MMDs once every five

years. Therefore, this five-year period will cover a complete MMD renewal cycle—giving an accurate snapshot of the total cost of the rule.

The costs of this final rule include (1) the cost of mariners' time at an REC, and

(2) the cost of mariners' travel to and from an REC. In all costs we assume an average mariner's wage rate as a proxy for the opportunity cost of a mariner's time spent at the REC and the time spent traveling to and from the REC. We

also assume per diem reimbursement rates as proxy unit costs for travel expenses. Table 1 presents the basic unit cost assumptions and sources that we used in this analysis of the final rule.

TABLE 1.—SUMMARY OF BASIC UNIT COSTS

Item	Unit cost	Source reference
Opportunity Cost of Mariner Time	\$22/hour	This wage-rate is based on information from the 2001 National Occupation Employment and Wage Statistics published by the Bureau of Labor Statistics.
Mileage	\$0.36/mile	2003 Privately Owned Vehicle (POV) Reimbursement Rates for Automobiles in Amendment 112 of the <i>Federal Travel Regulation</i> , published January 6, 2003, and effective January 1, 2003, by the General Services Administration.
Incidentals and Meals	\$50/day	The average incidentals and meals reimbursement rate for the 17 current REC locations. The General Services Administration provides rates for the Continental US. The Department of Defense provides rates for the Non-Continental US. These rates are part of the <i>Federal Travel Regulation</i> and are frequently updated.
Lodging	\$120/night	The average lodging reimbursement rate for the 17 current REC locations. The General Services Administration (GSA) provides rates for the Continental US. The Department of Defense provides rates for the Non-Continental US. These rates are part of the <i>Federal Travel Regulation</i> and frequently updated.

Cost of REC Time

We assume, on average, a mariner will spend one hour at the REC submitting an application and being fingerprinted. This time estimate is based on discussions with Coast Guard personnel familiar with REC operations and customer service. We realize some applicants may take more time and some may take less time; however, we believe one hour to be a reasonable estimate of the average time a mariner will spend at an REC.

We estimate the cost of a mariner's time at the REC to be \$22 (1 hour × \$22/hour cost of time = \$22). The estimated annual cost of REC time for affected mariners is \$311,630 (\$22/mariner × 14,165 total applicants = \$311,630).

Travel Cost

We assume round-trip travel, to an REC, to take either one-day or require an overnight stay. Furthermore, we believe most mariners live within close proximity to an REC. According to data from the Coast Guard's NMC, at least 70 percent of MMD applicants live within one-day round-trip travel to and from an REC and the remaining 30 percent may require an overnight stay. We also assume mariners will drive to an REC regardless of the distance. While there may be some mariners that take public transportation or use another mode of travel, we believe, on average, most mariners will drive themselves to an REC.

We estimate the one-day and overnight travel cost as follows:

One-Day Round-Trip Travel

For an applicant within one-day round-trip travel to and from an REC, we assume the cost to include the mileage, the opportunity cost of the time spent traveling, and incidentals.

We estimate the one-day round-trip driving distance and time to be 100 miles in 4 hours (or 50 miles one-way in 2 hours driving time). While some mariners will drive more than this and some will drive less, we believe 100 miles driving distance, in 4 hours, to be a reasonable average estimate of the one-day round-trip travel distance and time. We also assume the cost for one-day round-trip incidentals to be \$50 and the mileage reimbursement to be \$0.36/mile.

The estimated cost per mariner for one-day round-trip travel is \$174 (100 roundtrip miles × \$0.36/mile reimbursement rate + 4 travel hours × \$22/hour cost of time + \$50/day incidentals = \$174). The estimated annual cost for one-day round-trip travel for affected mariners is \$1,725,297 (\$174/mariner × .70 {percent one-day travel} × 14,165 mariners = \$1,725,297).

Overnight Travel

For an applicant having to travel and stay overnight, we assume the cost to include mileage, the opportunity cost of

time spent traveling, lodging, and incidentals.

