

THE NATIONAL ARCHIVES
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OF THE UNITED STATES

FEDERAL REGISTER

1934

VOLUME 26 NUMBER 236

Washington, Friday, December 8, 1961

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Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$1.50 per month or \$15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

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Rules and Regulations

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy MISCELLANEOUS AMENDMENTS TO CHAPTER

Scope and purpose. Part 719 is revised to conform with pertinent provisions of JAG Instruction P5800.7, the Manual of the Judge Advocate General, of June 2, 1961, as approved by the Secretary of the Navy. A new Part 755 is added. Section 765.20 is deleted because its content is incorporated in Part 719 as § 719.139.

1. Part 719 is revised to read as follows:

PART 719—NONJUDICIAL PUNISHMENT, NAVAL COURTS AND CERTAIN FACT-FINDING BODIES

Subpart A—Nonjudicial punishment

- Sec.
719.101 General provisions.
719.102 Letters of censure.

Subpart B—Convening Courts-Martial

- 719.103 Designation of additional convening authorities.
719.104 Appointment of personnel from other armed forces.
719.105 Preparation of appointing orders.
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Subpart C—Trial Matters

- 719.108 Reporters and interpreters.
719.109 Authority to grant immunity from prosecution.
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719.117 Action on courts-martial by convening authority.
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Subpart G—Appendices (Regulations Referred to in Preceding Subparts)

- 719.201 Appendix I—Applicable provisions of Bureau of Naval Personnel Manual and Marine Corps Manual relating to authority of commanding officers to effect promotions and reductions of enlisted members (referred to in § 719.101-(a)(1)).
719.202 Appendix II—Applicable provisions of U.S. Navy Regulations dealing with accusations, replies and counter charges and with adverse matters in fitness reports and records of officers (referred to in §§ 719.102 and 719.117).
719.203 Appendix III—Applicable provisions (sections 044018 and 044019) of the Navy Comptroller Manual dealing with time not creditable in computing cumulative years of service (referred to in § 719.111).
719.204 Appendix IV—Navy Comptroller Manual, Volume 4, Chapter 4, Part B, Section VIII, dealing with effect on pay of sentences of courts-martial (referred to in § 719.113).
719.205 Appendix V—Secretary of the Navy Instruction 5815.3 on policy and procedures concerning clemency relative to certain courts-martial (referred to in §§ 719.122 and 719.127).
719.206 Appendix VI—Secretary of the Navy Instruction 1050.3 on leave pending appellate review (referred to in § 719.126).

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- 719.207 Appendix VII—Applicable provisions of the Department of the Navy Security Manual for Classified Information, Chapter 9, Section 3 (referred to in § 719.133).
719.208 Appendix VIII—Secretary of the Navy Instruction 5605.3A on court-martial forms (referred to in § 719.134).
719.209 Appendix IX—U.S. Navy Regulations article 1901 on the meaning of the term "Accountable Officer" (referred to in § 719.137).
719.210 Appendix X—Applicable provisions of Navy Comptroller Manual paragraphs 043201 and 044443 on collection of debts due the United States from military personnel (referred to in § 719.137).
719.211 Appendix XI—Secretary of the Navy Instruction 7220.38A on remission of indebtedness of enlisted personnel (referred to in § 719.137).
719.212 Appendix XII—Bureau of Naval Personnel Instruction 1640.5B on designation of places of confinement (referred to in § 719.138).

AUTHORITY: §§ 719.101 to 719.212 issued under E.S. 161, 183, sec. 3481, 62 Stat. 833, secs. 801-940, 5031, 70A Stat. 36-78, 278, sec. 1219, 71 Stat. 160, E.O. 10214 (3 CFR 1949-1953 Comp. p. 408), as amended; 5 U.S.C. 22, 93, 10 U.S.C. 801-940, 1219, 5031, 18 U.S.C. 3481.

Subpart A—Nonjudicial Punishment

§ 719.101 General provisions.

(a) *Authority to impose*—(1) *General.* Pursuant to the provisions of chapter XXVI, Manual for Courts-Martial, United States, 1951 (E.O. 10214, 3 CFR 1949-1953 Comp. p. 408, referred to in this part as MCM 1951), and under the authority of article 15 of the Uniform Code of Military Justice (10 U.S.C. 801-940, referred to in this part as the Code), any commanding officer may, for minor offenses, impose nonjudicial punishment prescribed by paragraph 131, MCM 1951, upon officers, warrant officers, and other military personnel of his command. A commissioned officer or a commissioned warrant officer, designated as officer in charge of a unit by Departmental orders, Tables of Organization, or by orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached) or the Senior Officer Present, may impose nonjudicial punishments prescribed by paragraph 131b (2) and (3), MCM 1951, upon enlisted members of the unit of which he is in charge. The commanding officer or officer in charge may impose reduction to the next inferior grade if the condition concerning promotion authority specified in paragraph 131b, MCM 1951, is met. See Bureau of Naval Personnel Manual, articles C-7202 and C-7211, and Marine Corps Manual, paragraphs 1430 and 1450 (§ 719.201).

(2) *Command jurisdiction to impose.* At the time nonjudicial punishment is imposed, including a letter of censure, which is imposed when delivered, the in-

dividual upon whom the punishment is imposed must be a member of the command of the authority taking the action. If disciplinary action appears to be indicated in the case of an individual who is not a member of the command to which he was attached at the time of the alleged offense, full information concerning such alleged offense shall be referred for appropriate action to a commanding officer in the chain of military command over the individual concerned, and in the case of an indicated letter of censure, normally to the officer who exercises general court-martial jurisdiction over the individual concerned. In all cases in which a letter of censure is issued by a command authority to which the individual was not attached at the time of the offense, the letter shall contain an express statement to that effect.

(b) *Restrictions on imposition of nonjudicial punishment*—(1) *Punishment of persons whose cases have previously been adjudicated in domestic or foreign criminal courts.* The policy, criteria, procedures and limitations set forth in § 719.106(d) with respect to trial by summary court-martial of persons whose cases have been previously adjudicated in domestic or foreign criminal courts apply also to the imposition of nonjudicial punishment in such cases.

(2) *Units attached to a ship.* When a unit having a commanding officer or officer in charge is attached to a ship of the Navy for duty therein, such officer should, as a matter of policy, refrain from exercising his power to impose nonjudicial punishment, referring all such matters to the commanding officer of the ship for disposition. This policy shall not be applicable to Military Sea Transportation Service vessels operating under a master.

(c) *Nonpunitive measures.* Commanding officers and officers in charge are authorized and expected to use nonpunitive measures of censure in furthering the efficiency of their commands. These measures are not punishment and may be administered either orally or in writing in accordance with the provisions of paragraph 128c, MCM 1951. Nonpunitive censures, other than censures by the Secretary of the Navy, shall not be included in the Departmental records or in any of the official records of the recipients; and they shall not be quoted in, nor appended to, fitness reports. No command shall forward any nonpunitive censure or copy thereof to the Bureau of Naval Personnel or Headquarters Marine Corps. However, the facts upon which the censure is based may be the basis for adverse markings or comments in the next fitness report or enlisted performance evaluation of the recipient.

(d) *Procedure*—(1) *General.* The procedures prescribed in paragraph 133b, MCM 1951, will be followed in imposing nonjudicial punishment except as indicated below. See § 719.102(d) for additional procedures governing letters of censure. The impartial hearing prescribed in paragraph 133b, MCM 1951, will in every case precede the imposing of nonjudicial punishment, except that, if nonjudicial punishment is contemplated on the basis of findings of fact of

an investigation or court of inquiry in which the individual concerned was accorded the rights of a party with respect to the offense for which the punishment is contemplated, this hearing need only extend to the information and advice required by article 31(b) of the Code and to affording him an opportunity to present any matter in defense, mitigation, or extenuation that he desires to submit. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, he shall be afforded the impartial hearing prescribed by paragraph 133b, MCM 1951. In the alternative, the record may be returned to the investigative body for additional proceedings so that the individual concerned may be accorded the rights of a party with respect to that offense. The records of proceedings of investigations and courts of inquiry are for administrative use within the Naval Establishment and are normally not intended for distribution to individuals for their personal use. However, in any case where nonjudicial punishment is contemplated on the basis of information contained in the record of an investigation or court of inquiry, a copy of the record shall be made available to the individual concerned for his examination in connection with the preparation of a defense or an appeal. If the individual concerned so requests, a copy of the record may also be given to him, except in those instances where the best interests of the Government may be adversely affected by such action. In any case of doubt, the matter shall be referred to the Judge Advocate General for advice.

(2) *Impartial hearing.* When an impartial hearing is required under subparagraph (1) of this paragraph, it shall be conducted by the authority competent to impose nonjudicial punishment or, under extraordinary circumstances, by an officer designated prior to the imposition of such punishment by the authority competent to impose the punishment or by higher authority. The alternative of conducting the hearing by an officer other than the commanding officer shall be limited to situations where, in the discretion of the commanding officer or higher authority, it is infeasible for the commanding officer to conduct the hearing in view of his responsibility for the command. Each hearing shall include the following elemental requirements:

(i) Presence of the individual concerned before the officer conducting the hearing;

(ii) Advice to the individual concerned of the offense or offenses of which he is suspected;

(iii) Explanation to the individual concerned of his rights under article 31(b) of the Code;

(iv) Receipt of the oral statements of witnesses against the individual concerned in his presence or providing the individual concerned with copies of written statements of witnesses against him;

(v) Availability to the individual concerned of all items of information in the nature of physical or documentary evidence for his inspection;

(vi) Full opportunity to the individual concerned to present any matters in defense, mitigation or extenuation of the suspected offense or offenses.

(e) *Appeals*—(1) *Time.* In accordance with paragraph 134, MCM 1951, an appeal from nonjudicial punishment must be made within a reasonable time. Under ordinary circumstances, a reasonable time shall be construed to be fifteen days after imposition of the nonjudicial punishment. In computing this appeal period, allowances shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails.

(2) *To whom made.* Any appeal from nonjudicial punishment in accordance with paragraph 134, MCM 1951, shall be made to the authority next superior to the commanding officer or officer-in-charge who imposed the nonjudicial punishment, whether or not he is at the time of appeal in the chain of command of the person punished.

(f) *Deferral of punishment of confinement or restriction.* Execution of nonjudicial punishment of confinement imposed while at sea on ships having no brig facilities, and execution of nonjudicial punishment of restriction imposed while at sea may be deferred by the officer imposing the punishment until arrival of the ship in port. Execution of nonjudicial punishment of restriction imposed within a unit of the Fleet Marine Force in the field may be deferred by the officer imposing the punishment until return of the unit to a location or tactical conditions under which the restriction imposed will reasonably operate as a punishment. In no case, however, shall such deferral exceed fifteen days from the date the punishment is imposed.

(g) *Record of punishment.* The record of nonjudicial punishment will be kept in accordance with paragraph 135b, MCM 1951, and implementing regulations contained in the Bureau of Naval Personnel Manual and the Marine Corps Personnel Manual. The forms used for the Unit Punishment Book are NAVPERS 2696 and NAVMC 10132-PD or subsequent revisions thereof. These forms include the data required by paragraph 135b, MCM 1951, so that an additional record as illustrated in appendix 3, MCM 1951, is superfluous and should be avoided.

(h) *Punishment not to be increased.* Once imposed, nonjudicial punishment may be neither increased in severity nor changed to a different kind of punishment by the officer imposing the punishment, his successor in command, or superior authority. A letter of censure is imposed when delivered to the addressee thereof.

§ 719.102 Letters of censure.

(a) *General.* "Censure" is a generic term applicable to any form of adverse reflection upon individual character, conduct, performance, or appearance. Censure is a prerogative of command or administrative superiority, but certain exercises of the power of censure are governed by statute, regulations, and in-

structions. Although only the terms "reprimand" and "admonition" are mentioned in article 15 of the Code, censure, in traditional naval usage, may be imposed in three degrees in descending order of severity: reprimand, admonition, and caution. Censure includes both non-punitive and punitive measures. Non-punitive measures of censure are discussed in § 719.101(e). Measures of censure imposed as nonjudicial punishment are punitive and copies thereof, unless set aside or withdrawn, will be inserted in Departmental records and in the official records of the recipients. As provided in § 719.101(h), once a letter of censure has been delivered to the addressee thereof it may not be increased in severity or changed to a different kind of punishment. Such letters of censure in cases of officers are required to be in writing; and those imposed in cases of enlisted members may be by oral or written communication. The remaining provisions of this section relative to letters of censure do not apply to punitive censure of an enlisted member by oral communication.

(b) *Administrative letters of censure by the Secretary of the Navy.* Article 15 of the Code is inapplicable to administrative letters of censure issued by the Secretary of the Navy even though copies of such letters are filed in the official records of persons so censured. A person censured by the Secretary of the Navy may submit a request for reconsideration or such other written statement as he may desire to make.

(c) *Internal Departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of censure are matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, as personnel matters.

(d) *Procedure—(1) Issuing authority.* Where an officer has committed an offense which, in the opinion of the immediate commanding officer, warrants a punitive letter of censure, the immediate commanding officer may, at his discretion, issue the letter or refer the matter through the chain of military command normally to the superior who exercises general court-martial jurisdiction and who has military command over the prospective addressee. Prior to the issuance of a letter of censure, consideration must be given to the fact that the degree of severity and effect of punitive censure increases proportionately with the degree of superiority in military command channels of the officer in command who issues the letter.

(2) *Hearing requirement.* A letter of censure may be issued, or its issuance recommended to higher authority, only on the basis of the findings of fact of an investigation or court of inquiry in which the individual concerned has been afforded the rights of a party or on the basis of the impartial hearing prescribed in paragraph 133b, MCM 1951 (see § 719.101(d)). In the event an impartial hearing is conducted, the officer conducting the hearing shall prepare a report thereof, including a summary of the testimony of any witnesses, any

statements and affidavits offered by the individual concerned, a description of all items of information in the nature of physical or documentary evidence considered, and any statements and affidavits of the officer holding the hearing. A copy of the report of the impartial hearing shall be provided the prospective addressee of the letter of censure upon his request except in those instances where the best interests of the Government may be adversely affected by such action, and in any event a copy thereof shall be made available to him for his use in preparation of a defense or appeal. See § 719.101(d) for similar rules concerning a copy of the record of an investigation or court of inquiry.

(e) *Content of letter—(1) General.* A punitive letter of censure issued by virtue of the provisions of article 15 of the Code is imposed for conduct proscribed by the Uniform Code of Military Justice and may be based upon a violation of a custom of the naval service, a breach of discipline, a breach of military courtesy, or any other breach of, or failure to observe, a provision of law, regulation, or order. Such letter must set forth the facts upon which it is based in "Specification" language. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader thereof of all the relevant facts and circumstances surrounding the offense. General conclusions, as "gross negligence," "unofficer-like conduct," or "dereliction of duty" are valueless unless accompanied by specific facts upon which they are based.

(2) *References.* Reference should be made in all punitive letters of censure to all prior procedures and correspondence upon which they are based, and to applicable laws and regulations, including the MCM 1951 and this section. Particular reference should be made to the hearing afforded the addressee.

(3) *Classification (security).* Every reasonable effort will be made to exclude from letters of censure specific details which require security classification. Unless it contains classified matter, a letter of censure shall be designated "For Official Use Only."

(4) *Notification of right to appeal and right to submit statement.* All punitive letters of censure, copies of which are intended for inclusion in Department personnel records, except letters issued in execution of a court-martial sentence as described in § 719.117(d), shall contain the following paragraphs:

You are hereby advised of your right to appeal this action to the next superior authority in accordance with the provisions of article 15(d) of the Uniform Code of Military Justice, paragraph 134 of the Manual for Courts-Martial, United States, 1951, and section 0102f of the Manual of the Judge Advocate General. (Section 0102f is reproduced in § 719.102(f).)

If, upon full consideration, you do not desire to avail yourself of this right to appeal, you are directed so to inform the (Chief of Naval Personnel) (Commandant of the Marine Corps) through official channels. You are directed to reply without delay, through official channels, and to state therein the date of receipt of this communication, and the approximate time when either an appeal

or notice of decision not to appeal may be expected.

Unless withdrawn, or set aside by higher authority, a copy of this letter will be placed in your official record in (the Bureau of Naval Personnel) (Headquarters, U.S. Marine Corps). You are therefore privileged, pursuant to article 1701.8, U.S. Navy Regulations, 1948, to forward, within fifteen days after receipt of final determination of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, such statement concerning this letter as you may desire, also for inclusion in your record. (Omit ", pursuant to article 1701.8, U.S. Navy Regulations, 1948," in cases involving enlisted personnel.) If you elect not to submit a statement, you shall state so officially in writing within the time above prescribed. In connection with your statement, attention is directed to article 1404.2 and 3, U.S. Navy Regulations, 1948. Your reporting senior is required to make notation of this letter in your fitness report submitted next after the issuance of this letter has become final, either by decision of higher authority upon appeal or by your decision not to appeal. (Omit last sentence in cases involving enlisted Navy personnel.)

(f) *Appeals.* The provisions of § 719.101(e) apply to letters of censure. In addition, the following special rules are applicable:

(1) In forwarding an appeal from a letter of censure, the officer who issued the letter shall attach to the appeal the record of investigation or court of inquiry or report of hearing on which the letter of censure is based. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if he deems such action necessary in the interests of justice.

(2) The "next superior authority" to whom appeal from a letter of censure is authorized by article 15(d) of the Code is the next superior to the issuing authority in the chain of military command. In cases where it may be inappropriate for the immediate "next superior" to act, as where an identity may exist of person or staff with the command taking the action appealed from, such fact may be noted in reforwarding the appeal to the next superior in the chain of military command.

(3) Upon determination of the appeal, the superior shall return all papers to the appellant, informing him of the action taken and, if the letter was sustained upon appeal, direct him to return all papers to his immediate commanding officer together with his written statement made subsequent to the determination of the appeal, or his written declaration that he does not desire to make a statement.

(g) *Forwarding letter to Department.* Upon adverse determination of any appeal taken, the lapse of a reasonable time after issuance (see § 719.101e) or upon receipt of the addressee's statement that he does not desire to appeal, together with such statement as he may desire to make or his written declaration that he does not desire to make a statement, a copy of the punitive letter of censure and the following documents shall be forwarded via the chain of command to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate:

(1) Copies of all correspondence upon which the letter is based. Copies of records and reports of investigations which are forwarded to the Judge Advocate General pursuant to section 0212 of the Manual of the Judge Advocate General are not desired.

(2) A copy of the letter of appeal and the letter of the superior authority disposing of the appeal adversely to the appellant or the addressee's written statement declining to appeal.

(3) The original statement of the addressee made subsequent to receipt by him of an adverse determination of his appeal or after he declined to appeal, or his original written declaration that he does not desire to make a statement. This statement is separate and distinct from any statement declining to appeal. However, it may be made together with a statement declining to appeal.

It is the responsibility of the command to which the addressee of a letter of censure is attached to assemble and forward at one time all the foregoing documents via the chain of command. In the event that the addressee is detached before the command has forwarded the documents, the command shall forward all pertinent documents to the command to which the addressee has been transferred for completion of the required processing.

(h) *Cancellation.* (1) Except in certain highly infrequent situations, material properly placed in an officer's or enlisted member's official records is not removed therefrom or destroyed. In rare instances it may become necessary to cancel a letter of censure issued under article 15 of the Code and filed in the addressee's official records when factual error occurred or for other sound reasons indicating that the punishment resulted in a clear injustice. Seniors in the chain of command may cancel or direct cancellation of letters of censure issued by subordinate commands or by former subordinate commands since disestablished. The authority, i.e., the office, as distinguished from the former incumbent, which issued such a letter of censure, may also subsequently cancel such a letter. In these cases, cancellation will be accomplished by issuing a second letter to the officer concerned announcing the cancellation of the letter of censure and setting forth in detail the reason prompting such cancellation. Copies of the letter of cancellation will be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and any other addressees to whom copies of the original letter of censure may have been directed; the copy of the letter of censure and any reference thereto filed in the recipient's official records will then be removed.

(2) If a letter of censure is canceled by seniors in the chain of command before a copy of the original letter of censure has been received by the Chief of Naval Personnel or the Commandant of the Marine Corps, copies of the letters of censure and cancellation shall not be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps. If it is necessary to forward a copy of the letter of cancellation to the Chief of Naval Personnel or the Com-

mandant of the Marine Corps for removal of the copy of the letter of censure and any reference thereto from the official records of the recipient, the copy of the letter of cancellation shall not be filed with the official records of the individual concerned.

