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(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 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 col-

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leges 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 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 contracts. The contracts will be signed by the designated students and returned by the School to the Supervisor and shall become effective when signed by the Supervisor or his or her designee. A copy shall be returned to the School for transmittal to the student. Payments will be issued to midshipmen in amounts equaling \$4000 for each academic year of attendance whom execute the service obligation contracts providing for such payment amount. Payments shall commence to accrue on the day each such midshipman begins his or her first term of work at the School. Such payments shall be made quarterly to the midshipman until the completion of his or

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her course of instruction but in no event for more than four (4) academic years. The School shall submit a quarterly certified Daily Attendance Report listing the names of all designated midshipmen who are entitled to student incentive payments. Midshipmen who do not take all necessary steps to maintain their midshipman status, who lose their midshipman status due to action by the U.S. Navy, or who make the commitment identified in paragraph (a)(4) of this section will have their student incentive payment terminated.

(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 contract.* The service obligation contract shall obligate the midshipman to—

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

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

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

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

(v) Apply for an appointment as, and accept if tendered, and serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval

Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States for at least six (6) years following the date of graduation from a school; and

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

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

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

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

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

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

(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 the lesser of—

(i) 150 days; or

(ii) The 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 annual Service Obligation Compliance Report form (MA-930) to the Maritime Administration (Supervisor) 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 grad-

uate will file a minimum of seven (7) reports in order to give information on all six (6) years of the armed forces reserve and merchant marine officer license service obligations. 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. In case a deferment has been granted to engage in a maritime-related graduate course of study, annual reports must be submitted during the extension period resulting from such deferments. Examples of the reporting requirements are as follows.

Example 1: Midshipman graduates on June 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and each following period 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) for a minimum of seven (7) reports.

Example 2: Midshipman has a deferred graduation on November 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and each following period 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) for a minimum of seven (7) reports.

Example 3: Midshipman has a deferment following graduation on June 30, 2004, to attend graduate school for two (2) years. His or her first reporting date is between January 1, 2005 and March 1, 2005 and during the same time frame between January 1 and March 1 for two (2) years during graduate school, and then during the same January 1 to March 1 time frame for six (6) consecutive years thereafter (or until all components of the service obligation are fulfilled, whichever is latest) for a total of nine (9) reports.

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

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

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

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

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

(ii) *Breach after graduation.* (A) If the Maritime Administrator determines that an individual has failed to fulfill any part of the service obligations (described in §310.7(b)(3)), such individual may be ordered to active duty to serve a period of time not less than two (2) years and not more than the unexpired portion of the service obligation contract relating to service in the foreign

or domestic commerce or the national defense, as determined by the Maritime Administrator. The Maritime Administrator, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

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

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

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

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

(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 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.

(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.

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

[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; 69 FR 31901, June 8, 2004; 69 FR 61606, Oct. 20, 2004; 70 FR 28833, May 19, 2005]

§ 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.

(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

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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