

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG-1997-2799]

RIN 2115-AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the user fees for its services relating to the issuance of merchant mariner licenses, certificates of registry, and merchant mariner documents. We based the revisions on the most recent recalculation of program costs. We have changed the format of the two CFR sections in which the fees are published from narrative text to tables that are easier to use.

DATES: This final rule is effective October 4, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. You may also electronically access the public docket for this rulemaking on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For information concerning the final rule provisions, contact CDR Mark McEwen, Project Manager, U.S. Coast Guard Headquarters, Office of Planning and Resources (G-MRP), telephone 202-267-0785. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:**Background***Regulatory History*

The Coast Guard published a final rule entitled "User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation" in the **Federal Register** on March 19, 1993 (59 FR 15228). That rule established marine license, certificate of registry, and merchant mariner document user fees in 46 CFR parts 10 and 12.

On September 27, 1994, we added user fees for renewals of certificates of

registry and MMDs to these fee schedules.

On April 1, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents" in the **Federal Register** (63 FR 16024) [corrected April 20, 1998 at 63 FR 19580]. The NPRM proposed revised fees based on our latest cost recalculations.

We allowed 180 days for mariners to review the NPRM and submit written comments. During this time, we received 22 comments on a variety of issues including one request for a series of public meetings. Since the written comments addressed a wide variety of issues, the Coast Guard did not find that public meetings were needed to provide additional helpful information for the rulemaking and determined that a public meeting would not be helpful to develop the final rule.

Discussion of Comments and Changes

The following paragraphs discuss the comments received and explain the changes we have made in the final rule.

Opposition to User Fees

Thirteen comments objected to all user fees in general, and specifically to the user fees we proposed for merchant mariner licenses and documents. Some comments agreed that the fees were necessary, but objected to the amount of the proposed fees. Some comments stated that the fee for the service exceeded the value of the service to the recipient.

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 to require that the Coast Guard establish and collect fees for Coast Guard services. Our fees are based on the cost to the Coast Guard of providing the service.

Improve Service at RECs

We received four comments discussing the quality of service at the 17 Regional Examination Centers (REC). The comments suggested that the Coast Guard lower costs and fees by reducing procedures and increasing productivity at the RECs, and by allowing a third party to process merchant mariner document (MMD) applications and certify merchant mariners.

This rule does not include general changes to REC procedures or to the licensing and documentation system. However, we have forwarded these comments to the program managers and to the licensing reengineering team for their consideration.

Five comments stated that they would prefer that the fees that were paid would be used to improve service to the customer. Fees paid for merchant mariner licensing and documentation (MMLD) services are deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities. The Coast Guard cannot use fee receipts for any purpose unless specifically authorized by Congress.

\$17 Fee for Criminal Record Check

One comment stated that we should not charge the mariner a \$17 fee for a Federal Bureau of Investigation (FBI) criminal record check because the mariner does not benefit from this service.

The United States Court of Appeals upheld the Coast Guard's authority to charge the \$17 fee for an FBI criminal record check (*Seafarers International Union of North America, et al. v. the United States Coast Guard*, 81 F.3d 185-186, (DC Cir. 1996)). We will start collection of the \$17 FBI criminal record check fee when this rule becomes effective. The fee is included in the evaluation phase fee for original documents.

Schedule for Recalculation and Implementation of Fees

One comment suggested that we should not recalculate the fees now because we are considering privatizing certain licensing functions. Another comment recommended that we increase the fees once every 10 years and "adjust the fees for inflation only." One comment recommended that we gradually implement the new fee schedule over a 4-year period.

We must review and, if necessary, recalculate the licensing and documentation user fees every 2 years as required by OMB Circular A-25. Based on the recalculated costs, we may adjust the fees to recover the costs of providing services. The Coast Guard's settlement with Seafarers International Union (SIU) dated September 17, 1997, obligates the Coast Guard to "going forward with notice and comment rulemaking as to its MMLD program and further commits that this rulemaking will include the recalculation of its costs and reassessment of its fees." A phased implementation of fees is not practical because the fee reviews required by OMB are too frequent to allow phased implementation.

