

Maritime Administration, DOT**§ 310.58**

(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 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.

[47 FR 21812, May 20, 1982, as amended at 68 FR 62538, Nov. 5, 2003; 69 FR 61451, Oct. 19, 2004]

§ 310.58 Service obligation for students executing or reexecuting contracts.

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

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

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

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

(4) Apply for an appointment as, accept any tendered appointment as and

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

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

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

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that service under paragraph (a)(5)(i) of this section is not available;

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

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

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

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

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

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

§310.58

46 CFR Ch. II (10-1-10 Edition)

merchant marine as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

(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 serve 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 annual Service Obligation Compliance Report form (MA-930) to the Maritime Administration between January 1 and March 1 following his or her graduation. After the initial report is submitted, each graduate must continue to submit annual reports during the same time frame between January 1 and March 1

for six (6) consecutive years thereafter, or until all components of the service obligation are fulfilled, whichever is latest. Each graduate will file a minimum of seven (7) reports in order to give information on all six (6) years of the service obligation. Graduates are encouraged to submit their Service Obligation Compliance Report forms (MA-930) to MARAD using the web-based Internet system at <https://mscs.marad.dot.gov>. Reports may also be mailed to: Compliance Specialist, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590.

(i) Example 1: Midshipman graduates on June 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and thereafter between January 1 and March 1 for six (6) consecutive years (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

(ii) Example 2: Midshipman has a deferred graduation on November 30, 2004. His or her first reporting period is between January 1, 2005 and March 1, 2005 and thereafter between January 1 and March 1 for six (6) consecutive years (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

(iii) Example 3: Midshipman graduated in June 2003 and has already begun his or her service obligation reporting. His or her reports are now due between January 1 and March 1 of each reporting year.

(2) The Maritime Administration will provide reporting forms upon request. However, non-receipt of such forms will not exempt a graduate from submitting service obligation information as required by this paragraph. Graduates are encouraged to submit their Service Obligation Compliance Report forms (MA-930) electronically at <https://mscs.marad.dot.gov>. The reporting form has been approved by the Office of Management and Budget (2133-0509).

(e) *Breach of contract.* (1) Breach before graduation: (i) If the Maritime Administrator determines that an individual who has attended the Academy for not less than two (2) academic

Maritime Administration, DOT**§ 310.58**

years has failed to complete the course of instruction at the Academy, such individual may be ordered by the Secretary of Defense to active duty in one of the Armed Forces of the United States to serve for a period of time not to exceed two (2) years. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

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

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

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

(ii) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (e)(2)(i) of this section or if the Maritime Ad-

ministrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided.

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

(f) *Waivers.* The Maritime Administrator shall have the discretion to grant waivers of all or a portion of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted in writing to the Academies Program Officer, Office of Policy and Plans, Maritime Administration, 400 7th St., SW., Washington, DC 20590.

(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 or for the purpose of pursuing studies as recipients of scholarships or fellowships of national significance; *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

§ 310.59

records, to the Academies Program Officer, Maritime Administration, Office of Policy and Plans, NASSIF Building, 400 7th St., SW., 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 thirty (30) calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Maritime Administrator, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Policy and Plans. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Policy and Plans, Maritime Administration, 400 7th St., SW., Washington, DC 20590. Students and graduates can determine the current address on file with the Office of Policy and Plans by logging into the service obligation contract compli-

46 CFR Ch. II (10-1-10 Edition)

ance Web site at <http://mscs.marad.dot.gov>. Changes in the address listed can be made through the Internet.

(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.

(i) *Remedies.* To aid in the recovery of the Cost of Education Provided the Maritime Administrator may request the Attorney General to begin court proceedings, and the Maritime Administrator also may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

[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; 69 FR 9759, Mar. 2, 2004; 69 FR 29081, May 20, 2004; 69 FR 31903, June 8, 2004; 69 FR 61454, Oct. 19, 2004; 70 FR 28833, May 19, 2005]

§ 310.59 Courses of instruction.

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