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**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 310**

**[Docket No. MARAD-2020-0142]**

**RIN 2133-AB92**

**Admission and Training of Midshipmen at the United States Merchant Marine Academy; Amendment Providing an Emergency Waiver for Scholastic Requirements**

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

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

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**SUMMARY:** This interim final rule amends Maritime Administration (MARAD) regulations governing admission to the United States Merchant Marine Academy (USMMA). These amendments allow the MARAD Administrator to waive the requirement for USMMA applicants to have taken the College Board's Scholastic Aptitude Test (SAT) or the American College Testing Program (ACT) examination in the event of a State or national emergency. The ability to waive SAT and ACT requirements for prospective students is necessary to address testing disruptions caused by the coronavirus disease 2019 (COVID-19) public health emergency.

**DATES:** This interim final rule is effective [insert date of publication in the *Federal Register*]. Comments on this interim final rule must be received on or before [insert date 30 days after publication in the *Federal Register*].

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Search using docket number MARAD-2020-0142. Follow the online instructions for submitting comments.
- Mail: U.S. Department of Transportation, 1200 New Jersey Avenue S.E., Docket Management Facility, West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Regardless of how you submit your comments, please be sure to identify your submission by including the docket number.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the **Public Participation** section below.

*Note:* All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under Rulemaking Notices and Analyses regarding documents submitted to the Agency's dockets.

*Docket:* For access to the online docket to read background documents or comments received, go to <http://www.regulations.gov> and search “**MARAD-2020-0142.**”

**FOR FURTHER INFORMATION CONTACT:** Mitch Hudson, Office of the Chief

Counsel, at (202) 366-9373 or Mitch.Hudson@dot.gov. The mailing address for the Maritime Administration, Office of the Chief Counsel is 1200 New Jersey Avenue S.W., Washington, D.C. 20590.

## **SUPPLEMENTARY INFORMATION:**

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### **I. Executive Summary**

Institutions of higher education across the Nation have been severely impacted by the coronavirus disease 2019 (COVID-19) public health emergency, which has not only required them to adapt teaching methods and practices, but also admissions processes and criteria. USMMA is only one institution among the many faced with the dilemma of how to ensure the selection of qualified candidates given the current situation. The USMMA admissions policy is currently governed by 46 CFR 310.55 - *Scholastic requirements*, which provides in subsection (b)(1) that “[a]pplicants shall qualify in either the College Board’s Scholastic Aptitude Tests (SAT) or the American College Testing Program (ACT) examinations, administered nationally on scheduled dates at convenient testing

centers.” Subsection (d) further provides that “[n]o waivers of scholastic requirements will be granted.”

Due to the COVID-19 public health emergency, student access to test centers and the opportunity to take the SAT and ACT have been greatly reduced in the United States. Requiring SAT or ACT test scores from students in this admissions cycle by strictly adhering to the regulation as currently written will significantly affect the application process, selection, and appointment of prospective candidates, and may negatively impact enrollment numbers for the Class of 2025 at USMMA.

This interim final rule responds to an emergency waiver request submitted by USMMA seeking a revision to its governing regulations that would provide for a waiver of the scholastic requirements in an emergency situation. After considering the issues raised in the USMMA request, the Agency agrees that the unprecedented disruptions caused by the public health emergency make compliance by prospective candidates with the regulations as presently styled impracticable and warrant appropriate regulatory relief. Accordingly, MARAD is revising the regulations to give the MARAD Administrator the ability to issue a waiver of the scholastic requirements in the event of a State or national emergency that significantly limits the ability of applicants to take either the SAT or ACT. To ensure the proper implementation of this revision, MARAD is seeking comments on the USMMA request and the Agency's Interim Final Rule.

## **II. Background**

USMMA operates on a rolling admissions cycle. The cycle for the future Class of 2025 began on May 1, 2020 when applications were first accepted. Each candidate must first obtain a Congressional nomination to receive an appointment to the Academy. The

nomination process is independent from the application process; each member of Congress decides what requirements they deem appropriate. However, many members of Congress take into consideration a candidate's standardized test scores. Therefore, the lack of ACT/SAT standardized testing availability could prevent candidates from even receiving a nomination.