Four comments stated that the user fees are unfair because they are an additional burden to mariners who must already pay other costs to maintain their

licenses or advance their careers such as required courses, travel to required courses, and travel to the RECs.

The Coast Guard is aware of these other professional costs and we discussed them in the rulemaking that established the original fees on March 19, 1993 (58 FR 15228). We have not increased the fees since that time. This rulemaking is the first adjustment of the MMLD fees based on a recalculation of the costs of providing MMLD services.

Paying for Multiple Transactions

Three comments suggested that multiple license, MMD, and endorsement renewals for one individual should all expire simultaneously at 5-year intervals. This would consolidate all licensing fees into a single payment for multiple transactions once every 5 years. Mariners have the option to simplify their renewal process by renewing all their documents at the same time, putting them all on the same 5-year expiration schedule. The fee schedule provides savings to mariners when more than one document is processed using a single application.

Recalculation

One comment stated that the "recalculation is not a true cost analysis or an economic time test study, but an exercise in justifying the Congressional mandate to impose user fees."

We did the recalculation to comply with a court order resulting from litigation initiated by SIU. That case was settled after we completed the recalculation. The court ordered the Coast Guard to reassess its fees based on that recalculation. This rulemaking does so.

Regulatory Assessment

One comment criticized the draft regulatory assessment because the same user fee would represent a greater percentage of the average annual income for an able seaman than that of a third mate.

The fees in this rule are based only on the costs of providing each type of licensing and documentation service.

The same comment stated that "Coast Guard fees are also significantly higher than fees imposed by the government for similar federally mandated licenses and documents" such as by the Federal Aviation Administration and the Federal Communications Commission.

Unless the licensing systems of other agencies are the same as the Coast Guard's licensing system, the fees for licensing services will be different in each agency. Each agency has different direct and indirect costs for providing

the service and their fees are related to those costs. Comparisons with other government or professional organizations are useful for evaluating the potential cumulative impacts on affected persons, but each agency's or organization's system is unique and each agency's license has different requirements for obtaining certification.

Estimate of Uninspected Small Passenger Vessels

One comment disagreed with the Coast Guard's estimate of only 480 uninspected small passenger vessels and stated that the number should be much higher.

The Coast Guard agrees with the comment that the 480 figure is incorrect and, upon further research, the Coast Guard estimates there are approximately 30,000 uninspected passenger vessels that could have license holders both owning and operating their vessels as small businesses.

STCW

One comment suggested that the proposed fees, in addition to the requirements of the implementation of the International Convention on Standards, Training, Certification and Watchkeeping (STCW), "* * * would place an unacceptable financial burden upon individual mariners and upon vessel operators."

The June 26, 1997, STCW final rule (62 FR 34525) discussed the costs associated with implementation of that rule. However, the costs of providing STCW services were not part of our recalculation used for merchant mariner license and documentation fees in this rule. The Coast Guard has not charged fees for STCW certification services and this rule does not establish fees for these services. We have added new entries to tables 10.109 and 12.02-18 for processing STCW forms, and we clearly state there is no fee charged for this activity.

Other Changes

We have changed §§ 10.110 and 12.02-18 to allow for payment of fees for all phases at the time of application or for payment at each phase.

We are also adding language to both sections permitting RECs, as they become equipped, to accept payment by credit card.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies

and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A separate regulatory assessment document, however, has been prepared for this rule and is available in the docket for inspection or copying where indicated under ADDRESSES.

