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other benefits after completion of their service on vessels used by the United States for a war, armed conflict, national emergency or maritime mobilization need. It also describes the form of administrative assistance MARAD will provide to the seamen certified.

§ 349.2 Application for certification.

Pursuant to 46 App. U.S.C. 1132, an individual may submit an application to MARAD not later than 45 days after the date the individual completes the period of employment described in § 349.3 of this part.

§ 349.3 Certification criteria.

The Administrator shall apply the following criteria for certifying that an individual merchant seaman is entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided by chapter 43 of title 38, United States Code, for any member of a Reserve Component of the Armed Forces of the United States who is ordered to active duty. It shall be the responsibility of each applicant for certification to submit relevant documentation to MARAD, Office of Maritime Labor, Training, and Safety, MAR–250, 400 Seventh St., S.W., Room 7302, Washington, D.C. 20590, establishing that—

(a) *Employment as merchant seaman.* The applicant was employed after October 8, 1996, in the activation or operation of a vessel—

(1) in the National Defense Reserve Fleet maintained by MARAD under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744) in a period in which that vessel was in use or being activated for use under 50 U.S.C. App. 1744(b);

(2) that is requisitioned under section 902 of the Act (46 App. U.S.C. 1242); or

(3) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance).

(b) *Seaman credentials.* During the period of employment described in paragraph (a) of this section, the seaman possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 73 (as applicable) of title 46, United States Code, as required by 46 App. U.S.C. 1132(c).

(c) *Additional information.* If applicable, periods of hospitalization, convalescence, illness, injury, shipwreck or detention beyond the mariner's control were incurred in, or aggravated during, the performance of employment described in § 349.3(a).

§ 349.4 Decision on application.

MARAD will issue or deny certification (accompanied by an explanation in writing) to each applicant not later than 20 days after receipt of an application for certification.

§ 349.5 Reemployment rights and benefits.

(a) *General.* An individual who is absent from a position of employment, in the private or public (federal, state or local government) sector, because of temporary employment of any duration described in § 349.3(a), shall be entitled to reemployment rights and benefits upon completion of the temporary employment as a merchant seaman.

(b) *Superior claims.* Pursuant to 38 U.S.C. 4312(g), the right of a person to reemployment shall not entitle such person to retention preference or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(c) *Notification of employer.* Any person who is absent from a position of employment by reason of service as described in § 349.3(a) shall be entitled to reemployment rights and benefits provided in § 349.3(e) if—

(1) The person has given advance written or verbal notice of such service to such person's employer, unless giving notice is precluded by military necessity, under regulations prescribed by the Secretary of Defense, or, under all relevant circumstances, is impossible or unreasonable, pursuant to the provisions of 38 U.S.C. 4312(b); and

(2) The person submits an application for reemployment with the employer not later than 14 days after completion of a period of service of less than 181 days, or not later than 90 days after the

completion of a period of service greater than 180 days, or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(d) *Waiver of notice requirements.* A person who has not given notice, or who fails to report or apply for employment or re-employment within the appropriate period specified in paragraph (c) of this section shall not automatically forfeit such person's entitlement to the rights and benefits referred to in §349.5(e), but shall be subject to the rules of conduct, established by policy, and the general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work. MARAD will make a determination on the issue of whether notice of service was required in acting on the application for certification.

(e) *Exception to reemployment rights.* An employer is not required to reemploy an individual if the employer satisfies the burden of proving that, pursuant to 38 U.S.C. 4312(d)—

(1) The employer's circumstances have so changed as to make such reemployment impossible or unreasonable, or such reemployment, if required, would impose an undue hardship on the employer, as defined in 38 U.S.C. 4303(15); or

(2) The employment which the individual left for employment as a merchant seaman was for a brief, nonrecurrent period and there was not at the time of leaving such employment any reasonable expectation that such employment would continue indefinitely or for a significant period.

(f) *Reemployment benefits.* An individual certified by MARAD to be entitled to reemployment shall also be entitled to other ''benefits of employment'' (other than wages or salary for work performed), as defined in 38 U.S.C. 4303(2), that would have accrued to that individual by reason of an employment contract or agreement or an employer policy, plan or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment and benefits, vacations and the opportunity to select work hours or location of employment.

(g) *Reemployment position.* (1) An individual certified by MARAD as being entitled to reemployment shall be promptly reemployed by the former employer, according to the order of priority specified in 38 U.S.C. 4313(a), after submitting an application for reemployment. The three categories of priority, in ascending order, are for a merchant seaman who:

(i) Served for 90 days or less;

(ii) Served for more than 90 days; or

(iii) Has a disability incurred in, or aggravated during, the performance of such merchant service.

(2) For a person with such service related disability, the employer shall make ''reasonable efforts'', as defined in 38 U.S.C. 4303(10), ''to accommodate the disability'' to allow that person to be employed in the position that would have been occupied had the employment with the employer been continuous, or in the position in which employed on the date service began as a merchant seaman, and if that person is ''not qualified'' for either position, in a substantially equivalent position, as specified in 38 U.S.C. 4313 (a)(3) and (a)(4).

§349.6 Enforcement.

MARAD shall provide administrative assistance to any individual certified to be entitled to reemployment rights and benefits pursuant to chapter 43 of title 38, United States Code, made applicable by 46 App. U.S.C. 1132(a) and these regulations, who alleges in writing to MARAD the failure, refusal, or imminent failure or refusal of an employer to grant such rights or other benefits. The complaint must be sent to MARAD at the address in §349.3. Such complaint may be in any format and shall include the name and address of the employer against whom the complaint is filed and a summary of the allegations that form the basis for the complaint. MARAD will review, investigate and attempt to resolve the complaint by taking one or more of the following actions: