

List of Subjects in 40 CFR Part 721  
Environmental protection, Chemicals,  
Hazardous materials, Recordkeeping  
and reporting requirements.

Dated: January 27, 1997.

Charles M. Auer,  
Director, Chemical Control Division, Office  
of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is  
amended as follows:

#### **PART 721—[AMENDED]**

1. The authority citation for part 721  
continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and  
2625(c).

#### **§ 721.2980 [Removed]**

2. By removing § 721.2980.

[FR Doc. 97-2710 Filed 2-3-97; 8:45 am]

BILLING CODE 6560-50-F

### **DEPARTMENT OF TRANSPORTATION**

#### **Maritime Administration**

#### **46 CFR Part 349**

[Docket No. R 169]

RIN 2133-AB28

#### **Reemployment Rights of Certain Merchant Seamen**

**AGENCY:** Maritime Administration,  
Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Maritime Administration (MARAD) is issuing this procedural rule to implement provisions of the Maritime Security Act of 1996. These provisions amend the Merchant Marine Act, 1936, to grant reemployment rights and other benefits to certain merchant seamen serving on vessels used by the United States for a war, armed conflict, national emergency or maritime mobilization need. This rule establishes the procedure for obtaining the necessary MARAD certification for reemployment rights and other benefits conferred by statute and its assistance in pursuing these statutory rights and benefits.

**EFFECTIVE DATE:** This final rule is effective February 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christopher E. Krusa, Maritime Training Specialist, Maritime Administration, MAR-250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590-0001, tel. (202) 366-2648.

**SUPPLEMENTARY INFORMATION:** Section 2 of Pub. L. 104-239, the Maritime Security Act of 1996 (MSA), enacted on

October 8, 1996, in amending Title VI of the Merchant Marine Act, 1936 (Act), 46 App. U.S.C. 1171 *et seq.*, directs the Secretary of Transportation to establish a Maritime Security Program (MSP). The MSP will provide, over a period of ten years, financial assistance for the commercial operation of militarily useful vessels in the foreign commerce of the United States, employing U.S. citizen crews. Pursuant to contract, participating vessel operators are required to make their ships and other commercial transportation resources available to the Government during time of war or national emergency. Section 10 of the MSA also amends Title III of the Act, 46 App. U.S.C. 1131, to provide "reemployment rights and other benefits" for certain merchant seamen who have been certified" by the Secretary of Transportation.

In order to receive certification, those merchant seamen must submit an application not later than 45 days following completion of employment in the activation or operation of a vessel used by the United States for a "war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance)." The MSA provides that the reemployment rights and other benefits shall be "substantially equivalent to the rights and benefits provided for by chapter 43 of Title 38, United States Code, for any member of the Armed Forces of the United States who is ordered to active duty." The Secretary has delegated this certification authority to the Maritime Administrator (61 FR 64029; Dec. 3, 1996).

Section 10 of the MSA requires the Secretary to issue regulations implementing this section not later than 120 days after its enactment. Accordingly, pursuant to delegation of this authority by the Secretary to the Maritime Administrator, MARAD is issuing this final rule to establish the procedure for obtaining MARAD certification and to provide for MARAD administrative assistance to merchant seamen alleging denial of their statutory rights to reemployment and other benefits.

#### **Rulemaking Analysis and Notices**

*Executive Order 12866 (Regulatory Planning and Review; Department of Transportation (DOT) Regulatory Policies and Procedures; Pub. L. 104-121*

This procedural rulemaking is not considered to be an economically significant regulatory action under E.O. 12866, and is also not considered a

major rule for purposes of Congressional review under Pub. L. 104-121. It is not considered to be a significant rule under DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, it has not been reviewed by the Office of Management and Budget.

Section 10 of Pub. L. 104-239, which added section 302 to the Act (46 App. U.S.C. 1132), mandates that regulations be issued by February 5, 1997. This rule merely prescribes the procedures for MARAD to certify certain merchant seamen as being eligible for reemployment rights and other benefits granted by the Congress and to provide assistance to them in obtaining those rights and other benefits. Accordingly, pursuant to 5 U.S.C. 553, the notice and comment requirements of the Administrative Procedure Act are inapplicable and this is being published as a final rule.

#### *Federalism*

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Regulatory Flexibility*

The Maritime Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This is a procedural rule mandated by the Congress to allow individuals to be certified as eligible to claim their statutory rights to reemployment and other benefits.

#### *Environmental Assessment*

MARAD has concluded that this final rule has no environmental impact and that an environmental impact statement is not required.

#### *Paperwork Reduction Act*

This rulemaking contains new information collection requirements which will be submitted to the Office of Management and Budget for review and approval.

This rule does not impose any unfunded mandates.

#### **List of Subjects in 46 CFR Part 349**

Employment, National defense,  
Seamen.

Accordingly, new part 349 is added to Title 46 CFR to read as follows:

**PART 349—REEMPLOYMENT RIGHTS OF CERTAIN MERCHANT SEAMEN**

Sec.