(i) *Public reprimands—private reprimands.* For historical purposes and understanding of the captioned types of censure, brief comment is supplied thereon. Under article 24 of the Articles for the Government of the Navy (superseded by the Uniform Code of Military Justice), "private reprimand" was one of the punishments specified as being within the authority of a commanding officer to impose upon officers under his command. The word "private" was employed to distinguish a formal letter of reprimand addressed to an individual officer without general publicity from a "public reprimand", i.e., one published verbatim throughout the naval service. Omission of the word "private," preceding "admonition or reprimand" in article 15 of the Code does not constitute authority to commanding officers to issue "public reprimands," which are looked upon with disfavor by the Department of the Navy.

Subpart B—Convening Courts-Martial

§ 719.103 Designation of additional convening authorities.

(a) *General courts-martial.* In addition to those officers otherwise authorized by article 22 of the Code, all flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy and Marine Corps, are, pursuant to article 22(a) (6) of the Code, hereby designated as empowered to convene general courts-martial. Other officers specifically designated are listed in SECNAV Instruction 5810.4 and revisions thereto.

(b) *Special courts-martial.* In addition to those officers otherwise authorized by article 23 of the Code, the following officers are, pursuant to article 23(a) (7) of the Code, hereby designated as empowered to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons.

(2) Any commander whose subordinates in the tactical or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, except inactive-duty training Naval Reserve units.

(4) All commanding officers of enlisted personnel now or hereafter designated pursuant to article 0514, U.S. Navy Regulations, by a commander (including the commander of a multi-service command to which members of the naval service are attached).

(5) All commanding officers and officers in charge of commands now or hereafter designated as separate or detached commands within the meaning of article 23 of the Code by a flag or general officer in command (including the commander of a multi-service command to which members of the naval service are attached).

(6) All directors, Marine Corps Reserve and Recruitment Districts.

(7) All directors, Marine Corps Reserve Districts outside the continental United States.

(8) All administrative officers, U.S. Naval Shipyards.

(9) All directors, Navy Recruiting, Navy Recruiting Areas.

A copy of the orders accomplishing a designation under subparagraph (4) or (5) of this paragraph, shall be forwarded to the Judge Advocate General of the Navy and, in addition, in the case of Marine Corps units, to the Commandant of the Marine Corps. Other officers specifically designated are listed in SECNAV Instruction 5810.4 and revisions thereto.

(c) *Summary courts-martial.* Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial.

§ 719.104 Appointment of personnel from other Armed Forces.

The authority vested in the Secretary of the Navy under paragraphs 4g(3) and 6a, MCM 1951, is delegated to the Judge Advocate General of the Navy or to the officer acting in his absence.

§ 719.105 Preparation of appointing orders.

(a) *General.* Appointing and amending orders should be in naval letter form from the convening authority to the president of the court or summary court officer (identified by name, grade, and address).

(b) *Contents.* The "Subject" line should indicate the contents of the order, e.g., "Appointing special court-martial". The text of the order is indicated by the forms in appendix 4, MCM 1951, and notes 1, 2, 7, 11, 12, and 14 therein. In the list of members appointed to the court the name of the addressee as president of the court should be clearly indicated. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the appointing or amending order should be sent to the trial counsel of the court.

§ 719.106 Restrictions on exercise of court-martial jurisdiction.

(a) *Special and summary courts-martial generally.* In accordance with the provisions of paragraph 5b(4) and 5c, MCM 1951, exercise of authority to convene summary and special courts-martial may be restricted by a competent superior commander.

(b) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sea Transportation Service vessels operating under a master.

(c) *Jurisdiction under article 2 (4), (5) and (6) and article 3 of the Code—(1) Policy.* Paragraph 11b, MCM 1951,

provides, in part, that jurisdiction under article 3(a) of the Code should not be exercised without the consent of the Secretary of the Department concerned.¹ Extending this rule to all cases in which jurisdiction is dependent upon the provisions of article 2(4), 2(5), 2(6), 3(b), or 3(c) of the Code, the following rules of policy are announced.

(2) *Authorization required.* (i) No case of a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Naval Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty will be referred to for trial by court-martial without the prior authorization therefor of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense.

(ii) No case in which jurisdiction is based on article 3 (b) or (c) of the Code will be referred for trial by court-martial without the prior authorization therefor of the Secretary of the Navy.

(iii) If authorization is withheld under (i) or (ii) of this subparagraph, the Judge Advocate General shall indicate alternative action or actions, if any, to the convening authority.

(3) *Request for authorization.* Requests for authorization should contain the following information: The nature of the offense or offenses charged; a summary of the evidence in the case; the facts showing amenability of accused to trial by court-martial; whether civil jurisdiction exists; the military status of the accused or suspected person at the present and at the time of the alleged offense, and the reasons which make trial by court-martial advisable. Requests shall be addressed to the Secretary of the Navy and shall be forwarded by air mail or other expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

(4) *Apprehension and restraint.* Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or confinement of any person who is amenable to trial by court-martial solely by reason of the provisions of article 2 (4), (5) or (6) or article 3 of the Code.

(5) *Tolling statute of limitations.* The foregoing rules shall not impede the preferment and processing of sworn charges under article 30 of the Code when such preferment and processing are necessary to prevent the barring of trial by the statute of limitations (see art. 43 of the Code and pars. 29, 31c, 33b, and 68c, MCM 1951).

¹ The exercise of court-martial jurisdiction over a civilian solely by reason of article 3(a) of the Code has been invalidated on constitutional grounds by the Supreme Court of the United States. *Toth v. Quarles*, 350 U.S. 11 (1955).

(6) *Recall to active duty.* Members described in subparagraph (2) (i) of this paragraph may not be recalled to active duty solely for trial by court-martial.

(d) *Persons whose cases have been previously adjudicated in domestic or foreign criminal courts—(1) Policy.* A person in the naval service who has been tried in a domestic or foreign court, whether convicted or acquitted, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial for the same act or acts, except in those unusual cases where trial by court-martial is considered essential in the interest of justice, discipline, and proper administration within the naval service. Such unusual cases, however, shall not be referred for trial without specific permission therefor as provided herein.

(2) *Criteria.* Referral for trial within the terms of this policy shall be limited to cases involving substantial discredit to the naval service and which meet one of the following criteria:

(i) Cases in which punishment by civil authorities consists solely of probation, and local practice does not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(ii) Cases in which civil authorities have, in effect, divested themselves of responsibility by an acquittal manifestly against the evidence, or by the imposition of an exceptionally light sentence on the theory that the individual will be returned to the naval service and thus removed as a problem to the local community.

(iii) Cases of homosexuality in which mild penalties have been imposed upon conviction. Homosexuality with its demoralizing effects is a more serious problem in the military society because of the close-contact living and working conditions of its members.

(iv) Other cases in which the interests of justice and discipline are considered to require further action under the Uniform Code of Military Justice; for example, cases where conduct leading to trial before a foreign court has reflected adversely upon the naval service itself.

(3) *Procedure—(i) General and special courts-martial.* No case described in subparagraph (2) of this paragraph will be referred for trial by general court-martial or special court-martial without the prior permission therefor of the Secretary of the Navy. Requests for such permission shall be forwarded by the general court-martial authority concerned (or by the special court-martial authority concerned via the general court-martial authority) via the Commandant of the Marine Corps or Chief of Naval Personnel, as appropriate, to the Secretary of the Navy.

(ii) *Summary courts-martial.* No case described in subparagraph (2) of this paragraph will be referred for trial by summary court-martial without the prior permission therefor of the officer exercising general court-martial jurisdiction over the command. Grants of such permission shall be reported by the general court-martial authority con-

cerned by means of a letter addressed to the Secretary of the Navy in which he shall describe the offense alleged, action by civil authorities, and the circumstances bringing the case within the exception to the general policy.

(iii) *Reporting requirements.* The provisions of this section do not affect reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

(4) *Limitations.* Personnel who have been tried by courts which derive their authority from the United States, such as U.S. District Courts, will not be tried by court-martial for the same act or acts (see par. 68d, MCM 1951).

§ 719.107 Superior competent authority defined.

Whenever an accuser forwards charges pursuant to articles 22(b) and 23(b) of the Code, the "superior competent authority" as used in those articles is defined as any superior officer in the tactical or administrative chain of command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction (see par. 33i, MCM 1951).

Subpart C—Trial Matters

§ 719.108 Reporters and interpreters.

(a) *Appointment—(1) Reporters.* In each case before a general or special court-martial or military commission, the convening authority shall appoint a qualified court reporter or reporters who shall record in shorthand or by mechanical or other means the proceedings of and the testimony taken before such court or commission. A reporter may be appointed by the convening authority of a summary court-martial, by the officer who orders an investigation under article 32 of the Code or by the officer who directs the taking of a deposition. The reporter, as directed by the trial counsel or summary court, shall preserve the complete shorthand notes or mechanical record of the proceedings until appellate review has been completed and shall prepare either a verbatim or summarized record as directed. Additional clerical assistants may be appointed when necessary.

(2) *Interpreters.* In each case before a court-martial or military commission, in each investigation conducted under article 32 of the Code, and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, an interpreter who shall interpret for the court, commission, investigation or officer taking the deposition.

(3) *Manner of appointment.* Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him or at his dis-

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cretion by any other person. Such appointment may be oral or in writing.

(b) *Source and expenses.* Whenever possible, reporters, interpreters and clerical assistants shall be detailed from either naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Governmental agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of a reporter or interpreter at the prevailing wage scale for duty with a general or special court-martial or military commission or at the taking of a deposition. No expense to the Government by the employment of a reporter, interpreter or other person to assist in a court-martial, military commission or the taking of a deposition shall be incurred except when authorized by the convening authority or officer directing the proceeding. When required reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

§ 719.109 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, in order to prevent the defeat of justice it may be advisable to grant immunity from prosecution to one or more of the participants to the offense in consideration of their testifying for the Government in the investigation of and upon the trial of the principal offender. The authority to grant immunity from prosecution to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred or whether or not the matter has been referred for trial.

(b) *Procedure.* The written recommendation of the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have been preferred, that a certain witness be granted immunity from prosecution in consideration for testimony deemed essential to the Government shall be forwarded to the cognizant officer exercising general court-martial jurisdiction. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff legal officer for consideration and advice. The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified.

(c) *Form of grant.* In any case in which a witness is granted immunity, the general court-martial convening authority should execute a written agreement substantially in the following form:

In the matter of:

GRANT OF IMMUNITY

To: (Witness to whom immunity is to be granted.)

1. It appears that you are a material witness for the Government in the matter of (if charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred).

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from prosecution for any offense or offenses arising out of the matters therein involved concerning which you may be required to testify under oath.

3. It is understood that this grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness for the Government. It is further understood that this grant of immunity from prosecution extends only to the offense or offenses in which you were implicated in the matter herein set forth and concerning which you testify under oath.

(Signature)

(Grade, title)

§ 7109.110 Spectators.

The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the law officer, president of a special court-martial or summary court-martial, as appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the law officer, president of a special court-martial, or summary court-martial, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

§ 719.111 Preparation of charge sheets.

(a) *Enlisted pay grades.* The pay grade of an accused, e.g., E-1, E-2, etc., shall be indicated following the grade or rate of the accused on page 1 of the charge sheet.

(b) *Pay and allotment data—(1) Longevity increases.* Under applicable provisions of chapter 4 of volume 4 of the Navy Comptroller Manual, certain periods, such as unauthorized absence, do not constitute "time served" for the purposes of determining the cumulative years of service creditable for longevity pay increases. Care shall be taken in recording the basic pay of the accused on page 1 of the charge sheet to insure that the entry accurately reflects only the longevity increase to which the accused is entitled.

(2) *Contribution to basic allowance for quarters.* Inasmuch as the monthly contribution of an enlisted person to basic allowance for quarters which is to be deducted prior to computing the net amount of pay subject to partial for-

feitures or detention of pay is the minimum contribution as required by law in the particular case (see § 719.113(a)), only such minimum amount, regardless of the actual contribution of the accused, shall be entered in the appropriate place on page 1 of the charge sheet.

§ 719.112 Court-martial punishment of reduction in grade.

(a) *Automatic reduction.* Automatic reduction to the lowest enlisted pay grade under article 58A of the Code shall not be effected in the naval service. It is the policy of the Department of the Navy that enlisted persons of other than the lowest enlisted pay grade who are sentenced to confinement exceeding three months or to dishonorable or bad conduct discharge also be sentenced to reduction to the lowest enlisted pay grade. The sentence in such cases should expressly include reduction to the lowest enlisted pay grade.

(b) *Form of sentences to reduction in grade.* In adjudging a sentence which includes reduction to the lowest enlisted pay grade or to an intermediate pay grade, that portion of the sentence which relates to reduction should refer exclusively to the numerical designation of the grade to which reduced. Thus, this portion of the sentence should read: "To be reduced to the grade of pay grade (E-1)(. . .)". The determination of the proper grade or rate title, occupational field, apprenticeship or striker designation of the reduced pay grade shall be administratively determined by the convening authority, subject to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate.

(c) *Execution of sentence to reduction in grade.* If the sentence includes, unsuspended, a dishonorable or bad-conduct discharge or confinement for one year or more, execution of reduction included in the sentence shall not be accomplished until the sentence has been affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals.

§ 719.113 Forfeitures, detentions, fines.

(a) *Deduction of basic allowance for quarters.* The monthly contribution of an enlisted person to basic allowance for quarters, required by paragraph 126h (2), MCM 1951, to be deducted in certain cases prior to computing the net amount of pay subject to forfeiture or detention, is the minimum contribution as required by law in the particular case.

(b) *Forfeitures imposed by a summary court-martial.* Forfeitures of pay adjudged by summary courts-martial under article 20 of the Code may be apportioned over more than one month, but, as a matter of policy, the period of apportionment should not exceed three months.

(c) *Limitations.* In cases in which the sentence involves forfeiture of pay, detention of pay, or fine, the limitations prescribed by paragraph 126h, MCM 1951, shall be observed, as well as the procedures prescribed in section VIII, part B, chapter 4 of volume 4, Navy Comptroller Manual.

§ 719.114 Preparation of records of trial.

(a) *General and special courts-martial.* The provisions of appendices 9 and 10, MCM 1951, will be followed in the preparation and arrangement of records of trial and allied papers, with the following modifications:

(1) *Copies of appointing orders.* Carbon copies or mimeographed copies of the appointing orders and amending orders may be utilized for insertion into records at the place where appendices 9a and 10a, MCM 1951 (pp. 526 and 531) require insertion of "literal copy".

(2) *Charge sheets.* The original of the charge sheet may be inserted into the original record and copies of the charge sheet into copies of the record in lieu of copying into the record the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit and reference for trial. However, when the charges and specifications, the name and description of the accuser, his affidavit and reference for trial have been copied verbatim into the record, as recommended in the guide on page 507, MCM 1951 (appendix 8a), the original of the charge sheet is to be prefixed to the original of the record (appendix 9e, item 5, MCM 1951).

(3) *Staff legal officer's review.* In addition to the requirements of paragraph 85d, MCM 1951, copies of the Staff Legal Officer's Review will be attached to all copies of records of trial forwarded for review by a Board of Review.

(4) *Court-Martial Data Sheet.* Unless otherwise directed by the cognizant officer exercising general court-martial jurisdiction, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

(5) *Request for appellate defense counsel.* When the statement of the accused concerning appellate representation before a board of review is required (see § 719.115), the original thereof will be prefixed to the original record and a copy thereof to each copy of the record.

(6) *Court-Martial Chronology/Prisoner Data Form, NAVJAG 420 (6-58).* As provided in JAG Instruction 5810.20, and revisions thereof, this form will be prefixed to the originals of all records of trial by general court-martial and by special court-martial which include a bad conduct discharge.

(b) *Summary courts-martial.* Unless otherwise prescribed by the convening authority or officer having supervisory authority, the evidence considered by a summary court-martial need not be summarized or attached to the record of trial. Strict compliance with the provisions of paragraph 79e, MCM 1951, concerning the listing of names of witnesses on the charge sheet is directed.

(c) *Security classification of records of trial.* Records of trial containing classified matter shall be properly classified in accordance with the provisions of paragraph 82d, MCM 1951, and the Department of the Navy Security Manual for Classified Information. Copies of such records for delivery to the accused shall be prepared and handled in accordance with paragraph 82g, MCM 1951.

Attention is directed to the fact that while article 0407.1 of the Security Manual requires that matter bear the classification, overall, of its highest component, that degree of classification is not then imparted to other components. Rather, articles 0407.1 and 0407.3 authorize and require that a component be marked with the classification it warrants (if any). Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

Subpart D—Post-Trial Matters

§ 719.115 Request for appellate defense counsel.

Article 70(c) (1) of the Code provides that appellate defense counsel shall represent the accused, when requested by him, before a board of review or the Court of Military Appeals. Paragraph 48j(3), MCM 1951, requires the trial defense counsel, immediately after a trial which results in a conviction, to advise the accused generally as to his appellate rights. In order that each record of trial will show compliance with that paragraph, the following procedure will be followed: In each general court-martial and in each special court-martial involving a bad conduct discharge, and within the period prescribed in paragraph 48j(3), MCM 1951, the accused will, after being advised of his appellate rights, be requested to indicate his wishes as to appellate representation by a statement in the following form:

From: -----
 (Accused)
 To: Judge Advocate General.
 Subj: Appellate rights.
 Ref: (a) Par. 48j(3), MCM 1951.
 (b) Art. 66, UCMJ.

1. In accordance with reference (a), I have been informed of my appellate rights, including the right to be represented by appellate defense counsel before the board of review established pursuant to reference (b), in the review of my trial by ----- court-martial held on ----- at -----.

2. I do (do not) desire to be represented by appellate defense counsel before the said board of review.

Witness: -----

 (Defense counsel or other officer)

 (Date)

The original signed statement will be attached to the original trial record immediately following the appellate exhibits, and an unsigned copy will be similarly attached to each copy of the trial record.

§ 719.116 Distribution of staff legal officer's review.

In addition to the requirements of paragraph 85d, MCM 1951, and § 719.114 (a) (3), a copy of the review of the staff legal officer shall be forwarded to the command at which the accused is to be confined in order that it may be available

to those charged with developing an institutional program for the individual.

§ 719.117 Action on courts-martial by convening authority.

(a) *Companion cases tried separately.* In court-martial cases where the separate trial of a companion case is ordered, the convening authority will so indicate in his action on the record in each case.

(b) *Sentences suspended for more than six months.* If the sentence as approved by the convening authority involves a suspension of any portion thereof for a period in excess of six months or, in cases involving confinement, in excess of six months beyond the date of release from confinement, the convening authority shall state his reasons therefor in his action on the record.

(c) *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence adjudged extends to a punitive discharge, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not, in any way, affect the legal requirements as to the admissibility of records of previous convictions during the trial itself.

(d) *Sentences including censure—(1) General.* Censures (reprimand, admonition and caution, in descending order of severity) issued in execution of court-martial sentences are required to be in writing. Except as otherwise prescribed in this section, the provisions of § 719.102 (e) (1), (2), and (3) shall be applicable to letters of censure issued in execution of a court-martial sentence.

(2) *By whom issued.* Letters of censure in execution of sentences of summary courts-martial shall be issued by the convening authority. In those special and general court-martial cases wherein a sentence imposing censure is ordered executed by the convening authority, he shall issue the letter as part of his action on the record in accordance with the provisions of paragraph 89c(8), MCM 1951. Otherwise the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) *Contents.* The letter shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

A copy of this letter will be placed in your official record in (the Bureau of Naval Personnel) (Headquarters, U.S. Marine Corps). You are therefore privileged to forward, within fifteen days after receipt of this action, such statement concerning this letter

as you may desire, also for inclusion in your record. If you elect not to submit a statement, you shall state so officially in writing within the time prescribed. In connection with your statement, attention is directed to article 1404.2 and 3, U.S. Navy Regulations, 1948.

(4) *Procedure for issuance.* The original letter will be delivered to the accused and a copy appended to the convening authority's action (or the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter, in tenor, as follows:

Pursuant to the sentence of the court, as herein approved, a letter of (reprimand) (admonition) (caution) is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

(5) *Forwarding copy to Department.* Upon receipt of the accused's written statement or his written declaration that he does not desire to make a statement, an additional copy, together with the statement or declaration, shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(6) *Appeals.* Review, including appellate review of letters of censure issued as part of an approved court-martial sentence, will be accomplished as provided for by the Uniform Code of Military Justice, the Manual for Courts-Martial, and this part with respect to the proceedings of the particular court-martial which imposed the sentence. No separate appeal from these letters will be considered.

(e) *Designation of places of confinement.* The convening authority of a court-martial sentencing an accused to confinement is a competent authority to designate the place of confinement of naval prisoners. See also § 719.138.

(f) *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been adjudged in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record any facts which tend to extenuate, mitigate or aggravate the offense or offenses and do not appear in the court record or in the papers accompanying the same. If the accused entered a plea of guilty, the convening authority shall also include a synopsis of the circumstances of the offense amplifying the allegations set forth in the specification. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority and any statement made by the accused in rebuttal shall be appended to such action.