The total annual revenues from direct user fees under subtitle II of 46 U.S.C. 2110 does not exceed \$23.1 million and the merchant marine licensing and documentation (MMLD) revenues for fiscal year 1996 were only \$4.6 million. The revised fees will increase these revenues to an estimated \$9.3 million. This represents the maximum amount of revenue that could be collected based on recalculated data and transaction figures. The total revenue of direct user fees under subtitle II of 46 U.S.C. 2110 for fiscal year 1997 did not exceed \$23.1 million, well below the \$100 million threshold that makes a rulemaking economically significant.

This final rule will affect all mariners required to hold a license or certificate of registry (COR) in accordance with 46 CFR part 10 or a merchant mariner document (MMD) in accordance with 46 CFR part 12. Data from the RECs (1994) indicate a grand total of 57,529 transactions, including new license issuances as well as renewals.

The impact of the fees on the individual merchant mariner will occur at the time fees are paid. At all other times during the validity of the license, document, or certificate, if there are no document transactions, no payments are made. The relative economic impact of the fees on each mariner would vary depending upon the number and type of documents held by the mariner and the mariner's ability to pay.

To assess the impact of the fees on the individual mariner, the Coast Guard annualized fees over the period the documents were valid. We determined that the document transactions a typical mariner may require over the first 10 years he or she holds a license or document will include renewals as well as raises in grade or endorsements. Our analysis of the costs borne by the mariner covers a 10-year period.

Based on these assumptions, the annualized fee differences range from a low of \$0.80 for Upper Level Licenses to a high of \$16.30 for a Merchant Mariner's Document with qualified rating.

Summary

The Coast Guard found that the impact of the revisions will vary with the financial situation of each individual mariner. However, the data suggested the financial impact of the fee

revisions are not significantly different from the user and licensing fees of other professions, both in terms of actual fees and as a percent of salary. The impact of the fee revisions to the individual merchant mariner occurs over the phases of the document transactions at the time a fee is paid for each transaction phase. Absent further transactions during the document's 5-year period of validity, no other payments would be necessary until the renewal of the document.

The Coast Guard understands that the fee revisions may represent only one of several expenses incurred by the individual mariner when acquiring a Coast Guard license, COR, or MMD. Within the marine professions and trades, the fees for MMLD transactions have essentially become part of the overall cost associated with working in the industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* include 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.

The fee revisions in this final rule will impact the individual mariner. However, some license holders both own and operate their vessels as small businesses. For those individuals, this final rule has small entity implications. The annual impact of these fee revisions on any sole proprietor will be less than \$20. The Coast Guard estimates that few sole proprietors work as towing vessel operators, offshore supply vessel operators, and mobile offshore drilling unit operators. However, we believe that there are a number of sole proprietors in the small passenger vessel industry. As a business, sole proprietors can claim their licensing and documentation user fees as a business expense for tax purposes and many can pass along the expense of the licensing fees to the consumer in the form of higher rates. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard offered to

assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement action of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This final rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(a) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and executive orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions—

E.O. 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership

This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46.

Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.109 to read as follows:

§ 10.109 Fees.

Use table 10.109 to determine the fees that you must pay for license and certificate of registry activities in this part.

TABLE 10.109—FEES

If you apply for...	And you need...		
	Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
License:			
Original upper level	\$115	\$110	\$45
Original lower level	115	95	45
Raise of grade	100	45	45
Modification or removal of limitation or scope	50	45	45
Endorsement	50	45	45
Renewal	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	¹ 45
Radio Officer License:			
Original	65	n/a	45
Endorsement	50	45	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	¹ 45
Certificate of Registry:			
Original (MMD holder)	105	n/a	45
Original (MMD applicant)	120	n/a	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Endorsement	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	¹ 45
STCW Certification:			
Original	(²)	(²)	(²)
Renewal	(²)	(²)	(²)

¹ Duplicate for document lost as result of marine casualty—No Fee.

² No fee.

3. Revise § 10.110 to read as follows:

§ 10.110 Fee payment procedures.