We estimate the overnight round-trip driving distance and time, to an REC, to be 200 miles in 8 hours (double the one-day round trip scenario). While some mariners will drive more than this and some will drive less, we believe 200 miles driving distance, in 8 hours, to be a reasonable average estimate of the distance and time a mariner would drive for overnight travel to a REC. We also assume the cost for lodging and incidentals for overnight travel to be \$220 (2 × \$50/day incidentals + \$120/night lodging = \$220).

The estimated cost per mariner for overnight travel is \$468 (200 roundtrip miles × \$0.36/mile reimbursement rate + 8 travel hours × \$22/hour cost of time + \$220 lodging and incidentals = \$468). The estimated annual cost of overnight travel for affected mariners is \$1,988,766 (\$468/mariner × .30 {percent overnight travel} × 14,165 mariners = \$1,988,766).

Total National Cost

The annual cost of this interim rule, consisting of the cost of travel and time for affected mariners, is estimated to be \$4 million (non-discounted). Table 2 summarizes the total annual cost of the rule to industry.

TABLE 2.—SUMMARY OF ANNUAL COST

Item	Opportunity cost of mariner time	Mileage cost	Incidentals and meals cost	Lodging cost	Total annual cost per applicant	Total annual cost all applicants
Unit Cost	¹ \$22/hour	² \$0.36/mile	³ \$50/day	³ \$120/day	NA	NA
REC Time	22	.....	.....	.....	\$22	\$311,630
One-Day Round-Trip Travel	88	36	50	.....	174	1,725,297
Overnight Round-Trip Travel	176	72	100	120	468	1,988,766
Total Annual Cost of the Final Rule .....	.....	.....	.....	.....	.....	4,025,693

¹Per hour.²Per mile.³Per day.

The present value (PV) of the total cost of this interim rule is \$18 million in 2003 dollars (2003–2007, 7 percent discount rate).

The primary cost of this rule is the travel cost, which is driven by the mariners' opportunity cost of time, lodging, and other per diem factors. However, we believe the total cost of this rule is conservative because the REC locations, together, can serve more than 70 percent of affected mariners—especially given that the RECs are located in or near major maritime ports that may be accessed by mariners.

Benefits

The Coast Guard will review a mariner's background before issuing an MMD and anticipates several qualitative benefits from this new process. The Coast Guard will require mariners, seeking MMDs, to validate their basic information on identity and criminal records to ensure the issuance of MMDs only to eligible mariners. The Coast Guard expects to ensure marine safety and protect national security by conducting a background check of all MMD applicants and identifying those who pose a threat.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

Collection of Information

This interim rule calls for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on state or local governments and would either preempt state law or impose a substantial direct cost of compliance on them.

We have analyzed this interim rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the states. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Since this rule involves the manning of U.S. vessels and the documentation of merchant mariners, it is a matter of personnel qualifications, and so precludes states from regulation. Because states may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one-year. Though this interim rule will not result

in such an expenditure, we discuss its effects elsewhere in this preamble.

Taking of Private Property

This interim rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This interim rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this interim rule and concluded that under figure 2-1, paragraph (34)(c), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97-449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 12 as follows:

PART 12—CERTIFICATION OF SEAMEN

■ 1. Revise the authority citation for part 12 to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7303, 7304, 7305, 7503, 7505, 7701 and 8103; 50 U.S.C. 191; 33 CFR Part 6; 49 CFR 1.46; E.O. 10277, 16 FR 7537, 3 CFR, 1949-1953 Comp., p. 778; E.O. 10352, 17 FR 4607, 3 CFR 1949-1953 Comp., p. 873; E.O. 11249, 30 CFR 13001, 3 CFR, 1964-1965 Comp., p. 349; E.O. 13143, 64 FR 68271, 3 CFR, 1999 Comp., p. 238; E.O. 13273, 67 FR 56215, 3 CFR, 2002 Comp., p. 249; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 12.01-1, revise the heading and paragraph (a)(1); in paragraph (a)(2), remove the period and add, in its place, "; and"; and add paragraphs (a)(3) and (c) to read as follows:

§ 12.01-1 Purpose of rules in this part.

