

## SUBCHAPTER H—TRAINING

### PART 310—MERCHANT MARINE TRAINING

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#### Subpart A—Regulations and Minimum Standards for State, Territorial or Regional Maritime Academies and Colleges

##### § 310.1 Definitions.

For purposes of this subpart A:

(a) *The 1958 Act* means the Maritime Academy Act of 1958, Pub. L. 85-672.

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

(c) *Administration* means the Maritime Administration, United States Department of Transportation.

(d) *Agreement* means an agreement between a State, or Territorial or Regional maritime academy or college and the Maritime Administrator, Department of Transportation as authorized by the 1958 Act or the Act and set forth in § 310.13 of this part.

(e) *Secretary* means Secretary of Transportation.

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

(g) *Cadet* means cadet enrolled in the United States Maritime Service and in good standing at a State or Territorial or Regional maritime academy or college meeting the requirements of the 1958 Act.

(h) *Commanding Officer* means the Commanding Officer of a training ship furnished by the Administration.

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

(j) *Maritime Service* means the United States Maritime service.

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

(l) *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.

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

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

(o) *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.

(p) *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.

(q) *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.

### §310.2 Federal assistance.

(a) The Maritime Administrator may enter into agreements with the present or later established schools (not more than one such school in each State or Territory) meeting the requirements of the Act to make annual payments, for not in excess of four (4) years in the case of each such agreement, to be used for the maintenance and support of such Schools. The amount of each such annual payment shall be not less than the amount furnished to such School for its maintenance and support by the State or Territory in which such academy is located or, in the case of a Regional maritime academy an amount equal to the amount furnished to such academy for its maintenance and support by all States or Territories, r both, cooperating to support such School, but shall not exceed \$100,000. However, the amount shall not exceed \$25,000, if such academy does not meet the requirements of subsection 1304(f)(2) of the Act.

(b) Pursuant to the provisions of section 1304(c) of the Act, The Maritime Administrator, may furnish to any State or Territory of the United States for use as a Training Ship by a school any suitable vessel that is under his or her jurisdiction, obtain such vessel from any department or agency of the United States, or may construct and

furnish a suitable vessel, if such vessel is not available.

(c) The Maritime Administrator may pay to any School the amount of the costs of all fuel consumed by a Training Ship furnished under the provisions of section 1304(c)(1) of the Act while such vessel is being used for training purposes by such a School, if such funds have been appropriated and are available for that purpose.

(d) As a condition to receiving any payments or the use of any Training Ship under the provisions of the Act, the school shall comply with the requirements of the Act and this subpart and shall agree in writing to conform to such requirements.

(e) As a further condition to receiving any payments or the use of any Training Ship, a School shall agree that, with respect to the training program for merchant marine officers, consistent with provisions of the Act, the 1958 Act, and the Agreement, it will comply with the following provisions of law and implementing regulations duly promulgated thereunder, to the extent applicable, including, but not limited to: Title VI, Civil Rights Act, 1964 (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6101); the Vocational Rehabilitation Act—section 504 (29 U.S.C. 794); and 15 CFR Part 8. Each school shall give assurances that it will take any and all measures necessary to effectuate compliance.

### §310.3 Schools and courses.

(a) *Schools with Federal aid.* The following schools are presently operating with Federal aid under the 1958 Act or the Act:

California Maritime Academy  
Maine Maritime Academy  
Massachusetts Maritime Academy  
State University of New York Maritime College  
Texas Maritime College of the Texas A&M University at Galveston  
The Great Lakes Maritime Academy

(b) *General rules for operation of a School.* (1) The Schools shall maintain adequate berthing, messing and classroom instruction facilities ashore, or have plans to establish same at the earliest possible time, unless prevented from doing so by conditions beyond the control of the School. During a period

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a school is implementing an approved plan, Cadets may be housed and instructed on a Training Ship. However, the approved plan may include the ongoing use of the training ship as an instructional and laboratory facility and for the berthing of entering class cadets for a period not to exceed six months for purposes of shipboard indoctrination.

(2) The School shall arrange for the Cadet or Midshipman to take the United States Coast Guard original licensing examination prior to the date of graduation.

(3) As a condition to receiving payments of any amount allowable by the 1958 Act and the Act in excess of \$25,000 for any year, a School shall agree to admit student residents of other States to the extent of at least ten percent (10%) of each entering class, if such out-of-State students apply for admission and are otherwise qualified for such admission. The calculation of residents of other States shall exclude residents of foreign countries, but shall include residents of Territories and possessions of the United States (including the Commonwealth of Puerto Rico).

(4) Upon the request of the Administration a school shall furnish such reports and estimates as may be required in the preparation of Federal Budget estimates.

(5) State authorities shall prescribe and administer rules and regulations for the internal organization and administration of each School.

(6) The Administration shall have the right to inspect shore base facilities at all reasonable times.

(7) Records pertaining to a School, its officers, crew, Cadets, the Training Ship, and shore base, shall be maintained by each School and shall be available to the Supervisor upon request. A detailed record of applications for admissions, enrollments, reenrollments, absences with or without leave, hospitalizations, determinations of students not in good standing, disenrollments, graduations, and other data concerning cadets and Midshipmen shall be kept by each school for the period of enrollment plus one

year. Copies of these records shall be furnished to the Supervisor upon request.

(8) The Administration may include in any pamphlets, brochures or other public information materials an adequate description of each School giving the reader knowledge of the existence of the School, its purposes and where to obtain application forms and further information.

(c) *Curriculum.* (1) The minimum period of training shall be three (3) years. For the Cadets and Midshipmen at the schools located in California, Maine, Massachusetts, New York and Texas at least six (6) months of the total time must be aboard a Training Ship in cruise status. A maximum of two (2) months of training time aboard commercial vessels of not less than 2,500 horsepower may be substituted for two (2) months of the specified cruise time. For the cadets at the Great Lakes Maritime Academy, six (6) months of the time shall be aboard Great Lakes commercial vessels and an additional three (3) months shall be aboard either a Training Ship in a cruise status or Great Lakes commercial vessels while underway. Cadets in training status aboard commercial vessels shall sign on board as cadets and shall pursue their training within the framework of formal sea projects prepared and monitored by their respective Schools.

(2) State authorities shall prescribe and be responsible for the courses of instruction and general system of training and the addition of such reasonable maritime courses as may be prescribed by Federal authorities, subject to approval by the Maritime Administrator. The curriculum as a composite shall, as a minimum, meet the requirements set out in the Federal Curriculum Standards for Merchant Marine Officers Training Program.

(3) Copies of the Federal Curriculum Standards for Merchant Marine Officers Training Program at the State maritime academies may be obtained from the Maritime Administration, Office of Maritime Labor and Training,

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400 Seventh Street, SW, Washington, DC 20590.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[46 FR 37694, July 22, 1981, as amended at 49 FR 13365, Apr. 4, 1984]

### § 310.4 Training Ship.

The Administration may furnish a Training Ship, if such is available, to any School. Training Ships which may be designated for use by a School will be delivered to the School at a location determined by the Administration, in condition found to be in class by the American Bureau of Shipping and certificated by the U.S. Coast Guard. If a Training Ship is not available, adequate cruising facilities shall be the responsibility of the State and its School. The furnishing of a Training Ship shall be subject to the following terms and conditions:

(a) *General provisions.* (1) The State, acting through the School shall exercise reasonable care to safeguard the interests of the Administration and avoid (i) injury to any person aboard the Training Ship, and (ii) loss and damage of every nature with respect to the Training Ship. Also, the school shall have reasonable layup procedures during noncruise status of the Training Ship.

(2) Excerpts from log books and reports shall be submitted as directed by the Supervisor.

(3) Initial telegraphic or telephonic reports shall be made promptly to the Supervisor and the appropriate Region Director in the event of an accident causing (i) serious injury to any person, or to the Training Ship, or (ii) damage inflicted by the Training Ship upon any other ship or other property. Such reports shall be followed by complete written details of the occurrence.

(4) The Supervisor shall determine whether or not the berth of the Training Ship at the base in its home port is suitable from the standpoint of safe mooring. When the Training Ship is not on cruise, the Commanding Officer or Superintendent shall keep the Supervisor informed of the location of the Training Ship and any contemplated change of berth.

(5) The following notice shall be posted conspicuously aboard each Training Ship furnished to a State for use by a School:

This training ship is the property of the United States of America. It is furnished to the State of \_\_\_\_\_ by the Department of Transportation, Maritime Administration, for the purpose of training young men and women to become officers in the merchant marine of the United States. Neither the State, the Commanding Officer, nor any other person has any right, power or authority to create, incur or permit to be imposed upon this vessel, any lien whatever.

(6) No changes requiring U.S. Coast Guard approval shall be made to the Training Ship without the written approval of the Administration.

(7) In the event of the termination of the use of a Training Ship by the State or by the Maritime Administrator, the State shall return to the State base port, the Training Ship and all property whatsoever owned by the Administration. Title to all additions, replacements, and renewals made by the State shall vest in the Administration without charge.

(b) *Termination of use.* The Maritime Administrator may terminate the use of a Training Ship upon such reasonable notice to the State as the circumstances may permit in the judgment of the Maritime Administrator. If use of the Training Ship is terminated by the Maritime Administrator, the Maritime Administrator may:

(1) Substitute another Training Ship;

(2) Require the sharing of a Training Ship by two or more Schools; or

(3) Cooperate with the School in arranging for training time aboard commercial vessels for its Cadets and Midshipmen.

