

\* \* \* \* \*

■ 3. Section 52.2423 is amended by adding paragraph (s) to read as follows:

**§ 52.2423 Approval status.**

\* \* \* \* \*

(s) EPA approves as part of the Virginia State Implementation Plan the references to the documents listed in 9 VAC 5 Chapter 20, Section 5–20–21, paragraph E.12 of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on February 23, 2004.

[FR Doc. 04–12769 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 310

[Docket Number: MARAD–2004–17760]

RIN 2133–AB60

#### Merchant Marine Training

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Maritime Administration is publishing this interim final rule to implement changes to its regulations in part 310 regarding Maritime Education and Training. This rulemaking updates the Maritime Education and Training regulations to conform with Title XXXV, Subtitle A, of the National Defense Authorization Act for Fiscal Year 2004, regarding the administration of state, regional and United States merchant marine academies. This rulemaking also makes non-substantive technical changes to part 310.

**DATES:** This interim final rule is effective July 8, 2004. Comments on the rule must be submitted by August 9, 2004.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD–2004–17760] by any of the following methods:

- *Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building,

400 7th St., SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Jay Gordon, Maritime Administration, 400 7th St., SW., Washington, DC 20590; telephone: (202) 366–5173; or e-mail: [Jay.Gordon@marad.dot.gov](mailto:Jay.Gordon@marad.dot.gov).

**SUPPLEMENTARY INFORMATION:** For purposes of the following analysis, the term “Act” refers to the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, unless otherwise indicated.

#### Section-By-Section Analysis

##### Section 310.1 Definitions

(b) *Act*—We update the term “Act” to include sections of the Maritime Education and Training Act of 1980, Pub. L. 96–453, as amended, which includes the changes effected by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, and any subsequent amendments.

(i) *Cost of Education Provided*—is a concept added by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, in connection with requiring Student Incentive Payment (“SIP”) students defaulting on their obligations to repay the student incentive payments made to such students by the Federal Government.

(j)–(r)—Definitions under these designations were renumbered.

##### Section 310.3 Schools and Courses

Changes in this section include capitalizing the words “training ship” and replacing the title of the Office of Maritime Labor and Training with the Office of Policy and Plans.

##### Section 310.7 Federal Student Subsistence Allowances and Student Incentive Payments

*Section 310.7(b)(1)*—Under the Oceans Act of 1992, Pub. L. 102–587, the student incentive payment amount was increased from \$1200 per annum to \$3000 per annum. While MARAD’s regulations currently list \$1200 as the annual SIP payment amount, students currently receive payments of \$3000 per annum. Students receiving \$3,000 under their existing service obligation contracts will have the option of continuing to receive the \$3,000 payment under their old service obligation contracts or executing new service obligation contracts and receiving the increased amount of \$4000 per annum. The new service obligation contracts will specifically list \$4000 as the payment amount and will also have the increased obligations required by the new law. Individuals must execute the new service obligation contracts to receive the increased SIP payment amount.

*Section 310.7(b)(3)* addresses the form of the service obligation contract. This paragraph is changed to reflect revisions in the Act.

*Section 310.7(b)(3)(ii)*—Under former (b)(3)(ii), the separation of an individual from his or her obligation to complete the course of instruction at the School. By virtue of the changes in the law, the separation of an individual by the School no longer releases an individual from this obligation. An individual who is separated by the School is now in default of his or her service obligations and is liable for the remedies for failure to fulfill these obligations, such as induction into military service or recovery by the Federal Government of the Cost of Education Provided, plus interest and attorney’s fees.

*Section 310.7(b)(3)(iv)*—The previous law required graduates to maintain their license for at least six (6) years following graduation. This required the graduate to maintain a Coast Guard license at least equal to the license that such graduate had upon graduation from the School. The subsequent promulgation of Standards of Training, Certification and Watchkeeping (STCW) requirements created a situation in which various graduates were required to take additional courses in order to maintain such a license. Given the unanticipated impact of the STCW requirements, the Administration has determined that individuals graduating without the necessary STCW courses need not take these courses and can satisfy their service obligations by

maintaining a more restricted type of Coast Guard license, other than a continuity license. Continuity licenses were not deemed acceptable because they do not allow such graduates to sail in any capacity.