(a) * * *
 (1) 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;

(3) A means, through a criminal record review and a safety and security check, to determine whether the holder of a merchant mariner's document would be a threat to the safety of life or property at sea, or his or her presence would be adverse to the security of the United States.

(c) Continuous discharge books and merchant mariner documents are issued by the Coast Guard and are property of the Coast Guard.

■ 3. In § 12.01-6, revise the definition for "Conviction" and add, in alphabetical order, the definitions for the terms "Safe and Suitable Person", and "Safety and Security Check" to read as follows:

§ 12.01-6 Definitions of terms used in this part.

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the Coast Guard will consider the applicant to have received a conviction. A later expungement of the conviction will not negate a conviction unless the Coast Guard is satisfied that the expungement is based upon a showing that the court's earlier conviction was in error.

Safe and suitable person is one whose character and habits of life are such as to support the belief that his or her presence on board vessels of the United States is not, or may not be, adverse to the security of the United States.

Safety and Security Check is the process or action taken by the Coast Guard to determine whether an applicant for, or holder of, a merchant mariner's document is a safe and suitable person to be issued such a

document or to be employed on a vessel under the authority of such a document.

■ 4. Revise § 12.01-7 to read as follows:

§ 12.01-7 Regional Examination Centers.

Applicants for licensing and certification may apply at the following locations:

- Boston, MA
- New York, NY
- Baltimore, MD
- Charleston, SC
- Miami, FL
- New Orleans, LA
- Houston, TX
- Memphis, TN
- St. Louis, MO
- Toledo, OH
- San Pedro, CA
- Alameda, CA
- Portland, OR
- Seattle, WA
- Anchorage, AK
- Juneau, AK
- Honolulu, HI

■ 5. In § 12.02-4, revise the heading, paragraph (a), the introductory text of paragraph (c), and paragraph (c)(1), to read as follows:

§ 12.02-4 Basis for denial of a merchant mariner's document.

(a) No person who has been convicted by a court of record of a violation of the dangerous-drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, is eligible for a merchant mariner's document, except as provided by paragraph (c) of this section. No person who has ever been the user of a dangerous drug, addicted or not, or has ever been convicted of an NDR 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 a merchant mariner's document, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

(c) *Criminal Record Review and Safety and Security Check.* The Coast Guard may conduct a criminal record review and conduct a safety and security check of an applicant for a merchant mariner's document. An applicant pursuing simultaneous transactions for merchant mariner's credentials shall undergo a single criminal record review and safety and security check. Each applicant must provide written disclosure of all prior convictions (as defined in § 12.01-6) at the time of application.

(1) When a criminal record review and a safety and security check are conducted, the applicant shall provide fingerprints in a form and manner specified by the Coast Guard.

(i) When a criminal record review or a safety and security check leads the Coast Guard to determine that an applicant is not a safe and suitable person (as defined in § 12.01-6) or cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made, the application may be disapproved.

(ii) If an application is disapproved, the applicant will be notified in writing of the fact, and, except as provided by this paragraph, the reason or reasons for disapproval and advised that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal. The applicant will be notified in writing of the reason or reasons for disapproval, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed.

* * * * *

■ 6. In § 12.02-5, in paragraph (b) remove the term "CG-719" and add, in its place, the term "CG-719B".

■ 7. In § 12.02-9, revise the first and second sentence of paragraph (a) and paragraphs (g) and (h) to read as follows:

§ 12.02-9 Application for documents.

(a) *General.* The Coast Guard will not process an incomplete merchant mariner's document application. It will process an application that is current and up-to-date with respect to service, physical examination, and other pertinent matters.

* * * * *

(g) Each applicant for a merchant mariner's document may be subject to a criminal record review and a safety and security check as described by § 12.02-4(c).

(h) Each applicant for a merchant mariner's document shall comply with the NDR requirements in § 12.02-4(d).

■ 8. Add § 12.02-12 to read as follows:

§ 12.02-12 Identity.

(a) Each person applying for a merchant mariner's document shall present acceptable proof of identity. Proof of identity shall consist of two current forms of identification, one of which shall contain a photo of the applicant. The Coast Guard may require other identification information reasonably necessary to prove the applicant's identity.