§ 719.118 Promulgating orders.

(a) *General and special courts-martial—(1) When promulgating orders required.* Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening authority or any other party empowered to take such action shall be promulgated as prescribed in paragraphs 90 and 91, MCM 1951. Separate orders shall be issued for each accused in case of a joint or common trial. (See note, appendix 15a, MCM 1951, page 551 (3 CFR 1949-1953 Comp. p. 719).)

(2) *When supplementary order is not required.* Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement. However, copies of any action taken on such review will be forwarded to the convening authority, the accused, and to the commanding officer of the accused for notation in the service record or service record book of the accused.

(3) *Supplementary orders in board of review cases.* If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the board of review and, in appropriate cases, the Court of Military Appeals, no supplementary court-martial order is necessary. Although not necessary for the validity of the action taken, a supplementary court-martial order shall be issued in all other cases. Such orders shall be published as follows:

(i) Supplementary orders in cases involving flag or general officers, death sentences, and dismissals are issued by the Judge Advocate General by direction of the Secretary of the Navy.

(ii) Other supplementary orders shall be issued by the cognizant general court-martial authority. In cases not reviewed by the Court of Military Appeals (by petition or certification), orders should be issued immediately following accused's execution of a "Request for Immediate Release" (see § 719.128) or upon expiration of thirty days from the date of service of the board of review decision upon the accused. In cases considered by the Court of Military Appeals, supplementary orders should be issued upon notification of completion of review by the Court.

(iii) All supplementary orders in board of review cases shall bear the "NCM" or "WC NCM" number appearing on the board of review decision.

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, MCM 1951. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words:

"By direction of (name, grade, title and organization of issuing officer)." Duplicate originals of promulgating orders are copies personally subscribed by the officer who subscribed the original. Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade and title of an officer.

(5) *Distribution.* All initial and supplementary promulgating orders shall be distributed as follows:

(i) Original to be attached to original record of trial.

(ii) Duplicate original to be placed in the service record or service record book of the accused, unless the courts-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the convening authority when no findings have been expressly approved by him.

(iii) Certified copies:

(a) Three to be attached to the original record of trial.

(b) One to be attached to each copy of the record of trial.

(c) Two to the commanding officer of an accused who is ordered to a brig as a place of confinement; three if a disciplinary command is designated as a place of confinement. These copies should accompany the records of the accused to the place of confinement.

(d) One to Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate.

(e) One to the Senior Member, Naval Clemency Board, Washington 25, D.C., if the sentence, as approved by the convening authority, includes a punitive discharge or confinement for eight months or more.

(iv) Plain copies:

(a) One to the accused.

(b) One each to the law officer, trial counsel and defense counsel of the court-martial before which the case was tried.

(c) One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

(d) One to each appropriate subordinate unit and any other local distribution desired.

(e) One to Marine Corps Audit Branch, Defense Accounting and Audit Division, General Accounting Office, Washington 25, D.C., in the case of Marine Corps personnel.

(b) *Summary courts-martial.* In accordance with paragraph 90e, MCM 1951, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial pursuant to § 719.119(a), subsequent to the initial action of the convening authority, shall be communicated to the convening authority and to the commanding officer of the accused for notation in the service record or service record book of the accused.

§ 719.119 Review of summary and special courts-martial.

(a) *Summary courts-martial and special courts-martial not involving a bad conduct discharge*—(1) *Officers having supervisory powers.* In addition to the officer immediately exercising general court-martial jurisdiction over a command, the Judge Advocate General, Assistant Judge Advocate General (Military Justice), all officers exercising general court-martial jurisdiction and the deputies or chiefs of staff of officers exercising general court-martial jurisdiction are designated as having supervisory authority for the review of records of trial pursuant to article 65(c) of the Code and paragraph 94a(2), MCM 1951.

(2) *Selection of supervisory authorities.* (i) It is the policy of the Department of the Navy that review of cases pursuant to paragraph 94a(2), MCM 1951, will be accomplished in the field, unless compelling reasons exist for forwarding the record or records to the Judge Advocate General for review, and will be accomplished within the chain of command, if practicable. If accomplishment of the review of such cases within the chain of command is found not practicable, any officer having supervisory authority in the field may be requested to accept records of such cases and to act thereon pursuant to paragraph 94a(2), MCM 1951. Only if all reasonably available officers having supervisory authority in the field find it impracticable to grant such request will the records in such cases be forwarded to the Judge Advocate General for review. If so forwarded to the Judge Advocate General, they shall be accompanied by a letter stating the reasons why supervisory authority action was not accomplished in the field.

(ii) When an officer exercising general court-martial jurisdiction is the convening authority of a summary court-martial or a special court-martial not involving a bad conduct discharge, his action thereon will be as convening authority only. The record should then be forwarded to an appropriate superior officer exercising general court-martial jurisdiction, or, if no such superior officer has a law specialist available, the record shall be forwarded to the Judge Advocate General for review.

(3) *Action by officer having supervisory authority.* The officer having supervisory authority shall, after the record has been reviewed by a law specialist, place his action on the record. If the officer having supervisory authority disagrees with the recommendation of the law specialist as to matters of law, he shall not place an action on the record but shall forward the record to the Judge Advocate General, together with a signed copy of the law specialist's recommendation, by a letter of transmittal giving his reasons for disagreement with the law specialist's recommendation. When the question of law has been resolved by the Judge Advocate General, he may take action on the record as officer having supervisory authority or he may return the record to the cognizant officer having supervisory authority for action not inconsistent with the opinion ex-

pressed by the Judge Advocate General concerning the matter of law involved. Any action on the record by the officer having supervisory authority shall affirmatively indicate that the record was reviewed by a law specialist by including the statement, "This record has been reviewed in accordance with article 65(c), UCMJ."

(b) *Special courts-martial involving a bad conduct discharge*—(1) *Action by convening authority who is an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial jurisdiction is the convening authority of a special court-martial which involves a bad conduct discharge, and if such discharge is approved by him, the record shall be forwarded direct to the Judge Advocate General for review by a board of review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM 1951.

(2) *Action by reviewing authority (officer exercising general court-martial jurisdiction).* In special court-martial cases where the sentence as approved by the convening authority who is not an officer exercising general court-martial jurisdiction includes a bad conduct discharge, review will be accomplished in accordance with paragraph 94a(3), MCM 1951. In the event the officer exercising general court-martial jurisdiction has no law specialist or Marine Corps lawyer assigned to his staff, he may request any other officer exercising general court-martial jurisdiction to accept records of trial for review. Only if all reasonably available officers exercising general court-martial jurisdiction find it impracticable to grant such request will the records be forwarded direct to the Judge Advocate General for review by a board of review. If so forwarded, they shall be accompanied by a letter stating the reasons why review under article 65(b) was not accomplished in the field.

(3) *Disagreement between reviewing authority and his staff legal officer.* If the reviewing authority is in disagreement with his staff legal officer as to any matter of law, he shall nevertheless take such action on the record as is within his discretionary powers and unaffected by the disagreement, and shall transmit the record of trial, with an expression of his own views as to the matters of law involved in the disagreement, to the Judge Advocate General for review by a board of review.

(4) *Disapproval of bad conduct discharge by reviewing authority.* If a reviewing authority determines that he will not approve that portion of the sentence which provides for a bad conduct discharge, he shall, prior to placing his action upon the record, cause the record to be reviewed by a law specialist in accordance with article 65(c) of the Code, and in the manner set forth in paragraph (a) (3) of this section.

(c) *Special courts-martial tried in joinder or in common.* When one or more of the sentences adjudged in cases tried in joinder or in common requires review only under paragraph 94a(2), MCM 1951 (not involving an approved

bad conduct discharge) and the remaining sentence or sentences require review under paragraph 94a(3), MCM 1951 (including an approved bad conduct discharge), the officer exercising general court-martial jurisdiction shall cause each of the sentences to be reviewed in accordance with the applicable paragraph of the MCM 1951. In his action on the sentence or sentences requiring review under paragraph 94a(3), MCM 1951, he shall state that the sentence or sentences requiring review only under paragraph 94a(2) have been reviewed in accordance with article 65(c) of the Code. The original of the action or review taken on the sentence or sentences requiring review only under paragraph 94a(2), MCM 1951, shall be filed with the copy or copies of the record in the files of the officer exercising general court-martial jurisdiction, and a copy of such action or review shall be attached to the record forwarded to the Judge Advocate General, together with the action taken on the sentence or sentences requiring review under paragraph 94a(3), MCM 1951.

§ 719.120 Matters to be included in action on special courts-martial by general court-martial convening authorities.

(a) *Suspension of sentences.* If the general court-martial convening authority takes action to suspend any portion of a sentence involving a bad conduct discharge for a period in excess of six months or, in cases involving confinement, in excess of six months, beyond the date of release from confinement, he shall state his reasons therefor in his action on the record. In cases involving convictions of larceny or other offense or offenses involving moral turpitude, if the general court-martial convening authority suspends the punitive discharge for any period he shall include in his action on the case a statement of his reasons therefor.

(b) *Designation of places of confinement.* The general court-martial convening authority who orders a sentence of confinement into execution subsequent to the initial action of the convening authority on the record shall designate the place of confinement in his action on the record. See also § 719.138.

§ 719.121 Disposition of record after completion of review in the field.

(a) *JAG supervision.* Records of all trials by courts-martial in the naval service are under the supervision of the Judge Advocate General of the Navy.

(b) *Board of review cases.* After completion of review in the field, records of trial of cases reviewed by authorities within the geographical boundaries of the 11th, 12th, 13th, 14th and 17th Naval Districts, and in the broad Pacific Ocean area shall forward records requiring review by a board of review under article 66(b) of the Code to the Office of the Judge Advocate General of the Navy, West Coast, San Bruno, California. All other records requiring review by a board of review shall be forwarded to the Office of the Judge Advocate General, Navy Department, Washington 25, D.C.

(c) *Other general court-martial cases.* General court-martial cases which do not require review by a board of review under article 66(b) of the Code shall be forwarded to the Office of the Judge Advocate General, Navy Department, Washington 25, D.C.

(d) *Summary courts-martial and special courts-martial not involving a bad conduct discharge.* The record of trial of such cases shall be filed as provided in § 719.129.

§ 719.122 Remission and suspension.

(a) *Authority to remit or suspend sentences—(1) General.* Pursuant to the provisions of article 74(a) of the Code and paragraph 97a, MCM 1951, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the Judge Advocate General, and all officers exercising general court-martial jurisdiction over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President, provided that the Judge Advocate General shall not exercise this power in cases involving flag or general officers, and that officers exercising general court-martial jurisdiction shall not exercise this power in cases involving officers or warrant officers. A sentence to death may not be suspended. The foregoing action may be taken without regard to whether the person acting has previously approved the sentence.

(2) *Inferior courts-martial.* Paragraph 97a, MCM 1951, grants power to remit or suspend any part or amount of the unexecuted portion of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge to the officer having supervisory authority (§ 719.119(a)) and the commanding officer of the accused who has immediate authority to convene a court of the kind that adjudged the sentence.

(b) *Probationary period.* All suspensions shall be of the conditional remission type and shall be for a definite period of time. If the suspension is for a period in excess of six months, or, in cases involving confinement, in excess of six months beyond the time of release from confinement, see § 719.117(b) or § 719.120(a), as appropriate. For instructions concerning voluntary extensions for the purpose of serving probation, see SECNAV Instruction 5815.3 and revisions thereto.

(c) *Liaison with Naval Clemency Board.* Officers who take clemency action pursuant to the authority of paragraph (a) of this section on any sentence which includes a punitive discharge or confinement for eight months or more shall coordinate such action with the Naval Clemency Board in accordance with the provisions of SECNAV Instruction 5815.3 and revisions thereto.

§ 719.123 Effective period of sentence to confinement when previous sentence to confinement not completed.

When a prisoner serving a sentence to confinement adjudged by court-martial

is convicted by a court-martial for another offense and sentenced to a term of confinement, the subsequent sentence, upon being ordered into execution, will begin to run as of the date adjudged and will interrupt the running of the prior sentence. After the subsequent sentence has been fully executed, the prisoner will resume the service of any unremitted interrupted sentence to confinement.

§ 719.124 Vacation of suspension.

(a) *Form of order.* The forms prescribed in appendix 15e, MCM 1951, shall be used for promulgating orders vacating suspensions of sentences. In cases wherein article 71(c) of the Code is applicable and appellate review is not complete, the final sentence of the appropriate form may be modified to read: "Upon completion of appellate review pursuant to article 71(c), the sentence as affirmed may be executed without further order."

(b) *Distribution of order.* The promulgating order shall be distributed in accordance with the applicable provisions of § 719.118 except that in article 72(a) cases the original promulgating order and original report of proceedings to vacate suspension shall be forwarded to the Judge Advocate General for attachment to the record of trial.

§ 719.125 Approval of sentences extending to dismissal of an officer.

Pursuant to the authority of article 71(b) of the Code, the Under Secretary of the Navy and the Assistant Secretaries of the Navy are designated as empowered to approve sentences extending to the dismissal of an officer (other than a general or flag officer), or such part, amount, or commuted form of such sentences as they see fit, and to suspend the execution of any part of the sentence as approved.

§ 719.126 Service of decision of board of review on accused.

(a) *Promulgation packages.* When, in accordance with the provisions of paragraph 100c, MCM 1951, the Judge Advocate General elects not to certify a case to the Court of Military Appeals, a "promulgation package" will be prepared by his office and forwarded to the officer immediately exercising general court-martial jurisdiction over the command to which the accused is attached, as indicated in the record. The package shall include copies of the board of review decision, a copy of the initial and supplementary court-martial orders, an endorsement (on the accused's copy of the decision) notifying him of his right to petition for review, a form of petition for review, and a post card receipt to be signed by the accused. The package will normally also include directions to take action in accordance with the provisions of this section; however, specific instructions may be given.

(b) *Delay in service.* Delivery of the board of review decision to the accused shall be accomplished as soon as possible, unless delay is expressly authorized by the Judge Advocate General.

(c) *Change in place of confinement.* To avoid delay in service, it is imperative

that the Judge Advocate General, as well as the designated confinement activity, be notified when the place of confinement or temporary custody designated in the initial court-martial order is changed. In addition, any activity which receives information indicating that a promulgation package has been mis-addressed because of any such change shall immediately notify those concerned.

(d) *Action by general court-martial authority.* Upon receipt of a promulgation package, the officer exercising general court-martial jurisdiction will first determine whether the accused is still under his jurisdiction.

(1) *Accused transferred.* If the accused has been transferred from that jurisdiction, the package will be forwarded by endorsement (copy to Judge Advocate General or Director, Office of the Judge Advocate General, West Coast, as appropriate) to the officer currently exercising general court-martial jurisdiction over the accused. If the current whereabouts of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General (Director, Office of the Judge Advocate General, West Coast) informed.

(2) *Accused present.* If the accused is under the jurisdiction of the recipient of the promulgation package and present within his command, action will be taken as follows:

(i) The accused's copy of the board of review decision, with the endorsement thereon, and the petition for review form shall be delivered to the accused.

(ii) The accused's signature should be obtained on the post card receipt. If the accused refuses to sign the receipt, a certificate of personal service, reciting the facts, shall be prepared.

(iii) The date of service shall be noted on the copy of the board of review decision marked for the general court-martial authority and the copy marked for the accused's commanding officer, if appropriate, and the copies filed accordingly.

(iv) The post card receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General (or Director, Office of the Judge Advocate General, West Coast).

(3) *Accused on leave awaiting appellate review.* If the accused is on leave awaiting appellate review pursuant to SECNAV Instruction 1050.3, or revisions thereto, the following procedures shall apply:

(i) Service shall be made by registered mail, return receipt requested, in accordance with the provisions of paragraph 4c of that Instruction.

(ii) Signature on the return receipt by anyone at the accused's leave address shall constitute notification (as of the date of receipt) to the accused of the decision of the board of review and shall commence the running of the thirty-day appeal period.

(iii) The general court-martial authority shall cause a certificate of service by registered mail to be executed and, together with the return receipt, to be

mailed to the Judge Advocate General (Director, Office of the Judge Advocate General, West Coast).

(iv) If no signed return receipt is received (for example, because the accused has changed his address without notifying his commanding officer), constructive service shall be made in the manner prescribed in subparagraph (4) of this paragraph.

(4) *Accused absent or not at leave address.* When delivery cannot be made to an accused because he is absent without leave from his assigned ship or station, or because, having been granted leave under the provisions of SECNAV Instruction 1050.3, or revisions thereto, he has changed his address without notifying his commanding officer, constructive service may be made by certificate of attempted service, in accordance with the following:

(i) *Execution of certificate of attempted service.* The certificate of attempted service shall be executed in quintuplicate by the officer attempting service, and shall show the date, place and manner service was attempted. In addition, it shall show either (a) that personal service could not be made because the accused was absent without authority from his assigned ship or station, or (b) that service by registered mail, return receipt requested, could not be made at the accused's leave address because he changed such address without notifying his commanding officer (or such other facts showing why a return receipt was not obtained). There shall be attached to the certificate of attempted service as enclosures thereto an authenticated extract copy of the entry in the service record or the service record book of the accused relating to his unauthorized absence or relating to his leave under the provisions of SECNAV Instruction 1050.3 or revisions thereto, and an authenticated copy of Form DD-553 (Deserter-Absentee Wanted by Armed Forces), if issued, or the returned envelope showing the reason for non-delivery of attempted service by registered mail.

(ii) *Distribution.* Two copies of the certificate of attempted service shall be forwarded to the Judge Advocate General. One copy shall be forwarded to the Chief of Naval Personnel or to the Commandant of the Marine Corps, as appropriate, and two copies shall be retained by the officer immediately exercising general court-martial jurisdiction over the accused.

(iii) *Return of accused within appeal period.* If the accused returns to his assigned ship or station or advises his commanding officer of his correct address within the thirty-day appeal period, a copy of the promulgation package and a copy of the certificate of attempted service shall be served upon him; if he returns to the naval service within the appeal period at some place other than his assigned ship or station, the promulgation package and a copy of the certificate of attempted service shall be transmitted by the most expeditious means to such place for personal service upon him. In either case the required endorsement notifying the accused of

his right to petition in the U.S. Court of Military Appeals should be modified by an appropriate endorsement informing him that his appeal period is limited to thirty days from the date of the certificate of attempted service. A receipt of the accused, in duplicate, for his copy of the decision of the board of review and for the certificate of attempted service shall be obtained and forwarded to the Judge Advocate General.

(iv) *Effect of constructive service.* Constructive service constitutes notification to the accused of the decision of the board of review and commences the running of the thirty-day appeal period within which he may petition the U.S. Court of Military Appeals for grant of review. At the termination of the thirty-day appeal period, action will be taken in the same manner as though the accused had been served personally or by registered mail on the date of the execution of the certificate of attempted service.

(v) *Form.* The following form is recommended but may be modified as necessary to meet the requirements of a particular case:

UNITED STATES
v.

(Name, service number, grade or rate, and armed service.)

SPCM (GCM) (WC) NCM -----
CERTIFICATE OF ATTEMPTED SERVICE OF
BOARD OF REVIEW DECISION

To: The Judge Advocate General of the Navy
1. On -----, at -----
(Date)

(Ship, station or address of accused)
I, the undersigned officer, attempted to deliver to -----
(Name of accused)
the accused in the above-entitled case, a copy of the decision of the board of review with an endorsement thereon informing him of his right to petition the U.S. Court of Military Appeals for grant of review within 30 days from the time he is notified of the decision of the board of review, but delivery thereof was impossible because the said -----
(Name of accused)
[was then absent without leave (having escaped from confinement, broken arrest, broken restriction)] [was on leave awaiting appellate review and changed his address without notifying his commanding officer] [-----].

2. I have attached hereto as enclosure (1) an authenticated copy of the entry appearing in the service record of the said -----
(Name of accused)
relating to his [absence without leave] [leave pending completion of appellate review] and as enclosure (2) [an authenticated copy of Form DD-553 (Deserter-Absentee Wanted by the Armed Forces)] [returned envelope showing reason for nondelivery of attempted service by registered mail].

(Signature)

Name -----
Grade and service -----
File number -----
Organization -----

Encl: (1) Authenticated extract copy from service record.
(2) (Authenticated copy of Form DD-553.) (Returned envelope.)

§ 719.127 Execution of sentence.

(a) *General.* When the sentence of an enlisted man or warrant officer as affirmed by the board of review includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more, it may not be executed until completion of appellate review, i.e., expiration of the thirty-day appeal period if no petition for review is filed, or final review by the Court of Military Appeals if a petition is filed; provided that the sentence may be executed in accordance with the provisions of § 719.128 when the accused executes a Request for Immediate Release. When such sentence as affirmed by the board of review does not include, unsuspended, dishonorable or bad conduct discharge, or confinement for one year or more, it may be executed without further delay. See § 719.118 for requirements concerning issuance of promulgating orders.

