



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: Final rule; response to comments on interim final rule.

SUMMARY: This final rule adopts, without change, an October 22, 2020, interim final rule (IFR) amending Maritime Administration (MARAD) regulations governing admission to the United States Merchant Marine Academy (USMMA). The 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) pandemic and to provide for future emergencies.

DATES: This final rule is effective [*insert date of publication in the Federal Register*].

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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) pandemic, which has not only required them to adapt teaching methods and practices, but also admissions processes and criteria. USMMA, along with many other institutions, is 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 paragraph (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.” Prior to the Department’s October 22, 2020 IFR (85 FR 67299), paragraph (d) further provided that “[n]o waivers of scholastic requirements will be granted.”

Due to the COVID-19 pandemic, student access to test centers and the opportunity to take the SAT and ACT have been greatly reduced. Requiring SAT or ACT test scores from students during the COVID-19 pandemic by strictly adhering to the regulation as currently written will significantly affect the application process, selection, and appointment of prospective candidates.

This final rule adopts as final without change, the interim final rule published on October 22, 2020, in response 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 and public comments received on the IFR, MARAD agrees that the unprecedented disruptions caused by the COVID-19 pandemic continue to make compliance by prospective candidates with the requirement impracticable and warrant appropriate regulatory relief. Accordingly, MARAD issues this final rule 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.

II. Background

USMMA operates on a rolling admissions cycle. Aside from a limited number of appointments made by the Secretary of Transportation, candidates for admission must first be nominated by their respective Senator or Representative to receive an appointment to the Academy. The nomination process is independent from the application process; each nominating official decides what requirements they deem appropriate. However, nominating officials often 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. Only then will candidates be offered an appointment. The process will end when the candidate submits acceptance of the offer in late Spring.

According to the ACT website, there will be continued limitations in test center capacity and inevitable cancellations throughout the remainder of the 2021 test dates.¹ In

¹ 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>.

a February 2021 post on its website, ACT stated, “To mitigate COVID-related test cancellations, ACT added three national test dates to its fall 2020 national testing schedule, increased school day testing (state and district testing) and unveiled strategically placed pop-up testing sites across the nation to meet customer demand. Where possible, we [ACT] provided make-up testing for students who were displaced by last-minute cancellations and/or weather-related events.” The College Board, which administers the SAT, also reported that a substantial number of students who registered were unable to take the test as a result of testing center closures or reduction in capacity due to COVID-19 mitigation measures.² This is on top of the College Board cancelling SAT administrations from March through May of 2020.³ Test sites continue to face issues of capacity for Spring 2021, as they 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. For example, according to the College Board, each of the 41 SAT test centers in New York State was closed for the most recent test date (March 13); only one of those centers projected a re-opening date.⁴ As of February 1, 2021, USMMA had received 1792 applications, of which 897 (or 50%) were submitted without ACT or SAT scores.

III. Discussion of Comments to the Docket

In response to the October 22, 2020 interim final rule, MARAD received two timely submitted comments to the docket from private individuals. One was in support of the revision to USMMA admissions regulations and one was opposed.

With respect to the comment supporting the revision, MARAD and the USMMA

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

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

⁴ Retrieved March 22, 2021 from <https://collegereadiness.collegeboard.org/sat/register/test-center-closings>.

agree that students should not be made ineligible for admission to the USMMA on the sole basis that they were unable to take the SAT/ACT exams due to the COVID19 pandemic. This final rule will ensure that COVID19 and any other national emergency does not adversely impact our ability to consider otherwise qualified applicants for admission to the USMMA.

The comment opposing the regulatory revision stated that MARAD should instead work to assist applicants in locating available test locations and to facilitate applicants taking the standardized examinations. MARAD and the USMMA are not positioned to undertake such an expansive process. Instead, because it remains imperative that we are not deterred from our mission to foster and maintain a strong U.S. merchant marine, we are taking this action to protect against disruptions to the USMMA admission process when faced with a national emergency.

IV. Justification for the Final Rule

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

The College Board stated in 2020 that many schools and test centers would have reduced capacity because of social distancing guidelines and may encounter unexpected closures.⁵ ACT rescheduled its April 2020 national and international tests in response to

⁵ *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/releases/2020/cb-asks-colleges-show-flexibility-admissions-reduce-stress-students-challenges-universal-access-sat-coronavirus-pandemic?fbclid=IwAR3SbHTa4VIKpryc95KqFDeOTnCktwy0q4NOlcd8StS3Wrx1Bj6MOzFkAy0). Retrieved September 22, 2020 from <https://www.collegeboard.org/releases/2020/cb-asks-colleges-show-flexibility-admissions-reduce-stress-students-challenges-universal-access-sat-coronavirus-pandemic?fbclid=IwAR3SbHTa4VIKpryc95KqFDeOTnCktwy0q4NOlcd8StS3Wrx1Bj6MOzFkAy0>

concerns about the spread of the coronavirus.⁶ All students registered for April 2020 test dates were notified of the postponement with instructions for rescheduling to future test dates.⁷ Both the ACT and SAT websites continue to 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 pandemic, Spring test dates in 2020 were canceled and rescheduled for the Summer or Fall. There are continued limitations in test center capacity, and there are likely to be additional cancellations throughout the remainder of the 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, as it was in 2020, the availability of testing in 2021 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.⁸ All of the Federal service academies were confronted with this situation brought on by the COVID-19 pandemic. United States Air Force Academy (USAFA), United States Military Academy (USMA), United States Naval Academy (USNA), and the United States Coast Guard Academy (USCG) have all modified their own requirements for standardized tests from applicants making SAT and ACT scores

⁶ *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>.

⁷ *Id.*

⁸ *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 Retrieved September 22, 2020 from <https://www.fairtest.org/threefifths-fouryear-colleges-and-universities-are>.

optional again for the Fall 2022 admission.

Based on the foregoing, MARAD similarly 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 assured, and therefore, the strict requirement to include such test scores with applications is detrimental to USMMA's ability to offer admission to worthy student candidates.

Accordingly, MARAD issues this final rule providing an exemption to the scholastic requirements. This final rule is intended to provide needed relief to prospective students because of the COVID-19 pandemic and to ensure that the Maritime Administrator can take similar action in the future if the need arises.

V. Regulatory Analyses and Notices

a. Executive Orders 12866, 13563, 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 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 in applications for admission to USMMA in emergency situations. This rule does not actually waive any regulatory requirements. Therefore, this rule does not result in any costs or benefits.

b. 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 this rule adopts as final, without change, the interim final rule previously published as 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 the 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 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>.

List of Subjects in 46 CFR Part 310

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

PART 310—MERCHANT MARINE TRAINING

In consideration of the foregoing, MARAD adopts the interim final rule amending 46 CFR part 310 that published at 85 FR 67299 on October 22, 2020, as final without changes.

Signed in Washington, DC.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

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