349.1 Purpose.

349.2 Application for certification.

349.3 Certification criteria.

349.4 Decision on application.

349.5 Reemployment rights and benefits.

349.6 Enforcement.

Authority: Secs. 204(b), 302, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1132); 38 U.S.C. 4301 *et seq.*; 49 CFR 1.66

**§ 349.1 Purpose.**

This part prescribes regulations implementing section 302, Merchant Marine Act, 1936 (Act), as amended (46 App. U.S.C. 1132), added by section 10 of Pub. L. 104-239, the Maritime Security Act of 1996. These regulations provide the procedures by which the Maritime Administration (MARAD), under authority delegated by the Secretary of Transportation to the Maritime Administrator, certifies, upon application, that certain merchant seamen are entitled to reemployment rights and other benefits after completion of their service on vessels used by the United States for a war, armed conflict, national emergency or maritime mobilization need. It also describes the form of administrative assistance MARAD will provide to the seamen certified.

**§ 349.2 Application for certification.**

Pursuant to 46 App. U.S.C. 1132, an individual may submit an application to MARAD not later than 45 days after the date the individual completes the period of employment described in § 349.3 of this part.

**§ 349.3 Certification criteria.**

The Administrator shall apply the following criteria for certifying that an individual merchant seaman is entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided by chapter 43 of title 38, United States Code, for any member of a Reserve Component of the Armed Forces of the United States who is ordered to active duty. It shall be the responsibility of each applicant for certification to submit relevant documentation to MARAD, Office of Maritime Labor, Training, and Safety, MAR-250, 400 Seventh St., S.W., Room 7302, Washington, D.C. 20590, establishing that—

(a) *Employment as merchant seaman.* The applicant was employed after October 8, 1996, in the activation or operation of a vessel—

(1) in the National Defense Reserve Fleet maintained by MARAD under

authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744) in a period in which that vessel was in use or being activated for use under 50 U.S.C. App. 1744(b);

(2) that is requisitioned under section 902 of the Act (46 App. U.S.C. 1242); or

(3) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance).

(b) *Seaman credentials.* During the period of employment described in paragraph (a) of this section, the seaman possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 73 (as applicable) of title 46, United States Code, as required by 46 App. U.S.C. 1132(c).

(c) *Additional information.* If applicable, periods of hospitalization, convalescence, illness, injury, shipwreck or detention beyond the mariner's control were incurred in, or aggravated during, the performance of employment described in § 349.3(a).

**§ 349.4 Decision on application.**

MARAD will issue or deny certification (accompanied by an explanation in writing) to each applicant not later than 20 days after receipt of an application for certification.

**§ 349.5 Reemployment rights and benefits.**

(a) *General.* An individual who is absent from a position of employment, in the private or public (federal, state or local government) sector, because of temporary employment of any duration described in § 349.3(a), shall be entitled to reemployment rights and benefits upon completion of the temporary employment as a merchant seaman.

(b) *Superior claims.* Pursuant to 38 U.S.C. 4312(g), the right of a person to reemployment shall not entitle such person to retention preference or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(c) *Notification of employer.* Any person who is absent from a position of employment by reason of service as described in § 349.3(a) shall be entitled to reemployment rights and benefits provided in § 349.3(e) if—

(1) The person has given advance written or verbal notice of such service to such person's employer, unless giving notice is precluded by military

necessity, under regulations prescribed by the Secretary of Defense, or, under all relevant circumstances, is impossible or unreasonable, pursuant to the provisions of 38 U.S.C. 4312(b); and

(2) The person submits an application for reemployment with the employer not later than 14 days after completion of a period of service of less than 181 days, or not later than 90 days after the completion of a period of service greater than 180 days, or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(d) *Waiver of notice requirements.* A person who has not given notice, or who fails to report or apply for employment or re-employment within the appropriate period specified in paragraph (c) of this section shall not automatically forfeit such person's entitlement to the rights and benefits referred to in § 349.5(e), but shall be subject to the rules of conduct, established by policy, and the general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work. MARAD will make a determination on the issue of whether notice of service was required in acting on the application for certification.

(e) *Exception to reemployment rights.*

An employer is not required to reemploy an individual if the employer satisfies the burden of proving that, pursuant to 38 U.S.C. 4312(d)—

(1) The employer's circumstances have so changed as to make such reemployment impossible or unreasonable, or such reemployment, if required, would impose an undue hardship on the employer, as defined in 38 U.S.C. 4303(15); or

(2) The employment which the individual left for employment as a merchant seaman was for a brief, nonrecurrent period and there was not at the time of leaving such employment any reasonable expectation that such employment would continue indefinitely or for a significant period.

(f) *Reemployment benefits.* An individual certified by MARAD to be entitled to reemployment shall also be entitled to other "benefits of employment" (other than wages or salary for work performed), as defined in 38 U.S.C. 4303(2), that would have accrued to that individual by reason of an employment contract or agreement or an employer policy, plan or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards,

bonuses, severance pay, supplemental unemployment and benefits, vacations and the opportunity to select work hours or location of employment.

(g) *Reemployment position.* (1) An individual certified by MARAD as being entitled to reemployment shall be promptly reemployed by the former employer, according to the order of priority specified in 38 U.S.C. 4313(a), after submitting an application for reemployment. The three categories of priority, in ascending order, are for a merchant seaman who:

(i) Served for 90 days or less;  
(ii) Served for more than 90 days; or  
(iii) Has a disability incurred in, or aggravated during, the performance of such merchant service.