(b) *Naval Clemency Board cases.* Attention is directed to the provisions of SECNAV Instruction 5815.3 and revisions thereto, concerning the execution of punitive discharges in cases where the Naval Clemency Board action has not been received.

§ 719.128 Request for immediate release by accused.

(a) *General.* An accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which his sentence as affirmed by a board of review:

(1) Includes an unsuspended punitive discharge (including a discharge the suspension of which has been vacated); and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed prior to thirty days from the date the accused is served with a copy of the board of review decision.

(b) *Conditions of approval.* Such requests may be approved by the officer exercising general court-martial jurisdiction subject to the following conditions:

(1) That the accused has received a copy of the decision of the board of review in his case;

(2) That the accused has had fully explained to him his right to petition the United States Court of Military Appeals for grant of review;

(3) That the accused does not have an appeal pending before the United States Court of Military Appeals;

(4) That the accused does not intend to appeal to the United States Court of Military Appeals but, nevertheless, understands that his request for immediate release does not affect his right seasonably to petition the United States Court of Military Appeals;

(5) That the accused has consulted counsel of his own choice; and,

(6) That the accused has executed a Request for Restoration (NavPers 3048) which has been denied, or that he has executed a Waiver of Restoration (NavPers 3049) and does not have a Request for Restoration pending before the Sec-

retary of the Navy. In the event the accused has previously executed a Request for Restoration which is still pending, notification of subsequent execution of Waiver of Restoration shall be made immediately to the Secretary of the Navy (Naval Clemency Board); and execution of the unexecuted portion of the sentence will be held in abeyance pending notification of action by the Naval Clemency Board.

(c) *Execution of unexecuted portion of sentence.* Upon approval of such requests the officer exercising general court-martial jurisdiction will order the unexecuted portion of the sentence to be duly executed.

(d) *Form of request for immediate release.* The following form is prescribed. Three signed copies thereof will be transmitted to the Judge Advocate General.

UNITED STATES

v.

(Name, service number, grade or rate, and armed service)

SPCM (GCM) (WC) NCM -----

REQUEST FOR IMMEDIATE EXECUTION OF (BAD CONDUCT) (DISHONORABLE) DISCHARGE ADJUDGED ON ----- BY (SPECIAL) (GENERAL) COURT-MARTIAL CONVENED BY ----- AT (ON BOARD) -----

To: (Officer exercising general court-martial jurisdiction)

1. I, the undersigned, the accused in the above-captioned case, hereby request the immediate execution of the above described

(Dishonorable/Bad Conduct) discharge and my release from the naval service.

2. I have executed (a Request for Restoration, NavPers 3048, which has been denied) (a Waiver of Restoration, NavPers 3049, and do not have a Request for Restoration, NavPers 3048, pending before the Secretary of the Navy). [Delete inapplicable alternative.]

3. I received a copy of the decision of the Board of Review in my case on -----

4. I have had fully explained to me and I understand my right, under article 67(c) of the Uniform Code of Military Justice, to petition the United States Court of Military Appeals for grant of review within thirty days from the date I received my copy of the decision of the Board of Review.

5. I do not have an appeal pending before the United States Court of Military Appeals at this time, nor do I now intend to appeal; however, I understand that if this request is granted, it will not affect my right to appeal if I later change my mind and decide to appeal.

6. I have discussed this matter with

(Name, grade, file number, branch of service) counsel of my own choice.

(Name of accused)

CERTIFICATE

I, the undersigned officer of the grade, file number and branch of service below stated, certify that the above named accused personally appeared before me this ----- day of -----, 19--, at -----; I explained to him his right, under article 67(c) of the Uniform Code of Military Justice, to petition the United States Court of Military Appeals for grant of review; I read aloud to him the foregoing request and he thereafter

signed the same in my presence and acknowledged that he did so as his free and voluntary act.

(Name, grade, file number, branch of service)

§ 719.129 Filing of court-martial records.

(a) *General courts-martial.* All records of trial by general court-martial shall, after completion of final action, be filed in the Office of the Judge Advocate General.

(b) *Special courts-martial.* Records of trial by special courts-martial which (1) involve an officer accused or (2) have been acted upon by a board of review, including a rehearing of a case in which a board of review acted on the earlier record of trial, shall, after completion of final action, be filed in the Office of the Judge Advocate General. All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

(c) *Summary courts-martial—(1) Shore activities.* Officers having supervisory authority will retain original records for a period of two years after final action. At the termination of such retention period, officers having supervisory authority at shore activities in the 1st through 10th Naval Districts will transfer the original records of proceedings to the Federal Records Center, Mechanicsburg, Pennsylvania; those at shore activities in the 11th through 17th Naval Districts will transfer such records to the Federal Records Center, South San Francisco, California.

(2) *Fleet activities.* Supervisory authorities who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, will retain original records of proceedings for a period of three months. At the termination of such retention period, such fleet officers in the Atlantic-Mediterranean Area and in the 1st through 10th Naval Districts will transfer the original records of proceedings to the Federal Records Center, Mechanicsburg, Pennsylvania; those in the Pacific Area and in the 11th through 17th Naval Districts will transfer such records to the Federal Records Center, South San Francisco, California.

§ 719.130 Financial responsibility for costs incurred in support of courts-martial.

Financial responsibility for costs incurred as the result of necessary activities of appointees to or witnesses called before courts-martial will be governed by the following delineation:

(a) *Travel, per diem and fees.* (1) The costs of travel and per diem of military personnel and civilian employees of the Navy, including that of JAG Task Force personnel but excluding that of Naval Judiciary Unit personnel, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by Naval Judiciary Unit personnel will be charged to the operation and maintenance allotment of the Judge Advocate General.

(2) The costs of fees and mileage of civilians other than employees of the Navy will be charged to appropriation "Operation and Maintenance, Navy" funds administered by the Bureau of Naval Personnel.

(b) *Services and supplies.* (1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(i) In house costs which are direct, out-of-pocket, identifiable, and which total \$100 or more in a calendar month; and

(ii) Costs which arise under contracts which were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services and/or supplies.

Subpart E—Miscellaneous Matters

§ 719.131 Fees of civilian witnesses.

(a) *Authorization for payment.* (1) The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition has been taken when such disbursing officer is presented a public voucher for such fees and mileage properly completed, signed by the witness and certified by one of the following:

(i) Trial counsel or assistant trial counsel of the court-martial.

(ii) Summary court-martial.

(iii) Counsel for the court in a court of inquiry.

(iv) Recorder or junior member of a board to redress injuries to property.

(v) Military or civil officer before whom a witness gave his deposition.

(2) The public voucher must be accompanied by the subpoena and by a certified copy of the order appointing the court-martial, court of inquiry or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its Territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) *Obtaining money for advance tender or payment.* Upon written re-

quest by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) *Reimbursement.* If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) *Certificate of person before whom deposition is taken.* The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition will be evidence of the fact and period of attendance of the witness and the place from which summoned (see paragraph 117e, MCM 1951).

(e) *Payment of accrued fees.* The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return journeys will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) *Computation.* Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) *Non-transferability of accounts.* Accounts of civilian witnesses may not be transferred or assigned.

(h) *Signatures.* Signatures of witnesses when signed by mark must be witnessed by two persons.

(i) *Rates for civilian witnesses prescribed by law—(1) Civilian witnesses not in Government employ.* A civilian not in Government employ, duly summoned as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive four dollars (\$4.00) for each day's actual attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going and returning to his place of residence. Regardless of the mode of travel employed by the witness, computation of mileage in this respect shall be made on the basis of a uniform table of distances adopted by the Attorney General (Rand McNally Standard Highway

Mileage Guide). Civilian witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residences as to prohibit return thereto from day to day, shall be entitled to an additional allowance of eight dollars (\$8.00) per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance; provided, that in lieu of the mileage allowance provided for herein, witnesses who are required to travel between Hawaii, Puerto Rico, the Territories and possessions, or to and from the continental United States, shall be entitled to the actual expenses of travel at the lowest first class rate available at the time of reservation for passage, by means of transportation employed; and provided further, that this subparagraph (1) shall not apply to Alaska. In each instance involving Alaska, the Judge Advocate General will, upon request, furnish the current applicable rates. (See 28 CFR 21.3 for fees and allowances of witnesses in Alaska.)

(2) *Civilian witness in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid (i) his necessary expenses, incident to travel by common carrier or, if travel is made by privately owned automobile, mileage at the rate of 10 cents per mile, and (ii) a per diem allowance at the rate of \$16 in lieu of subsistence within the United States except Alaska and Hawaii, and at the maximum rates prescribed by the Bureau of the Budget pursuant to the Travel Expense Act of 1949, as amended (5 U.S.C. 836) in Alaska and Hawaii and outside the United States. Such per diem allowance shall be paid in accordance with the provisions of the Standardized Government Travel Regulations (see NCPI 4650-Encl 2). If the tribunal is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

(j) *Expert witnesses.* When the services of an expert witness are required, the convening authority shall inform the Judge Advocate General by expeditious means and inform him of (1) the duration of the expected testimony and (2) the recommended daily compensation computed on the basis of the standing of the expert witness involved and the normal compensation paid a witness of such standing in the area involved. Upon the receipt of such information, the Judge Advocate General, acting for the Secretary of the Navy, will advise the convening authority of the amount of compensation authorized. After an expert witness has testified pursuant to such employment the certificate of one of the officers listed in subparagraph (a) of this section to the disbursing officer shall also enclose a certified copy of the authorization of the Judge Advocate General.

§ 719.132 Warrants of attachment.

Warrants of attachment will not be issued without prior approval of the Judge Advocate General, acting for the Secretary of the Navy, in each case.

§ 719.133 Security of classified matter in judicial proceedings.

(a) *General.* Every precaution will be taken by convening authorities, law officers, presidents of special courts-martial, summary courts-martial and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves security information or cryptographic systems and publications, the convening authority, president of a special court-martial, summary court-martial and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of section 3, chapter 9 of the Department of the Navy Security Manual for Classified Information; paragraph 33f, MCM 1951; and SECNAV Instruction 5511.4 and revisions thereto.

(b) *Security clearance of personnel.* If classified matter is to be used for prosecution, appropriate personnel security clearances must be granted to all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court, in accordance with the Department of the Navy Security Manual for Classified Information. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused himself, and the practicability of doing so, rests in the sound discretion of the convening authority and may be one of the considerations in his determination that permission to try a particular case must be requested from the Secretary of the Navy in accordance with the provisions of paragraph 33f, MCM 1951. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this paragraph have not been complied with, the law officer or president of a special court-martial or summary court-martial shall adjourn the court and refer the matter to the convening authority.

(c) *Procedures concerning spectators.* See § 719.110 which prescribes procedures necessary to prevent the dissemination of classified information to other than authorized persons.

§ 719.134 Court-martial forms.

For a list of the forms used in courts-martial and instructions concerning the requisition of such forms, see SECNAV Instruction 5605.3 and revisions thereto.

§ 719.135 Suspension of counsel.

(a) *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM 1951, and this section, been suspended from acting as counsel before courts-martial and boards of review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM 1951, and from withdrawal of certification made pursuant to articles 26 and 27 of the Code.

(b) *Grounds for suspension.* (1) Suspension shall be accomplished only when,

by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or board of review. Specific grounds for suspension include, but are not limited to:

- (i) Demonstrated incompetence while acting as counsel during pre-trial, trial or post-trial stages of a court-martial;
- (ii) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;
- (iii) Fabricating papers or other evidence;
- (iv) Tampering with a witness;
- (v) Abusive conduct toward the court or board, the law officer, or opposing counsel;
- (vi) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46 and 48, MCM 1951);
- (vii) Conviction of an offense involving moral turpitude or conviction of a violation of article 48 of the Code;
- (viii) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or
- (ix) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

(2) Action to suspend should not be initiated solely because of personal prejudice or hostility toward counsel, because he has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems solely from inexperience or lack of instruction in the performance of legal duties. The Canons of Professional Ethics of the American Bar Association are considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and boards of review, and are quoted, in part, for guidance:

3. *Attempts to exert personal influence on the court.* Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar.

5. *The defense or prosecution of those accused of crime.* It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused, otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of estab-

lishing the innocence of the accused is highly reprehensible.

7. *Professional colleagues and conflicts of opinion.* A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the professional employment of another lawyer, are unworthy of those who should be brethren at the bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

9. *Negotiations with opposite party.* A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake or negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

15. *How far a lawyer may go in supporting a client's cause.* Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

16. *Restraining clients from improprieties.* A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

17. *Ill-feeling and personalities between advocates.* Clients, not lawyers, are the

litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. *Treatment of witnesses and litigants.* A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

21. *Punctuality and expedition.* It is the duty of the lawyer not only to his client, but also to the courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

24. *Right of lawyer to control the incidents of the trial.* As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

37. *Confidences of a client.* It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened.

39. *Witnesses.* A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of opposing counsel or party. In doing so, however, he should scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from the truth, or in any degree to affect his free and untrammelled conduct when appearing at the trial or on the witness stand.

(c) *Action to suspend—(1) General.* Action to suspend a person from acting as counsel before courts-martial and boards of review will be initiated only

when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effectiveness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a law officer, appointed counsel, staff legal officer, or member of a board of review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action will be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he will appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as law officer or counsel of general courts-martial pursuant to article 26 or 27 of the Code. The board will cause notice to be given to the counsel concerned informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel will be permitted at least 5 days subsequent to notice to prepare for a hearing. Failure to appear at a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was convened by other than the Judge Advocate General, the officer who appointed the board shall, unless he deems the investigation incomplete, in which case he may direct further investigation and hearing, forward the report of the board to the Judge Advocate General together with his comments and recommendations concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board convened by him or the report of a board convened by an officer exercising general court-martial jurisdiction, together with the comments and recommendations of such officer, the Judge Advocate General shall determine whether the person involved shall be

suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding this section, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as law officer or as counsel before general courts-martial made pursuant to article 26 or 27 of the Code.

§ 719.136 Petition for new trial under Article 73 of the Code.

(a) *Received prior to completion of action in the case by the board of review and the U.S. Court of Military Appeals.* Petitions for new trials received in the Office of the Judge Advocate General while the accused's case is pending before a board of review of the U.S. Court of Military Appeals shall be referred for action to the board, or Court, respectively. If referred for action to a board of review, such board shall take action in accordance with the Uniform Rules of Procedure for Proceedings In and Before Boards of Review.

(b) *Received subsequent to action in the case by the board of review and the U.S. Court of Military Appeals.* If a petition for a new trial is received in the Office of the Judge Advocate General and the case is no longer pending before either a board of review or the U.S. Court of Military Appeals, action will be taken in accordance with the provisions of paragraph 109, MCM 1951, and the following rules:

(1) If the petition was placed in military channels within one year after approval of the sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate General, it shall be considered to have been seasonably filed.

(2) Upon receipt of a petition for a new trial, it shall be docketed in the Military Justice Division and examined for compliance with the requirements of paragraph 109, MCM 1951. If the petition does not comply with such requirements in any particular or particulars, the petition will be returned to the petitioner for correction and compliance. Any format that substantially includes the required information will however, be considered sufficient.

(3) If the petition does not submit matter that falls within the category of newly discovered evidence or fraud on the court, or if the requirements of article 73 of the Code are not otherwise met, the Judge Advocate General will advise the petitioner that the petition has been denied.

(4) If the petition is considered substantially to comply with the provisions of paragraph 109, MCM 1951, and if the matter submitted is considered to fall within the category of newly discovered evidence or fraud on the court, one copy of the petition, one copy of each supporting document and one copy of the brief, if any, will be forwarded to desig-

nated appellate defense counsel and to designated appellate Government counsel.

(5) In the event either counsel or the panel referred to in subparagraph (6) of this paragraph considers that further investigation is necessary in the interests of justice, he or the panel may request the Judge Advocate General to initiate such investigation stating in full the reasons for the request.

(6) Immediately after the action described in subparagraph (4) of this paragraph, the Judge Advocate General shall constitute a panel of three officers from the membership of boards of review in his office, other than the board of review which previously acted on the case, and such panel shall be provided with a copy of the petition, each supporting document and the briefs, if any.

(7) Upon the request of the petitioner, his counsel or representative, and upon a showing that such hearing and argument is in the interests of justice, a hearing and oral argument upon the petition may be allowed within the discretion of the panel constituted to consider the petition. Oral testimony will not be taken at such hearing, however; any new evidence must be submitted in written form. The petitioner shall not attend such hearing and may argue only through counsel. Whether or not a hearing and oral argument are allowed, the counsel for petitioner may file a brief in support of his petition within 20 days after: (i) his designation as counsel for the petitioner; or (ii) if other than designated counsel, his notification of appearance to the panel constituted to consider the petition. Counsel for the Government may file a brief opposing the petition within 20 days of the filing of petitioner's brief, or, if petitioner has failed to file a brief, within 20 days after the expiration of the time allowed for filing of petitioner's brief.

(8) Insofar as practicable and not inconsistent with provisions of the Manual for Courts-Martial and this section, the provisions of the Uniform Rules of Procedure for Proceedings In and Before Boards of Review (Part 150 of this title) will be followed with respect to qualifications and conduct of counsel, the format of briefs, the conduct of hearings, continuances and interlocutory matters.

(9) After briefs are filed and after hearing and oral argument, if any, the panel constituted to consider the petition shall prepare an opinion, together with a summary of the evidence and a discussion of the points of law involved, and an action on the petition for consideration by and signature of the Judge Advocate General.

§ 719.137 Set-off of indebtedness of convicted person against his pay.

When the United States has suffered loss of money or property through such offenses as selling or otherwise disposing of or willfully damaging, destroying or losing military property, willfully and wrongfully hazarding a vessel, larceny, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in article 1901, U.S. Navy Regulations, 1948, have been convicted by court-martial and sentenced to

dismissal or punitive discharge, the amount of such loss constitutes an indebtedness to the United States which will be set off against the final pay and allowances due such person at the time the dismissal or punitive discharge is executed. The convening authority of the court-martial will determine the amount of the loss and advise the disbursing officer of the amount to be set off. The amount of the loss may also be set off against a convicted person's final pay and allowances when he is separated otherwise than by dismissal or punitive discharge. See NAVCOMPT Manual pars. 043201 and 044443-28 for set-off prior to separation with consent of the individual concerned. See also 10 U.S.C. 6161 and SECNAV Instruction 7220.38 and revisions thereto concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding set off against final pay in other cases when such action is directed by competent authority.

§ 719.138 Authority to prescribe regulations relating to the designation and changing of places of confinement.

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations as required to appropriate authorities relating to the designation and changing of places of confinement of naval prisoners. See BUPERS Instruction 1640.5 and revisions thereto. Convening authorities, officers exercising supervisory authority, and commanding officers operating brigs are considered appropriate authorities within the meaning of this section. The Chief of Naval Personnel is further authorized to designate places of confinement when necessary, to change the designation, and to authorize the transfer of prisoners between naval places of confinement and to Federal penal or correctional institutions.

§ 719.139 Authority to administer oaths and to act as notary.

(a) Article 136 of the Code, entitled "Authority to administer oaths and to act as notary," lists several categories of persons who are granted authority as set forth in subsections (a) and (b) of the article. Subsections (a) (1) through (6) and (b) (1) through (5) list specific categories, and (a) (7) and (b) (6) provide that additional persons may be designated by regulations of the Armed Forces or by statute to exercise authority under the article. In accordance with the provisions of article 136(a) (7) the following officers of the Navy and Marine Corps on active duty, including retired and reserve officers, are authorized to administer oaths for the purpose of military administration, including military justice, and shall have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by members of the Armed Forces, wherever they may be; by persons serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands; and

by other persons subject to the Code outside the United States:

(1) Officers certified by the Judge Advocate General of the Navy under articles 26 and/or 27 of the Code; and

(2) Officers of the grade of Lieutenant Commander and Major, or above.

(b) Further, the following officers of the Navy and Marine Corps on active duty, including retired and reserve officers, are authorized in accordance with the provisions of article 136(b) (6) of the Code to administer oaths necessary in the performance of their duties: Officers designated as Casualty Assistance Calls Program Officers while so acting.

§ 719.140 Apprehension by civilian agents of naval intelligence.