Individuals executing or reexecuting service obligation contracts after the effective date of the Act are now required to maintain licenses that are at least equal in status to the licenses they had at the time of graduation (*i.e.*, the ability to sail without restrictions in both domestic and foreign commerce). Such graduates are required to take all courses necessary to maintain their licenses, even with respect to unforeseen future requirements. The type of Coast Guard license that is required to satisfy the service obligation of maintaining a license for at least six (6) years following graduation is a license containing appropriate national and international endorsements and certifications required by the United States Coast Guard for service both on domestic and international voyages. "Appropriate" in this instance means the same endorsements and certifications held at the date of graduation, or the equivalent. Restricted licenses limited in applicability to just portions of the domestic or international voyages do not satisfy this obligation, nor do continuity licenses. This change confirms the Administration's longstanding interpretation of the law in this respect, that graduates continue to maintain Coast Guard licenses that are not more restricted than the licenses with which they graduated.

**Section 310.7(b)(3)(vi)**—The Act now allows employment within the Federal Government to satisfy the requirement that graduates "serve in the foreign or domestic commerce" or "national defense" of the United States. Such employment in the Federal Government must be significantly maritime-related and serve the national security interests of the United States.

The determination of whether such employment satisfies this service obligation is made by the Administration. Examples of civilian employment that might satisfy this obligation are civilian positions relating to vessel or port security in the Navy, the Department of Homeland Security, or the Transportation Security Administration. "Significant" is equated to a material or essential portion of an individual's responsibilities. It does not mean a "majority" of such individual's responsibilities, but means more than just an incidental part.

**Section 310.7(b)(5)**—The number of days required to qualify for an "afloat employment year" for each year will be

set forth on the Administration's Web site at <http://www.marad.dot.gov>.

**Section 310.7(b)(7)—Breach of Contract**

**Section 310.7(b)(7)(i)(A)**—Undergraduate Breach/Induction into Armed Forces: This paragraph is substantially rewritten to conform to the new terms of the Act. Any individual who has accepted SIP payments for a minimum of two (2) academic years and fails to fulfill any of their service obligations may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason, as determined by the Maritime Administrator, this requirement may be waived in whole or in part. *See* section 310.7(b)(8).

**Section 310.7(b)(7)(i)(B)**—Undergraduate Breach/Collection of Cost of Education Provided: This paragraph contains a new provision set forth in the Act. It authorizes the Secretary of Transportation, acting through the Maritime Administrator, to take action against defaulting individuals to recover the Cost of Education Provided to such individuals, plus interest and attorney's fees. Such authority may be exercised in instances where the Maritime Administrator determines that it would better serve the national interest to recover the Cost of Education Provided from a defaulting individual rather than to refer such individual to the Secretary of Defense for induction into the Armed Forces of the United States.

**Section 310.7(b)(7)(i)(C)**—Sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individuals to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction. This provision is in addition to the Maritime Administrator's authority to waive the service obligations as set forth in section 310.7(b)(8).

**Section 310.7(b)(7)(i)(D)**—For purposes of paragraph (b)(7)(i)(A) of this section, an "academic year" is defined as the completion by a student of the required number of semesters, trimesters, or quarters, as applicable, whether at school or at sea, which comprise a complete course of study for an academic year. Thus, liability under paragraph (b)(7)(i)(A) begins for students at the beginning of their third

(3rd) academic year, whether at school or at sea.

**Section 310.7(b)(7)(ii)—Post Graduation Defaults**

**Section 310.7(b)(7)(ii)(A)**—Individuals who breach their service obligations after graduation are subject to be ordered to active duty in the Armed Forces of the United States for a period of time not less than two (2) years and not more than the unexpired portion of the three (3) years of service required in the foreign and domestic commerce or the national defense of the United States following graduation.

