

follows: “A member may be paid special pay under this section and incentive pay under section 301 of this title for the same period of service only if the member is assigned by orders to a hazardous duty described in section 301(a) of this title in addition to diving duty. However, if a member is paid special pay under this section, the member is not entitled to more than one payment of incentive pay under section 301 of this title.”

1998—Subsec. (a)(3). Pub. L. 105-261 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “actually performs diving duty.”

1991—Subsec. (a). Pub. L. 102-25 struck out “of this section” after “subsection (b)”.

Subsec. (b). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

1987—Subsecs. (d), (e). Pub. L. 100-180 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Pub. L. 97-60 revised provisions of subsec. (a) into new subsecs. (a), (b), and (c), redesignated subsec. (b) as (d), and, in provisions of subsec. (a) as revised, added to enumeration of conditions attached to entitlement to special pay requirement that the member maintain proficiency as a diver by frequent and regular dives, substituted a rate of \$200 a month for officers and \$300 a month for enlisted men for former rate of \$110 a month for all members, and inserted provisions authorizing payment of both special pay under this section and incentive pay under section 301 of this title in specified circumstances.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title VI, §617(c), Oct. 5, 1999, 113 Stat. 652, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 1999, and shall apply with respect to special pay paid under such section for months beginning on or after that date.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title VI, §616(b), Oct. 17, 1998, 112 Stat. 2041, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1998, and shall apply with respect to months beginning on or after that date.”

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-180, div. A, title VI, §624(b), Dec. 4, 1987, 101 Stat. 1104, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the fourth calendar month following the month in which this Act is enacted [Dec. 1987] and shall apply only with respect to diving duty performed on or after that date.”

§ 305. Special pay: hardship duty pay

(a) **SPECIAL PAY AUTHORIZED.**—A member of a uniformed service who is entitled to basic pay may be paid special pay under this section while the member is performing duty that is designated by the Secretary of Defense as hardship duty.

(b) **PAYMENT ON MONTHLY OR LUMP SUM BASIS.**—Special pay payable under this section may be paid on a monthly basis or in a lump sum.

(c) **MAXIMUM RATE OR AMOUNT.**—(1) The monthly rate of special pay payable to a member under this section may not exceed \$1,500.

(2) The amount of the lump sum payment of special pay payable to a member under this section may not exceed the product of—

(A) the maximum monthly rate in effect under paragraph (1) at the time the member qualifies for payment of special pay under this section; and

(B) the number of months during which the member will be performing the designated hardship duty.

(d) **RELATIONSHIP TO OTHER PAY AND ALLOWANCES.**—Special pay paid to a member under this section is in addition to any other pay and allowances to which the member is entitled.

(e) **REPAYMENT.**—A member who is paid special pay in a lump sum under this section, but who fails to perform the designated hardship duty during the months included in the calculation of the amount of the lump sum under subsection (c)(2), shall be subject to the repayment provisions of section 303a(e) of this title.

(f) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations for the payment of hardship duty pay under this section, including the specific monthly rates at which the special pay will be available.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 465; Pub. L. 88-132, §12(a), Oct. 2, 1963, 77 Stat. 217; Pub. L. 90-623, §3(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 95-485, title VIII, §804(b)(1), Oct. 20, 1978, 92 Stat. 1620; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 105-85, div. A, title VI, §619(a)-(c)(1), Nov. 18, 1997, 111 Stat. 1789, 1790; Pub. L. 105-261, div. A, title VI, §617(a), (c)(1), Oct. 17, 1998, 112 Stat. 2041; Pub. L. 109-163, div. A, title VI, §627, Jan. 6, 2006, 119 Stat. 3296; Pub. L. 110-181, div. A, title VI, §617, Jan. 28, 2008, 122 Stat. 150.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
305(a)	37:237.	Oct. 12, 1949, ch. 681, §206, 63 Stat. 811; May 20, 1958, Pub. L. 85-422, §1(7), 72 Stat. 125.
305(b)	37:237a.	June 30, 1954, ch. 432, §729, 68 Stat. 355.