(c) *Property aboard the Training Ship.* The State shall have the complete use of a Training Ship as defined, subject to the following terms and conditions:

(1) All property, or its equivalent furnished by the Administration, shall be returned to the Administration when use of the Training Ship is terminated. The only exceptions are: spare and replacement parts consumed; and losses due to ordinary wear and tear, unavoidable accident and perils of the

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sea. All other property otherwise lost or destroyed shall be replaced at the expense of the State.

(2) Administration property shall not be permanently removed from the Training Ship to the shore base without the prior written approval of the Supervisor.

(3) The administration shall take inventories of State and Federal property aboard the Training Ship at such times as it deems necessary. The school, at its expense, shall furnish such assistance as may be necessary in taking such inventories.

(d) *Condition Surveys.* Before a Training Ship is released to a School and manned by officers under State control, a condition survey shall be made by duly authorized representatives of the School and the Administration. If the Training Ship is found in order, the School representative shall sign a receipt for the Training Ship. Subsequently, after due notice to the State authorities, a condition survey may be made of the Training Ship whenever deemed advisable by the Administration, and, in any event, upon redelivery of the Training Ship by the State to the Administration.

(e) *Maintenance and repairs.* (1) *Administration payment.* A Training Ship shall be maintained in good repair by the Secretary as provided by the 1958 Act and the Act. Expenses for repairs, changes and alterations, repairs to equipage and replacements of equipage in accordance with the Administration's approved allowance lists for the Training Ship (i.e. authorized under the Act and to the extent that funds are available), shall be borne by the Administration under the following terms and conditions:

(i) When it is necessary to repair or drydock the Training Ship because of damage (except in an emergency, when on foreign cruise), the Commanding Officer or Superintendent shall notify the Supervisor and appropriate Region Director by telephone or telegraph in order to enable a representative of the Region Director, if available, to be present, when the survey of the damage is made.

(ii) Repairs which need not be carried out during the annual overhaul period shall be made by the Cadets or Mid-

shipmen, if possible, under the supervision of the officers. When repair material is required for this purpose, the Commanding Officer or Superintendent shall forward to the Supervisor a list of such material and estimated costs, and a description of the repairs to be carried out by the Cadets or Midshipmen. The Supervisor shall promptly advise the Commanding Officer or Superintendent whether or not such work comes under the heading of repairs, and if procurement of the material is authorized.

(iii) Requisitions covering repairs, renewals, and betterments shall be prepared in quintuplicate by the heads of departments of the Training Ship and submitted by the Commanding Officer or Superintendent to the Supervisor at least forty-five (45) days before the date of the annual overhaul, with one copy to the Region Director.

(iv) The State is authorized to expend not to exceed \$5,000 for emergency repairs which become necessary while the Training Ship is on foreign cruise. The Administration shall reimburse the State upon submission of vouchers to, and approval by, the Maritime Administrator. To obtain reimbursement for emergency repairs estimated to cost in excess of \$5,000, authorization must be obtained by the State from the Supervisor prior to undertaking such repairs. The Commanding Officer shall be responsible for all necessary filings with the United States Customs Service to avoid duties upon all emergency repairs performed outside the United States. If penalties are imposed, for non-filing or improper filing, they shall be solely the responsibility of the State.

(2) *State payment.* Except as otherwise provided in this section, the State shall, at its own expense, accomplish the following:

(i) Undertake usual preventive maintenance of the Training Ship, adhere to minimum levels of preventive maintenance as prescribed by the Administration, and keep the Training Ship clean and painted, above the waterline according to good maritime practices.

(ii) Cause the Training Ship to be fumigated if required by the Administration and forward to the Supervisor a copy of the fumigation certificate.

(iii) Pay for all consumable stores, freshwater and costs incidental to the operation of the Training Ship.

(iv) Pay for fuel of the training ship except that the Administration may assist in paying the cost of fuel consumed on the Training Ship while being used for training purposes if funds are appropriated and available for such purposes.

(f) *Cruises.* The school shall submit the cruise itinerary of the Training Ship including a listing of foreign ports to be visited, for approval of the Supervisor at least sixty (60) days in advance of the date such cruise is scheduled to begin. The Supervisor shall arrange with the Department of State for clearance of the Training Ship to visit foreign ports.

(g) *Hospitalization.* The School shall be responsible for all medical treatment and hospitalization of all persons aboard the Training Ship at all times, including officers and Cadets and Midshipmen. If available, facilities of the United States Public Health Service should be utilized.

(h) *Repatriation and return to home port.* The School shall be responsible for the return to the home port of the Training Ship of all persons, including officers and Cadets and Midshipmen, who originally embarked on a training cruise from a Continental United States port and who are left behind, after the departure of the Training Ship from any port, foreign or domestic, or are to be brought home from the ship at any time or for any reason. The School shall be solely responsible for all expenses of repatriation and return to home port.

### §310.5 Personnel.

(a) *Selection and appointment of Superintendent and faculty by State authorities.* (1) The State shall select and appoint the Superintendent of a School in accordance with qualifications established by appropriate State authorities. The State shall notify the Maritime Administrator whenever a new Superintendent is appointed and furnished with appropriate background information on the appointee for informational purposes.

(2) The State shall appoint faculty members in disciplines other than en-

gineering and navigation on the basis of the same criteria used in the employment of such personnel in State-supported colleges and universities throughout the State. Faculty members in navigation and engineering courses, including steam and diesel, shall meet appropriate academic and practical experience standards adopted by the school and approved by the Administration.

(b) *Personnel for Training Ships—(1) Commanding Officer.* The Commanding Officer shall hold a valid Master's Ocean, Unlimited Tonnage license including Radar Observer endorsement issued by the United States Coast Guard and shall have served at least two (2) years as Master, Chief Officer, Commanding Officer, or Executive Officer either (i) on oceangoing vessels under the authority of said Master's Ocean, Unlimited Tonnage license, or (ii) in the case of sea service as a member of the Uniformed Services of the United States, on ships accepted by the United States Coast Guard as equivalent for qualifying service for issue of a Master's Ocean, Unlimited Tonnage license.

(2) *Chief Engineer.* The Chief Engineer must hold a valid Chief Engineer's (Steam) Ocean, Unlimited Horsepower license, issued by the United States Coast Guard and have served as Chief Engineer of an oceangoing steamship of comparable horsepower to that of the particular Training Ship.

(3) *Watch Officers.* Both Deck and Engineer Watch Officers in charge of a watch, underway, shall hold valid Ocean, Unlimited Tonnage licenses, issued by the United States Coast Guard, in their particular field.

(4) *Radio Officers.* During each training cruise the Training Ship shall have assigned one or more radio officers holding a valid license issued by the United States Coast Guard, in accordance with its regulations.

(5) *Licensed Engineer.* When a Training Ship boiler is in operation, there shall be a Licensed Engineer qualified to stand the watch aboard at all times.

(c) *Insignia for officers and other School personnel.* The State may furnish insignia for officers and other school personnel, other than officers of the United States Navy, United States

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Naval Reserve, United States Maritime Service and United States Coast Guard.

(Approved by the Office of Management and Budget under control number 2133-0010)

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[46 FR 37694 July 22, 1981, as amended at 47 FR 25530, June 14, 1982; 49 FR 13365, Apr. 4, 1984]

#### §310.6 Entrance requirements.

(a) *Enrollment prior to April 1, 1982.* A candidate for admission to a school who wishes to be considered for Federal student subsistence payments shall:

(1) Be a citizen of the United States.

(2) Be obligated to (i) complete the Naval Science curriculum (ii) take all necessary and positive steps to obtain a commission as ensign in the United States Naval Reserve, (iii) apply before graduation for such commission, and (iv) accept such commission if offered. A breach of this agreement will result in termination of cadet status and of Federal student subsistence payments, and may lead to legal action for recovery of all past such payments. The requirements of this paragraph shall not apply at The Great Lakes Maritime Academy.

(3) Be obligated to sit for the appropriate licensing examination of the United States Coast Guard. A breach of this agreement will result in termination of cadet status and of Federal student subsistence payments, and may lead to legal action for recovery of all past such payments.

(4) Meet the physical standards specified by the United States Coast Guard for original licensing as a merchant marine officer. The written certification of the Superintendent of the school, based on a physical examination by a doctor, the results of which are on record at the school, that a candidate meets these requirements, will be acceptable to the Administration.

(5) Possess a secondary school education or equivalent, satisfactory for admission as an undergraduate, to colleges or universities under control of the State in which the school is located.

(6) Meet requirements established by the school in regard to such criteria as

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the individual's secondary school grades, rank in graduating class, aptitude, achievement, and qualities of leadership.

(b) *Enrollment on or after April 1, 1982.*

A candidate for admission to a school who wishes to be considered for the Federal student incentive payments shall:

(1) Meet the requirements of paragraphs (a) (1), (4), (5), and (6) of this section.

(2) Be at least seventeen (17) years of age and not have passed the twenty-fifth (25th) birthday on the day of enrollment at a School.

(3) Apply for, be offered, and have accepted midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) and simultaneously have applied and been accepted for Enlisted Reserve status.

(4) Be obligated to complete the naval science curriculum.