An application is considered complete when all required documents are submitted, the required standardized test scores are received, and the Candidate Fitness Assessment has been passed. USMMA's current deadline for applications is February 1, 2021. After February 1, USMMA will review applications for completeness, evaluate candidates, and make selections. Only then will candidates be offered an appointment. The process will end when the candidate submits acceptance of the offer in late Spring.

As of September 1, 2020, USMMA had received over 700 applications, with a majority not including ACT or SAT scores. According to the ACT website, there will be continued limitations in test center capacity and inevitable cancellations throughout the remainder of the 2020-2021 test dates.<sup>1</sup> The College Board, which administers the SAT, also reports that a substantial number students who register have been unable to take the test as a result of testing center closure or reduction in capacity due to COVID-19 mitigation measures.<sup>2</sup> This is on top of the College Board cancelling SAT administrations from March through May.<sup>3</sup> As the USMMA admissions process

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<sup>1</sup> Rescheduled Test Centers. (September 19, 2020). [www.ACT.org](https://www.act.org/content/act/en/products-and-services/the-act/test-day/rescheduled-test-centers.html). Retrieved September 22, 2020, from <https://www.act.org/content/act/en/products-and-services/the-act/test-day/rescheduled-test-centers.html>.

<sup>2</sup> What to Know Before the September and October SAT Administration, (September 22, 2020). [www.collegeboard.org](https://www.collegeboard.org). <https://www.collegeboard.org/releases/2020/what-to-know-sept-oct-sat-admins>.

<sup>3</sup> College Board Cancels May SAT in Response to Coronavirus, (March 16, 2020), [www.collegeboard.org](https://www.collegeboard.org), <https://www.collegeboard.org/releases/2020/college-board-cancels-may-sat-response-coronavirus>.

advances into Fall, it is unclear whether applicants will be afforded the opportunity to take the SAT or ACT exam. The deadline for completed applications for USMMA Class of 2025 candidates is February 1, 2021 and therefore, students who are unable to take the SAT or ACT until 2021 may not be able to complete their applications in time for this deadline. Even if the February 1, 2021 deadline were to be postponed and if the public health emergency were to wane sufficiently in the Spring of 2021 to allow the re-opening of test centers, there may still be problems with requiring SAT and ACT test scores for all applicants in this admissions cycle. Test sites may be faced with issues of capacity in Spring of 2021, as they would need to test all students whose testing was postponed due to COVID-19 plus all future high school graduates who will require scores for college entrance in 2022.

### **III. Agency Response**

After considering the information provided in the request, evaluating the risks posed to maintaining a vibrant and qualified merchant marine, and assessing the ongoing hardships stemming from the public health emergency, the Agency has decided that there exists a need to add flexibility to MARAD's regulations governing USMMA admissions by giving the MARAD Administrator the ability to waive SAT and ACT testing requirements in emergency situations.

The College Board states that this year, many schools and test centers will have reduced capacity because of social distancing guidelines and may encounter unexpected closures.<sup>4</sup> ACT rescheduled its April national and international tests in response to

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<sup>4</sup> *College Board Asks Colleges to Show Flexibility in Admissions This Year to Reduce Stress for Students, Citing Challenges in Providing Universal Access to the SAT During the Coronavirus Pandemic.* (2020, June 2). [www.College Board.org](https://www.collegeboard.org). Retrieved September 22, 2020 from <https://www.collegeboard.org/releases/2020/cb-asks-colleges-show-flexibility-admissions-reduce-stress->

concerns about the spread of the coronavirus.<sup>5</sup> All students registered for April 2020 test dates were notified of the postponement with instructions for rescheduling to future test dates.<sup>6</sup> Both the ACT and SAT websites currently show many postponed/cancelled exams across the 50 States. These exams are conducted in high schools and other public buildings, some of which are not yet re-opened and many of which when re-opened have reduced capacity.