Pursuant to the provisions of paragraph 19, MCM 1951, and under the authority of article 7(b) of the Code, any civilian agent of Naval Intelligence, who is duly accredited by the Director of Naval Intelligence or a designee of the Director of Naval Intelligence, and who has been assigned to conduct an investigation requested by, or at the direction of, the Secretary of the Navy, the Head of any Office or Bureau in the Department of the Navy, the Commandant of the Marine Corps, the Commandant of the Marine Corps Schools, any commanding general of the Marine Corps, or any Naval commandant, commander or commanding officer, may apprehend, if necessary, persons subject to the Uniform Code of Military Justice or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer of a higher grade than that of the commissioned officer or warrant officer who is to be apprehended, except where such an apprehension is necessary to prevent disgrace to the service or the commission of a felony.

Subpart F—Parties and Witnesses in Certain Fact-Finding Bodies

§ 719.150 Objectives.

(a) *Definition.* Administrative fact-finding bodies of the types here dealt with are used by commanding officers for the purpose of developing the facts and circumstances of an incident or event.

(b) *Function.* The primary function of a fact-finding body is to develop and consider evidence related to the matter under investigation; to arrive at clearly expressed, consistent findings of fact from that evidence; and, if directed, to offer opinions and recommendations.

(c) *Purpose.* The primary purpose of a fact-finding body is to provide convening and reviewing authorities with adequate information upon which to base decisions in the matters involved. Fact-finding bodies are administrative and not judicial. The report of a fact-finding body is purely advisory; its opinions do not constitute final determinations or legal judgments, and its

recommendations are not binding on convening and reviewing authorities.

§ 719.151 Types of fact-finding bodies.

(a) *Three types.* There are three types of administrative fact-finding bodies: courts of inquiry, boards of investigation, and one officer investigations. The investigations conducted by the basic types of fact-finding bodies may be either formal or informal; those conducted by courts of inquiry are always formal. A formal fact-finding body is one which meets all of the following requirements: It is convened by a written appointing order, testimony is taken under oath, and proceedings are recorded verbatim. If any one of these requirements is absent, the investigation is informal. Formal and informal investigations differ in their procedures to accommodate the variety of situations which must be investigated in the Department of the Navy. The formal investigation utilizes hearing room methods similar to the court of inquiry. The informal investigation employs for the most part the preliminary inquiry method using correspondence, telephone inquiries and informal interviews to gather the required information conveniently and expeditiously.

(b) *Courts of inquiry.* A court of inquiry consists of at least three commissioned officers as members and a commissioned officer as counsel for the court. It is always a formal fact-finding body. See article 135 of the Code. It is always convened by a written appointing order, and whether or not so directed in the appointing order, a court of inquiry will take testimony under oath and record proceedings verbatim. Except for boards convened for the redress of injuries to property under article 139 of the Code (see Part 755 of this chapter), a court of inquiry is the only naval fact-finding body which possesses the power to subpoena civilian witnesses.

(c) *Board of investigation.* A board of investigation is comprised of two or more commissioned officers. It may be either formal or informal.

(d) *One-officer investigation.* A one-officer investigation is conducted by one commissioned officer. It may be either formal or informal. One-officer investigations are designed to meet necessary investigative requirements with a minimum commitment of officers.

§ 719.152 Convening authority—power to order.

(a) *Courts of inquiry.* Any person authorized to convene a general court-martial, or any other person designated by the Secretary of the Navy for that purpose, may convene a court of inquiry.

(b) *Investigations.* Any officer in command may order a board of investigation or a one-officer investigation. For the purposes of this subpart, "officer in command" means an officer authorized to convene any type of court-martial under article 22, 23, or 24 of the Code, or authorized to impose disciplinary punishment under article 15 of the Code, including officers in charge. Only a commanding officer empowered to convene a special court-martial, or superior authority, may, however, order

an investigation which involves redress of injury under article 139 of the Code.

§ 719.153 Authority to administer oaths.

An officer appointed to perform investigative functions or to serve as counsel for an administrative fact-finding body within the meaning of this subpart is empowered to administer oaths in the performance of his duties. (See article 136 of the Code.)

§ 719.154 Parties; definitions.

(a) *Party.* A party is a person subject to the Uniform Code of Military Justice, or an employee of the Department of Defense, whose conduct or performance of duty is "subject to inquiry" or who has a "direct interest" in the subject under inquiry and who is so designated as provided in §§ 719.155 and 719.156.

(b) *Subject to inquiry.* A person's conduct or performance of duty is "subject to inquiry" when the person is involved in the incident or event under investigation in such a way that disciplinary action may follow; or which may affect his rights or privileges; or jeopardize his personal reputation or professional standing.

(c) *Direct interest.* A person has a "direct interest" in the subject of inquiry:

(1) When the findings, opinions, or recommendations of the fact-finding body may, in view of his relation to the incident or circumstances under investigation, reflect questionable or unsatisfactory conduct or performance of duty; or

(2) When the findings, opinions, or recommendations may relate to a matter over which the person has a duty or right to exercise official control.

§ 719.155 Designation of parties.

(a) *Who may be designated.* (1) Any member of the naval service subject to the Uniform Code of Military Justice whose conduct or performance of duty is subject to inquiry shall be designated as a party.

(2) Any person subject to the Uniform Code of Military Justice or employed by the Department of Defense who has a direct interest in the subject of inquiry under § 719.154(c) (1) or (2) shall or may, respectively, upon his own request, be designated as a party to the proceedings.

(3) Any member of an Armed Force other than the Navy and Marine Corps who is subject to the Code and whose conduct or performance of duty is subject to inquiry or who has a direct interest in the subject of inquiry may be designated a party, but only under the conditions set forth in paragraph (b) (3) of this section.

(4) Any member of the Naval Reserve or Marine Corps Reserve not subject to the Uniform Code of Military Justice by virtue of his status whose conduct or performance of duty is subject to inquiry or who has a direct interest in the subject of inquiry, may, upon his own request, be designated a party. See paragraph (b) (3) of this section.

(5) No other persons may be designated parties.

(b) *Who may designate.* Parties may be designated by either the convening authority or the fact-finding body, subject to the following rules:

(1) Designation of parties should be accomplished by the convening authority in the appointing order if it is apparent at the time of its issuance that a person or persons should be designated. The power to designate continues in the convening authority during the entire proceedings before the fact-finding body.

(2) If, at any time during the course of the investigation it appears to the investigative body that any person not previously designated as a party should be so designated (see paragraph (a) of this section), the person shall be informed of that conclusion and the reasons therefor, and shall be designated a party and accorded his rights as such. See § 719.157.

(3) When it is considered advisable and practicable to accord the rights of a party to a member of an Armed Force other than the Navy or Marine Corps, or to a member of the Naval or Marine Corps Reserve under paragraph (a) (4) of this section, the rights of a party shall be explained to that person and he shall be offered an opportunity to participate voluntarily as a party to the proceedings. Should the convening authority or the fact-finding body consider it necessary to designate such person a party without his consent, application for authority to do so shall be made to the Secretary of the Navy (Judge Advocate General) stating the reasons therefor, the subject of inquiry, and enclosing a brief summary of the facts known at the time. The investigation shall continue while awaiting reply. The person will be notified that proceedings are to be continued, that he may voluntarily participate, and that he will be accorded the rights of a party. If authority to designate the person a party without his consent is received from the Secretary of the Navy after the proceedings have commenced, the fact-finding body will follow the procedure of subparagraph (2) of this paragraph, unless the person has already voluntarily availed himself of the opportunity to be a party.

§ 719.156 Change in status of a party.

If it no longer appears that a person previously designated as a party is involved in a material degree in the matter under investigation, his designation as a party may be withdrawn by the investigative body upon application of that party, or on the fact-finding body's own initiative.

§ 719.157 Rights of a party.

(a) *General.* A party to an investigation by a fact-finding body shall have the following rights:

(1) To be given due notice of such designation.

(2) To be present during the proceedings, but not when the investigation is cleared for deliberations.

(3) To be represented by counsel.

(4) To cross-examine witnesses.

(5) To introduce evidence.

(6) To testify as a witness.

(7) To refuse to incriminate himself, and to refuse to make any statement re-

garding any offense of which he is accused or suspected.

(8) To make a voluntary statement, oral or written, to be included in the record of proceedings or investigative report.

(9) To make an argument at the conclusion of presentation of evidence.

In courts of inquiry only, a party has two additional rights:

(10) To challenge members of the court of inquiry for cause stated to the court. (Article 135(d) of the Code.)

(11) If charged with an offense, to be a witness at his own request and not to be called as a witness in the absence of his own request.

(b) *Right to counsel.* The party may be represented by civilian counsel if provided by him, or by military counsel appointed by the convening authority. The party is entitled to military counsel of his own selection, if reasonably available. Except in an investigation which is to be utilized as a pretrial investigation required by article 32 of the Code, no special legal qualifications of counsel for the party are required. In a court of inquiry or other formal investigation counsel qualified under article 27(b) of the Code should be made available if practicable. In informal investigations similarly qualified counsel should be provided if reasonably available. If the investigation is to be utilized as a pretrial investigation required by article 32 of the Code, counsel for the party must be qualified within the meaning of article 27(b) of the Code, unless the party expressly waives the appointment of counsel so qualified. The explanation of this right in an appropriate case, and any waiver thereof, shall be reported verbatim in the record of any formal investigation or otherwise noted in the report of an informal investigation. It is the duty of counsel to represent the party to the best of his ability and to protect and safeguard the interests of the party by all honorable and legal means. If counsel for a party is absent, a formal investigation shall not proceed until his return, or until new counsel for the party is retained by him or appointed by the convening authority. However, the party may waive his right to have counsel present provided the party understands his right to counsel and the effect of the waiver. The explanation of this right and any waiver thereof shall be reported verbatim in the record.

(c) *Explanation of rights.* At the outset of the proceedings of an administrative fact-finding body, all parties then designated shall be informed of the rights set forth in paragraph (a) of this section, and those rights shall be clearly explained. Upon the designation of a person as a party during the course of the investigative proceedings his rights as such shall be explained clearly to him. The record of proceedings, to the point the investigation has progressed, will be made available to a newly designated party and his counsel for examination. Any reasonable request by a newly designated party for recall of witnesses previously examined for the purpose of cross-examination shall be granted. If the witness cannot be recalled, cross-examination may be ac-

complished by affidavit or in the case of an informal investigation by any practicable means. Any testimony given by a person as a witness prior to his designation as a party remains in the record after designation as a party. If the person is on the witness stand at the time he is designated a party or is thereafter called as a witness, see § 719.158 for the rights to be accorded him. Undue delay in the designation of a party may constitute prejudice and preclude adverse action with respect to the party based upon the record or his earlier testimony.

(d) *Failure to accord rights.* Failure to accord the rights of a party to a person whose conduct becomes subject to inquiry may preclude use of the record of proceedings as evidence. (Article 50 of the Code.) Moreover, such failure may require the return of a record or report to the convening authority to afford an individual the opportunity to examine the record or report and to make a statement in rebuttal concerning adverse action taken or contemplated against him other than disciplinary action (see § 719.101(d)(1)). In those instances where substantial contentions are made in the rebuttal statement, which are not refuted by other evidence in the case, further inquiry should be instituted to resolve the points in issue. If further inquiry is impracticable, the convening authority should express his opinion concerning the points in issue.

(e) *Recording advice as to rights.* The record of proceedings of a court of inquiry or formal investigation shall set forth verbatim the advice given to a person designated as a party concerning his rights. Any waiver of his rights by the party, in whole or in part, shall also be recorded verbatim. Waivers may be made personally by the party or by counsel in the presence of the party. In those proceedings where a verbatim record is not prepared (i.e. an informal investigation), the substance of the advice given to a person designated as a party shall be reduced to a written statement. The party shall acknowledge in writing that he has been informed of his rights as indicated in the statement and any waivers thereof shall be executed in writing. The statement of rights, acknowledgment of the party and any waivers shall be attached to the report of investigation as an exhibit. The written acknowledgment and any waivers shall be witnessed by two witnesses, one of whom shall be the counsel of the party, if he is represented by counsel.

(f) *Right to a copy of the record.* A party to an investigation is not entitled to a copy of the record or investigative report, or any part thereof, unless the record is to be used as a pretrial investigation under article 32 of the Code and trial of the party by general court-martial has been ordered. Consideration should be given to conducting a separate pretrial investigation when the record or report of the investigation contains either classified material or unclassified material which might be of assistance in prosecution or support of a claim against the United States. If a letter of censure, or other nonjudicial punishment is contemplated, see § 719.

101 concerning the right of the individual to a copy of the record.

§ 719.158 Rights of witnesses.

(a) *Persons charged with offenses.* Any party or other person charged with an offense relating to the matter under investigation shall be a competent witness before a court of inquiry only at his own request (18 U.S.C. 3481). A person is charged with an offense when he has been formally accused by indictment or information, or by the preferring of charges and specifications under article 30 of the Code. Subject to this statutory limitation, any party or other person, whether charged with or suspected of an offense, may be called as a witness before a fact-finding body, whether or not he requests to be a witness.

(b) *Compulsory self-incrimination prohibited.* (1) No witness shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any issue under investigation and may tend to degrade him. (Art. 31 (a) and (c) of the Code.) See MCM 1951, par. 150.

(2) If a party or other person called as a witness is suspected of or charged with an offense, he shall be informed of the nature of the offense and the subject matter of the inquiry, and shall be advised that he does not have to make any statement or give any testimony regarding the offense, and that any statement or testimony made by him may be used as evidence against him in any subsequent trial by court-martial. (Article 31(b) of the Code. If such party or other person is not subject to the Code, the phrase "any subsequent trial by court-martial" at the end of the warning should be modified, e.g., as follows: "any subsequent trial by court-martial or other court" or "any subsequent trial"). After being so informed, the right to refrain from testifying regarding the offense of which he is suspected or charged must be claimed by the witness. Despite assertion of such a right, however, he may be questioned on matters other than the offense of which he is suspected or charged. The question of whether or not a party or other person called as a witness is suspected of an offense is one for decision of the fact-finding body and will depend upon the nature of the subject of the inquiry, the reasonable probability that an offense has been committed and the reasonable possibility that the witness was the offender. The investigative body shall resolve all reasonable doubt in favor of the person called as a witness.

§ 719.159 Statements regarding disease or injury.

No person in the Armed Forces shall be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest which an individual is required to sign at any time shall be null and void and of no force and effect. 10 U.S.C. 1219. Any person

in the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised of his right not to sign such a statement.

§ 719.160 Warning witnesses.

The fact-finding body in its discretion may direct a witness in the Naval Establishment or by assignment or otherwise subject to naval authority or request other witnesses not to discuss their testimony with other witnesses or persons who have no official interest in the matter until the investigation is completed. This warning is given to ensure that the matter before the fact-finding body can be fairly heard, and to eliminate the possibility that disclosures of the substance of the witness' testimony may influence, however inadvertently, testimony of witnesses still to be heard.

§ 719.161 Meeting of the court.

(a) *Sessions.* The proceedings of a court of inquiry or formal board will be held in open session unless the convening authority or the court or board, for security reasons or other good cause, directs that the entire proceedings or any portion thereof be closed to the public. The fact that the inquiry is held in closed session does not exclude the parties to the inquiry or their counsel. If the matter to be heard requires a security clearance and individual counsel has not been granted such clearance, the convening authority shall be advised thereof. In regard to necessary security clearance of personnel and procedures if such a person or civilian counsel is not so cleared, see § 719.133(b) which shall be applied also to the administrative fact-finding bodies here dealt with.

(b) *Clearing the court.* The court (court of inquiry or formal board) may be cleared at any time for deliberation or consultation, whereupon the parties and their counsel will withdraw. Counsel for the court will also withdraw unless requested to remain. During an open hearing and when numerous spectators are present, the court may withdraw to another room for deliberation or consultation.

(c) *Spectators; publicity.* As a general rule, the public shall be permitted to attend open sessions of a court of inquiry or formal board. The taking of photographs in the courtroom during an open or closed session of the court or board, or broadcasting the proceedings from the courtroom by radio or television will not be permitted.

(d) *Informal boards.* An informal board of investigation must determine the best methods of eliciting information in each case. Informal boards have considerable latitude in the methods they may employ to elicit information. In investigating one incident, it may be desirable to employ the hearing room procedure of a court of inquiry; in another, signed statements of witnesses may suffice. It may be appropriate to employ a combination of these methods. An informal board of investigation may take testimony in any fair manner it chooses if the appointing order has not

directed that testimony be taken under oath.

(e) *One officer investigations.* Formal and informal one officer investigations are governed by the rules and principles prescribed for formal and informal boards of investigation, respectively, insofar as those rules and principles can be applied to a single officer investigator. The mission of the officer must be given primary consideration in the determination of procedural questions not covered by sources of guidance.

Subpart G—Appendices (Regulations Referred to in Preceding Subparts)

§ 719.201 Appendix I—Applicable provisions of the Bureau of Naval Personnel Manual and Marine Corps Manual relating to authority of commanding officers to effect promotions and reductions of enlisted members (referred to in § 719.101 (a) (1)).

(a) Bureau of Naval Personnel Manual article C-7202(7) defining "commanding officer" for purposes of advancement, reduction or change in rate or rating:

(7) The term "commanding officer(s)" as used throughout this section and in directives issued thereunder applies only to those commanding officers and officers-in-charge of Navy and Marine Corps activities who are empowered to convene summary courts-martial or higher courts-martial.¹

(b) Bureau of Naval Personnel Manual article C-7211(2):

(2) *Reduction as punishment pursuant to Article 15, Uniform Code of Military Justice.* Pursuant to Article 15, Uniform Code of Military Justice and implementing regulations, a commanding officer or an officer-in-charge may reduce an enlisted person to next inferior grade as non-judicial punishment, if the grade from which demoted is, under pertinent Departmental regulations, within the promotion authority of the commanding officer, officer-in-charge, or lower command. The Departmental regulations set forth in this section, and in certain directives prescribed thereunder, authorize all commanding officers and officers-in-charge, expressly provided for in article C-7202(7), to effect advancements of Navy enlisted personnel under their command or in their charge to all enlisted rates except master chief petty officer, senior chief petty officer, and chief petty officer, permanent appointment. Therefore, those commanding officers and officers-in-charge specified in the preceding sentence may reduce Navy enlisted personnel, other than master chief petty officer, senior chief petty officer, and chief petty officer, permanent appointment, under their command or in their charge to the next inferior grade for disciplinary reasons.

(c) Marine Corps Manual paragraph 1430.2:

1430 ENLISTED PROMOTIONS:

* * * * *

2. *Authority and responsibilities.* a. Marine Corps enlisted personnel shall be selected and promoted as directed by the Commandant of the Marine Corps. Promotions may be made only to the extent that the number of personnel serving in each enlisted

¹ These limitations on the term "commanding officer" apply specifically in matters of advancement, reduction or change in rate or rating of Navy personnel.

grade shall not exceed the number authorized by the Secretary of the Navy.

b. Selection and review boards are periodically convened by the Commandant of the Marine Corps to examine the qualifications of enlisted personnel for promotion to pay grades E-6, E-7, E-8, and E-9 and to recommend those best qualified for promotion to the next higher grade. The composition of these boards, their duties, and the names of enlisted personnel to be considered for promotion are prescribed by the Commandant of the Marine Corps.

c. The following commanders are authorized to promote enlisted personnel to pay grades E-2, E-3, E-4, and E-5 in accordance with the qualification requirements and procedures established by the Commandant of the Marine Corps:

(1) Marine Corps commanders having authority to convene special courts-martial in accordance with Article 23 of the Uniform Code of Military Justice (10 USC 823).

(2) Commanders of Marine detachments ashore.

(3) Commanders of units of the Marine Corps Organized Reserve having custody of the service records of personnel under their command.

(4) Marine Corps commanders senior in the administrative chain of command to those specified above.

(5) Commanding officers of ships to which a Marine detachment is detailed for duty.

d. The Commandant shall prescribe qualification requirements for the promotion of enlisted personnel as necessary to maintain the high standards of proficiency, leadership, and character among enlisted grades that are required to ensure the continued combat readiness of the Marine Corps. Commanders shall ensure that all prescribed requirements have been met by personnel being considered for promotion and that all promotions are effected in accordance with the procedures established by the Commandant of the Marine Corps. Enlisted Marines shall not be promoted if, in the opinion of the commander, they are incapable of performing satisfactorily in the next higher grade even if all other requirements have been met. A commander shall withhold delivery of a certificate of appointment to pay grades E-6, E-7, E-8, and E-9 and report the circumstances to the Commandant if, in the opinion of the commander, the Marine is not qualified for promotion to that grade.

(d) Marine Corps Manual paragraph 1450:

1450 REDUCTION IN GRADE

1. *Nonpunitive reductions.* a. The Commandant of the Marine Corps may reduce enlisted Marines to any grade when necessary to reduce the total number of personnel in grade, and for incompetence in accordance with procedures prescribed by him.

b. Commanding generals may, for incompetence, reduce enlisted Marines under their administrative control to the next lower pay grade in accordance with the procedures prescribed by the Commandant of the Marine Corps.

c. Any commander may, for incompetence, reduce privates first class who are under his administrative control. Procedures to be followed in effecting these reductions will be prescribed by the Commandant of the Marine Corps.