**Section 310.7(b)(7)(ii)(B)**—If the Secretary of Defense is unable or unwilling to order an individual to active duty or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the defaulting individual the Cost of Education Provided by the Federal Government, plus interest and attorney's fees.

**Section 310.7(b)(7)(ii)(C)**—Sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

This provision is in addition to the Maritime Administrator's authority to waive the service obligations. Such authority is set forth in section 310.7(b)(8) and may be exercised in cases where there would be undue hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason.

**Section 310.7(b)(10)(ii)(C)**—Reflects that graduates are required to keep the Office of Policy and Plans, as opposed to the Office of Maritime Labor, Training and Safety, aware of the graduates' current mailing addresses.

**Section 310.7(b)(11)**—This new paragraph reflects that the Administration is now authorized to collect debts owed to the Federal Government by commencing court proceedings as well as utilizing the Federal debt collection procedures set forth in chapter 176, title 28 of the United States Code and other applicable administrative remedies for debt collection. Such administrative collection options include offsetting debts against defaulting individuals' tax refunds.

### *Section 310.12–1 Form of Agreement*

The form of agreement has been deleted in its entirety. Setting forth a required agreement in the Administration's regulations constrained the ability of the Administration and the Schools to modify the agreement to reflect changing circumstances. Not only would the agreements have to be modified, but also the regulations would have to be changed. A model agreement will be posted on MARAD's Web site at <http://www.marad.dot.gov>.

### *Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy*

#### *Section 310.51 Definitions*

(b) *Act*—We update the term “Act” to include sections of the Maritime Education and Training Act of 1980, Pub. L. 96–453, as amended, which includes the changes effected by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, and any subsequent amendments.

(f) *Cost of Education Provided*—is a concept added by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, in connection with recovery of funds from individuals failing to perform their service obligations, both before and after graduation. It is the intent of the Act that the Administration recover the financial costs incurred by the Federal Government for providing training or financial assistance to students at the Academy. For students at the Academy, this means the pro rata cost of all charges incurred with respect to the Academy for a given fiscal year, including room, board, classroom academics, and other training activity costs as well as any direct financial assistance given to such individual.

(g)–(i)—Definitions under these designations were renumbered.

#### *Section 310.58 Service Obligation for Students Executing or Reexecuting Contracts*

Section 310.58(a)—The terms of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, apply to individuals executing service obligation contracts after November 24, 2003. No individual previously having executed a service obligation contract is required by virtue of the amendments of the Act to execute a new service obligation contract. Individuals executing contracts after November 24, 2003, even those who have already executed a service obligation contract, are required to execute the new service obligation contract if they receive new

consideration from the Federal Government for such execution.

*Section 310.58(a)(1)*—Under former section 310.58(a)(1), the separation of an individual by the Academy released that individual from his or her obligation to complete the course of instruction at the Academy. By virtue of the changes in the law, the separation of an individual by the Academy no longer releases an individual from this obligation. An individual who is separated by the Academy is now in default of his or her service obligations and is liable for the remedies for failure to fulfill these obligations. Among these remedies are induction into military service or recovery by the Federal Government of the Costs of Education Provided.

*Section 310.58(a)(3)*—Under former section 310.58(a)(3), graduates were required to maintain their license for at least six (6) years following graduation. This required the graduate to maintain a Coast Guard license at least equal to the license that such graduate had upon graduation from the Academy. The subsequent promulgation of STCW requirements created a situation wherein various graduates were required to take additional courses in order to maintain such a license. Given the unanticipated impact of the STCW requirements, the Administration determined that individuals graduating without the necessary STCW courses need not take these courses and can satisfy their service obligations by maintaining a more restricted type of Coast Guard license, other than a continuity license. Continuity licenses were not acceptable because they do not allow such graduates to sail in any capacity.