[46 FR 37694, July 22, 1981, as amended at 48 FR 24080, May 31, 1983]

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

(a) *Subsistence allowances.* (1) *Selection and allocation.* In accordance with the Administration's established freshmen subsidy allocation for each School, the school shall select the individuals in its new entering class who will be enrolled in the United States Maritime Service as cadets and start to receive Federal student subsistence payments for uniforms, textbooks and subsistence as provided in the 1958 Act. The freshman subsidy allocations for each school are as follows: California Maritime Academy 99; Maine Maritime Academy 135; Massachusetts Maritime Academy 69; State University of New York Maritime College 200; Great Lakes Maritime Academy 45; and the Texas Maritime College 32. Each student who meets the entrance requirements in §310.6(a) and applies for enrollment in the United States Maritime Service shall be entitled to consideration for a student subsistence

payment at a rate and under the conditions in the 1958 Act. The list identifying the selected students shall be forwarded to the Administration on or before October 31, 1981. The Federal student subsistence payments will be paid to the School while a cadet is in attendance but not in excess of four (4) academic years for any one student.

(2) *Resignation or disenrollment.* There will be no substitution for students removed or dropped from the list of those originally receiving Federal student subsistence payments. Subsidized students who resign or are disenrolled from a school shall not, on subsequent reenrollment, be in a position to reclaim their subsidy status.

(3) *Selection criteria; rate of payment.* The selection of the students to receive such payments shall be made by the School in accordance with criteria established by the School, with the prior approval of the Administration. The rate of Federal student subsistence payments will be determined by the Administration according to the 1958 Act or the Act.

(4) *ROTC enrollment.* Subsidized cadets who make a commitment to an Armed Force Reserve Officer Training Corps will be removed from the Administration subsidy rolls effective on the date they receive funds from a U.S. military service. Should they leave the program for any reason they may not reclaim the Administration subsidy as a cadet.

(5) *Payment procedure.* The Administration shall make the Federal student subsistence payments no more frequently than monthly, directly to the School upon the presentation of a statement containing the names of each Cadet selected by the Academy (within the quotas furnished pursuant to paragraph (a) of this section) to be enrolled in the Maritime Service and to receive the Federal student subsistence payments. For newly selected Cadets in a new entering class, the statement supporting the first voucher for payment shall certify that the cadets have met the entrance requirements in §310.6.

(6) *Certification procedure.* All vouchers submitted for payment shall contain a certification by the Superintendent that the payment will be

used to assist in defraying the cost of the uniforms, textbooks, and subsistence of each Cadet on the basis of the amount to which the cadet is entitled, as reflected by the attached Daily Attendance Report. No cadet shall receive a federal student subsistence payment for any time during which he or she is absent without leave or for absence due to a condition not in line of duty, or when determined by the School to be not in good standing.

(7) *Insufficient appropriations.* If it appears that the amount appropriated by Congress under the Act shall not be sufficient to make payments at the maximum rate, not in excess of \$1,200 per academic year per cadet, the Maritime Administrator, after consultation with the Schools, may determine the exact rate to be paid at each School for the remainder of the fiscal year.

(b) *Federal student incentive payments.*  
(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 agreements. The agreements 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 these midshipmen in amounts equaling \$1,200 for each academic year of attendance. 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.



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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.

(2) *Temporary reallocation of Federal student incentive payments.* If a School does not have a sufficient number of eligible freshmen to utilize all of its allotted payments, then the unused subsidies may be reallocated on a need basis to academies with eligible students. In the next academic year, each School's subsidy quota for entering students will revert to its original level.

(3) *Form of the Service Obligation Agreement.* The service obligation agreement 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 unless sooner separated by 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 to fulfill the requirements for such license not later than three (3) months after graduation;

(iv) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following graduation from a School;

(v) Apply for an appointment as, 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 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

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

(4) *Marine-related employment.* (i) graduates who intend to claim employment in a United States maritime-related industry, profession of marine science as meeting all or part of the service obligation under paragraph (b)(3)(vi) of this section, shall submit evidence to the Supervisor that they have conscientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence and other information available, shall be considered in any finding. In view of current and projected employment opportunities, afloat, the Maritime Administrator will grant the shoreside employment option infrequently and only on the basis of comprehensive evidence.

(ii) The Maritime Administrator may consider the positions of operational, management and administrative responsibility in the following marine-related categories under the provisions of paragraph (b)(3)(vi) of this section: Civilian employment in Federal and State agencies related to maritime affairs, steamship companies, stevedoring companies, vessel chartering and operations, cargo terminal operations, naval architecture, shipbuilding and repair, municipal and state port authorities, port development, marine engineering, and tug and barge companies. The above list is not all inclusive and is only intended to serve as a general guide.

(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.

(6) *Reporting requirement.* (i) The schools must promptly submit copies of all resignation forms (containing the name, reason, address and telephone number) of juniors and seniors to the Supervisor, to be used for monitoring and enforcement purposes. Each graduate must submit an employment report form to the Maritime Administration (Supervisor) 13 months following his or her graduation and each succeeding 12 months for three years to: Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW., Washington, DC 20590. In case a deferment has been granted to engage in a graduate course of study, semi-annual reports must be submitted for any extension of the three (3) year obligation period resulting from such deferments. The examples follow:

*Example 1:* Midshipman graduates on June 30, 2001. His first reporting date is July 1, 2002 and thereafter for 3 consecutive years.

*Example 2:* Midshipman has a deferred graduation on November 30, 2001. His first reporting date is December 1, 2002 and thereafter for 3 consecutive years.

(ii) The Maritime Administration will provide reporting forms. However, non-receipt of such form will not exempt a graduate from submitting employment information as required by this paragraph. The reporting form has been approved by the Office of Management and Budget (2133-0509).

(7) *Breach of Agreement.* (i) If the Administration determines that any midshipman who has attended a school for not less than 2 years has failed to complete the course of instruction at a school, the Secretary of the Navy may order that midshipman to active duty in the United States Navy, to serve for a period of time not to exceed 2 years. The Supervisor shall submit the list of those who have breached their agreement to the Chief of Naval Education and Training, Pensacola, Florida 32508.

(ii) If the Administration determines that a graduate of a school has broken

his or her agreement under paragraph (3), the Secretary of the Navy may order that individual to active duty to serve a period of time not less than 2 years and not more than the unexpired portion of the service required. The Maritime Administrator, Department of Transportation, in consultation with the Secretaries of Defense and Transportation, shall determine in which service the graduate shall serve such period of time.

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

(9) *Deferments.* In exceptional cases the Administration may grant a deferment of all or part of the service commitment under paragraphs (b)(3)(ii) through (vi) of this section for a period not to exceed two years, only for graduates considered to have superior academic and conduct records while at the school, for the purpose of their entry after graduation into a marine-or maritime-related graduate course of study at an accredited graduate school. However, the Secretary of the department in which the United States Coast Guard is operating and the Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration, which has jurisdiction over such service shall approve any deferment of service as a commissioned officer. Applications for such deferment shall be made through the Superintendent of Midshipman's school, who shall forward each application together with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Supervisor for appropriate action.

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.* (i) An official of the Administration designated by the Supervisor shall:

(A) Render determinations of whether a student or graduate has breached his or her service agreement;

(B) Grant or deny a deferment of the service obligation under paragraph

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(b)(9) of this section, except obligations otherwise a part of the graduate Reserve officer status;

(C) Grant or deny a waiver of the requirements of the service agreement in hardship cases.

(ii)(A) 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 must 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.

(B) Appeals must be filed with the Maritime Administrator within 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 Secretary, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(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 Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(D) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (b)(10)(ii)(B) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (b)(10)(ii)(B) of this section. Appeals may not be submitted by fac-

simile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(E) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

*Example to paragraph (b)(10)(ii)(E):* If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(iii) The Maritime Administrator will issue a written decision for each timely appeal. This decision constitutes final agency action.

(iv) If a student or graduate fails to appeal within the time set forth in paragraph (b)(10)(ii) of this section, the decision of the designated official will be final and constitute final agency action.

[46 FR 37694, July 22, 1981, as amended at 48 FR 24080, May 31, 1983; 49 FR 13365, Apr. 4, 1984; 65 FR 39558, June 27, 2000; 66 FR 36176, July 11, 2001]

### §310.8 Leave.

(a) *Enrolled before April 1, 1982.* Limitations on cadet leave, without loss of Federal student subsistence, with the specific limits to be set at the discretion of the Superintendent on an academic year basis, are:

(1) If hospitalized, sick at home, or confined in the sick bay, leave shall not exceed four (4) months.

(2) For an emergency due to the serious illness, injury or death of a very near relative, leave shall not exceed seven (7) days.

(3) Annual leave shall not exceed thirty (30) days.

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(4) Christmas and Easter leave shall not exceed a total of twelve (12) days, and leave may be granted for all legal holidays—Federal and state. This leave is in addition to that granted in paragraph (a)(3) of this section.

(5) Leave in addition to that provided in paragraphs (a) (3) and (4) of this section may be granted only if approved in advance by the Supervisor, upon direct request by the Superintendent.

(b) *Enrolled on or after April 1, 1982.* Midshipmen will be granted leave without loss of incentive payments as follows:

(1) Medical leave, as authorized by the school, not to exceed four (4) months.

(2) Christmas and Easter leave and all legal holidays—Federal and state—as authorized by the school. This leave is in addition to that granted in paragraph (b)(3) of this section.