In subsection (a), the words “Except as provided by subsection (b) of this section” are inserted for clarity. The words “is also . . . entitled” are substituted for the words “shall, in addition thereto . . . be entitled”. The words “any place outside the United States, or in Alaska or Hawaii” are substituted for the words “beyond the continental limits of the United States or in Alaska”, since, under the source statute, Hawaii was beyond the continental limits of the United States, and the United States, as defined in section 101(1) of this revised title, would otherwise include Alaska and Hawaii. This interpretation conforms to the opinion of the Comptroller General, B-138956, April 20, 1959 (38 Comp. Gen. 710).

In subsection (b), the words “Appropriation of” are substituted for the words “of the funds appropriated to”. The words “may not be paid” are substituted for the words “no part . . . shall be available for the payment”. The words “member of a uniformed service” are substituted for the words “person in the military service” to conform to subsection (a). The words “Puerto Rico” are inserted for clarity, since the source statute was applicable to that place. The words “Virgin Islands” are inserted, since that unincorporated territory is not covered by the word “possession”. The word “Territory” is omitted as obsolete.

AMENDMENTS

2008—Pub. L. 110-181 amended section generally. Prior to amendment, text read as follows:

“(a) **SPECIAL PAY AUTHORIZED.**—A member of a uniformed service who is entitled to basic pay may be paid

special pay under this section at a monthly rate not to exceed \$750 while the member is performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.

“(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the provision of hardship duty pay under subsection (a), including the specific monthly rates at which the special pay will be available.”

2006—Subsec. (a). Pub. L. 109-163 substituted “\$750” for “\$300”.

1998—Pub. L. 105-261, § 617(c)(1), struck out “location” after “duty” in section catchline.

Subsec. (a). Pub. L. 105-261, § 617(a)(1), substituted “performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.” for “on duty at a location in the United States or outside the United States designated by the Secretary of Defense as a hardship duty location.”

Subsec. (b). Pub. L. 105-261, § 617(a)(4), redesignated subsec. (d) as (b).

Pub. L. 105-261, § 617(a)(2), struck out heading and text of subsec. (b). Text read as follows: “Appropriations of the Department of Defense may not be paid, as hardship duty location pay under subsection (a), to a member of a uniformed service who is a resident of a State, Puerto Rico, the Virgin Islands, a possession, or a foreign country and who is serving in that State, Puerto Rico, the Virgin Islands, that possession, or that foreign country, as the case may be.”

Subsec. (c). Pub. L. 105-261, § 617(a)(2), struck out heading and text of subsec. (c). Text read as follows: “A member receiving special pay under section 305a of this title may not be paid hardship duty location pay under subsection (a) for the same period of service.”

Subsec. (d). Pub. L. 105-261, § 617(a)(4), redesignated subsec. (d) as (b).

Pub. L. 105-261, § 617(a)(3), substituted “hardship duty pay” for “hardship duty location pay”.

1997—Pub. L. 105-85, § 619(c)(1), substituted “hardship duty location pay” for “while on duty at certain places” in section catchline.

Subsec. (a). Pub. L. 105-85, § 619(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as provided by subsections (b) and (c), under regulations prescribed by the President, an enlisted member of a uniformed service who is entitled to basic pay may, while on duty at a designated place outside the 48 contiguous States and the District of Columbia, be paid special pay at the following monthly rates:

Pay grade	Monthly rate
E-9	\$22.50
E-8	22.50
E-7	22.50
E-6	20.00
E-5	16.00
E-4	13.00
E-3	9.00
E-2	8.00
E-1	8.00.”

Subsec. (b). Pub. L. 105-85, § 619(b)(1), inserted heading and substituted “as hardship duty location pay” for “as foreign duty pay” in text.

Subsec. (c). Pub. L. 105-85, § 619(b)(2), inserted heading and substituted “hardship duty location pay under subsection (a)” for “special pay under this section” in text.

Subsec. (d). Pub. L. 105-85, § 619(b)(3), added subsec. (d).

1991—Subsec. (a). Pub. L. 102-25 struck out “of this section” after “subsections (b) and (c)”.

Subsec. (b). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

1978—Pub. L. 95-485, § 804(b)(1)(C), substituted “on duty” for “on sea duty or duty” in section catchline.

Subsec. (a). Pub. L. 95-485, § 804(b)(1)(A), inserted reference to subsec. (c) of this section and struck out pro-

vision entitling an enlisted member of a uniformed service who is entitled to basic pay to special pay while on sea duty.

Subsec. (c). Pub. L. 95-485, § 804(b)(1)(B), added subsec. (c).