Individuals executing service obligation contracts after the effective date of the Act are now required to maintain their licenses in at least equal status to the status they had at the time of graduation (*i.e.*, the ability to sail without restrictions in both domestic and foreign commerce). Such graduates are required to take all courses necessary to maintain their licenses, even with respect to unforeseen future requirements. The type of Coast Guard license that is required to satisfy the service obligation of maintaining a license for at least six (6) years following graduation is a license containing appropriate national and international endorsements and certifications required by the United States Coast Guard for service both on domestic and international voyages. “Appropriate” in this instance means the same endorsements and certifications held at the date of graduation, or the equivalent. Restricted

licenses limited in applicability to just portions of the domestic or international voyages do not satisfy this obligation, nor do continuity licenses. The Act confirmed the Administration's longstanding interpretation of the law in this respect, that graduates had to maintain a Coast Guard license that was not more restricted than the license with which they graduated.

*Section 310.58(a)(5)* has been amended to reflect the statutory authorization of additional ways to perform the employment aspects of the service obligation requirements. The Act now allows employment within the Federal Government to satisfy the requirement that graduates “serve in the foreign or domestic commerce” or “national defense” of the United States. Such employment in the Federal Government must be significantly maritime-related and serve the national security interests of the United States.

The determination of whether such employment satisfies the service obligation requirements is made by the Administration. Examples of civilian employment that might satisfy the service obligation are civilian positions relating to vessel or port security in the Navy, the Department of Homeland Security, or the Transportation Security Administration.

“Significantly” is equated to a material or essential portion of an individual's responsibilities. It does not mean a “majority” of such individual's responsibilities, but means more than just an incidental part.

*Section 310.58(b)* is amended for purposes of clarity and to indicate that the number of days for satisfactory service for each sea year will be set forth on the Administration's Web site at <http://www.marad.dot.gov>.

#### *Section 310.58(e)(1)—Breach of Contract Before Graduation*

*Section 310.58(e)(1)(i)*—This paragraph is substantially rewritten to conform to the new terms of the Act. Any individual who has attended the Academy for a minimum of two (2) academic years who fails to fulfill any of their service obligations may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason, as determined by the Maritime Administrator, this requirement may be waived in whole or in part. See section 310.58(f).

*Section 310.58(e)(1)(ii)*—This paragraph contains a provision set forth in the Act. It authorizes the Secretary of Transportation, acting through the Maritime Administrator, to take action against defaulting individuals to recover the Cost of Education Provided from individuals who have attended the Academy for more than two (2) academic years, but not yet graduated.

*Section 310.58(e)(1)(iii)*—For purposes of paragraph (e)(1)(i) of this section, an “academic year” is defined as the completion by a student of a total of three (3) trimesters, whether at the Academy or at sea. Thus, liability under paragraph (e)(1)(i) begins for students when they begin their seventh (7th) trimester, whether at the Academy or at sea.

*Section 310.58(e)(2)—Breach After Graduation*

*Section 310.58(e)(2)(i)*—Individuals who breach their service obligations after graduation are subject to be ordered to active duty in the Armed Forces of the United States for a period of time of not less than three (3) years and not more than the unexpired portion of the five (5) years of service required in the foreign and domestic commerce or the national defense of the United States following graduation.

*Section 310.58(e)(2)(ii)*—If the Secretary of Defense is unable or unwilling to order an individual to active duty or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the defaulting individual the Cost of Education Provided by the Federal Government.

*Section 310.58(e)(2)(iii)* sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction. This provision is in addition to the Maritime Administrator’s authority to waive the service obligations as set forth in section 310.58(f).

*Section 310.58(h)(2)(iii)*—Reflects that graduates are required to keep the Office of Policy and Plans, as opposed to the Office of Maritime Labor, Training and Safety, aware of the graduates’ current mailing addresses.

*Section 310.58(i)*—This new paragraph reflects that the Administration is now authorized to collect debts owed to the Federal Government by commencing court

proceedings as well as utilizing the Federal debt collection procedures set forth in chapter 176, title 28 of the United States Code and other applicable administrative remedies for debt collection. Such administrative collection options include offsetting debts against defaulting individuals’ tax refunds.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures.* This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This interim final rule is not likely to result in an annual effect on the economy of \$100 million or more. This interim final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The economic impact associated with this rule, if any, should be minimal; therefore, further regulatory evaluation is not necessary. This interim final rule is intended only to update provisions in Part 310 to conform to the National Defense Authorization Act for Fiscal Year 2004 and to make technical changes and corrections.