(2) For a person with such service related disability, the employer shall make "reasonable efforts", as defined in 38 U.S.C. 4303(10), "to accommodate the disability" to allow that person to be employed in the position that would have been occupied had the employment with the employer been continuous, or in the position in which employed on the date service began as a merchant seaman, and if that person is "not qualified" for either position, in a substantially equivalent position, as specified in 38 U.S.C. 4313(a)(3) and (a)(4).

#### **§ 349.6 Enforcement.**

MARAD shall provide administrative assistance to any individual certified to be entitled to reemployment rights and benefits pursuant to chapter 43 of title 38, United States Code, made applicable by 46 App. U.S.C. 1132(a) and these regulations, who alleges in writing to MARAD the failure, refusal, or imminent failure or refusal of an employer to grant such rights or other benefits. The complaint must be sent to MARAD at the address in § 349.3. Such complaint may be in any format and shall include the name and address of the employer against whom the complaint is filed and a summary of the allegations that form the basis for the complaint. MARAD will review, investigate and attempt to resolve the complaint by taking one or more of the following actions:

(a) *Consultation with claimant.* MARAD will communicate with the individual filing the complaint, in writing and/or by telephone or other means, to provide assistance in pursuing reemployment rights and benefits with the employer.

(b) *Employer contact.* MARAD may contact the employer and attempt to resolve the complaint to the mutual satisfaction of the complainant and the employer.

(c) *Consultation with Department of Labor.* If attempts by MARAD to resolve the complaint are unsuccessful, MARAD may seek advice on the matter from the U.S. Department of Labor.

(d) *Referral to Attorney General or Merit Systems Protection Board.* MARAD will notify the complainant of an unsuccessful effort to resolve a complaint. Pursuant to 38 U.S.C. 4323 and 4324, if the complainant so requests, MARAD will refer to the Attorney General a complaint relating to a private or State employer, or to the Merit Systems Protection Board, for litigation, a complaint relating to a Federal executive agency employer.

Dated: January 30, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97-2746 Filed 2-3-97; 8:45 am]

BILLING CODE 4910-81-P

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 43, 63, 64, and 65**

[CC Docket No. 96-23, DA 96-1873]

### **Revision of Filing Requirements**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule.

**SUMMARY:** On November 8, 1996, the Common Carrier Bureau adopted a *Report and Order*, "Revision of Filing Requirements," that eliminates or significantly reduces reporting requirements imposed on communications common carriers by the Commission's policies and rules. As a result of this action, thirteen reporting requirements have been eliminated, and the frequency of filing for four other reports has been reduced.

**EFFECTIVE DATE:** March 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Beers, Deputy Chief, Industry Analysis Division, Common Carrier Bureau, at (202) 418-0952, or Scott Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418-7102.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Common Carrier Bureau's *Report and Order*, "Revision of Filing Requirements," adopted November 8, 1996 and released November 13, 1996 (CC Docket No. 96-23, DA 96-1873). The full text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference

Center, Room 239, 1919 M Street, Washington, DC 20554. The *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104-13, and has been approved in accordance with the provisions of that Act (OMB Control No. 3060-0701). The Office of Management and Budget (OMB) offered its strong support for the actions as proposed. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**PAPERWORK REDUCTION ACT:** The actions taken regarding the collections of information contained in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104-13, and have been approved by the Office of Management and Budget (OMB) under OMB control number 3060-0701. OMB offered its strong support for the actions. In addition, OMB made three suggestions in addition to the proposals: (1) That the word "annual" be added to the revised language for § 65.600(b) <sup>1</sup> to make clear that the reports are required on an annual basis; (2) that the Commission conduct a rulemaking to address the filing requirements associated with the ARMIS and CAM reporting thresholds; and (3) that the Commission consider modifying the annual access tariff filing periods to coincide with the periods covered by the interstate rate of return monitoring reports. <sup>2</sup> First, we agree with OMB and ALLTEL that the revised language for § 65.600(b) should more clearly specify that reports are required on an annual basis. We believe that the revised language for § 65.600(b), adopted in the *Report and Order*, achieves that result. Second, as discussed at Part IV of the *Report and Order*, the Commission will address ARMIS and CAM filing requirements and carrier classification in another proceeding. Finally, we decline to alter the annual access tariff filing period because the present schedule allows the Commission to use the current years rate-of-return reports to evaluate and calculate annual access tariffs.

**OMB Approval Number:** 3060-0701.

**Title:** Revision of Filing Requirements, CC Docket 96-23, DA 96-1873.

**Form Number:** FCC 492.

<sup>1</sup> Notice of Office of Management and Budget Action, at 2 (OMB No. 3060-0701) (released May 30, 1996). OMB suggests a change to § 65.500(b). We assume this to be a typographical error. ALLTEL, whose suggestion OMB specifically supports, also suggests a change to § 65.600(b).

<sup>2</sup> Notice of Office of Management and Budget Action, at 2.