1968—Subsec. (a)(2). Pub. L. 90-623 substituted “48 contiguous States” for “contiguous 48 States”.

1963—Pub. L. 88-132 substituted “while on sea duty or duty at certain places” for “sea and foreign duty” in section catchline.

Subsec. (a). Pub. L. 88-132 designated existing provisions as cl. (1) and substituted provisions of cl. (2) permitting special pay for an enlisted member of a uniformed service while on duty at a designated place outside the contiguous 48 States and the District of Columbia for former provision entitling such member to special pay while on duty in any place outside the United States, or in Alaska or Hawaii.

Subsec. (b). Pub. L. 88-132 substituted “a State, Puerto Rico, the Virgin Islands, a possession, or a foreign country and who is serving in that State, Puerto Rico, the Virgin Islands, that possession, or that foreign country” for “Alaska, Hawaii, Puerto Rico, the Virgin Islands, or a possession, unless that member is serving in an area outside Alaska, Hawaii, the Virgin Islands, or a possession, of which he is a resident”.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-485, title VIII, § 804(b)(3), Oct. 20, 1978, 92 Stat. 1621, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 1978.”

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of this title.

SAVINGS PROVISION

Pub. L. 88-132, § 12(b), Oct. 2, 1963, 77 Stat. 218, provided that: “Notwithstanding subsection (a) [amending this section], an enlisted member who, on the day before the effective date of this Act [Oct. 1, 1963], was permanently assigned to duty at a place outside the United States or in Alaska or Hawaii, shall, during the remaining period of that assignment, but not after that place is designated for the purpose of section 305(a)(2) of title 37, United States Code, be paid the basic pay to which he was entitled on that date plus special pay under section 305 of title 37, United States Code, whenever qualified thereunder as that section was in effect on the day before the effective date of this Act, if the total of that basic pay and that special pay is more than the basic pay to which he would otherwise be entitled during that period under section 2 of this Act [amending section 203 of this title].”

TRANSITION PROVISION

Pub. L. 105-85, div. A, title VI, § 619(e), Nov. 18, 1997, 111 Stat. 1790, provided that: “Until such time as the Secretary of Defense prescribes regulations regarding the provision of hardship duty location pay under section 305 of title 37, United States Code, as amended by this section, the Secretary may continue to use the authority provided by such section 305, as in effect on the day before the date of the enactment of this Act [Nov. 18, 1997], to provide special pay to enlisted members of the uniformed services on duty at certain places.”

SEA DUTY PERFORMED BETWEEN OCTOBER 1, 1978, AND SEPTEMBER 30, 1981

Pub. L. 95-485, title VIII, § 804(c), Oct. 20, 1978, 92 Stat. 1621, provided that: “Any individual who on September

30, 1978, is an enlisted member of a uniformed service shall be eligible to receive special pay under section 305(a)(1) of title 37, United States Code, as in effect on September 30, 1978, for any period of sea duty performed by such individual during the period beginning on October 1, 1978, and ending on September 30, 1981, for which such individual does not receive special pay under section 305a of such title (as added by subsection (a))."

EXECUTIVE ORDER No. 10168

Ex. Ord. No. 10168, Oct. 11, 1950, 15 F.R. 6877, as amended by Ex. Ord. No. 10821, May 20, 1959, 24 F.R. 4123; Ex. Ord. No. 10989, Jan. 23, 1962, 27 F.R. 727; Ex. Ord. No. 11120, Oct. 2, 1963, 28 F.R. 10631, which concerned regulations relating to special pay for sea duty and duty at certain places, was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, formerly set out as a note under section 301 of this title.

§ 305a. Special pay: career sea pay

(a) AVAILABILITY OF SPECIAL PAY.—A member of a uniformed service who is entitled to basic pay is also entitled, while on sea duty, to special pay at the applicable rate under subsection (b).

(b) RATES; MAXIMUM.—The Secretary concerned shall prescribe the monthly rates for special pay applicable to members of each armed force under the Secretary's jurisdiction. No monthly rate may exceed \$750.

(c) PREMIUM.—A member of a uniformed service entitled to career sea pay under this section who has served 36 consecutive months of sea duty is also entitled to a career sea pay premium for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty served by such member. The monthly amount of the premium shall be prescribed by the Secretary concerned, but may not exceed \$350.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the administration of this section for the armed force or armed forces under the jurisdiction of the Secretary. The entitlements under this section shall be subject to the regulations.