(3) Excused absences, as authorized by the school, not to exceed thirty (30) days per academic year. All unauthorized leave and all excused absences in excess of thirty (30) days will result in loss of incentive payments. Midshipmen receiving student incentive payments may be granted leaves of absence without pay, as approved by the Superintendent, for periods not to exceed one (1) academic year at a time. Midshipmen in a pay status will only be granted a leave of absence if they continue to meet all requirements for graduation in this part, including age requirements.

[48 FR 24081, May 31, 1983]

### § 310.9 Medical attention and injury claims.

(a) *Medical attention and hospitalization.* The school shall be responsible for arranging that a medical officer shall be attached or on call to the school. During the cruise, the School shall assign a medical officer to the Training Ship.

(b) *Compensation claims of Cadets or Midshipmen.* Compensation claims for personal injuries or death sustained by a federally-assisted cadet or midshipman in the performance of official duty shall be forwarded to the Supervisor for transmission to the Office of Workers' Compensation Programs. The

Supervisor shall furnish necessary forms.

(c) *Medical care and compensation for Officers and other personnel.* Officers and other personnel of the School, and of the Training Ship may avail themselves of any medical facilities furnished by the State or Federal Government for which they qualify. See, for example, 42 CFR part 32. Such persons who are not Federal employees shall look to the State alone for pay, allowances, compensation and other benefits during injury or illness.

[46 FR 37694, July 22, 1981, as amended at 48 FR 24081, May 31, 1983]

### § 310.10 Discipline and dismissal.

(a) Each School shall establish and publish rules and regulations governing Cadet and Midshipman discipline and providing for a demerit system for infractions of these rules and regulations. Serious or excessive violations of the rules and regulations by a Cadet or Midshipman may be considered as evidence of inaptitude for the demanding career of a merchant marine officer and warrant dismissal by the school.

(b) Each Cadet or Midshipman shall, upon admission to the School, be furnished a copy of the School's rules and regulations.

(c) Any Cadet or Midshipman placed on probation for failure to meet the conduct requirements of the school may, at the discretion of the Superintendent, be listed as not in good standing for any period not to exceed six (6) months for the purpose of § 310.7(a)(5).

### § 310.11 Cadet uniforms.

Cadet uniforms shall be supplied at the school in accordance with the uniform regulations of the School. Those regulations shall prescribe a distinctive insignia or device approved by the Maritime Administrator.

### § 310.12 Scope and effect.

(a) If any provisions of this subpart conflict with laws and regulations of the State, the appropriate State authorities shall notify the Maritime Administrator in writing of such conflict and pertinent circumstances. The Maritime Administrator, as a matter of discretion, shall take, or not take, any

action determined appropriate under the 1958 Act or the Act.

(b) The Maritime Administrator may, after consultation with the Superintendents of the schools issue binding executive instructions supplementing this subpart.

**§310.12-1 Form of agreement.**

(a) The form of agreement between the Maritime Administrator and a school for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act is set forth below. The form of agreement may be augmented by special, additional articles if requested by the State and if agreed to by the Maritime Administrator. Agreement by the Maritime Administrator will be rare and will occur only if (1) the State presents good cause (e.g. explicit requirement of State law) and (2) the requested addition is not inconsistent with the 1958 Act or the Act and this subpart.

UNITED STATES OF AMERICA, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

*State Maritime Academy or College Agreement*

This Agreement, entered into as of the 1st day of July 1981, by and between the United States of America, acting through the Department of Transportation, Maritime Administration (hereinafter called the "Administration") and the State of \_\_\_\_\_ (hereinafter called the "State"), acting through the \_\_\_\_\_ Maritime Academy (hereinafter called the "School").

WITNESSETH

Whereas:

1. The Agreement is effective July 1, 1981. A number of its provisions will become effective October 1, 1981, or later, and are so indicated;

2. "The Maritime Education and Training Act of 1980," Pub. L. 96-453 (hereinafter called the "Act"), effective October 1, 1981, and its predecessor statute "The Maritime Academy Act of 1958," Pub. L. 85-672 (hereinafter called the "1958 Act"), provide for payments to State, Regional, and Territory maritime academies and colleges (hereinafter called "schools") for the maintenance and support of such schools;

3. The 1958 Act provides for payments to the schools for students in attendance at such schools commencing with the day such students begin their first term of work at

such schools until the completion of the course of instruction, but in no event for more than four academic years;

4. The Act authorizes the Administration to make payments to students entering into a service obligation agreement with the Administration;

5. The Act authorizes the Administration to pay for the cost of all fuel consumed by a training ship furnished by the Administration while such vessel is being used for training purposes;

6. The Act and the 1958 Act provide for certain requirements regarding courses of instruction and educational standards which any such schools must meet in order to receive said payments referred to in paragraph 2 above; and,

7. The Administration has determined that the School has met or by virtue of this Agreement meets all the requirements referred to in paragraph 6 above.

Now, therefore, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

Article 1. *Assistance Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make annual payments to the school for not in excess of four years if the school has a four-year course and not in excess of three years if the school has a three-year course under this Agreement to be used for the maintenance and support of the school. The amount of each such annual payment shall be not less than the amount furnished to the school for its maintenance and support by the State but shall not exceed \$25,000, or \$100,000 if the school meets the requirements of Article 5(b) of this Agreement.

Art. 2. *Subsistence Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to make payments for each student enrolled in a subsidized status before April 1, 1982, at a rate not in excess of \$1,200 for each academic year. These payments shall be made to the school for the account of each such subsidized student who is attending the school. The school agrees that such payments shall be used by the student to assist in defraying the cost of his or her uniforms, textbooks, and subsistence. It is further agreed that the payments under this Article 2 shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid to the school in such installments as the Administration shall prescribe while such student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

Art. 3. *Student Incentive Payments.*

The Administration, subject to the provisions of Article 5 of this Agreement, agrees to provide the school with service obligation agreement forms for a specified number of students beginning the first term of work at the school on or after April 1, 1982. The service obligation agreement forms shall be signed by the designated students and returned by the school to the Administration which agrees to issue payments to these students in amounts equaling \$1,200 for each academic year to assist them in paying the cost of uniforms, books and subsistence. It is further agreed that under Article 3 payments shall commence to accrue on the day each such subsidized student begins his or her first term of work at the school and that such payments shall be paid in such installments as the Administration shall prescribe while the student is in attendance and until the completion of his or her course of instruction, but in no event for more than the normal period required, by the school, to complete the prescribed course.

*Art. 4. Fuel Payments.*

If funds are appropriated in any given fiscal year and are made available for expenditure by the Administration for fuel consumed by Government-owned training ships furnished to the schools, the allocation of such funds may be as determined in the discretion of the Administration.

*Art. 5. Requirements.*

(a) In consideration of the payments to be made to the school pursuant to Articles 1, 2 and 4 of this Agreement, and of the payments to designated students enrolled in the school pursuant to Article 3 of this Agreement, the school shall, and as a condition of this Agreement agrees to,

(1) Provide courses of instruction in navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of vessels and equipment, and innovations being introduced to the merchant marine of the United States; and,

(2) Conform to such standards in such courses, in training facilities, in entrance requirements, and in instructors, as are established by the Administration after consultation with the Superintendents of schools.

(b) In addition to the condition provided in paragraph (a) of this Article 5 and as an express condition to receiving payments of any amount in excess of \$25,000 for any one year under Article 1 of this Agreement, the school hereby agrees to admit to its courses of instruction otherwise qualified students resident in any other State or Territory in such numbers as the Administration shall prescribe, except that the number so prescribed shall not, at any time, exceed one third of the total number of students attending the school.

(c)(1) The school agrees that, with respect to the training program for merchant marine officers under the Act and the 1958 Act, and

this Agreement, it will, to the extent applicable, comply with the following provisions of law and implementing regulations duly promulgated thereunder (including, but not limited to 15 CFR Part 8): Title VI, Civil Rights Act, 1964 (42 U.S.C. 2000d); Age Discrimination Act of 1975 (42 U.S.C. 6101); and Vocational Rehabilitation section 504 (29 U.S.C. 794). The school further agrees that it will immediately take any measures necessary to effectuate this subparagraph (c)(1).

(2) It is agreed that these assurances are given in consideration of and for the purpose of obtaining and continuing in effect any financial assistance extended after the date hereof to the school by the Administration including any payments to be rendered pursuant to agreements extending financial assistance which were approved prior to such date, and any violation by the school of any of the provisions of this assurance of non-discrimination shall constitute a breach of this Agreement and of each of such prior agreements.

(3) The school further recognizes and agrees that such financial assistance will be extended by the Administration in reliance upon the representations and agreements made in this assurance of nondiscrimination, and that the United States shall have the right (in addition to any of its other rights under its agreements with the school) to seek judicial enforcement of these assurances. These assurances are binding on the school, its principals, officers, employees, agents, successors, transferees, and assignees.

(d) The Administration is hereby authorized to examine and audit the books, records and accounts of the school whenever it is deemed necessary or desirable. Further, the school agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge, adequate office space and other facilities reasonably required by such auditors of the Administration or other persons designated by the Administration in the performance of their duties in administering the provisions of the payments provided under this Agreement. This provision complies with Federal Management Circular 73-6 providing for a single audit for educational institutions and assigning one Federal agency with the audit responsibility for schools receiving Federal aid.