The SAT and ACT are typically taken in the Spring, but due to the COVID-19 public health emergency, Spring test dates in 2020 were canceled and rescheduled for the Summer or Fall. As of September 2020, there are continued limitations in test center capacity, and there are likely to be additional cancellations throughout the remainder of the 2020-2021 test dates. The decision on whether a test center closes rests largely within a State's own discretion, based on guidelines set forth by the Centers for Disease Control and Prevention. Simply stated, the availability of testing this year is highly unpredictable.

In response, many colleges and universities have now resorted to making the SAT/ACT test optional for admissions. More than 60% of 4-year colleges and universities in the U.S. will not require applicants to submit ACT or SAT scores for Fall 2021 admission.<sup>7</sup> All of the Federal service academies are confronted with this situation

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<sup>5</sup> *ACT Reschedules April 2020 National ACT Test Date to June.* (2020, March 16). ACT News Room and Blog. Retrieved September 22, 2020 from <https://leadershipblog.act.org/2020/03/act-reschedules-april-2020-national-act.html>.

<sup>6</sup> *Id.*

<sup>7</sup> *Three-Fifths of Four-Year Colleges and Universities Are Test-Optional for Fall 2021 Admission; Total of Schools Not Requiring ACT/SAT Exceeds 1,450.* (2020, August 12). [www.fairtest.org](http://www.fairtest.org) Retrieved September 22, 2020 from <https://www.fairtest.org/threefifths-fouryear-colleges-and-universities-are>.

brought on by the COVID-19 public health emergency, and none have reached a conclusive answer on how to address admissions standards and criteria effectively. United States Air Force Academy (USAFA), United States Military Academy (USMA) and United States Naval Academy (USNA) are considering the waiver of their own requirements for standardized tests from applicants.

Based on the foregoing, MARAD concludes that there is a need to revise its regulations governing USMMA scholastic requirements by giving the MARAD Administrator the ability to waive SAT and ACT testing requirements for USMMA applicants in emergency situations. Due to forces beyond the control of prospective students, the uniform availability of standardized testing is not possible, and therefore, the strict requirement to include such test scores is detrimental to USMMA's ability to offer admission to worthy student candidates.

#### **IV. Comments and Immediate Effective Date**

Because the student application dates are fast approaching, MARAD finds good cause to issue this interim final rule providing an exemption to the scholastic requirements. There is good cause to make this rule effective immediately so as to provide needed relief to prospective students due to the effects of the COVID-19 public health emergency. Pursuant to DOT's regulation on rulemaking procedures, 49 CFR 5.13(j)(2), MARAD seeks to replace this interim final rule with a final rule, which may differ from today's rule in response to comments received. Accordingly, MARAD is accepting comments on this interim final rule. The Agency is seeking comments on whether the emergency waiver for scholastic requirements is appropriate under the

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circumstances. In particular, MARAD is interested in information concerning whether any other steps could be taken to ensure that all qualified candidates for admission may overcome any regulatory obstacles to admission. Given the narrow focus of this rule and its near-term effects, the Agency has provided an expedited comment period, which the Agency believes will allow commenters sufficient time to address the issues in this rule. See “**Public Participation**” section below.

The Agency is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” As discussed above in this document, the intent of this action is to provide relief to prospective student candidates for admission to USMMA who, due to the COVID-19 public health emergency, are finding it either impossible or impractical to sit for the SAT or ACT standardized tests. Since dates for submitting admission applications are imminent, the Agency finds it impracticable to seek public comment prior to the effective date of the rule. MARAD seeks to issue this rule to provide relief before it is too late for applicants to be apprised of an emergency waiver to the scholastic requirements and to take action accordingly.

Though this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These

comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document. MARAD will consider these comments in deciding any next steps following this interim final rule.

## **V. Regulatory Analyses and Notices**

### *a. Executive Orders 12866, 13563, 13771 and DOT Rulemaking Procedures*

Executive Order (E.O.) 12866, E.O. 13563, and the Department of Transportation's administrative rulemaking procedures set forth in 49 CFR Part 5, subpart B, provide for determining whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of E.O. 12866.

Today’s interim final rule is not significant and has not been reviewed by OMB under E.O. 12866. This rule is limited to giving the MARAD Administrator the ability to waive the regulatory requirement to include SAT or ACT scores for admission to USMMA in emergency situations. This rule does not actually waive any regulatory requirements.<sup>8</sup> Therefore, this rule does not result in any costs or benefits.

Executive Order 13771, titled “Reducing Regulation and Controlling Regulatory Costs,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, “Regulatory Planning and

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<sup>8</sup> MARAD will separately issue the pertinent waiver once this rule becomes effective.

Review,” are subject to these requirements. Per OMB Memo M-17-21, E.O. 13771 applies to a rulemaking action that is “a significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero.” As discussed above, this rule adds flexibility to MARAD’s regulations by giving the MARAD Administrator the ability to waive SAT/ACT testing requirements in emergency situations. Accordingly, this action is a deregulatory rule under Executive Order 13771. However, this action does not result in any quantified cost savings because it does not actually waive any regulatory requirements.

*b. Executive Order 13924*

On May 19, 2020, the President issued E.O. 13924, “Regulatory Relief to Support Economic Recovery,” as part of the country’s ongoing recovery effort to the national COVID-19 public health emergency. The Order directs agencies to address the current economic emergency by using to the fullest extent possible any available emergency authorities to support the economic response to the COVID-19 public health emergency. It also directs agencies to provide relief through rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary. This interim final rule is consistent with E.O. 13924 by providing prospective candidates for admission to USMMA adversely affected by the inability to take the SAT or ACT caused by the national health emergency the opportunity to apply for and to be considered for admission.

*c. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA), MARAD has considered the

impacts of this rulemaking action on small entities (5 U.S.C. 601 et seq.). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 603(a). Because, as discussed above, this rule is exempt from the APA notice and comment requirements, MARAD is not required to conduct a regulatory flexibility analysis.

*d. Executive Order 13132, Federalism*

MARAD has examined today's interim final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The interim final rule will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

*e. The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by State, local, or tribal

governments or by any members of the private sector. Therefore, the Agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

*f. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule includes no new collection of information and will not change any existing collections of information as it does not actually waive any regulatory requirements.

*g. Privacy Act*

Anyone can 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 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

## **VII. Public Participation**

*How long do I have to submit comments?*

MARAD is providing a 30-day comment period.

*How do I prepare and submit comments?*

Your comments must be written in English.

To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD asks that the documents be submitted using the Optical Character Recognition (OCR)

process, thus allowing MARAD to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Search using the MARAD docket number and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at

[http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the interim final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and

that is relevant or responsive to this interim final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information.

MARAD will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this interim final rule. Submissions containing CBI should be sent to the email address provided in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. Any comments MARAD receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

*Will the agency consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing any follow-on action, we will consider that comment as an informal suggestion for future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for

accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

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

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

In consideration of the foregoing, MARAD amends 46 CFR part 310 as follows:

### **PART 310—MERCHANT MARINE TRAINING**

- 1. Revise the authority citation for part 310 to read as follows:

Authority: 46 U.S.C. Chapter 515; 49 U.S.C. 322(a); 49 CFR 1.93

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

- 2. Amend § 310.55 by revising paragraph (d) to read as follows:

#### **§ 310.55 Scholastic requirements.**

\* \* \* \* \*

(d) *Waivers.* No waivers of scholastic requirements will be granted, except in the event of a State or national emergency that significantly limits the ability of applicants to take either the SAT or ACT, as determined by the Maritime Administrator.

Dated: October 20, 2020.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.**  
*Secretary, Maritime Administration*

[FR Doc. 2020-23493 Filed: 10/20/2020 4:15 pm; Publication Date: 10/22/2020]