(e) DEFINITION OF SEA DUTY.—(1) In this section, the term "sea duty" means duty performed by a member—

(A) while permanently or temporarily assigned to a ship and—

(i) while serving on a ship the primary mission of which is accomplished while under way;

(ii) while serving as a member of the off-crew of a two-crewed submarine;

(iii) while serving as a member of a tender-class ship (with the hull classification of submarine or destroyer); or

(iv) while serving as an off-cycle crew-member of a multi-crewed ship; or

(B) while permanently or temporarily assigned to a ship and while serving on a ship the primary mission of which is normally accomplished while in port, but only during a period that the ship is away from its homeport.

(2) The Secretary concerned may designate duty performed by a member while serving on a ship the primary mission of which is accomplished either while under way or in port as "sea duty" for purposes of this section, even though

the duty is performed while the member is permanently or temporarily assigned to a ship-based staff or other unit not covered by paragraph (1).

(3) For the purpose of determining the years of sea duty with which a member may be credited for purposes of this section, the term "sea duty" also includes duty performed after December 31, 1988, by a member while permanently or temporarily assigned to a ship or ship-based staff and while serving on a ship on which the member would be entitled, during a period that the ship is away from its homeport, to receive sea pay by reason of paragraph (1)(B).

(4) A ship shall be considered to be away from its homeport for purposes of this subsection when it is—

(A) at sea; or

(B) in a port that is more than 50 miles from its homeport.

(Added Pub. L. 95-485, title VIII, §804(a)(1), (2), Oct. 20, 1978, 92 Stat. 1620; amended Pub. L. 96-343, §3(a), (b), Sept. 8, 1980, 94 Stat. 1124; Pub. L. 96-579, §4(a), Dec. 23, 1980, 94 Stat. 3364; Pub. L. 97-60, title I, §116, Oct. 14, 1981, 95 Stat. 996; Pub. L. 97-295, §3(1), Oct. 12, 1982, 96 Stat. 1303; Pub. L. 98-525, title VI, §623(a), Oct. 19, 1984, 98 Stat. 2541; Pub. L. 99-145, title VI, §634(a), Nov. 8, 1985, 99 Stat. 647; Pub. L. 100-26, §8(e)(5), Apr. 21, 1987, 101 Stat. 286; Pub. L. 100-180, div. A, title VI, §621(a)-(c), Dec. 4, 1987, 101 Stat. 1097, 1099; Pub. L. 100-224, §5(a)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 100-456, div. A, title XII, §1233(b)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101-189, div. A, title VI, §653(b), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 102-190, div. A, title XI, §1111(d)(3), Dec. 5, 1991, 105 Stat. 1492; Pub. L. 104-106, div. A, title VI, §618, Feb. 10, 1996, 110 Stat. 362; Pub. L. 105-85, div. A, title VI, §620, Nov. 18, 1997, 111 Stat. 1790; Pub. L. 106-398, §1 [[div. A], title VI, §630(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-156; Pub. L. 110-181, div. A, title VI, §618, Jan. 28, 2008, 122 Stat. 151.)

AMENDMENTS

2008—Subsec. (e)(1)(A)(iv). Pub. L. 110-181 added cl. (iv).

2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title VI, §630(a)(1)], inserted heading and substituted "A member" for "Under regulations prescribed by the President, a member" in text.

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title VI, §630(a)(3)], added subsec. (b) and struck out former subsec. (b) which contained tables specifying the monthly rates for special pay under subsec. (a) for enlisted members, warrant officers, and commissioned officers.

Subsec. (c). Pub. L. 106-398, §1 [[div. A], title VI, §630(a)(3)], added subsec. (c) and struck out former subsec. (c) which read as follows: "Under regulations prescribed by the President, a member of a uniformed service who is entitled to career sea pay under this section who has served 36 consecutive months of sea duty (other than an enlisted member in a pay grade above E-4 with more than five years of sea duty) is entitled to a career sea pay premium of \$100 a month for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty served by such member."

Subsec. (d). Pub. L. 106-398, §1 [[div. A], title VI, §630(a)(3)], added subsec. (d). Former subsec. (d) redesignated (e).