*Art. 6. Methods of Payment.*

(a) *Assistance Payments.* The school shall submit to the Administration annually, at the time and in the form approved by the Administration, a voucher for the assistance payment provided in Article 1 of this Agreement. Each voucher for an assistance payment whether under the Act or the 1958 Act, shall be supported by certified statements of operating expenses for the preceding year, of

an estimate of operating expenses for the year with respect to which the voucher is submitted, of amounts furnished by the State to the school for maintenance and support, and of evidence of compliance with the requirements of paragraph (b) of Article 5 of this Agreement. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(b) *Subsistence Payments.* The school shall submit a monthly voucher, in form approved by the Administration, for the subsistence payments provided in Article 2 of this Agreement. Each voucher for subsistence payments shall be supported by a certified Daily Attendance Report listing the names of all subsidized students and the number of days each was in attendance at the school and is entitled to payment as stated on such voucher. Upon approval of such voucher by the Administration, payment shall be made by the Administration to the school.

(c) *Student Incentive Payments.* The school shall submit a monthly certified Daily Attendance Report listing the names of all designated students who are entitled to the student incentive payments provided in Article 3 of this Agreement and the number of days each was in attendance at the school and is entitled to payment. The Administration shall issue quarterly payments directly to such students.

(d) *Fuel Payments.* Upon notice from the Administration that appropriated funds are available for fuel payments provided in Article 4 of this Agreement, the school will submit a statement of the fuel consumed by the Government-owned training ship supported by copies of all billings representing fuel purchases, a statement of fuel consumed while such ship was being used for training purposes, copies of appropriate fuel consumption entries in the engineering log, and such other information as the Administration may require. The Administration will prepare the necessary voucher and make payment to the school.

*Art. 7. Public Information.*

It is agreed that the school shall include in its curriculum catalogue, student information pamphlets, brochures, and other public information materials, a detail description of the assistance available to the school and its students under the Act, the 1958 Act and this Agreement, including the service obligations of student and graduates who first enter the school on or after April 1, 1982.

*Art. 8. Regulations.*

This Agreement is subject to all the provisions of Part 310, Subpart A, Title 46, Code of Federal Regulations, and the school hereby agrees to conform to said provisions as they may be amended from time-to-time during the period this Agreement is in effect.

*Art. 9. Officials not to Benefit or be Employed.*

No member of or delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

*Art. 10. Disputes.*

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Director, Office of Maritime Labor and Training who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the school, which decision shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the school appeals by mailing or otherwise furnishing said Director, Office of Maritime Labor and Training, a written appeal addressed to the Maritime Administrator, Department of Transportation. The decision of the Maritime Administrator, Department of Transportation, or his or her duly authorized representative, shall be final and conclusive. In connection with any appeal, the school shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the school shall proceed diligently with performance of the Agreement in accordance with the decision of the Director, Office of Maritime Labor and Training.

*Art. 11. Duration of Agreement.*

This Agreement is effective as of the day and year first set forth hereinabove and shall remain in full force and effect for a period of \_\_\_ years after said date, unless sooner terminated by either party as herein provided.

*Art. 12. Termination of Agreement.*

This Agreement may be terminated by either party upon sixty (60) days written notice to the other party, *Provided, however*, that notwithstanding any such termination the parties hereto shall continue to be responsible for the faithful performance of all of the terms and provisions of this Agreement through the effective date of such termination. Termination or expiration of this Agreement shall neither affect nor relieve either party of any liability or obligation that may have arisen or accrued prior thereto.

*Art. 13. Renewal of Agreement.*

Unless terminated by notice, as provided for herein under Article 12 of this Agreement, the rights and privileges granted to, and the obligations assumed by, the parties together with all other provisions of this Agreement shall continue in full force and effect and shall be renewed from year-to-year for an additional period of one (1) year from the expiration date herein, unless either party shall at least three (3) months prior to the date of expiration of any additional one (1) year period notify the other

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party in writing that it does not desire the Agreement to be extended for such additional one (1) year period. This Agreement, as extended year-to-year as aforesaid, may be amended, modified or supplemented in writing at any time by the mutual consent of the parties hereto.

**Art. 14. Assignment Prohibited.**

It is hereby agreed by the school that the Agreement, or any interest herein, shall not be assigned to any other person without the prior written consent of the Administration, which consent may be subject to such terms and conditions as the Administration deems appropriate.

**Art. 15. Availability of Funds.**

It is understood and agreed by and between the parties hereto that the obligations under this Agreement shall be deemed executory to the extent of the monies available to said parties for the purpose thereof and no liability on account thereof shall be incurred beyond such available monies by either of said parties.

**Art. 16. Prior Agreement.**

It is hereby understood and agreed by and between the parties hereto that the agreement in effect between the parties on the date prior to the effective date of this Agreement is superseded by this Agreement but only as to obligations not incurred prior to the expiration date of said prior agreement under the provisions of said prior agreement.

In witness whereof, the UNITED STATES OF AMERICA, represented as aforesaid, has caused this Agreement to be executed on its behalf in three counterparts as of the day and year first written hereinabove and actually on the \_\_\_ day of \_\_\_ 19\_\_.

Attest:

United States of America, Department of Transportation, Maritime Administration.

Secretary. \_\_\_\_\_  
By: \_\_\_\_\_

Maritime Administrator of Maritime Affairs.  
[Seal]

Attest:

State of \_\_\_\_\_  
\_\_\_\_\_ Maritime Academy

By: \_\_\_\_\_  
[Seal]

Approved as to form:

\_\_\_\_\_  
General Counsel, Maritime Administration.

[46 FR 37694, July 22, 1981. Redesignated at 48 FR 24081, May 31, 1983]

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

**AUTHORITY:** Secs. 204(b) and 1301–1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b) and 1295–1295g); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

**SOURCE:** 47 FR 21812, May 20, 1982, unless otherwise noted.

**§ 310.50 Purpose.**

The regulations in this subpart govern the nomination, admission and appointment of midshipmen to the United States Merchant Marine Academy,

**§ 310.51 Definitions.**

(a) *Academy* means the United States Merchant Marine Academy.

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

(c) *Administration* means the Maritime Administration, Department of Transportation.

(d) *Administrator* means the Administrator of the Maritime Administration.

(e) *Citizen* means an individual who, by birth or naturalization, owes national allegiance to the United States, but the term excludes United States nationals.

(f) *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.

(g) *NOAA* means the National Oceanic and Atmospheric Administration.

(h) *USNR* means the United States Naval Reserve.

**§ 310.52 General.**

(a) Midshipmen are appointed to the Academy for training to prepare them to become officers in the U.S. merchant marine. The Academy, located at Kings Point, New York, is maintained by the Government as a part of the Administration. After successful completion of the 4-year course of study, a graduate of the Academy shall receive a Bachelor of Science degree and a merchant marine license as either a

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third officer or third assistant engineer (or both licenses upon completion of a special curriculum and passing the respective license examinations) issued by the U.S. Coast Guard. If qualified, a graduate may be commissioned as an officer in a reserve component of an armed force of the United States.

(b) Midshipmen entering the Academy after April 1, 1982, are required by the Act to sign an agreement committing them to service obligations following the date of graduation. The terms of the service obligation contract are set forth in § 310.58 of this subpart.

**§ 310.53 Nominations and vacancies.**

(a) *Nominating officials.* (1) Each Senator and Member of the House of Representatives (including delegates from Guam, the Virgin Islands and the District of Columbia and the Resident Commissioner from Puerto Rico), the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate to the House of Representatives from American Samoa may nominate ten (1) candidates to compete for admission to the Academy.

(2) In accordance with the Act (46 U.S.C. 1295b (b)(1)), nominating officials may only nominate candidates who are residents of the State or other geographic area which the particular nominating official represents, as follows:

The candidate must be a resident of—	To be nominated by—
The State .....	A Member of the U.S. Senate representing that State.
The State .....	A Member of the U.S. House of Representatives whose Congressional District is located in that State.
Guam .....	The Delegate to the U.S. House of Representatives representing Guam.
Virgin Islands .....	The Delegate to the U.S. House of Representatives representing the Virgin Islands.
District of Columbia .....	The Delegate to the U.S. House of Representatives representing the District of Columbia.
Commonwealth of Puerto Rico.	The Resident Commissioner to the United States from Puerto Rico.
American Samoa .....	The Delegate to the House of Representatives representing American Samoa.

The candidate must be a resident of—	To be nominated by—
Any area or installation located in the Republic of Panama which is made available to the United States pursuant to the (i) the Panama Canal Treaty of 1977, (ii) the agreements relating to and implementing the Treaty signed September 7, 1977, and (iii) the Agreement between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979; <i>Provided</i> , That no residence in the Republic of Panama is required if nomination is due to his or her parent's employment in the Panama Canal or in the Republic of Panama by the United States Government or the Panama Canal Commission.	Panama Canal Commission.
Northern Mariana Islands .....	Governor of the Northern Mariana Islands. Secretary of the Interior.
Trust Territory of the Pacific Islands.	

(3) Individuals must be residents of the Trust Territory of the Pacific Islands to qualify for designation by the Secretary of the Interior.

(4) Nominating officials may select nominees, and the Secretary of the Interior may select designees, by any method they wish, including a screening examination.

(5) Candidates from nations other the United States must be nominated by an official of their home government and have their applications approved by the United States Government official specified in § 310.66 (a), or (c) or (d).

(b) *Vacancies.* (1) The number of vacancies in each entering class allocated to each State is in proportion to the representation in Congress from that State.