**Administrative Procedure Act**

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for not providing notice and comment since this interim final rule only updates existing regulations to conform to the National Defense Authorization Act for Fiscal Year 2004 and makes non-substantive technical corrections. While MARAD feels that public comment on this rule is unnecessary, we will accept comments during the timeframe outlined in the **DATES** section of this rulemaking.

**Regulatory Flexibility Act**

The Maritime Administrator certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. This interim final rule is intended only to update provisions in Part 310, which do not affect a substantial number of small entities, but instead affect the United States Merchant Marine Academy, State merchant marine academies, and students thereof.

*Federalism*

We have analyzed this interim final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials is not necessary.

*Executive Order 13175*

MARAD does not believe that this interim final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

*Environmental Impact Statement*

We have analyzed this interim final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, “Procedures for Considering Environmental Impacts,” 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this interim final rule is required. This interim final rule involves administrative and procedural regulations that have no environmental impact.

*Unfunded Mandates Reform Act of 1995*

This interim final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This interim final rule is the least burdensome alternative that achieves the objective of the rule.

*Paperwork Reduction Act*

This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

**Privacy Act**

Anyone is able to 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**List of Subjects in 46 CFR Part 310**

Grant programs-education, Reporting and recordkeeping requirements, Schools, Seamen.

■ For the reasons set forth in the preamble, MARAD amends 46 CFR Chapter II as follows:

**PART 310—MERCHANT MARINE TRAINING**

■ 1. The authority citation for part 310 continues to read as follows:

**Authority:** 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. Amend § 310.1 by revising paragraphs (b), (i), (j), (k), (l), (m), (n), (o), (p), and (q) and by adding new paragraph (r) to read as follows:

**§ 310.1 Definitions.**

\* \* \* \* \*

(b) *Act* means the Maritime Education and Training Act of 1980, Pub. L. 96-453, as amended.

\* \* \* \* \*

(i) *Cost of Education Provided* means the financial costs incurred by the Federal Government in providing student incentive payments for students at the State maritime academies.

(j) *Deputy* means the Deputy Maritime Administrator, Department of Transportation.

(k) *Maritime Service* means the United States Maritime Service.

(l) *Midshipman* means a student in good standing at a State maritime academy or college who has accepted midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) under the Act.

(m) *Officers* means all officers and faculty employed by a State maritime academy or college.

(n) *Region Director* means the Director of the Administration's region office in which a School is located or in which a training ship is located.

(o) *School* means State or Territorial or regional maritime academy or college meeting the requirements of the Act.

(p) *Superintendent* means the superintendent or president of a School.

(q) *Supervisor* means the employee of the Administration designated to supervise the Federal Government's interest in a School under the provisions of the Act, an agreement, and this subpart.

(r) *Training Ship* means a vessel used for training by a school and furnished by the Administration to a State or Territory, and includes the ship itself and all its equipment, apparel, appliances, machinery boilers, spare and replacement parts and other property contained in it.

\* \* \* \* \*

**§ 310.3 [Amended]**

■ 3. Amend § 310.3 in paragraph (b)(1) by removing the words "training ship" and adding in their place "Training Ship" and in paragraph (c)(3) by removing the words "Maritime Labor and Training" and adding in their place "Policy and Plans."