2. *Reductions as nonjudicial punishment.* a. Navy and Marine Corps commissioned officers who are authorized to administer nonjudicial punishment in accordance with Article 15 of the Uniform Code of Military Justice (10 U.S.C. 815) may reduce enlisted Marines under their command to the next inferior pay grade as nonjudicial punishment if the pay grade from which reduced is within the promotion authority of the

commander or is within the promotion authority of an equivalent or lower command.

b. The Commandant of the Marine Corps retains promotion authority for promotion to pay grades E-9, E-8, E-7, and E-6. Reductions from these grades as nonjudicial punishment may be made only by the Commandant of the Marine Corps. Navy and Marine Corps commanders listed in paragraph 1430 have authority to promote to pay grades E-5, E-4, E-3, and E-2.

c. Statutory and regulatory provisions governing punitive reductions are contained in the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, and the Naval Supplement thereto. [The Naval Supplement has been superseded by the Manual of the Judge Advocate General, applicable provisions of which are reproduced in this part.] The Bureau of Naval Personnel Manual contains supplementary and implementing provisions regarding punitive reductions of enlisted Navy personnel. The Marine Corps Personnel Manual contains personnel procedures to be followed in effecting reductions of Marines.

§ 719.202 Appendix II—Applicable provisions of U.S. Navy Regulations dealing with accusations, replies and counter charges and with adverse matters in fitness reports and records of officers (referred to in §§ 719.102 and 719.117).

(a) U.S. Navy Regulations article 1404:

1404 ACCUSATIONS, REPLIES, AND COUNTER CHARGES

1. Whenever an accusation is made against an officer, either by report or by endorsement upon a communication, a copy of such report or endorsement shall be furnished him at the time.

2. Reports or complaints, and statements submitted in reply thereto or in explanation thereof, shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned.

3. Persons in the naval service to whom reports or complaints are submitted for statement shall not reply by making counter charges.

(b) U.S. Navy Regulations article 1701.8 dealing with adverse matters in fitness reports and records of officers:

8(a) Adverse matter shall not be placed in an officer's record without his knowledge. It shall be first referred to the officer reported upon for such official statement as he may choose to make in reply. If the officer reported upon desires to make no statement, he shall so state officially in writing.

(b) When a report of fitness containing adverse matter, or any correspondence relating thereto, is sent to an officer, it shall be sent direct, addressed in his name. The officer concerned shall return any communication so received, together with his statement in reply to the Chief of Naval Personnel (Commandant of the Marine Corps) via the officer by whom the original report was completed and via the officer or officers through whom such report was forwarded.

§ 719.203 Appendix III—Applicable provisions (sections 044018 and 044019) of the Navy Comptroller Manual dealing with time not creditable in computing cumulative years of service (referred to in § 719.111).

044018 SERVICE NOT CREDITABLE, GENERAL

The following types of service may not be counted for basic pay purposes:

1. Emergency Officers Retired List;
2. Inactive National Guard;

3. State, home, or territorial guard;
 4. Army and Navy Reserve Officers' Training Corps and Citizens Military Training Corps;
 5. time spent in a fraudulent enlistment when such enlistment is so specified in discharge authority.

044019 SERVICE NOT CREDITABLE, TIME LOST

1. *Time lost defined*—a. *General*. The periods of absence defined in subpars. b through e are considered as time lost and will not be included in determining cumulative years of enlisted service for basic pay purposes. Under 10 U.S. Code 972, time lost by an enlisted member must be added to the period served before such absence or absences to complete the term for which enlisted or inducted. Prior laws required only that time lost on account of sickness misconduct must be made up and that other absences might be made up.

b. *Unauthorized absence, AWOL*. Unauthorized absence is defined as a period of absence in excess of one day (24 consecutive hours) without leave or liberty, over leave, or over liberty, unless such absence is excused as unavoidable.

c. *Sickness misconduct, SKMC*. Sickness misconduct is defined as a period of absence from duty in excess of one day (24 consecutive hours) because of a member's intemperate use of alcoholic liquors or habit forming drugs or because of disease or injury resulting from his own misconduct.

d. *Nonperformance of duty (civil arrest), NPDI*—(1) *Prior to 24 July 1956*. Nonperformance of duty (civil arrest) is defined as a period of absence in excess of one day (24 consecutive hours) while in custody of civil authorities, unless the member is acquitted or released without trial and without making restitution or reparation.

(2) *On or after 24 July 1956*. Nonperformance of duty (civil arrest) is defined as a period in excess of one day (24 consecutive hours) of nonperformance of duty while confined under sentence or while confined awaiting and during trial by civil authority if the member is convicted under the laws of the state or government concerned. If the member is released without trial or after trial and acquittal, or if the conviction is later set aside on legal grounds as distinguished from clemency, the absence will be considered as unavoidable and not as time lost, unless the member is released upon his agreement to make reparation for the offense for which he was committed or is subsequently convicted by a court-martial on the same facts.

(3) *Member released without trial*. If the member is released without trial, or without being convicted, upon his agreement to make restitution or reparation of the alleged offense for which he was taken into custody, the period of civil arrest is creditable only if his commanding officer or other competent authority determines that his absence will be excused as provided in par. 044253-1 (forfeiture of bond will not in itself constitute reparation or admission of guilt).

(4) *Periods of authorized leave*. A period of authorized leave is not included in NPDI. See par. 044253-1.

e. *Nonperformance of duty (confinement), NPDI*—(1) *Prior to 24 July 1956*. Confinement is defined as a period of absence in excess of one day (24 consecutive hours) while in confinement under general court-martial sentence and while in confinement awaiting trial (and during trial) which results in conviction and sentence by general court-martial to confinement and to a total loss of pay and allowances. Nonperformance of duty because of confinement does not include time spent in confinement awaiting trial (and during trial) by other than general court-martial, nor time spent in confinement after such trial. It also does not include time in confinement awaiting trial by general court-

martial if such trial results in acquittal. Further, it does not include time in confinement awaiting trial (and during trial) by general court-martial or time spent in confinement after such trial provided the court-martial is subsequently wholly remitted or set aside by competent authority. See subpar. (2) for confinement commencing before and extending beyond 24 July 1956.

(2) *On or after 24 July 1956*. Confinement is defined as a period in excess of one day (24 consecutive hours) spent in confinement either under sentence adjudged by any court-martial or while awaiting and during trial by any court-martial which results in conviction. Any confinement prior to the actual award of a court-martial in connection with an offense for which confined is to be considered as confinement "while awaiting trial" within the meaning of 10 U.S. Code 972(3). Members placed in confinement before 24 July 1956 will be required to make up only time spent in confinement on or after 24 July 1956. Confinement awaiting trial and during trial or under sentence will be regarded as absence from duty pending final action in each case in accordance with the Manual for Courts-Martial. No period of confinement will be counted as lost time if the individual is acquitted of the charges involved or the sentence is set aside and the charges dismissed by competent authority.

2. *Time Lost, Computation*—a. *General*. In computing the time lost to be made good at the expiration of enlistment, the computation will be made on a day for day basis, including the thirty-first day of any month. The time served for the purpose of making good any time lost will be computed in the same manner. When computing cumulative years of service for pay purposes, time lost will be computed in the manner prescribed in pars. 044250-044255 for computing unauthorized absence for pay purposes. Care must be exercised to insure that the definition applicable at the time of occurrence is considered in computing cumulative service for the purpose of basic pay, retirement, and transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

b. *Commencement of absence*. The first day of confinement or unauthorized absence (including the day on which leave, liberty, or authorized travel time expires if prior to 2400) or the day on which a member is admitted to the sick list as a result of his own misconduct will be considered a day of absence. When leave, liberty, or authorized travel time expires at 2400, the unauthorized absence will be considered to commence the following day.

EXAMPLES

In all examples, 10 days leave was granted; the member departed at 1200 on 1 April and returned at 0700 on 13 April.

Example A. When expiration of leave is specified in leave papers as 0800 on 12 April—Absence without leave commences at 0800 on 12 April; member absent for 23 hours; no time lost; no checkage of pay.

Example B. When expiration of leave is specified in leave papers as 2400 on 11 April—Absence without leave commences at 2400 on 11 April even when administrative regulations permit delay in reporting to duty station until working hours of the following day; man absent for 31 hours; 12 April is a day of time lost and loss of pay; 13 April is a day of duty.

Example C. When expiration of leave is specified in leave papers as 11 April (no hour indicated)—Same as Example B.

Example D. When expiration of leave is not specified in leave papers (leave stated in terms of number of days only)—Since regulations permit a Navy member to delay in reporting to duty until 0900 of the morning following the last day of leave, absence without leave commences at 0900 on 12 April; member is absent for 22 hours; no time lost

and no loss of pay. (This example is equally applicable to Marine Corps members except that the hour of required reporting will be determined from the Marine Corps Manual, Volume I.) Absence at the expiration of authorized travel time is computed in the same manner, except that Navy members reporting in compliance with change of station orders must report not later than 2400 of the last day of travel time (see Bureau of Naval Personnel Manual).

c. *Termination of absence*. The day on which a member is released from confinement, returned to jurisdiction of the armed forces, or is discharged from the sick list will be considered a day of duty.

§ 719.204 Appendix IV—Navy Comptroller Manual, Volume 4, Chapter 4, Part B, Section VIII, dealing with effect on pay of sentences of courts-martial (referred to in § 719.113).

SECTION VIII: SENTENCES OF COURTS-MARTIAL, EFFECT ON PAY

044270 FORFEITURE OF PAY, COURT-MARTIAL

1. *General*. To be effective, any forfeiture of pay must be adjudged in express terms, that is, in dollars or dollars and cents and not in days pay. A sentence of forfeiture of pay may not be applied to an enlisted member's savings deposits or to the interest thereon.

2. *Effective date*. When a sentence of a court-martial includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture will apply to pay or allowances becoming due on and after the date such sentence is approved by the convening authority, unless the convening authority, at the time he approves the sentence, suspends execution of the forfeiture or defers the application of such forfeiture pending completion of appellate review or for other appropriate reason. All other sentences to forfeiture become effective on the date the sentence is ordered executed. Except in the case of a new trial, the convening authority at the time of approval of any sentence may order its execution if, as approved by him, it does not involve a general or flag officer, a sentence of death or dismissal, or an unsuspended sentence of dishonorable discharge, bad conduct discharge, or confinement for one year or more as such a sentence may not be executed unless and until affirmed upon appellate review. A diary entry or Military Pay Order (DD Form 114) submitted to the disbursing officer by the commanding officer will specify the date forfeiture of pay will commence or will advise that the application of the forfeiture has been deferred until the sentence is ordered into execution. In addition, for Navy members a Court Memorandum (NavCompt Form 516), specifying the reason for the court-martial, will be submitted to the disbursing officer by the commanding officer. (See the Manual for Courts-Martial, United States, 1951, pars. 88, 98, and 126h(5), and the Bureau of Naval Personnel Manual, art. B-2316.) In appropriate cases, a Supplementary Court Memorandum (NavPers 601/NavCompt 516A) or DD Form 114 submitted to the disbursing officer by the commanding officer will give further instructions, such as may be necessary upon completion of appellate review or upon vacation of suspension.

3. *Pay record entry*. A forfeiture of pay will be described in item 28 of the Military Pay Record (DD Form 113) by use of the abbreviation describing the type of courts-martial followed by the effective date, the total amount forfeited, and the monthly amount and number of months over which such forfeiture is to be liquidated; for example, SCM 12/10/51 TFP \$60 (20 x 3).

4. *Substantiating vouchers*. A diary entry or DD Form 114 will be used by the disburs-

ing officer to substantiate entries on a member's pay record. When the pay record order indicates that unauthorized absence has been the reason for the court-martial sentence, pay records and microfilm will be examined to insure that proper checkage of pay and allowances for the period of absence has been entered in the account. In addition to the foregoing, for Navy members, a NavCompt Form 516 also will be submitted as a voucher to further substantiate the pay record adjustment and for Marine Corps members, if the sentence of a general court-martial adjudges confinement and forfeiture of pay and allowances, the commanding officer also will submit two certified copies of the approved sentence to the disbursing officer.

5. *Liquidation.* Beginning with the effective date of the sentence, the forfeiture of pay will be checked against the member's account until the entire amount adjudged and approved has been checked except as otherwise provided in subpar. 7 or until further execution of the sentence is stopped by action of proper authority. In making a checkage for a fractional part of a month, one-thirtieth of the monthly rate of forfeiture will be checked for each day, treating each month as if it had 30 days. The periods during which a member is in a nonpay status will be excluded in computing the period during which the member's pay is forfeited pursuant to a court-martial sentence. When two court-martial sentences decree forfeitures of pay for periods which run concurrently, the amount stated in each sentence will be forfeited only for the specified period mentioned in each and if the total amount of forfeitures during any period the sentences run concurrently exceeds the two-thirds limitation provided in the Manual for Courts-Martial, United States, 1951, par. 126h(2), only two-thirds of the member's pay will be forfeited during such period. After the concurrent period has expired, pay is forfeited under the one remaining sentence only at the rate and for the time remaining in that sentence.

6. *Amounts due.* Any money due and unpaid on the day preceding that on which the sentence of forfeiture of pay is effective or ordered executed and pay subsequently due which is not forfeited by the sentence may be used to offset charges for allotments and clothing issues or may be paid to the member in the usual manner. Each member may be permitted to draw \$5 a month (not cumulative) for necessary expenses irrespective of a sentence of a court-martial not involving total forfeiture of pay and allowances.

7. *Loss of pay unliquidated.* If a sentence involving forfeiture of pay has not been liquidated completely by the date of separation from active service, death, or desertion, by the effective date of a voluntary extension of enlistment, or by the date of expiration of enlistment of a member who is detained in a disciplinary nonpay status after the expiration of enlistment (see par. 044204-4), only the proportionate checkage will be accomplished. The forfeiture will not be interrupted by an involuntary extension of enlistment. When a deserter is returned to a pay status, checkage of the forfeiture will be resumed.

8. *Sentence disapproved, suspended, or set aside—*a. *Issuance of administrative discharge in lieu of bad conduct or dishonorable discharge awarded by court-martial.* If a previously executed sentence of dishonorable or bad conduct discharge is not sustained on a new trial and the Secretary of the Navy substitutes therefor a form of discharge authorized for administrative issuance, the member is entitled to the pay and allowances which would have been received had the bad conduct or dishonorable discharge not been executed until the date of the actual issuance of the administrative discharge or normal date of expiration of enlistment, whichever is earlier. In such a case, the member

concerned will be advised to submit a claim for the pay and allowances involved to the General Accounting Office via the Navy Finance Center (Central Accounts Department) or the Commandant of the Marine Corps (Code CDB), accompanied with all pertinent documents.

b. *Remission of discharges awarded by courts-martial and procedures for resuming pay.* If a previously executed sentence of dishonorable or bad conduct discharge is not sustained on a new trial and the member is required to serve the remainder of his enlistment, he will receive the pay and allowances to which he would have been entitled if the bad conduct or dishonorable discharge had not been executed, that is, to the date of return to duty or normal date of expiration of enlistment, whichever is earlier. When the member's enlistment has not expired, the disbursing officer of the activity to which the member reports will open a pay record and commence proper credit of pay and allowances as of the date the member returns to duty on the basis of the letter stating that the member is to serve the remainder of his enlistment and an Order to Enter Account (NavCompt Form 511 or DD Form 114). The disbursing officer will notify the Navy Finance Center or the Commandant of the Marine Corps (Code CDB) by letter of the circumstances in the case and the fact that the member has been returned to a duty status and will request that an adjustment voucher be issued to cover any erroneous payments made on the date of the voided discharge. The member will be advised of his right to submit a claim to the General Accounting Office via the Comptroller of the Navy or the Commandant of the Marine Corps (Code CDB) for pay and allowances for the period between the date of execution of the bad conduct or dishonorable discharge and the date of return to duty or the normal date of expiration of enlistment.

c. *Action to be taken when sentence involving reduction in rating or forfeiture of pay is set aside in order to provide for new hearing.* When the sentence of a court-martial is set aside or disapproved, the member will have restored to him the forfeiture of pay and allowances effected by an executed portion of the sentence unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing, approved and declared effective or ordered executed. This also applies to a sentence affecting pay and allowances indirectly as by means of reduction to an inferior grade as well as to sentences affecting pay and allowances explicitly.

d. *Computing of the period and amount of forfeiture of a sentence awarded upon a rehearing.* If a forfeiture of pay is approved and ordered executed under a new sentence incident to a rehearing, the member will be credited with the amount of any forfeiture of pay actually effected under the former sentence prior to the time such sentence was disapproved or set aside, unless the latter sentence provides otherwise.

e. *Reductions in rating as a court-martial sentence.* In the case of an enlisted member of other than pay grade E-1 sentenced by court-martial to reduction in rating, the effective date of the reduction will be specified in the pay record ordered submitted to the disbursing officer by the commanding officer of the member. In appropriate cases, a NavCompt Form 516A or a DD Form 114 submitted to the disbursing officer by the commanding officer of the member will give further instructions, such as may be necessary upon completion of appellate review or upon vacation of suspension. In all cases, the rate of pay of a member reduced in rating will be commensurate with his length of service.

f. *Remission of previous forfeitures of pay by reason of sentence involving total forfeitures of pay.* On the effective date of a general court-martial sentence involving confinement and forfeiture of all pay and allowances, any unliquidated portion of forfeiture of pay under a previous sentence of court-martial automatically is remitted. When a general court-martial sentence involving confinement and forfeiture of all pay and allowances afterwards is set aside, such action automatically will nullify from the beginning the remission of forfeiture of pay. This subparagraph does not apply to new trials pursuant to section 12 of the Act of May 5, 1950 (64 Stat. 147; 50 U.S. Code 740). (Manual for Courts-Martial, United States, 1951, Appendix 2.)

g. *Substantiating vouchers.* A certified copy of the letter or any other document causing the action will be submitted as a substantiating voucher.

044271 DETENTION OF PAY, COURT-MARTIAL

1. *General.* To be effective, any detention of pay must be adjudged in express terms, that is, in dollars or dollars and cents and not in day's pay.

2. *Effective date.* The effective date of the sentence will be indicated on the Court Memorandum (NavPers 601/NavCompt 516) or Military Pay Order (DD Form 114) submitted to the disbursing officer by the commanding officer of the member. Detailed instructions relative to the effective date of sentence involving forfeiture of pay are in the Manual for Courts-Martial, United States, 1951, par. 126h(5).

3. *Pay record entries.* A sentence of a court-martial involving detention of pay will be entered on the Military Pay Record (DD Form 113) in the same manner as a sentence involving forfeiture of pay, except that the letters "TDP" will be used in lieu of "TFP"; for example, SCM 6/3/51 TDP \$120 (20x6). When checkage of the entire amount of detention pay has been accomplished, the disbursing officer will notify the commanding officer in writing of such fact, filing a copy of such notification as a pay record voucher. The commanding officer will enter and attest a notation on page 13 of the member's Enlisted Service Record (NavPers Form 601) showing the amount of pay detained, the type of court-martial, and the date of approval of sentence.

4. *Substantiating vouchers.* The NavCompt Form 516 or DD Form 114 modified to show that detention pay is involved will be submitted to substantiate detention pay entries on the member's pay record.

5. *Liquidation.* The provisions of par. 044270-5 relating to forfeiture of pay will be applicable to detention of pay.

6. *Payments.* Each member may be permitted to draw \$5 a month (not cumulative) for necessary expenses irrespective of a sentence of a court-martial involving detention of pay.

7. *Repayment—*a. *General.* Upon discharge (except by reason of a fraudulent or illegal enlistment), voluntary extension of an enlistment, or release from active duty, any amount of pay detained in accordance with the terms of a court-martial sentence will be paid to the member except that such amount is available for liquidation of overpayments or other authorized checkages at separation. If the member dies while in active naval service, the pay detained will be paid to the person who is entitled to the amount found due under statutory provisions regarding the settlement of accounts of deceased personnel in accordance with 10 U.S. Code 2771. A mark of desertion, if not removed, will serve to forfeit all amounts of pay detained prior to the date of desertion. The execution of a sentence of forfeiture of all pay and allowances does not encompass pay detained under the terms of a previous sentence.

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b. *Pay record entry.* Upon repayment in accordance with subpar. a, the total amount of pay detained will be credited on the pay record opposite the notation "DET PAY (enter type of court-martial and date of approval of sentence)." Such credit entry will be substantiated by one of the following pay record orders submitted by the commanding officer for the purpose of notifying the disbursing officer of the member's separation, voluntary extension of enlistment, or death:

1. Record of Discharge, Release from Active Duty, or Death (NavCompt Form 512);
2. Agreement to Extend Enlistment (NavPers 601A/NavCompt 513);
3. Military Pay Order (DD Form 114);
4. Separation orders.