(b) The following credentials are acceptable proof of identity:

- (1) Unexpired U.S. military identification card;
- (2) Unexpired U.S. driver's license;
- (3) Unexpired U.S. passport;
- (4) Unexpired official identification card issued by a federal, State, or local government or by a territory or possession of the U.S. (including a federal employee's identification credential);
- (5) Unexpired port credential, with photo of the applicant, issued by State or local port authority;
- (6) Unexpired law enforcement credential, with photo of the applicant;
- (7) Unexpired merchant mariner's document issued after February 3, 2003;
- (8) Unexpired foreign passport; or
- (9) Birth Certificate or Birth Registration, issued by a State, county, municipality or outlying possession of the U.S.

■ 9. In § 12.02-13, revise paragraphs (b) and (c) to read as follows:

§ 12.02-13 Citizenship requirements.

* * * * *

(b) The OCMI may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be an original or a copy certified as true by the agency responsible for issuing the document of the following:

- (1) Birth certificate or birth registration;
- (2) Certificate of naturalization (original must be presented; photocopies are unlawful);
- (3) Baptismal certificate or parish record recorded within one year after birth;
- (4) Statement of a practicing physician certifying the physician's attendance at the birth and who possesses a record showing the date and location at which it occurred;
- (5) State Department passport;
- (6) A merchant mariner's document issued by the Coast Guard after February 3, 2003, that shows that the holder is a citizen of the U.S.;
- (7) Delayed certificate of birth issued under a state seal in the absence of any collateral facts indicating fraud in its procurement; or
- (8) Certificate of Citizenship issued by the United States Immigration and Naturalization Service or by the Bureau of Citizenship and Immigration Services;

(c) If the applicant can not meet the requirements set forth in paragraphs (b)(1) through (8) of this section, the applicant must make a statement to that effect, and may submit data of the following character for consideration:

(1) Report of the Census Bureau showing the earliest available record of age or birth.

(2) Affidavits of parents, other relative, or two or more responsible citizens of the U.S. stating citizenship.

(3) School records, immigration records, or insurance policies.

■ 10. In § 12.02-17, revise the heading and the introductory text of paragraph (c); revise paragraph (c)(2) and remove paragraph (c)(3); revise paragraph (d) and add paragraph (h) to read as follows:

§ 12.02-17 Preparation and issuance of documents.

* * * * *

(c) When a person applies for a merchant mariner's document, he or she must—

* * * * *

(2) Provide acceptable proof of identity as described in § 12.02-12.

(d) For recordkeeping purposes, the official identification number is a seaman's social security number.

* * * * *

(h) The mariner shall return the previous MMD when a new MMD is issued.

■ 11. Revise § 12.02-23(e) and add (g) to read as follows:

§ 12.02-23 Issuance of duplicate documents.

* * * * *

(e) If a merchant mariner's document or service record is lost, the seaman may obtain a duplicate by following the procedures in paragraph (c) of this section and by signing an affidavit, before the OCMI or a designated representative, explaining the loss of the document or service record. The Coast Guard will not process any application for a duplicate merchant mariner's document unless the applicant complies with the requirements of § 12.02-9.

* * * * *

(g) The Coast Guard may deny applications for duplicate merchant mariner's documents for any reason listed in § 12.02-4.

■ 12. Revise § 12.02-24 to read as follows:

§ 12.02-24 Reporting loss of continuous discharge book, merchant mariner's document, or certificate of discharge.

Whenever a mariner loses a continuous discharge book, merchant mariner's document, or certificate of discharge, the mariner shall immediately report the loss to the nearest OCMI. The report shall be made in writing giving the facts incident to its loss.