(2) In each entering class, two vacancies shall be allocated each year for individuals nominated by the Panama Canal Commission; one vacancy each to nominees from Puerto Rico, Guam, Virgin Islands, Northern Marian Islands and American Samo; and four vacancies to nominees from the District of Columbia.

(3) Not to exceed four (4) individuals at any one time may be admitted from

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the Trust Territory of the Pacific Islands and twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, but not more than two (2) individuals from any one of such nations shall receive training at the same time.

(4) The Administrator may permit, upon approval of the Secretary of State, not more than thirty (30) individuals at one time from nations other than the United States to receive instruction at the Academy, subject to the condition that the foreign nations reimburse the Administrator for the cost of such training.

(5) The distribution of each entering class by State is:

Alabama .....	4
Alaska .....	1
Arizona .....	3
Arkansas .....	2
California .....	19
Colorado .....	4
Connecticut .....	4
Delaware .....	1
Florida .....	10
Georgia .....	5
Hawaii .....	2
Idaho .....	2
Illinois .....	9
Indiana .....	3
Iowa .....	4
Kansas .....	3
Kentucky .....	2
Louisiana .....	4
Maine .....	2
Maryland .....	5
Massachusetts .....	5
Michigan .....	7
Minnesota .....	3
Mississippi .....	3
Missouri .....	3
Montana .....	2
Nebraska .....	2
Nevada .....	2
New Hampshire .....	2
New Jersey .....	6
New Mexico .....	2
New York .....	15
North Carolina .....	6
North Dakota .....	1
Ohio .....	8
Oklahoma .....	2
Oregon .....	3
Pennsylvania .....	10
Rhode Island .....	2
South Carolina .....	4
South Dakota .....	1
Tennessee .....	4
Texas .....	13
Utah .....	2
Vermont .....	1
Virginia .....	5

Washington .....	5
West Virginia .....	2
Wisconsin .....	4
Wyoming .....	1

(6) The distribution of each entering class otherwise provided under the Act is:

Northern Mariana Islands .....	1
Puerto Rico .....	1
District of Columbia .....	4
Republic of Panama .....	2
Guam .....	1
American Samoa .....	1
Virgin Islands .....	1
Administrator .....	Not to exceed 40.

(7) The distribution of students provided for under the Act without reference to entering class is:

	Not to exceed at any one time
Trust Territory of the Pacific Islands .....	4
Western Hemisphere nations (other than U.S.) ....	12
Foreign nations .....	30

(c) *Request for nomination.* A person interested in admission to the Academy who feels that he or she meets the requirements in this subpart should request a nomination from his or her Senator or Representative or other appropriate nominating official listed in paragraph (a) of this section.

(d) *Date for nominations.* The nominating official will send a nomination form for each nominee to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, Long Island, New York 11024, normally between August 1 and December 31 of the school year preceding that in which admission to the Academy is desired.

(e) *Appointments.* (1) The Administrator shall make appointments to fill the vacancies allocated pursuant to paragraph (b) of this section from among qualified nominees, in order of merit, from each geographical area. The order of merit shall be established according to the procedure as specified in §310.57(b). Such appointments first shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter, appointments shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter appointments shall be made from among remaining qualified nominees (national alternates) in order

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of merit regardless of the area of residence.

(2) The Administrator may appoint, without competition, not more than forty (40) qualified citizens who possess qualities deemed to be of special value to the Academy. In making these appointments, the Administrator shall give special consideration to achieving a national demographic balance and to recognizing individuals with qualities deemed to be of special value to the Academy.

[47 FR 21812, May 20, 1982, as amended at 51 FR 17741, May 15, 1986; 60 FR 44438, Aug. 28, 1995]

### § 310.54 General requirements for eligibility.

(a) *Citizenship.* All candidates shall be citizens of the United States except: (1) Nominees from foreign nations; (2) nominees from the Northern Mariana Islands; (3) designees from the Trust Territory of the Pacific Islands; and (4) nominees from American Samoa, who may be American nationals. No person who is not a citizen shall be entitled to any office or position in the U.S. merchant marine by reason of his or her graduation from the Academy, until such person shall have become a citizen.

(b) *Age.* On July 1 of the year of admission to the Academy, a candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25) birthday.

(c) *Character.* A candidate shall be of good moral character. The Administrator may reject the nomination of any candidate whose character is incompatible with the Academy's standards. No person who has been dismissed or compelled to resign from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, the Academy or a State maritime academy for improper conduct shall be eligible for appointment as a midshipman at the Academy. No person whose last discharge from any armed force was under conditions other than honorable or who has had a merchant mariner document removed or suspended for cause shall be eligible for appointment as a midshipman.

(d) *Investigation.* To be eligible for appointment, all candidates who are United States citizens shall be completely loyal to the United States and shall meet the requirements established by the Department of the Navy for designation as Midshipman, USNR (including the Merchant Marine Reserve, USNR). Candidates for appointment shall execute documents approved by the Administrator for the purpose of a security and suitability investigation. Appointment as a Midshipman, USNR (including the Merchant Marine Reserve, USNR) shall be a condition of admission for an individual who is a citizen. A candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation shall be subject to immediate separation should the candidate, as a result of the investigation, fail to meet the requirements established for appointment as Midshipman, USNR.

(e) *Waivers.* There shall be no waivers of general eligibility requirements.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66)

[47 FR 21812, May 20, 1982, as amended at 49 FR 45858, Nov. 21, 1984]

### § 310.55 Scholastic requirements.

(a) *Academic requirements*—(1) *Credits.* Applicants shall have satisfactorily completed their high school education at an accredited secondary school, or equivalent, and shall present at least 15 units of credit for subjects acceptable to the Academy, comprised of:

(i) 7 required units, as follows:

(A) 3 units of Mathematics (from algebra, geometry and trigonometry);

(B) 3 units of English; and

(C) 1 unit of Physics or Chemistry.

(ii) 8 other units, preferably chosen from the following fields:

(A) Additional mathematics and science;

(B) Foreign language;

(C) Economics; and,

(D) Social science.

(2) *Evidence of academic work.* Before approval of an application, each applicant shall submit evidence showing completion of high school education, or showing that such education will be

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completed no later than June 30 of the year in which admission is sought.

(b) *Scholastic examinations*—(1) *Required entrance examinations.* Applicants 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. A candidate electing to use the College Board shall take both the mathematics and the verbal section of the SAT. A candidate electing to use the ACT, shall take all the tests, namely, English, Mathematics, Social Sciences and Natural Sciences. Minimum qualifying scores on the entrance examinations will be determined by the Superintendent of the Academy for each entering class prior to any offers of appointment for the particular class. Any score below the minimum on any one section of an examination shall make the nominee ineligible for admission. All examination costs shall be borne by the applicant. Nominees shall take all the required examinations by the February testing date in the year for which they seek appointment, unless the Academy's Admissions Office grants special authorization to take later examinations.

(2) *Forwarding test results.* Candidates shall be responsible for requesting the testing services to submit their scores directly to the Academy.

(3) *Test information.* Information on the entrance examinations may be obtained from—

The candidate's high school guidance office; or,  
College Board, P.O. Box 592, Princeton, N.J. 08540; or,  
College Board, P.O. Box 1025, Berkeley, CA. 94701; or,  
American College Testing Program, P.O. Box 168, Iowa City, IA 52240.

(c) *Prior Scholastic Record.* Applicants shall demonstrate scholastic achievement by having attained a relatively high standing in relation to their fellow students and by having shown proficiency in mathematics and science courses. With respect to applicants who completed high school at least one year before applying for admission to the Academy, consideration will be given to satisfactory college level study or

any special study undertaken to strengthen their academic backgrounds, particularly in respect to determining whether such supplementary academic activity offsets any deficiency in high school scholastic records.

(d) *Waivers.* No waivers of scholastic requirements will be granted.

### § 310.56 Physical requirements.

(a) *Physical standards.* (1) A candidate shall meet the physical requirements prescribed by the Department of the Navy for appointment as Midshipman, USNR (including the Merchant Marine Reserve, USNR) and the requirements prescribed by the U.S. Coast Guard for original licensing as a third mate and third assistant engineer. All candidates shall have color perception and refractive error within the limits prescribed by the Department of the Navy or by the U.S. Coast Guard, whichever are higher.

(2) The requirement to meet these standards is a continuing one and shall apply through graduation from the Academy. Failure to meet the standards while attending the Academy is grounds for, and may lead to disenrollment. Individuals who have completed at least two years of study and, as a result of an accident, illness or other cause (during official duty), fail to meet this requirement may be permitted to remain at the Academy at the discretion of, and under conditions set by, the Administrator. Those individuals permitted to remain through graduation will agree to fulfill aspects of the service obligation which they are capable of, as deemed appropriate by the Administrator.

(b) *Qualifying physical examinations.* All candidates for the Academy shall have a physical and dental examination conducted by a service academy examining facility designated by the Service Academies Central Medical Review Board. The required physical examination shall occur within 1 year preceding the date of admission to the Academy. Although there is no charge for such examination, all expenses (including travel, meals and hotel accommodations) incurred in obtaining such examination shall be borne by the applicant. Candidates may be subject to reexamination upon reporting to the

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Academy and at any time while attending the Academy.

(c) *Physical reexamination.* A candidate who is rejected for failure to meet the physical requirements may request either a reevaluation of the examination results or a reexamination. A midshipman failing to meet the physical requirements while attending the Academy is entitled to make the same request.

