



Mariners' Training and Background Checks

Report to Congress
February 13, 2023



U.S. Coast Guard

Foreword

February 13, 2023

I am pleased to present the following report, Mariners' Training and Background Checks, as prepared by the U.S. Coast Guard.

The Elijah E. Cummings Coast Guard Authorization Act of 2020 directs the submission of a report detailing recommendations to ensure that personnel working on a vessel who perform work or operate equipment on such vessel not related to the operation of the vessel itself undergo a background check and the appropriate training necessary to ensure personnel safety and the safety of the vessel's crew.



Pursuant to Congressional requirements, this report is being provided to the following members of Congress:

The Honorable Maria Cantwell
Chairwoman, Senate Committee on Commerce, Science, and Transportation

The Honorable Ted Cruz
Ranking Member, Senate Committee on Commerce, Science, and Transportation

The Honorable Sam Graves
Chairman, House Committee on Transportation and Infrastructure

The Honorable Rick Larsen
Ranking Member, House Committee on Transportation and Infrastructure.

I am happy to answer any questions you may have, or your staff may contact my Senate Liaison Office at (202) 224-2913 or House Liaison Office at (202) 225-4775.

Sincerely,

Linda L. Fagan
Admiral, U.S. Coast Guard
Commandant



Mariners’ Training and Background Checks

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I. Legislative Language

This report responds to the language set forth in Section 8313(c) of the Elijah E. Cummings Coast Guard Authorization Act of 2020 (Pub. L. No. 116-283), which reads:

SEC. 8313. NON-OPERATING INDIVIDUAL

(a) **IN GENERAL.**—The Secretary of the department in which the Coast Guard is operating shall not enforce section 8701 of title 46, United States Code, with respect to the following:

(1) A vessel with respect to individuals, other than crew members required by the Certificate of Inspection or to ensure the safe navigation of the vessel and not a member of the steward's department, engaged on board for the sole purpose of carrying out spill response activities, salvage, marine firefighting, or commercial diving business or functions from or on any vessel, including marine firefighters, spill response personnel, salvage personnel, and commercial divers and diving support personnel.

(2) An offshore supply vessel, an industrial vessel (as such term is defined in section 90.10–16 of title 46, Code of Federal Regulations), or other similarly engaged vessel with respect to persons engaged in the business of the ship on board the vessel—

(A) for—

(i) supporting or executing the industrial business or function of the vessel;

(ii) brief periods to conduct surveys or investigations, assess crew competence, conduct vessel trials, provide extraordinary security resources, or similar tasks not traditionally performed by the vessel crew; or

(iii) performing maintenance tasks on equipment under warranty, or on equipment not owned by the vessel owner, or maintenance beyond the capability of the vessel crew to perform; and

(B) not the master or crew members required by the certificate of inspection and not a member of the steward's department.

(b) **SUNSET.**—The prohibition in subsection (a) shall terminate on the date that is 2 years after the date of the enactment of this Act.

(c) **REPORT.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Commandant shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report detailing recommendations to ensure that personnel working on a vessel who perform work or operate equipment on such vessel not related to the operation of the vessel itself undergo a background check and the appropriate training necessary to ensure personnel safety and the safety of the vessel's crew.

(2) **CONTENTS.**—The report required under paragraph (1) shall include, at a minimum, a discussion of—

(A) options and recommendations for ensuring that the individuals covered by subsection (a) are appropriately screened to mitigate security and safety risks, including to detect substance abuse;

- (B) communication and collaboration between the Coast Guard, the department in which the Coast Guard is operating, and relevant stakeholders regarding the development of processes and requirements for conducting background checks and ensuring such individuals receive basic safety familiarization and basic safety training approved by the Coast Guard;
- (C) any identified legislative changes necessary to implement effective training and screening requirements for individuals covered by subsection (a); and
- (D) the timeline and milestones for implementing such requirements.

II. Report

Introduction:

To complete this report, the Coast Guard examined the current protocols and requirements for non-operating individuals serving aboard commercial vessels and consulted federal advisory committees and partners regarding these requirements. Based on the feedback received and understanding of current industry practices, the Coast Guard believes screening and training already in place for these individuals is sufficient for mitigating safety and security risks. In the below sections, we outline current practices, and highlight potential additional measures that could be implemented to further heighten and codify safety and security protections.

Options and Recommendations Regarding Appropriate Screening:

46 U.S.C. § 8701 mandates the requirements for Merchant Mariner Credentials, which authorize service in the capacity for which the holder of the credential is engaged or employed. Issuance of such credentials requires appropriate training and background checks, commensurate with the level and type of credential. Section 8701 exempts specific types of individuals on certain vessels from credentialing requirements, based on the nature of their responsibilities on board their vessels. Section 8313(a) of the *Elijah E. Cummings Coast Guard Authorization Act of 2020* adds additional exemptions to the existing nine vessel-type exceptions in § 8701(a).