The pay record order will direct the disbursing officer to recredit the total amount of pay detained as shown by the member's service record. When repayment prior to completion of the sentence involving detention is made, no substantiating voucher will be required to credit the amount detained.

8. *Sentence disapproved, suspended, or set aside.* The provisions of par. 044270-8 relating to forfeiture of pay will be applicable to detention of pay.

044272 FINES, COURTS-MARTIAL

1. *General.* To be effective, any fine imposed by a court-martial must be adjudged in express terms, that is, in dollars or dollars and cents and not in day's pay. A fine may not be applied to an enlisted member's saving deposits or to the interest accumulated thereon.

2. *Effective date.* The effective date of the fine will be indicated on the diary entry, Military Pay Order (DD Form 114), or Court Memorandum (NavPers 601/NavCompt 516) submitted to the disbursing officer by the commanding officer.

3. *Pay record entry.* If the member consents to checkage, a fine may be entered immediately in item 28 of the Military Pay Record (DD Form 113). The fine will be liquidated strictly in accordance with the terms of the member's consent, who may request either a onetime checkage or liquidation in stated monthly installments. The checkage entry will indicate by abbreviation the type of court-martial, the date the provision for the fine in the sentence was ordered executed, the word "Fine," the amount of the fine, and installment information (if any), for example: SCM 1/19/56, Fine \$50 (\$10 x 5) CHKD ----- BAL ----- If the member does not consent to checkage, the applicable information plus the notation "Non-consent" will be entered in item 40 of the pay record. This notation will be carried forward to item 40 of all succeeding pay records until such time as the fine is liquidated (see subpar. 6).

4. *Substantiating vouchers.* The diary entry, DD Form 114, or NavCompt Form 516 modified to show that a fine is involved will be submitted to substantiate the proper entry on the member's pay record.

5. *Deposits to offset fines.* The disbursing officer will accept and credit on the pay record of the member any amount which the member may wish to deposit to offset the fine. Such a deposit will be described in item 4 of the pay record opposite the notation "DEPOSIT-FINE." Such deposits will be taken up by the disbursing officer on a Cash Collection Voucher (DD Form 1131) as a credit to the appropriation to which the member's pay is properly chargeable.

6. *Fine unliquidated.* Any amount of the fine unpaid at the time of the separation of the member from active service will be set off against any pay due and unpaid at that time.

7. *Sentence disapproved, suspended, or set aside.* The provisions of par. 044270-8 relating to forfeiture of pay are applicable to fines.

044273 FORFEITURE OF PAY, COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

The provisions of par. 044270 relating to forfeiture of pay by sentence of court-martial are applicable to forfeiture of pay imposed as a nonjudicial punishment by a commanding officer exercising general court-martial jurisdiction. Such commanding officer will authorize and direct the disbursing officer carrying the member's Military Pay Record (DD Form 113) to make an appropriate entry on the pay record involved. A diary entry or Military Pay Order (DD Form 114) will be used for such authorization and will be submitted as a substantiating voucher. Such a forfeiture will be entered on the pay record in the manner prescribed in par. 044270-3 except that the abbreviation "COP" will be used to describe the type of disciplinary action involved.

044274 CHECKAGE FOR LOSS OR DAMAGE TO PRIVATE PROPERTY

1. *General.* Checkages for assessment of damages made under sec. 0511, Naval Supplement to the Manual for Courts-Martial (superseded by Part 755 of this chapter), will be entered in item 28 of the member's Military Pay Record (DD Form 113) opposite the notation "PRIVATE PROP." Such an entry will be substantiated by a Military Pay Order (DD Form 114) directing the checkage. In liquidating such a checkage, the disbursing officer will compute the member's net pay per month by adding the basic pay and sea and foreign duty pay (if applicable) and, if applicable, subtracting the amount of the member's mandatory contribution to a class Q allotment. If the amount of the checkage exceeds one-half of the member's net pay as computed herein, the disbursing officer will set up an installment liquidation of the checkage. Such installment liquidation will provide that the checkage will be liquidated at the rate of one-half of the member's net pay per month as computed herein for the number of months necessary to accomplish the checkage and will be entered on the pay record in the same manner as an installment liquidation of an advance of pay. An extension of enlistment or separation from active service does not relieve the member from his liability and the disbursing officer then will use all available funds to liquidate the balance. If sufficient funds are not available upon separation from active service or extension of enlistment to offset the entire amount of the checkage, the unliquidated portion will be checked upon a subsequent reentry on active service or during the period of the extension.

2. *Payment to claimant.* When the checkage has been liquidated, the disbursing officer carrying the pay record of the member at the time the liquidation is accomplished will be responsible for making payment to the claimant of the amount so checked. This payment will be expended on a Public Voucher for Purchases and Services Other than Personal (Standard Form 1034) and charged to the appropriation to which the member's pay was properly chargeable at the time the deduction was made. If the checkage extends over two fiscal years, the appropriations will be shown separately on the public voucher. The public voucher will contain an endorsement by the disbursing officer to the effect that the checkage has been entered on the pay record of the member by order of the commanding officer and has been completely liquidated. If a member extends his enlistment or is discharged and immediately reenlists and does not have sufficient funds to offset the entire amount of the checkage, the disbursing officer will not make payment to the claimant until the entire amount has been checked in the ensuing period of reenlistment or extension. If a member is discharged and does not im-

mediately reenlist or is otherwise separated from the service and does not have sufficient funds to offset the entire amount of the checkage, the disbursing officer will pay to the claimant only the amount that actually has been checked on the pay record of the member.

§ 719.205 Appendix V—Secretary of the Navy Instruction 5815.3 on policy and procedures concerning clemency relative to certain courts-martial (referred to in §§ 719.122 and 719.127).

SECNAV 5815.3
Pers—F3
MarCorps—DK
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4 March 1958

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
Washington 25, D.C.

SECNAV Instruction 5815.3 [with changes 1 and 2 incorporated]

From: Secretary of the Navy.
To: All Ships and Stations.
Subj: Clemency relative to certain courts-martial cases; policy and procedures concerning

Encl: (1) Retention on active duty by extension of enlistment for purpose of serving probation

1. *Purpose.* To restate and clarify the policy and procedures to be followed in submitting to the Secretary of the Navy requests for clemency from persons undergoing certain courts-martial sentences.

2. *Cancellation.* This Instruction cancels SECNAV Instruction 5810.6B.

3. *Definitions.* a. "Clemency," as used herein, is the residual clemency exercised by the Secretary of the Navy or his designees and is defined as that action, other than correction of a legal error, which results in the mitigation, remission, or suspension of the whole, or any part, of the unexecuted portion of a sentence, restoration to duty, and when applicable, the full or partial restoration of grade.

b. The term "unsuspended punitive discharge," as used herein, is defined as a punitive discharge, not the result of vacation of suspension proceedings, which is to be executed upon completion of confinement or appellate review.

4. *Applicability.* This Instruction applies to all persons, other than warrant officers and commissioned officers, convicted by courts-martial, whose sentences include confinement for 8 months or more, and to those whose sentences include an unsuspended punitive discharge, with or without confinement.

5. *Policy.* It is the policy of the Secretary of the Navy that persons within the purview of paragraph 4 of this Instruction, who are suitable, and evince a desire therefor (including such persons whose normal dates of expiration of enlistment might otherwise act as a bar to normal probationary action), be restored to duty upon completion of confinement, or a portion thereof, to the end that they may show, by their conduct and performance of duty during a probationary period, that they are entitled to have the suspended portion of their sentences remitted; and that those persons not suited for, or not desiring retention in the naval service, may be accorded such clemency as may be in the best interests of the naval service and the individual concerned.

6. *Naval Clemency Board.* To implement this policy, the Naval Clemency Board was established by the Secretary of the Navy to make appropriate recommendations in the cases of Navy and Marine Corps personnel eligible for clemency consideration. The Board bases such recommendations on the background of the individual concerned, his

civil and military history, his adjustment in confinement, or while awaiting completion of appellate review if not confined, motivation for future service, the nature and circumstances of the current offense(s), the recommendation of the commanding officer, and the recommendation of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

7. *Periods of review.* Courts-martial sentences will be reviewed by the Naval Clemency Board as follows:

Sentence	Initial clemency requests to be submitted	Subsequent clemency requests to be submitted
Less than 8 months' confinement and punitive discharge.	30 days prior to release date, assuming full credit for good time, if applicable, will be earned.	Not applicable.
8 months' to (but not including) 2 years' confinement.	Not earlier than 4 nor later than 6 months of confinement.	Every 8 months thereafter.
2 years' or more confinement.	Not earlier than 6 nor later than 8 months of confinement.	Annually thereafter.

c. Notwithstanding the limitations with regard to period of confinement established on eligibility for review in paragraphs 4 and 7 a and b above, in especially deserving cases of individuals serving sentence of court-martial and when deemed appropriate by the commanding officer, a special request may be submitted at any time prior to completion of confinement or execution of discharge. (In the event such case does not meet the court-martial order promulgation requirements of 1955 NS MCM, section 0118a(4) (c)5 (superseded by § 719.18(a) (5) (iii) (e)), one copy of the court-martial promulgating order will be forwarded with the clemency request and progress report.)

(1) This type of request normally should be reserved for cases where bona fide information is received relative to humanitarian or hardship problems which can be alleviated only through clemency, or in cases where information not previously considered becomes known that would alter a previous recommendation, or in those cases where it is obvious that further confinement would serve no useful purpose either to the naval service or the individual.

(2) In the event of any emergency wherein the requirement for clemency action is considered by the commanding officer to be of an immediate nature, commanding officers may submit recommendations by message or speedletter to the Naval Clemency Board, copy to the Commandant of the Marine Corps, or the Chief of Naval Personnel, as appropriate. Such recommendations shall contain substantiating information.

d. When directed by the Senior Member, Naval Clemency Board, by the Chief of Naval Personnel, or by the Commandant of the Marine Corps.

8. *Procedure for submission of requests.* Requests and recommendations shall be forwarded, notwithstanding the status of appellate review or status of the person's enlistment, by the commanding officer to the Secretary of the Navy (Naval Clemency Board) via the Chief of Naval Personnel (Attn: Pers-F31) or the Commandant of the Marine Corps (Attn: Code DK), as appropriate.

a. Unsuspended punitive discharges may be executed, upon completion of confinement, without referring cases to the Secretary of the Navy for clemency review, under the following circumstances:

(1) When the provisions of 1955 NS, MCM, section 0122 [superseded by § 719.128], have been complied with, or

(2) In cases where the individual executes a Waiver of Restoration (NavPers 3049), has less than 2 months' confinement remaining to be served on the date of execution of such waiver, does not have a dishonorable discharge pending, no form of clemency is requested by the individual or recommended

a. Requests for restoration or waiver of restoration from persons sentenced to an unsuspended punitive discharge without confinement shall be submitted not earlier than receipt of the action of the officer exercising general court-martial jurisdiction nor later than the day following receipt of Board of Review decision.

b. Requests from personnel, whose sentences include a period of confinement, shall be submitted in accordance with the following schedule:

by the local clemency board or commanding officer, has been served with the Board of Review decision, and the right of appeal to the United States Court of Military Appeals has been or, at the time of discharge, will have been foreclosed by expiration of the prescribed 30-day period.

In such cases, the original and one copy of the Waiver of Restoration (NavPers 3049) will be forwarded, with a statement that the discharge is to be executed without further clemency action in compliance with this paragraph. In the event an individual executes a request or waiver, which is a change from one previously executed, upon which clemency review has not been completed, notification shall be made immediately to the Secretary of the Navy (Naval Clemency Board) and no final action shall be taken pending receipt of the determination made by the Secretary of the Navy.

b. In the cases of those individuals confined at places other than retraining commands and of those sentenced to an unsuspended punitive discharge without confinement, who do not come within the purview of subparagraph a above, the original and six copies of the Court-Martial Progress Report (NavPers 3047), together with the original and six copies of the Request for Restoration (NavPers 3048), or, alternatively, the Waiver of Restoration (NavPers 3049), shall be forwarded.

(1) In addition, the original and six copies of a neuropsychiatric evaluation of the individual shall be included by those commands to whom the services of a naval psychiatrist may be made reasonably available. In the event a naval psychiatrist cannot be made reasonably available, this fact will be stated in the progress report and the requirement will be waived.

(2) Paragraph 10b of the Court-Martial Progress Report (NavPers 3047) shall, in all cases, contain the commanding officer's recommendation, with adequate substantiating information.

(3) Generally, the commanding officer referred to in paragraph 10(b) of the Court-Martial Progress Report (NavPers 3047), and the officer considered responsible for submission of the report, is the commanding officer on whose rolls the individual is carried. However, in the case of personnel serving sentence in Marine brigades, the commanding officer referred to in paragraph 10(b) of NavPers 3047, and the officer considered responsible for submission of the report, is the commanding officer of the brig, who will forward the report via the commanding officer on whose rolls the individual is carried.

c. In the cases of those individuals confined at retraining commands, who do not come within the purview of subparagraph a above, requests and recommendations will be submitted as in subparagraph b except

that the initial progress report will be prepared using appropriate DD forms. In subsequent reports, form NavPers 3047 may be used, when it proves adequate for the information to be presented.

d. Subsequent reports submitted in accordance with subparagraph b and subparagraph c will emphasize what changes have been observed since the previous recommendation was submitted.

9. *Clemency recommendations.* a. When considered appropriate, the commanding officer may recommend no action, or one or more of the following forms of clemency:

(1) Restoration to duty on probation.
 (2) Reduction in period of confinement or forfeitures. These recommendations should ordinarily be reserved for cases involving verified severe hardship or exceptionally meritorious service in confinement.

(3) Mitigation of the discharge to one less severe.

(4) Full or partial restoration of grade in especially deserving cases.

b. In connection with clemency recommendations, the following factors have general or specific applicability:

(1) Nature of offense.
 (2) Previous record of service.
 (3) Adjustment in confinement.
 (4) Sincerity of motivation.
 (5) Potential value to the service.
 (6) Value to the service as a petty officer or a noncommissioned officer.

c. Ordinarily, an individual is considered to be not restorable who:

(1) Was convicted of an offense involving moral turpitude, including larceny.

(2) Was convicted of a vicious, violent, or other felonious offense.

(3) Has a record or criminal acts or incorrigibility.

(4) Has a record of numerous military offenses.

(5) Is mentally or physically unfit for duty.

(6) Is a probation violator.

10. *Probationary periods.* a. Restoration to duty on probation may be granted to persons who have sufficient time remaining in their current enlistments to serve an appropriate probationary period on active duty.

b. In the case of an individual who does not have sufficient time remaining in his current enlistment, as extended under paragraph 11 below, he may likewise be granted restoration to duty on probation if he consents in writing to an extension of his enlistment for the period of his probation, in accordance with the procedures set forth in enclosure (1).

c. The probationary period will normally be for a period of 6 months.

11. *Making good lost time*—a. *Mandatory.* Paragraph 4 of SECNAV Instruction 1626.4 prescribes the conditions under which enlisted personnel of the Navy and Marine Corps and Reserve components thereof are required to make up time lost in order to complete the full term of their enlistments or other periods of obligated service. It will be noted that only periods of unauthorized absence, confinement, and nonperformance of duty (civil arrest), as defined in paragraph 5 of that Instruction and occurring on or after 24 July 1956, must be made good under the conditions prescribed, but that all sickness misconduct, as defined therein, must be made good under the conditions prescribed regardless of whether occurring before, on, or after that date.

b. *Voluntary.* When an enlisted member has insufficient time remaining in which to serve a probationary period on active duty during his normal enlistment or enlistment as extended under paragraph 4b of SECNAV Instruction 1626.4, for the purpose of mandatorily making good time lost, he may, in appropriate cases and in accordance with

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pertinent instructions, make application to make good on a voluntary basis the time he lost from his enlistment by reason of unauthorized absence, confinement, and non-performance of duty (civil arrest), which occurred before 24 July 1956. For the purpose of determining the time remaining in which to serve a probationary period, time is computed from the recommended restoration date to the date of expiration of enlistment or enlistment as extended under that instruction. To be valid, it is required that the voluntary application be made and approved on or before the date of expiration of enlistment. Since retention on or return to active duty for the purpose of mandatorily making good lost time involuntarily extends the enlistment, a voluntary application which is made and approved before or during the period in which the member is mandatorily making good lost time pursuant to SECNAV Instruction 1626.4, meets this requirement, and pertinent instructions shall be so construed. If the application is approved, time lost before 24 July 1956 commences to be made good, with entitlement to pay and allowances, on the date immediately following the date of expiration of enlistment, enlistment as involuntarily extended, or return to duty status, whichever is the latest date. Time lost before 24 July 1956 by reason of unauthorized absence, confinement, and nonperformance of duty (civil arrest) will be computed in accordance with the provisions of paragraph 044019, NavCompt Manual.

12. *Notification of the Secretary of the Navy's action.* The individual shall be notified as soon as practicable after receipt of any action by the Secretary of the Navy that affects his sentence. A copy of the letter promulgating the action, or a certified true extract therefrom shall be filed in the individual's service record. In addition, an entry of the Secretary's action shall be made in the service record, clearly stating the date and conditions of the action and the authority therefor. In cases of restoration to duty, such entry shall include the specified date thereof, the period of probation, and the total unexecuted portion of the sentence(s) remaining to be executed in the event of vacation of suspension. In cases where the person has completed the period of confinement and is placed on probation relative only to the discharge, the fact should be clearly stated (i.e., "... no confinement remains to be served on this sentence.").

13. *Authority to withhold action.* a. Unsatisfactory conduct on the part of an individual or information which becomes known to the commanding officer after submission of the progress report, may be cause to withhold any clemency action directed by the Secretary of the Navy. To accomplish this, the commanding officer is designated as having the authority to exercise so much of the power vested in the Secretary of the Navy under article 74, Uniform Code of Military Justice, as is necessary for this purpose.

b. The commanding officer shall normally withhold the clemency if the person's offense is sufficiently serious to be made a matter of official record, and shall take such action in every case where the offense involves escape or attempted escape, or results in the forfeiture of good conduct time in confinement. Once the action of the Secretary has been withheld, the commanding officer may not thereafter execute any part of the clemency, nor may he execute a punitive discharge, except in consonance with 1955 NS, MCM, section 0122 (superseded by § 719.128), until final determination has been made by the Secretary.

c. Where the action of the Secretary of the Navy is withheld by the commanding officer as provided above, an immediate report to that effect, with the commanding officer's recommendation as to final determination, shall be forwarded direct to the Secretary of the Navy (Naval Clemency Board). A service-record entry shall be made stating the reasons the clemency was withheld.

14. *Liaison.* Coordination with Naval Clemency Board in exercise of clemency authority delegated by 1955 NS, MCM, section 0113 [superseded by § 719.122].

a. Officers who take action to remit or suspend any part or amount of the unexecuted portion of any sentence which includes a punitive discharge or 8 months or more of confinement pursuant to authority delegated by 1955 NS, MCM, section 0113 (superseded by § 719.122), will insure that one copy of the official action is forwarded, without delay, to the Senior Member, Naval Clemency Board, with copy to BuPers or MarCorps as appropriate.

b. In order that inconsistent or conflicting clemency actions may be avoided, prior to taking clemency action as described in a above, the officer contemplating such action will determine whether or not the progress report of the individual concerned has been forwarded to the Secretary of the Navy (Naval Clemency Board) for clemency review.

(1) In the event the progress report has not been forwarded to the Secretary of the Navy (Naval Clemency Board) for review, the officer may exercise such clemency as he deems appropriate.

(2) In the event the progress report has been forwarded to the Secretary of the Navy (Naval Clemency Board) for review, the officer will inform the Naval Clemency Board of his contemplated clemency action. The Naval Clemency Board will then inform the officer:

(a) He may take clemency action; and/or

(b) What clemency action, if any, has been taken by the Secretary of the Navy. (The fact that the Secretary of the Navy has taken no clemency action does not prohibit the officer from taking clemency action. Also, the fact that the Secretary of the Navy has taken clemency action does not prohibit the officer from taking further clemency action if circumstances in a particular case so indicate.)

15. *Discharge.* a. Persons sentenced to an unsuspended punitive discharge will not be discharged until receipt of the Secretary of the Navy's action regarding clemency, and receipt of appellate review action, except those who have requested immediate release and in whose cases the provisions of 1955 NS, MCM, section 0122 [superseded by § 719.128], and subparagraph 8a of this Instruction have been complied with. When transfer for discharge has been effected, service-record entries will clearly indicate the status of clemency requests, the Secretary of the Navy's action thereon, and appellate review action.

b. Notwithstanding any provision herein, no person shall be discharged with a punitive discharge if at the time thereof he has previously forwarded a communication to the effect that he desires to petition the Court of Military Appeals for a grant of review. Should this be the case and the person desires to withdraw his petition for grant of review, no action will be taken until the Court of Military Appeals has duly made and promulgated its order authorizing such withdrawal.