(d) *Waivers.* Some medical requirements may be waived for enrolled students and applicants to the USMMA who require such a medical waiver to qualify for admission and/or retention. Since commissioning in the United States Navy, or any other branch of the Armed Forces, is a requirement for graduation, no waivers will be granted for medical conditions which would prevent commissioning in at least a restricted status in the U.S. Navy Reserve. Individuals interested in waiver consideration may request a waiver by writing to the Superintendent, USMMA. The granting of medical waivers will be based on U.S. Navy guidelines and regulations for waiver consideration for admission to the U.S. Naval Academy and the physical requirements consistent with commissioning as a reserve officer in the U.S. Navy in a restricted line program. Individuals requesting medical waivers must be able to meet all other admission requirements, including the physical examination requirement for an original U.S. Coast Guard merchant marine license as a third mate and/or third assistant engineer. The decision of the Superintendent on any requested waiver is administratively final.

[47 FR 21812, May 20, 1982, as amended at 55 FR 46952, Nov. 8, 1990]

### § 310.57 Application and selection of midshipmen.

(a) *Application.* All candidates shall submit an application for admission to the Academy's Admissions Office. Prospective candidates also should submit an application, but are not considered official candidates until their nominations are received. Candidates shall submit with their applications an official transcript and personality record from the candidate's high school and, if applicable, such records from any

school attended after high school graduation. Application forms are available upon request by writing to the Admissions Office at the Academy.

(b) *Selection of Midshipmen.* Selection of midshipmen for appointment to fill vacancies allotted to the various States and other locations, as specified in § 310.53(b) (1) and (2) of this subpart, shall be in order of merit. The order of merit shall be determined on the scores of the required entrance examinations, on assessment of the academic background of the individual and on such other factors as are considered by the Academy to be effective indicators of motivation and the probability of successful completion of training at the Academy. No preference shall be granted in selecting individuals for appointment because one or more members of their immediate families are alumni of the Academy.

(c) *Notification of selection.* Results of the selection process will be made known about May 1 each year. The Academy shall advise each candidate and his or her nominating official of his or her status as a principal candidate, as an alternate candidate or as an unqualified candidate. Alternates will replace principal candidates who decline appointment or fail to meet the physical requirements or the security and suitability investigation.

(d) *Service obligation agreement.* Each candidate selected for appointment to the Academy after April 1, 1982, who is a citizen of the United States, shall sign a service obligation contract as a condition of admission. The contract is prescribed in § 310.58 of this subpart.

(e) *Reporting to the Academy.* Candidates who accept offers of appointment shall, pursuant to instructions issued by the Academy, report to the Academy on a specified date in mid-July for orientation and induction.

(f) *Oath.* Each midshipman who is a citizen of the United States shall take the following oath of office at the Academy:

"I, \_\_\_\_\_, having been appointed a midshipman to the U.S. Merchant Marine Academy, accept appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to

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the same; that I will comply with all the regulations of the U.S. Merchant Marine Academy; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

(g) *Birth Certificate.* Each candidate shall present a certificate of birth authenticated by an authorized official.

### § 310.58 Service obligation for students enrolled after April 1, 1982.

(a) *Form of service obligation contract.* The service obligation contract shall obligate each midshipman who is a citizen and who enters the Academy after April 1, 1982, to:

(1) Complete the course of instruction at the Academy, unless sooner separated by 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;

(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 the foreign and 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 Administrator), if the 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 NOAA; or

(iv) By combining the services specified in paragraphs (a)(5) (i), (ii) and (iii) of this section; 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, a satisfactory year of service on vessels 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.

(c) *Marine-related employment.* (1) Graduates who do not meet the sea service requirement in paragraph (b) of this section and who claim employment in a United States maritime-related industry, profession or marine science as meeting all or part of the service obligation under paragraph (a)(5) of this section and the service obligation contract shall submit evidence to the Administration that they have conscientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence submitted, and other information available to the Administration, shall be considered in any finding. In view of current and projected employment opportunities afloat, the Administrator will grant the shoreside employment option infrequently and only on the basis of comprehensive evidence.

(2) The Administrator may consider positions of operational, management or administrative responsibility, including, but not limited to, the following marine-related categories, to be under the provisions of § 310.58(a)(5)(ii) of this subpart and the service obligation contract: Civilian employment in Federal and State agencies related to maritime affairs; steamship companies; stevedoring companies; vessel chartering and operations; cargo terminal operations; naval architecture; shipbuilding and repair; municipal and

State port authorities; and port development, marine engineering, and tug and barge companies.

(d) *Reporting requirements.* (1) Each graduate must submit an employment report form 13 months following his or her graduation and each succeeding 12 months for a total of five consecutive years to: Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW., Washington, DC 20590.

*Example 1:* Midshipman graduates on June 30, 2001. His first reporting date is July 1, 2002 and thereafter for 5 consecutive years.

*Example 2:* Midshipman has a deferred graduation on November 30, 2001. His first reporting date is December 1, 2002 and thereafter for 5 consecutive years.

(2) The Maritime Administration will provide reporting forms. However, non-receipt of such form will not exempt a graduate from submitting employment information as required by this paragraph. The reporting form has been approved by the Office of Management and Budget (2133-0509).

(e) *Breach of contract.* (1) If the Administration determines that any individual who has attended the Academy for not less than 2 years has failed to complete the course of instruction at the Academy, the Secretary of the Navy may order that individual to active duty in the U.S. Navy, at a rating determined by the U.S. Navy, to serve for a period of time not to exceed 2 years. The Administration shall submit the list of those who have breached their service obligation contract to the Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508.

(2) If the Administration determines that a graduate of the Academy has broken his or her agreement under paragraphs (a)(2) through (6) of this section and the service obligation contract, 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 required under said subparagraph (5) and the contract. The Administrator, in consultation with the Department of Defense and the U.S. Coast Guard, shall determine in which service the graduate shall serve and the pe-

riod of time. The branch of service in which the individual serves shall determine the rank or rating of the individual. If the Secretary of Defense is unable or unwilling to order an individual to active duty, the Secretary of Transportation may recover from the individual the cost of education provided by the Federal Government by requesting the Attorney General to begin court proceedings to recover the costs of that education.

(f) *Waivers.* The Administrator shall have the discretion to grant waivers 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 to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, DC 20590.

(g) *Deferments.* In exceptional cases, the Administration may grant a deferment of all or part of the agreement under paragraph (a)(5) of this section and the service obligation contract, for a period not to exceed 2 years, only for graduates considered to have superior academic and conduct records while at the Academy and only for the purpose of entering a marine or maritime-related graduate course of study approved by the Administrator; *Provided,* That any deferment of service as a commissioned officer under paragraph (a)(5)(iii) of this section and the service obligation contract shall be subject to the sole approval of the Secretary of the department which has jurisdiction over such service (including the Secretary of the department in which the U.S. Coast Guard is operating and the Secretary of Commerce with respect to NOAA). A graduate shall make application for such deferment through the Superintendent of the Academy, who shall forward each application, together with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW,

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Washington, DC 20590 for appropriate action.

(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 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 Secretary, 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 Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(iv) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the

date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (h)(2)(ii) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (h)(2)(ii) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(v) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

*Example to paragraph (b)(10)(v):* If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(3) The Maritime Administrator will issue a written decision for each timely appeal. This decision constitutes final agency action.

(4) If a student or graduate fails to appeal within the time set forth in paragraph (h)(2) of this section, the decision of the designated official will be final and constitute final agency action.

[47 FR 21812, May 20, 1982, as amended at 60 FR 44438, Aug. 28, 1995; 65 FR 39558, June 27, 2000; 66 FR 36177, July 11, 2001]

### § 310.59 Courses of instruction.

(a) *At Academy.* Three major curriculums are offered: Nautical Science, for



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the preparation of deck officers; Marine Engineering, for the preparation of engineering officers; and the Dual License Program, a combined course which leads to licenses in both specialties. All midshipmen who are citizens shall take naval science courses prescribed by the Department of the Navy. All curriculums include general education courses and electives.

(b) *Sea year.* Midshipmen spend one-half of their sophomore (third class) year and one-half of their junior (second class) year training at sea aboard one or more merchant vessels. In addition to practical shipboard assignments, midshipmen are required to complete written study assignments incorporating material from the major segments of the Academy curriculums.

### § 310.60 Training on subsidized vessels.

All operators of subsidized merchant vessels, in accordance with contractual arrangements, are required to employ for training at least two midshipmen, as assigned by the Superintendent of the Academy, which employment shall be in accordance with the following provisions.

(a) *Work assignments.* All practical work assignments for midshipmen shall be in accordance with courses prescribed by the Superintendent of the Academy.

(b) *Working hours.* In order to permit midshipmen to complete their academic assignments, vessel employers shall not require midshipmen to work more than 8 hours each day. Midshipmen shall devote at least 3 hours of their own time each day to study.

(c) *Pay.* Midshipmen shall receive pay while employed aboard merchant vessels directly from the steamship company employers at the same rate received by cadets and midshipmen at the other Federal academies. A change in the rate of pay for midshipmen at the Academy shall occur after a change in the rate of pay for cadets/midshipmen at the other Federal academies and shall be effective either on June 15th or on December 15th of the same calendar year, whichever occurs first. While aboard ship, they shall be berthed in single-occupancy rooms or in rooms with other midshipmen in

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that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers. The steamship company employers shall also pay the midshipmen such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel in which the midshipmen are employed.