These codified exemptions from the credentialing process do not relieve all potential non-operating individuals from screening accompanied by a background check. Company and vessel Safety Management Systems procedures can include background checks for individuals serving on board vessels. Marine employer best practices include background checks, to include review of all information reasonably and legally available; employers who follow this practice should also maintain records of databases used and records searched. The vessels covered in §8313(a) are required to have Coast Guard-approved vessel security plans, which offer controls for individuals entering a vessel and accessing certain restricted areas on board the vessel. Additionally, any individual holding a Transportation Worker Identification Credential, as many non-operating individuals would, would have already undergone a background check prior to issuance of that credential. Because of these industry practices that comport with other law, regulation, and company policies, the Coast Guard does not recommend additional background checks be required for non-operating individuals.

Should additional measures be desired, a few options could be explored. For example, Pub. L. 116–283 exempts non-operating individuals from 46 U.S.C. § 8701(b), which requires all persons working aboard a vessel to hold a merchant mariner credential. Repeal or sunset of Pub. L. 116–283 would revert to the credential requirement, with security screening inherent in the application process. Alternatively, the Coast Guard can rely on industry best practices of pre-employment screening. A more straightforward way to ensure that non-operating personnel are screened may be to apply similar screening provisions as are applicable to riding gang members pursuant to 46 U.S.C. § 8106(a)(2)-(5).

In considering other forms of personnel screening, such as chemical testing, current laws and regulations generally do not require non-operating individuals who are not crewmembers or are not conducting safety-sensitive duties aboard the vessel to be enrolled in a pre-employment or random drug testing program. The Coast Guard recognizes that some maritime industry trade groups have created voluntary guidelines for chemical testing for specific individuals working aboard a vessel. As these are voluntary guidelines, the Coast Guard does not have authority to enforce compliance. Although the Coast Guard does not have authority to require chemical testing of non-operating individuals, it does have authority to conduct chemical testing of non-operating individuals directly involved in a serious marine incident as described in 46 C.F.R. §§ 4.06-1 and 16.240. This authority provides an industry-wide level of deterrence and complements the maritime industry trade group guidelines.

Recommendations for Training of Non-Operating Personnel:

The Coast Guard and National Merchant Marine Personnel Advisory Committee (NMERPAC) recommend that non-operating individuals receive basic vessel familiarization training prior to or upon coming on board the vessel, specific to the vessel's equipment and operations. This training should be completed before the commencement of any on-board duties and be recorded by the vessel and the operating company. Non-operating individuals cannot be assigned vessel safety, security, or environmental protection responsibilities while on board the vessel, as such duties would require specific training that could only be mandated through the issuance of a credential. Owner or operator vetting and confirmation of shore-side or onboard safety training and competency assessments established by the maritime industry are generally considered sufficient for non-operating individuals.

As noted above in the screening section, a clear way to codify the training already occurring per industry practice would be to apply similar provisions as are applicable to riding gang members regarding training in 46 U.S.C. § 8106(a)(4).

Collaboration with Stakeholders:

To complete this report, the Coast Guard sought recommendations from the NMERPAC, which was established to advise on matters relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners. Of note, the Coast Guard acknowledges that NMERPAC supports the legislative modification to include offshore supply vessels, industrial vessels as prescribed in 46 C.F.R. § 90.10-16, and similarly engaged vessels with respect to non-operating individuals as part of the list of exempted personnel in 46 U.S.C. § 8701. Additionally, the Coast Guard utilized information from the National Offshore Safety Advisory Committee pertaining to the authorization act.

III. Conclusion

Non-operating individuals are subject to industry practices which may include background screening and safety training required for operating in the maritime environment. The Coast Guard offers that promulgation of screening and training requirements similar to those for riding gangs under 46 U.S.C. § 8106 would codify what the Service understands to be existing practice in the maritime industry. The Service notes that the exceptions set forth in section 8313(a) of the *Elijah E. Cummings Coast Guard Authorization Act of 2020* may result in legal challenges for the Coast Guard regarding enforcement of the citizenship requirements in 46 U.S.C. § 8103. The Service's interpretation of the statute requires that any individual exempted or excepted from compliance with 46 U.S.C. § 8701(b) would still have to comply with § 8103, which requires that an unlicensed seaman be a citizen of the United States, an alien lawfully admitted to the U.S. for permanent residence, or a foreign national enrolled in the United States Merchant Marine Academy. The Coast Guard also notes that without requiring a credential for those individuals exempted under this language or applying riding gang-like language to these individuals, the Service is unable to require those individuals to have safety training and familiarization associated with operating in an emergency and/or marine environment. This level of training and screening should be weighed against the minimal burden associated with a worker obtaining an entry-level credential.

Appendix: Abbreviations

Abbreviation	Definition
C.F.R.	Code of Federal Regulations
NMERPAC	National Merchant Marine Personnel Advisory Committee
U.S.C.	United States Code