■ 13. In § 12.02-27, revise the introductory text of paragraph (a) and

paragraphs (a)(1), (a)(2), (a)(3), (e)(3)(i)(A), and (e)(3)(i)(B); redesignate paragraphs (e)(3)(i)(C) and (e)(3)(i)(D) as paragraphs (e)(3)(i)(D) and (e)(3)(i)(E), respectively; and add new paragraphs (e)(3)(i)(C) and (e)(5) to read as follows:

§ 12.02–27 Requirements for renewal of a merchant mariner’s document.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a merchant mariner’s document shall establish possession of all of the necessary qualifications before the document is renewed. The Coast Guard will not process an application until the applicant has submitted a complete application package that complies with the requirements of § 12.02–9. A request for a renewed merchant mariner’s document may be denied for any reason listed in § 12.02–4.

(1) Each application for a merchant mariner’s document must be made on form CG–719B furnished by the Coast Guard and be accompanied by the evaluation fee (including examination and issuance fees when required) established in Table 12.02–18 of § 12.02–18. Each application must contain all necessary proofs of qualifications, identity, and citizenship or nationality. It must be current and up-to-date with respect to service, the physical examination, and all other pertinent matters.

(2) The applicant may apply either in person at any Regional Examination Center listed in § 12.01–7(a) or by mail under paragraph (e)(3) of this section.

(3) Each applicant who elects to renew by mail shall submit the merchant mariner’s document with his or her application. If a document is submitted, it will not be returned to the applicant. A photocopy of a merchant mariner’s document showing both the front and the back of the document may be submitted in place of the existing document.

* * * * *

- (e) * * *
- (3) * * *
- (i) * * *

(A) A completed application and the evaluation fee (including examination

and issuance fees when required) established in Table 12.02–18 in § 12.02–18.

(B) The document to be renewed, or, if it has not expired, a photocopy of it, showing both the front and the back.

(C) A copy (both front and back if the credentials are printed on two sides) of two credentials deemed acceptable proofs of identity in § 12.02–12, one of which must be a photo identification.

* * * * *

(5) Each applicant applying for renewal by mail must appear in person at an REC at least one time during the application process to obtain a renewed merchant mariner’s document. At that time, the applicant must show the same proofs of identity submitted with the application package as required by paragraph (e)(3)(i)(C) of this section. No other proofs of identity will be accepted. At the time the applicant appears in person at the REC, the applicant shall provide fingerprints in a form and manner specified by the Coast Guard. The applicant shall return the expired or expiring document to the Coast Guard. If the applicant has applied in person, shown the proofs of identity, submitted the expired or expiring document with the application, and provided fingerprints, then the renewed document may be mailed to an address provided by the applicant. * * *

Dated: December 29, 2003.

Thomas H. Gilmour,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2002–11288]

RIN 2115–AG30

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim rule [USCG–2002–11288], which was published in the **Federal Register** on December 12, 2003 (68 FR 69564). The interim rule provides a partial rate adjustment for pilotage on the Great Lakes. A review of this interim rule after publication identified an omission of a figure in a table and two erroneous tables.

DATES: Effective on January 6, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on this correction notice, call or e-mail Paul Wasserman, Director, Office of Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at telephone 202–267–2856, or *pwasserman@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION:

Need for Correction

The interim rule, as published, contained an erroneous figure for the total of District One’s Projected Return on Investment. This was due to the omission of a number in the column designated as “Total District One.” There were also two incorrect tables placed in Step 6a. The tables should have been “Table B.—District Two—Projected Return on Investment” and Table C.—District Three—Projected Return on Investment.”

Correction of Publication

■ Accordingly, the publication on December 12, 2003, of the interim rule [USCG–2002–11288], FR Doc. 03–30711, is corrected as follows:

■ 1. On page 69574, in Table A.—District One Step 10, change the figure under Total District One from \$10,000 to \$100,000.

■ 2. On page 69574, remove “Table B.—District Two—Adjustment Determination” and “Table C.—District Three—Adjustment Determination” and, in their place, add the following tables.

TABLE B.—DISTRICT TWO—PROJECTED RETURN ON INVESTMENT

Step	Area 4	Area 5	Total District 2
1	\$705,015	\$1,461,069	\$2,166,084
2	(365,292)	(446,468)	(811,760)
3	(477,218)	(930,701)	(1,407,919)
4	(137,495)	83,900	(53,595)
5	0	0	0
6	(137,495)	83,900	(53,595)
7	0	0	0