■ 4. Amend § 310.7 by revising paragraphs (b)(1), (b)(3), (b)(5), (b)(7), (b)(8), and (b)(10)(ii)(C), and by adding paragraph (b)(11) to read as follows:

**§ 310.7 Federal student subsistence allowances and student incentive payments.**

\* \* \* \* \*

(b) \* \* \*

(1) *General provisions.* In accordance with the Administration's established subsidy quotas for classes entering after April 1982, each school shall identify to the Administration, no later than February 1 annually, those students who have been selected to receive the student incentive payment authorized by the Act. The students so identified must meet the requirements of § 310.6(b). The Administration shall provide the school with the necessary service obligation contracts. The contracts will be signed by the designated students and returned by the School to the Supervisor and shall become effective when signed by the Supervisor or his or her designee. A copy shall be returned to the School for transmittal to the student. Payments will be issued to midshipmen in amounts equaling \$4000 for each academic year of attendance whom execute the service obligation contracts providing for such payment amount. Payments shall commence to accrue on the day each such midshipman begins his or her first term of work at the School. Such payments shall be made quarterly to the midshipman until the completion of his or her course of instruction but in no event for more than four (4) academic years. The School shall submit a quarterly certified Daily Attendance Report listing the

names of all designated midshipmen who are entitled to student incentive payments. Midshipmen who do not take all necessary steps to maintain their midshipman status, who lose their midshipman status due to action by the U.S. Navy, or who make the commitment identified in paragraph (a)(4) of this section will have their student incentive payment terminated.

\* \* \* \* \*

(3) *Form of the service obligation contract.* The service obligation contract shall obligate the midshipman to—

(i) Use the student incentive payment to defray the cost of uniforms, books and subsistence;

(ii) Complete the course of instruction at the School;

(iii) Take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from a School and fulfill the requirements for such license not later than three (3) months after such graduation;

(iv) Maintain a valid license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from a School, accompanied by the appropriate national and international endorsements and certification required by the United States Coast Guard for service aboard vessels on domestic and international voyages ("appropriate" means the same endorsements and certifications held at the date of graduation, or the equivalent);

(v) Apply for an appointment as, and accept if tendered, and serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States for at least six (6) years following the date of graduation from a school; and

(vi) Serve in the foreign or domestic commerce or both, and the national defense of the United States for at least three (3) years following graduation from a School—

(A) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or Territory of the United States;

(B) As an employee in a United States maritime-related industry, profession, or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that service under paragraph (b)(3)(vi)(A) of this section is not available to such individual;

(C) As a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined to be satisfactory by the Maritime Administrator; or

(D) By combining the services specified in paragraphs (b)(3)(vi)(A), (b)(3)(vi)(B) and (b)(3)(vi)(C) of this section; and

(E) Such employment in the Federal Government must be both significantly maritime-related and serve the national security interests of the United States. "Significantly" is equated to a material or essential portion of an individual's responsibilities. It does not mean a "majority" of such individual's responsibilities, but means more than just an incidental part.

\* \* \* \* \*

(5) *Afloat employment year.* For purposes of the service obligation, a satisfactory year of afloat employment shall be a number of days employed afloat that is at least equal to the median number of days of seafaring employment under Articles achieved by deck or engine officers in the most recent calendar year for which statistics are available. Such figures for each year will be posted on the Administration's Internet site at <http://www.marad.dot.gov>.

\* \* \* \* \*

(7) *Breach of contract*—(i) Breach before graduation. (A) If the Maritime Administrator determines that any individual who has accepted Federal student incentive payments for a minimum of two (2) academic years has failed to fulfill any part of the contract set forth in § 310.7(b)(3), such individual may be ordered by the Secretary of Defense to active duty in one of the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (b)(7)(i)(A) of this section, or if the Maritime Administrator determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the amount of student incentive payments, plus interest and attorney's fees.

(C) The Maritime Administrator is authorized to reduce the amount to be recovered under paragraph (b)(7)(i)(B) of this section from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(D) For purposes of paragraph (b)(7)(i)(A) of this section, an "academic year" is defined as the completion by a student of the required number of semesters, trimesters, or quarters, as applicable, whether at school or at sea, which comprise a complete course of study for an academic year. Thus, liability under paragraph (b)(7)(i)(A) of this section begins for students at the beginning of their third (3rd) academic year, whether at school or at sea.