(d) *Berthing and messing.* While aboard ship, midshipmen shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers.

(Secs. 204(b) and 1301-1308, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b); and 1295 through 1295g); Pub. L. 96-453; Pub. L. 97-31; 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981); EO 12387 (47 FR 44981, Oct. 13, 1982)

[47 FR 21812, May 20, 1982, as amended at 52 FR 21534, June 8, 1987]

### § 310.61 Training on other vessels and by other facilities or agencies.

The Administrator may arrange for training of midshipmen on Government-owned vessels, in cooperation with other governmental and private agencies, and on other vessels documented under the laws of the United States if the owner of such vessel cooperates in such use. Midshipmen may be assigned for training in shipyards, plants, and industrial and educational organizations for instructional purposes only.

### § 310.62 Allowances and expenses; required deposit.

(a) *Items furnished.* Each midshipman shall receive: Free tuition, quarters and subsistence; limited medical and dental care; and certain travel expenses, in accordance with chapter 5, part A, of the Joint Travel Regulations For Members Of Uniform Services, Vol. 1 (U.S. Department of Defense publication, Serial No. 0516-LP-255-0265), while traveling under official Academy orders.

(b) *Required Deposit.* Prior to admission to the Academy, each midshipman shall make a specified deposit, as established by Academy regulations, to

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help defray the cost of items and services generally of a personal nature which are not provided by the Academy. Additional deposits, as prescribed in Academy regulations, are required to be made in subsequent years. Failure to make any required deposit will result in denial of admission, suspension or disenrollment.

### § 310.63 Uniforms and textbooks.

The Academy shall supply midshipmen uniforms and textbooks in accordance with Academy regulations.

### § 310.64 Privileges.

(a) Midshipmen may be granted a leave of absence of approximately four (4) weeks after completing each of the first, second and third years of training.

(b) Classes and exercises are suspended on New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and such other days as may be designated by the President as holidays for Federal employees.

(c) Midshipmen may be granted approximately 2 weeks leave during the period which includes Christmas Day and New Year's Day.

(d) Liberty and other privileges are granted to midshipmen meriting them under Academy regulations.

(e) Relatives and friends of midshipmen may visit at the Academy during such hours as the Superintendent may prescribe.

(f) There shall be a Ship's Service Store maintained as a non-appropriated fund activity at the Academy primarily to serve the needs of the midshipmen.

### § 310.65 Graduation.

(a) *Classes enrolled prior to April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Filing for a commission in the USNR (including the Merchant Marine Reserve, USNR); and

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be granted commissions as Ensign, USNR (including the Merchant Marine Reserve, USNR) by the Department of the Navy.

(3) In return for the education received at Government expense, each applicant shall sign an agreement to serve in one of the following categories immediately after graduation:

(i) Sail on his or her license at sea for not less than six (6) months each year for three (3) consecutive years; or

(ii) Sail on his or her license at sea for not less than four (4) months each year for four (4) consecutive years; or

(iii) Apply for and serve on active duty for training on board a U.S. Navy ship for a minimum period of thirty (30) consecutive days each year for a period of three (3) consecutive years, and be either employed ashore for the balance of each year in some phase of the maritime industry or engaged in full-time graduate studies related to the maritime field; or

(iv) Apply for and serve on full-time active duty as a commissioned officer in a uniformed service of the United States for a period of 3 consecutive years.

(b) *Classes enrolled after April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Application for an appointment, and acceptance if tendered of an appointment, as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the U.S. Coast Guard Reserve, or any other Reserve component of an armed force of the United States; and,

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(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be commissioned as a reserve officer in an armed force as described in paragraph (b)(1) of this section.

(3) The service obligation incurred by graduates is prescribed in § 310.58 of this subpart.

### § 310.66 Foreign students.

(a) *Appointments from the Trust Territory of the Pacific Islands.* The Administrator may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy. Not more than 4 such individuals may receive instruction at any one time. Residents of the Trust Territory of the Pacific Islands are neither citizens nor nationals of the United States.

(b) *Appointments from the Northern Mariana Islands.* The Governor of the Northern Mariana Islands may nominate individuals for one position each year allocated to residents of the Northern Mariana Islands. Such residents are neither citizens nor nationals of the United States.

(c) *Appointments from nations located in the Western Hemisphere.* The President may designate individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation. The Secretary may allow, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy on a reimbursable basis.

(d) *Appointments from nations other than the United States.* In addition to the appointments under paragraphs (a), (b) and (c) of this section, the Administrator, with the approval of the Secretary of State, may permit individuals from any nations other than the

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United States to receive instruction at the Academy. Not more than 30 such individuals may receive instruction at any one time.

(e) *Candidate Sponsors.* A representative of the Administration or a diplomatic representative of the United States in the candidate's country of residence will be designated as the Candidate's Sponsor. It will be the responsibility of the Candidate's Sponsor to act as liaison with the appropriate officials of the candidate's country of residence and to coordinate all activities, including funding arrangements, entrance examinations, medical examinations, country clearances, travel papers, transportation to the Academy, obtaining the necessary designation by the Department of the Interior in the case of candidates from the Trust Territory of Pacific Islands under paragraph (a) of this section, the nomination of the Governor of the Northern Mariana Islands under paragraph (b) of this section, the nomination of a designee of the President in the case of candidates from nations located in the Western Hemisphere under paragraph (c) of this section, and the approval of the Department of State in the case of candidates from nations other than the United States under paragraph (d) of this section. In addition, the Candidate's Sponsor shall furnish to the Admissions Office of the Academy a report as to the candidate's proficiency in the use of idiomatic English.

(f) *Admissions Procedure—(1) Applications.* Applications for enrollment of foreign students shall be processed through the appropriate diplomatic channels of the applicant's country and the appropriate offices in the United States Departments of State or of the Interior, whichever is applicable. Applications shall reach the appropriate office of the United States Government by January 1 of the year in which admission is sought. After endorsement by the authorized official of the United States Government, the application will be forwarded promptly to the Academy's Admissions Office.

(2) *Qualifications.* Each candidate shall:

(i) Be a bona fide citizen of the country transmitting the application and meet the requirements as to age and

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character set forth in §310.54 of this subpart;

(ii) Possess the physical qualifications, specified in §310.56 of this subpart, and undergo a physical examination as arranged by the Academy's Admissions Office;

(iii) Be proficient in reading, writing and speaking idiomatic English; and,

(iv) Satisfy the following scholastic requirements:

(A) Meet the minimum qualifying scores on the entrance examinations as specified in §310.55 of this subpart. When available, special foreign language College Board examinations may be substituted for the College Board or American College Testing Program examinations. Detailed certificates covering schoolwork of foreign students are required. Transcripts shall be submitted in the English language.

(B) Submit a certificate from his or her Government that he or she is conversant with the literature of his or her native country and that he or she has completed a course in the literature of his or her native language generally equivalent to two (2) years of secondary schoolwork in literature in the United States. In lieu of this certificate, a candidate may produce evidence of having acquired the units for literature from accredited United States schools.

(g) *Cost of instruction.* Students admitted to the Academy pursuant to paragraphs (a), (b) and (c) of this section shall be subject only to the same fees as are paid by citizen midshipmen. The cost of instruction (including the same allowances as received by midshipmen at the Academy appointed from the United States) for students admitted to the Academy under paragraph (d) of this section must be reimbursed to the Administrator by the nation from which the student comes. Such reimbursement shall be the incremental cost of providing the instruction to each of such foreign students (including the cost of allowances). The amount of reimbursement shall be established by the Academy separately for each entering class and each upper class prior to January 1 of the year in which the academic year begins and will be payable annually in advance of commencement of the academic year.

Instructions as to payment procedures will be provided with the statement of the amount to be reimbursed. Students admitted to the Academy pursuant to paragraph (d) of this section shall pay the same fees paid by citizen midshipmen.

(h) *Uniforms, textbooks and allowances.* The Academy shall provide to foreign students receiving instruction at the Academy all required uniforms and textbooks and allowances for transportation as are provided to citizen midshipmen.

(i) *Rules and regulations.* Subject to such exceptions as shall be jointly agreed to by the Administrator and the Secretary of the Interior with respect to individuals from the Trust Territory of the Pacific Islands, foreign students, including students from the Northern Mariana Islands, receiving instruction at the Academy shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduation as citizen midshipmen; but such persons shall not be entitled to hold any license authorizing service on any merchant vessel of the United States solely by reason of graduation from the Academy.

(j) *Oath.* In lieu of the oath of allegiance to the United States, a substitute oath shall be required of students who are not citizens of the United States, as follows:

"I, \_\_\_\_\_, a citizen of \_\_\_\_\_, aged \_\_\_\_ years and \_\_\_\_ months, having been appointed to receive instruction at the U.S. Merchant Marine Academy, do solemnly swear (or affirm) to comply with all regulations of the U.S. Merchant Marine Academy and to give my utmost efforts to accomplish satisfactorily the required curriculum with the full knowledge that I shall be disenrolled from the U.S. Merchant Marine Academy if deficient in conduct, health or studies."

[47 FR 21812, May 20, 1982, as amended at 60 FR 44439, Aug. 28, 1995]

### § 310.67 Academy regulations.

The Superintendent of the Academy is delegated authority to issue all regulations necessary for the accomplishment of the Academy's mission.