

agrees in part. Only those mariners who fail to provide documentation of proficiency, and those who have had their licenses suspended, will need to demonstrate proficiency.

Two comments questioned the duration of the demonstration of proficiency: Whether the demonstration would be a short-term evaluation or conducted over the full period of training. It is the Coast Guard's opinion that the demonstration should extend over the full period of training; except that, in the case of a mariner returning from the suspension of his or her license, that demonstration may be short-term.

One comment sought clarification on what documentation of proficiency the Regional Examination Centers (RECs) would require before license renewal, and on the meaning of "current license". The Coast Guard clarified this issue in NVIC 4-01. The "current license" mentioned in the preamble refers to the license the mariner held before May 21, 2001.

One comment stated that the check-ride requirement for license renewal might unfairly affect a small business without a Designated Examiner (DE) and might result in increased expense. The Coast Guard disagrees. Check rides are necessary only when a mariner lacks other documentation of training and service at renewal. Although this requirement may affect businesses, the process of developing DEs should allow every company, regardless of size, to have a DE.

One comment asked whether the decision requiring a check ride at the time of renewal would belong to a license evaluator instead of a higher authority. The evaluator should be the person best able to identify whether there is sufficient information within an application package. Although a check ride is available for the REC to use, this process is only for those cases when the mariner is unable to furnish documentary evidence that he or she obtained training and service during the preceding licensed period.

One comment identified a need for objectives and assessment criteria for the DE to use when conducting check rides. The Coast Guard agrees. The objectives should be based upon the TOAR published in NVIC 4-01. The assessment criteria are before the Towing Safety Advisory Committee (TSAC) and will become available in the **Federal Register**.

Designated Examiner (DE)

Three comments stated that the term "designated examiner" (DE) needs further clarification in regard to

qualifications and expectations. The term and what it entails are fully explained in NVICs 4-01 and 6-97.

One comment stated that any process for developing DEs must be smooth and that the requirements must use common sense. The commenter also suggested that the process contemplated by this rulemaking draws too much from the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), as amended, and is inconsistent with towing on inland rivers and the Western Rivers. There is no compelling rationale to remove the requirement; however, the Coast Guard eased the process for obtaining the letter of designation as a DE, which it describes in NVIC 4-01.

One comment stated that qualifications for DEs are a point of controversy in the offshore industry, and that the towing industry should expect similar controversy. With or without controversy, the Coast Guard must ensure that DEs are adequately trained and qualified.

One comment asked that the final rule clearly reflect that the same person may both instruct and evaluate a candidate. There is nothing in this rule or previous rules prohibiting a person from both instructing and evaluating a candidate.

One comment asked whether any liability attaches to the DE for his or her recommendations. If evidence exists demonstrating that the DE is not ensuring the proficiency of the candidates, the Coast Guard may withdraw his or her designation. The DE is able to determine only that a candidate is competent at the time of assessment.

One comment stated that mariners, who are already overworked and in short supply, would face an added workload by participating in the program for Qualified Instructors (QIs) and DEs. The commenter also stated that mariners who are retired, disabled, or otherwise inactive, even if not holding licenses, should be eligible to be QIs and DEs. The Coast Guard disagrees. The process establishes that a mariner must hold a valid license to become a DE. If a mariner holding a license chooses to become a DE, he or she may do so; however, he or she must still comply with the watch-hour requirements of 46 CFR 15.705.

One comment stated that the rule overlooks the fact that a DE should expect payment for his services. The commenter also stated that an employer could use coercion to gain a favorable evaluation, "while the threat of a Coast Guard subpoena could cause stress, anxiety, and embarrassment for the Designated Examiner." There are

numerous ways a DE could receive payment. Coercion could occur, but we don't believe it is a substantial concern. Although our authority to issue subpoenas might intimidate some, there are too many personalities involved to determine why or when, or to prevent coercion in all cases.

One comment asked why the Coast Guard does not see a DE's administering check rides for his employer as a conflict of interest. Our opinion is that no conflict of interest arises since it is in both the employer's and the DE's best interest to ensure that a mariner receiving certification can safely complete his or her duties.

One comment stated that maritime educators and marine-membership organizations need leeway to effectively deal with rehabilitating mariners and returning them to service. The comment asked whether the Coast Guard had fully considered that a mariner returning from a suspension of a license might be unemployed and not have access to a vessel for his or her testing, and whether the Coast Guard would let a mariner get a job, return to work, and then arrange for his or her check ride. Our rules state that no mariner may return to work in a position requiring a license if his or her license is suspended; yet nothing in those rules or this rule limits his or her ability to work in an unlicensed position.

Equivalents

One comment asked whether tonnage restrictions contained in 46 CFR 15.910 would persist. No. The tonnage restrictions that existed in § 15.910 until May 21, 2001, no longer exist, since this final rule effectively removes the equivalent provision on licensure.

General

Two comments stated that the most critical challenge is implementing the final rule. They suggested that the best way to meet the challenge is through an ongoing consultative process involving the industry, the Coast Guard, and licensed operators. The Coast Guard agrees with this comment and has been working with the TSAC on implementing the rule.

One comment stated that the rule should differentiate between licenses for towing on oceans and near-coastal waters and those for towing on inland waters and Western Rivers, since these two methods of towing are extremely different. That was the rule's main intent—to separate the types of towing. The TOARs fit the methods of towing in the areas of operation and the routes sought.