(ii) *Breach after graduation.* (A) If the Maritime Administrator determines that an individual has failed to fulfill any part of the service obligations (described in § 310.7(b)(3)), such individual may be ordered to active duty to serve a period of time not less than two (2) years and not more than the unexpired portion of the service obligation contract relating to service in the foreign or domestic commerce or the national defense, as determined by the Maritime Administrator. The Maritime Administrator, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (b)(7)(ii)(A) of this section or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided, plus interest and attorney's fees.

(C) The Maritime Administrator may reduce the amount to be recovered under paragraph (b)(7)(ii)(B) of this section from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(8) *Waivers.* Waivers may be granted in cases where there would be undue hardship or impossibility of performance of the provisions of the contract due to accident, illness or other justifiable reason. Applications for

waiver will be submitted to the Supervisor.

\* \* \* \* \*

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

(ii) \* \* \*

(C) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Policy and Plans. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Policy and Plans, 400 7th St., SW., Washington, DC 20590.

\* \* \* \* \*

(11) *Remedies.* To aid in the recovery of the cost of education under this section, the Maritime Administrator may request the Attorney General to begin court proceedings, and the Maritime Administrator may make use of the Federal debt collection procedure in chapter 176 of title 28, United States Code, or other applicable administrative remedies.

\* \* \* \* \*

■ 5. Section 310.12-1 is revised to read as follows.

**§ 310.12-1 Form of agreement.**

The form of agreement between the Maritime Administrator and schools for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act is available on MARAD's Web site at <http://www.marad.dot.gov>.

\* \* \* \* \*

■ 6. Amend § 310.51 by revising paragraphs (b), (f), (g), and (h), and by adding a new paragraph (i) to read as follows:

**§ 310.51 Definitions.**

\* \* \* \* \*

(b) *Act* means the Maritime Education and Training Act of 1980, Pub. L. 96-453, 94 Stat. 1997, as subsequently amended, 46 App. U.S.C. 1295-1295g.

\* \* \* \* \*

(f) *Cost of Education Provided* means the financial costs incurred by the Federal Government for providing training or financial assistance to students at the United States Merchant Marine Academy, including direct financial assistance, room, board, classroom academics, and other training activities.

(g) *Foreign student* means an individual who owes national allegiance

to a country or political entity other than the United States, and the term includes United States nationals.

(h) NOAA means the National Oceanic and Atmospheric Administration.

(i) USNR means the United States Naval Reserve.

\* \* \* \* \*

■ 7. Amend § 310.58 by revising the section heading, paragraphs (a), (b), (e), (f), (h)(1), and (h)(2), and by adding a new paragraph (i) to read as follows:

**§ 310.58 Service obligation for students executing or reexecuting contracts.**

(a) The service obligation contract shall obligate each midshipman who is a citizen and who executes or reexecutes a service obligation contract to:

(1) Complete the course of instruction at the Academy;

(2) Fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy;

(3) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from the Academy accompanied by the appropriate national and international endorsements and certifications as required by the United States Coast Guard for service aboard vessels on both domestic and international voyages (“appropriate” means the same endorsements and certifications held at the date of graduation, or the equivalent);

(4) Apply for an appointment as, accept any tendered appointment as and serve as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the United States Coast Guard Reserve, or any other Reserve component of an armed force of the United States for at least six (6) years following the date of graduation from the Academy;

(5) Serve in the foreign or domestic commerce and the national defense of the United States for at least five (5) years following the date of graduation from the Academy:

(i) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that

service under paragraph (a)(5)(i) of this section is not available;

(iii) As a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) Other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Maritime Administrator; or

(v) By combining the services specified in paragraphs (a)(5)(i), (ii), (iii) and (iv) of this section; and,

(vi) Such employment in the Federal Government that satisfies paragraph (a)(5)(iv) of this section must be both significantly maritime-related and serve the national security interests of the United States. “Significantly” is equated to a material or essential portion of an individual’s responsibilities. It does not mean a “majority” of such individual’s responsibilities, but means more than just an incidental part; and

(6) Submit periodic reports to the Administration to establish compliance with all the terms of the contract.

(b) *Service as a merchant marine officer.* For purposes of the service obligation set forth in paragraph (a)(5)(i) of this section, a satisfactory year of service on vessels in the United States merchant marine as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available. The number of such days for each year as determined by the Administration are set forth at <http://www.marad.dot.gov>.