- (a) You may pay—
- (1) All fees required by this section when you submit your application; or
- (2) A fee for each phase at the following times:
- (i) An evaluation fee when you submit your application.
- (ii) An examination fee before you take the first examination section.
- (iii) An issuance fee before you receive your license or certificate of registry.
- (b) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.
- (c) Unless the REC provides additional payment options, your fees may be paid as follows:
- (1) Your fee payment must be for the exact amount.
- (2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.
- (3) If you pay by mail, you must use either a check or money order.
- (4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(d) Unless otherwise specified in this part, when two or more documents are processed on the same application—

- (1) *Evaluation fees.* If a certificate of registry transaction is processed on the same application as a license transaction, only the license evaluation fee will be charged; and
- (2) *Issuance fees.* A separate issuance fee will be charged for each document issued.

§ 10.209 [Amended]

4. In § 10.209(e)(4), remove the symbols “§§” and add, in their place, “the tables in §§”.

§§ 10.205, 10.207, 10.209, 10.217, and 10.219 [Amended]

5. In addition to the amendments set forth above, in 46 CFR part 10, remove the word “§ 10.109” and add, in its place, the words “table 10.109 in § 10.109” in the following places:

- (a) Section 10.205(a);
- (b) Section 10.207(a);
- (c) Section 10.209(a)(1), (e)(3)(i)(A), and (f)(1);
- (d) Section 10.217(a)(1) and (a)(2); and
- (e) Section 10.219(c).

PART 12—CERTIFICATION OF SEAMEN

6. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

7. Revise § 12.02–18 to read as follows:

§ 12.02–18 Fees.

(a) Use table 12.02–18 to determine the fees that you must pay for merchant mariner document activities in this part.

(b) Unless otherwise specified in this part, when two documents are processed on the same application—

(1) *Evaluation fees.* If a merchant mariner document transaction is processed on the same application as a license or certificate of registry transaction, only the license or certificate of registry evaluation fee will be charged;

(2) *Examination fees.* If a license examination under part 10 also fulfills the examination requirements in this part for a merchant mariner document, only the fee for the license examination is charged; and

(3) *Issuance fees.* A separate issuance fee will be charged for each document issued.

(c) You may pay—

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

- (i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your merchant mariner document.

(d) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(e) Unless the REC provides additional payment options, your fees may be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(f) The Coast Guard may assess charges for collecting delinquent payments or returned checks. The Coast Guard will not provide documentation services to a mariner who owes money for documentation services previously provided.

TABLE 12.02-18—FEES

If you apply for...	And you need...		
	Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Merchant Mariner Document:			
Original without endorsement	\$110	n/a	\$45
Original with endorsement	110	140	45
Endorsement for qualified rating	95	140	45
Upgrade or Raise in Grade	95	140	45
Renewal without endorsement for qualified rating	50	n/a	45
Renewal with endorsement for qualified rating	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	¹ 45
STCW Certification:			
Original	(²)	(²)	(²)
Renewal	(²)	(²)	(²)
Other Transactions:			
Duplicate Continuous Discharge Book	n/a	n/a	10
Duplicate record of sea service	n/a	n/a	10
Copy of certificate of discharge	n/a	n/a	10

¹ Duplicate for document lost as result of marine casualty—No Fee.

² No Fee.

§ 12.02-27 [Amended]

7. In § 12.02-27(e)(4) and (f), remove the symbols “§§” and add, in their place, “tables in §§”.

§§ 12.02-23 and 12.02-27 [Amended]

8. In addition to the amendments set forth above, in 46 CFR part 12, remove

the word “§ 12.02-18” and add, in its place, the words “table 12.02-18 in § 12.02-18” in the following places:

(a) Section 12.02-23(b) and (c)(2); and

(b) Section 12.02-27(a)(1) and (e)(3)(i)(A).

Dated: July 27, 1999.

R.C. North,

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

[FR Doc. 99-20037 Filed 8-4-99; 8:45 am]

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