\* \* \* \* \*

(e) *Breach of contract.*

(1) Breach before graduation: (i) If the Maritime Administrator determines that an individual who has attended the Academy for not less than two (2) academic years has failed to complete the course of instruction at the Academy, such individual may be ordered by the Secretary of Defense to active duty in one of the Armed Forces of the United States to serve for a period of time not to exceed two (2) years. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(ii) If the Secretary of Defense is unable or unwilling to order an individual to active duty under the previous paragraph, or if the Maritime Administrator determines that

reimbursement of the Cost of Education Provided by the Federal Government would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided by the Federal Government.

(iii) For purposes of paragraph (e)(1)(i) of this section, an “academic year” is defined as the completion by a student of a total of three (3) trimesters, whether at the Academy or at sea. Thus, liability under paragraph (e)(1)(i) of this section begins for students when they begin their seventh (7th) trimester, whether at the Academy or at sea.

(2) Breach after graduation: (i) If the Maritime Administrator determines that an individual has failed to fulfill any part of the service obligation contract (described in § 310.58(a)), such individual may be ordered to active duty to serve a period of time not less than three (3) years and not more than the unexpired portion of the service obligation contract relating to service in the foreign or domestic commerce or the national defense, as determined by the Maritime Administrator. The Maritime Administrator, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(ii) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (e)(2)(i) of this section or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided.

(iii) The Maritime Administrator may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(f) *Waivers.* The Maritime Administrator shall have the discretion to grant waivers of all or a portion of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted in writing to the Academies Program Officer, Office of Policy and Plans, Maritime

Administration, 400 7th St., SW.,  
Washington, DC 20590.

\* \* \* \* \*

(h) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

(1) A designated official of the Administration shall:

(i) Determine whether a student or graduate has breached his or her service obligation contract;

(ii) Grant or deny a deferment of the service obligation, except for obligations otherwise a part of the graduate's commissioned officer status; and,

(iii) Grant or deny a waiver of the requirements of the service obligation contract in cases of undue hardship or impossibility of performance due to accident, illness or other justifiable reason.

(2)(i) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal will set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(ii) Appeals must be filed with the Maritime Administrator within thirty (30) calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Maritime Administrator, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Policy and Plans. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Policy and Plans, Maritime Administration, 400 7th St., SW., Washington, DC 20590. Students and graduates can determine the current address on file with the Office of Policy and Plans by logging into the service obligation contract compliance Web site at <http://mscs.marad.dot.gov>. Changes in the address listed can be made through the Internet.

\* \* \* \* \*

(i) *Remedies.* To aid in the recovery of the Cost of Education Provided the Maritime Administrator may request the

Attorney General to begin court proceedings, and the Maritime Administrator also may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

\* \* \* \* \*

By Order of the Maritime Administrator.

Dated: June 2, 2004.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04-12765 Filed 6-7-04; 8:45 am]

**BILLING CODE 4910-81-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 73, 74 and 90

[ET 03-158; MB 03-159; FCC 04-80]

### New York City Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

**DATES:** The rule changes will become effective July 8, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dave Roberts (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Report and Order, (MO&O) FCC 04-80, adopted on March 31, 2004, and released on April 9, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at

(202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

By this MO&O, the FCC reallocates television channel 16 to the land mobile service for use by the New York Police Department and NYMAC for public safety use in the New York metropolitan area.

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's rules. See Certification That §§ 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303, 308, 309(j), and 337 this Report and Order *is adopted*.

### List of Subjects in 47 CFR Parts 2, 73, 74 and 90

Television, Land mobile radio services.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 73, 74, and 90 as follows:

### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 37.

■ b. In the list of non-Federal Government (NG) footnotes, revise footnote NG66; and remove footnotes NG114 and NG127.

### § 2.106 Table of Frequency Allocations.

*The revisions read as follows:*

\* \* \* \* \*

**BILLING CODE 6712-01-P**