16. *Other uses of progress reports.* Copies of progress reports, requests of individuals concerned, recommendations thereon, and other relevant correspondence and informa-

tion are included in a permanent file in each case. These data may become especially significant in the event of a subsequent petition by the individual to the Navy Discharge Review Board or the Board for Correction of Naval Records.

RICHARD JACKSON,
Assistant Secretary of the Navy
(Personnel and Reserve Forces)

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ENCLOSURE (1)

RETENTION ON ACTIVE DUTY BY EXTENSION OF ENLISTMENT FOR PURPOSE OF SERVING PROBATION

1. *Procedure.* a. In the case of an individual falling within the purview of paragraph 10b of this Instruction, he shall be informed that in order to become eligible for probation he must have sufficient obligated active service remaining in his enlistment as will enable him to serve a reasonable period of probation. Otherwise, if he desires to obligate himself for the requisite period of active service, he is privileged to submit for consideration an agreement in the following form:

I understand that in order that the unexecuted portion of my sentence may be suspended for the purpose of enabling me to be restored to active duty on probation, I must be obligated to serve on active duty for sufficient time in which to serve a reasonable period of probation. I further understand that, pursuant to Public Law 780, 84th Congress (reenacted, 10 U.S.C. 972), and implementing directives, I shall be required to make up the period of ----- days I lost from my enlistment, unless I am sooner discharged. [Omit preceding sentence if the individual has not lost time which must be made good under that law.] Accordingly, I hereby agree to being retained on active duty for the period of my probation, such period not to exceed 1 year. I understand that the time remaining in my enlistment, as involuntarily extended for the purpose of making good time lost, will be included in this period. [Omit preceding sentence if not applicable.] I further understand that this suspension may be vacated, in accordance with paragraph 97b, Manual for Courts-Martial, 1951, in which event the unexecuted portion of my sentence shall be executed.

b. The request shall be signed in duplicate by the individual. The original shall be retained in the individual's service record and the duplicate original, together with six copies, shall be forwarded with the Request for Restoration (NavPers 3048).

c. No voluntary agreement to make up lost time under paragraph 11b of this Instruction is to be used in connection with this request.

d. Upon receipt of notification that the Secretary of the Navy has suspended the unexecuted portion of the sentence for purposes of probation, the service-record entry required by paragraph 12 of this Instruction shall include the following:

----- is being retained in the public
(Name)
interest for convenience of the Government in an active-duty status under an extension of enlistment prescribed by the Secretary of the Navy for the period of probation, unless sooner discharged. ----- has
(Name)
agreed to such retention.

§ 719.206 Appendix VI—Secretary of the Navy Instruction 1050.3 on leave pending appellate review (referred to in § 719.126).

SECNAV 1050.3
Pers—F3L—de
24 September 1959

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON 25, D.C.

SECNAV Instruction 1050.3

From: Secretary of the Navy.
To: All Ships and Stations.

Subj: Navy and Marine Corps personnel not in confinement while awaiting appellate review of sentences which include punitive discharge or dismissal; permissible procedures for granting leave to.

Ref: (a) SECNAVINST 5810.6C of 4 Mar 1958 (renumbered 5815.3 and reproduced in § 719.205).

- (b) BuSandA Manual, Vol. IV.
- (c) BuMed Manual.
- (d) MarCorps Manual.
- (e) BuPers Manual.

1. *Purpose.* To authorize leave for certain persons awaiting completion of appellate review of their court-martial cases in which the sentences include unsuspended punitive discharge or dismissal.

2. *Suspension.* The provisions of SECNAV Instruction 1626.4, BuPers Manual, MarCorps Manual, BuSandA Manual, and NavCompt Manual which are inconsistent with this Instruction are held in abeyance pending modification thereof.

3. *Applicability.* This Instruction is applicable to Navy and Marine Corps personnel who have been tried by court-martial and sentenced to punitive discharge or dismissal which has not been suspended for the purpose of serving probation and to whom the following elements apply:

a. The sentence does not include confinement or the sentence to confinement has been completed;

b. The case is awaiting completion of appellate review by a board of review or the Court of Military Appeals; and

c. If the individual is an enlisted member, the Court-Martial Progress Report has been submitted, and the member has either executed a Waiver of Restoration (NavPers 3049) or has requested and been denied suspension of his punitive discharge and restoration to duty by the Secretary of the Navy acting through the Naval Clemency Board pursuant to reference (a).

4. *Action.* In the event the commanding officer is of the opinion that the services of an individual under his command who falls within the category specified in paragraph 3 cannot be economically utilized and/or the best interests of the service and the individual would be served by granting him leave while awaiting completion of appellate review, the commanding officer, in the absence of a request from the Department to the contrary, may utilize the procedure outlined herein. This procedure is primarily intended for personnel (1) who are in a nonpay status because of expiration of active-obligated service or of unsuspended sentence to forfeiture of all pay and allowances or (2) whose cases are subject to indefinite or prolonged delay in completion of appellate review. This procedure, however, should not be used in the case of an individual who is unable to provide his own transportation to his home or other place selected as his leave address. A commanding officer who does not have facilities for effecting separations may transfer to a separation activity an individual who is to be granted leave under this Instruction.

a. Advise the individual that he is privileged to make a signed request for leave (as specified in subparagraph 4b) while awaiting completion of appellate review. The re-

quest of an enlisted member shall be made a matter of record on the administrative remarks page of the service record as prescribed in paragraph 5 hereof. The request of an officer or warrant officer shall be submitted in signed duplicate in a form adapted from that prescribed in paragraph 5. One such signed copy shall be retained by the commanding officer with the personnel records of the officer or warrant officer concerned. All pertinent provisions of this procedure should be explained to the individual.

b. Should such a request be made and approved, the individual will be granted the leave appropriate to his case pending completion of appellate review:

(1) If the individual has no leave to his credit as of the current date or is in a nonpay status (e.g., his enlistment has expired or he is serving a sentence which includes unsuspended, forfeiture of all pay and allowances) he will be granted leave without pay and allowances.

(2) If the individual has earned leave to his credit and is in a pay status he will be granted leave with pay and allowances to the extent leave has been earned as of the current date. However, if the individual is serving a sentence which includes unsuspended, partial forfeiture of pay, he will be paid only that part of his pay and allowances which is not forfeited.

(3) Leave with full or partial pay and allowances, when exhausted, will continue as leave without pay and allowances.

The leave authorization shall reflect the kind of leave granted and shall contain no indication that the individual is to report to his station upon expiration of leave. He shall be paid accrued pay and allowances; but no mileage or transportation in kind is authorized by law for members granted leave for this purpose. If an enlisted member, he shall be permitted to retain one uniform, one overcoat—if needed, and, in the case of Navy personnel, the clothing listed in paragraph 42701 of reference (b). Pay and allowances will terminate as of date of departure or date of expiration of earned leave, as applicable. On the date his pay and allowances are terminated, the member's allotments will be stopped in the same manner that such stoppages are made upon discharge. Prior to his departure, the individual shall be given a thorough physical examination as prescribed in articles 15-48 or 15-49 of reference (c), as appropriate. Form DD-214 shall be filled out to the extent possible and signed by the individual. He shall be informed that he is subject to orders of competent naval authority while on such leave, and that he must keep the commanding officer apprised of his current address.

c. Upon completion of appellate review, copies of the decision of the board of review or Court of Military Appeals, as appropriate, together with related papers, shall be forwarded to the individual by registered mail, return receipt requested. (If a board of review decision with the endorsement required by paragraph 100, MCM, cannot be delivered to the accused because he has changed his address without notifying the commanding officer, constructive service shall be made corresponding to that prescribed in section 0121, 1955 NS MCM [superseded by § 719.126], for cases of unauthorized absence.) If the punitive discharge of a warrant officer or enlisted member is upheld by the board of review and the individual does not petition for a grant of review by the Court of Military Appeals within a period of 30 days after the decision of the board of review has been delivered to the individual's address, or if the punitive discharge is upheld by the Court of Military Appeals, the punitive discharge shall be executed and other separation processing completed without requiring his presence. The com-

manding officer may address an inquiry directly to the Judge Advocate General of the Navy to determine whether a petition for grant of review has been duly filed. A sentence extending to dismissal of an officer, if upheld upon appellate review and approved by the Secretary of the Navy, shall also be executed and separation processing completed without requiring the officer's presence. The individual shall be paid by check for such amount as is found standing to his credit after making checkage for reenlistment bonus when applicable. No cash allowance under paragraph 10313 of reference (d) (see § 730.109 of this chapter) or article C-10315(5) of reference (e) (§ 730.16(e) of this chapter) shall be paid, nor shall civilian clothing be furnished under article C-10315 (3) of reference (e) (§ 730.16(c) of this chapter).

d. In the event that the findings and sentence are set aside and a rehearing may be ordered, the convening authority shall determine in accordance with law whether a rehearing is practicable; if he finds a rehearing impracticable, he shall dismiss the charges (provided the findings as well as the sentence were set aside).

e. If the sentence of an enlisted member is set aside and charges dismissed, he shall, as appropriate, be discharged for the convenience of the Government or for expiration of enlistment with the type of discharge warranted by his service record, and the separation processing completed without requiring his presence. The recommendation for reenlistment will be based upon current criteria dealing with the subject. Where applicable, entry shall be made in the service record to the effect that the discharge terminates the additional service obligation acquired under section 4(d)(3), Universal Military Training and Service Act, as amended, 50 U.S.C. App. 454(d)(3), 10 U.S.C. 651. The individual shall be paid by check for such amount as is found standing to his credit. The payment shall include compensation for any leave credit unused at the time of the discharge. If the sentence of an officer or warrant officer is set aside and the charges dismissed, or if the findings of guilty are affirmed and the sentence is set aside, the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, will upon notification thereof, direct the action to be taken.

5. *Service-record entries.* Requests by enlisted personnel for leave under this Instruction shall be made in substantially the following form on the administrative remarks page of the service record, signed by the individual, and approved by an officer authorized to sign such entries:

(Date.)

I hereby request that I be granted (leave without pay) (leave including leave without pay) pending completion of appellate review of my (General) (Special) court-martial case. I understand that:

a. While on such leave I am subject to orders of competent naval authority.

b. I must keep the commanding officer advised of my current address.

c. If the sentence in my case is affirmed upon appellate review, I shall be discharged with a (bad conduct discharge) (dishonorable discharge).

d. If the sentence to (bad conduct discharge) (dishonorable discharge) is set aside and no rehearing is to be held, I shall be discharged with the type of discharge warranted by my service record.

e. If a rehearing is ordered, I am liable to be returned to naval custody for the purpose of further court-martial proceedings.

(Signature of Individual)

Approved: _____

6. *Reports required.* The commanding officer shall submit to the Chief of Naval Per-

sonnel (Attn: Pers-F3) a report setting forth the circumstances of each case in which this permissible leave procedure is not utilized in regard to a member of the Navy or Naval Reserve who falls in the category described in paragraph 3. The report shall include the reason why the leave procedure was not utilized, the nature of the member's present duties, normal number of hours performed daily, kind of restraint imposed, if any, pay status, date of expiration of enlistment as extended for purpose of making up lost time, and the commanding officer's evaluation of the individual.

RICHARD JACKSON,
Assistant Secretary of the Navy
(Personnel and Reserve Forces)

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§ 719.207 Appendix VII—Applicable provisions of the Department of the Navy Security Manual for Classified Information, Chapter 9, Section 3 (referred to in § 719.133).

DISCLOSURE THROUGH JUDICIAL PROCEEDINGS
0916. GENERAL COURTS-MARTIAL

By law every person who has been tried by general court-martial is entitled to a copy of the record of the proceedings of the court, whether he was acquitted or convicted. Frequently, such copy is delivered to civilian counsel for use as a basis for legal attack upon the conviction. Such records may be introduced into evidence in civilian courts, thereby becoming, in their entirety, public records. It is important, therefore, that every precaution be taken by convening authorities of general courts and by courts, law officers, and trial counsel to protect the security of classified information. It is, therefore, directed that officers who are authorized to convene general courts-martial shall make every effort to have all information to be introduced as evidence declassified.

1. If the trial of a case involves classified information, and the convening authority finds that the trial would be warranted except for the fact that it would probably be detrimental to the prosecution of a war or inimical to national security he shall, without dismissing the charges, forward the case to the officer exercising general court-martial jurisdiction over the command for disposition. If the latter officer concurs in the determination, he shall forward the case through channels to the Secretary of the Navy who may, in time of war, certify to the President that trial would be detrimental to the prosecution of the war or inimical to national defense. In such event, the applicable statute of limitations is extended to 6 months after termination of hostilities as proclaimed by the President or by joint resolution by Congress. Any officer exercising general court-martial jurisdiction has the authority to determine whether security considerations are paramount to trial, and he may, in appropriate cases, dismiss the charges or authorize their trial instead of forwarding them to the Secretary.

2. If classified information is required for prosecution and the trial is authorized, the officer exercising general court-martial jurisdiction shall be governed by the following procedures:

a. Grant appropriate personnel security clearances in accordance with chapter 15 of this manual to all members of the court, members of the prosecution and defense, and the court reporters.

b. If the accused is represented by civilian defense counsel, such counsel must likewise

have been cleared before classified information may be disclosed to him. In no case shall a clearance of a civilian defense counsel be based on investigation action less than a National Agency Check.

c. Sessions of the court-martial shall be closed to the public whenever necessary to prevent dissemination of classified information to other than authorized persons.

d. The original record of trial shall be properly classified.

e. If the copy of the record prepared for the accused contains information requiring security protection, the trial counsel, unless otherwise directed by the convening authority, shall forward the accused's copy to the convening authority. The latter shall excise or withdraw from the accused's copy any information requiring security protection and will, thereafter, cause expurgated copy to be delivered to the accused together with a certificate to the effect that certain information has been deleted or withdrawn from the accused's copy of the record for reasons of national defense and that the original record of trial may be inspected in the files of the Judge Advocate General of the Navy under such regulations as may be prescribed by the Secretary of the Navy.

f. The certificate shall list:

- (1) The pages from which information has been deleted.
- (2) The pages which have been removed in their entirety.
- (3) The exhibits which have been withdrawn.

A copy of this certificate, together with a statement signed by the accused acknowledging receipt of an expurgated copy of the record of trial, or a certificate of delivery of same, shall be attached to the original record of trial.

g. If the necessity for assigning classification is determined subsequent to delivery of a copy to the accused, the copy shall be recovered by proper authority and returned to the convening authority for expurgation.

0917. PRODUCTION OF OFFICIAL RECORDS IN CIVIL COURTS

1. Classified information shall not be released for introduction into civil courts.

2. * * * (See § 701.2 of this chapter.)

3. Where official records are desired for use in a matter not in litigation, and where the records are not classified or of a privileged status as described in article 1251, Navy Regulations, a written request for said records by the parties in interest or their counsel shall be sent to the Secretary of the Navy (Judge Advocate General), Department of the Navy, Washington, D.C. When the purpose for which the records are desired is in the judgment of the Secretary of the Navy (Judge Advocate General) sufficient to justify compliance with the request and the interests of the Government would not be prejudiced thereby, the Secretary of the Navy (Judge Advocate General) may release such of the official records as he may determine to be appropriate under the circumstances.

0918. CLAIMS AGAINST THE UNITED STATES

No person in the Naval Establishment other than in the discharge of his official duties shall disclose any information whatever, whether classified or unclassified, or whether obtained from official records or within the immediate knowledge of the relator, which might be of aid or assistance in the prosecution or support of any claim against the United States (18 U.S.C. 283).

0919. COLLISION CASES

In those cases wherein a naval ship was involved in collision, an opportunity for survey of the naval ship shall not be permitted if such survey will invoke possible disclosure of classified information. In such cases, the

representatives of the other ship, craft, or structure shall be advised that in the interests of national defense an opportunity for survey of the naval ship will not be afforded.

§ 719.208 Appendix VIII—Secretary of the Navy Instruction 5605.3A on court-martial forms (referred to in § 719.134).

SECNAV 5605.3A
JAG:212:dd
13 March 1959

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
Washington 25, D.C.

SECNAV INSTRUCTION 5605.3A

From: Secretary of the Navy.

To: All Ships and Stations.

Subj: Forms used in courts-martial proceedings; requisitioning of.

Ref:

- (a) FFSOINST 5600.1B of 15 June 1958, Subj: Index of Forms and Publications, Cognizance Symbol "I" (superseded by NAVSANDA Publication 2002, Requisitioning Guide and Index of Forms and Publications, Cognizance Symbol "I").
- (b) Marine Corps Order 4235.7A (or revision thereof).

1. Purpose. This Instruction describes the availability of forms used in courts-martial proceedings.

2. Cancellation. This Instruction supersedes and cancels SECNAV Instruction 5605.3 of 13 June 1953 and JAG Instruction 5605.2 of 1 March 1956.

3. Availability of forms. a. The forms listed below are used in courts-martial by the naval service:

- DD 453 Subpoena for Civilian Witness.
- DD 454 Warrant of Attachment.
- DD 455 Report of Proceedings to Vacate Suspension.
- DD 456 Interrogatories and Depositions.
- DD 457 Investigating Officer's Report.
- DD 458 Charge Sheet.
- DD 490 Verbatim Record of Trial (Front cover only—use of the Chronology Sheet on the reverse of the front cover is no longer required—NAVJAG 420(6-58) should be substituted therefor in accordance with JAG Instruction 5810.20A of 24 September 1958).
- DD 491 Summarized Record of Trial.
- DD 494 Court-Martial Data Sheet (The use of this form was made optional by JAG Notice 5810 of 6 August 1953).
- NAVJAG 420(6-58) Court-Martial Chronology/Prisoner Data Form.
- NAVJAG 425 Statistical Report (Summary courts-martial only).

b. The above-designated forms are available from the forms and publications segment of the Navy Supply System as cognizance symbol "I" material and may be obtained in accordance with the instructions contained in reference (a). Marine Corps activities will requisition forms in accordance with instructions contained in reference (b).

c. Where forms are prescribed by the *Manual for Courts-Martial, 1951*, but are not included in the above listing, convening authorities should improvise as necessary, using the manual and appendixes thereto as guides.

F. A. BANTZ,
Assistant Secretary of the Navy
(Material).

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§ 719.209 Appendix IX—U.S. Navy Regulations article 1901 on the meaning of the term "Accountable Officer" (referred to in § 719.137).

1901 "ACCOUNTABLE OFFICER" CONSTRUED.

The term "accountable officer" as used in these regulations shall be construed to mean an officer detailed to duty involving pecuniary responsibility for Government funds and property in his custody.

§ 719.210 Appendix X—Applicable provisions of Navy Comptroller Manual paragraphs 043201 and 044443 on collection of debts due the United States from military personnel (referred to in § 719.137).

(a) Navy Comptroller Manual paragraph 043201-1:

1. *Military personnel.* Initial collection action for debts due the United States by military personnel is the responsibility of the commanding officer of the ship or station where the member is currently assigned for duty. Collection by checkage against the member's pay is authorized in certain cases as explained in pars. 044443-28, 044596-3c, and 044598. In general, involuntary checkage is authorized when the indebtedness is the result of an erroneous payment made to the member or on his behalf, or when a credit is disallowed or a charge raised by the General Accounting Office in the accounts of a disbursing or certifying officer. For indebtedness of a nature where checkage is not authorized without the member's consent, the commanding officer is responsible for calling the member's attention to his liability and for taking all reasonable efforts to encourage the member to arrange satisfaction of the debt either by voluntary remittance or written consent to checkage of pay.

(b) Navy Comptroller Manual paragraph 044443-28a:

a. *General.* Checkages will be entered in item 28 of Navy and Marine Corps member's pay records only when credit is made to Navy or Marine Corps appropriations. If requested by another Government department or agency to enter a checkage on the pay record of a member, the request will be processed in accordance with par. 044598. Checkage entries on pay records of Navy members, other than those involving subhead 2216 of Military Personnel, Navy, and subhead 2231 of Reserve Personnel, Navy, appropriations which have not lapsed, will show the appropriation or fund symbol with proper subhead, object class, expenditure account, bureau control activity number, and bureau control number from which the checkage originally was charged. The symbol number of the disbursing office requesting the checkage and a brief descriptive notation or explanatory note also will be entered in item 28 or item 40 if additional space is needed. For pay records of Marine Corps members, each checkage entry which involves an appropriation other than the appropriation to which the pay of the member is being charged at the time the entry is made, will include the applicable appropriation or fund symbol with the proper subhead, object class, and expenditure account number from which the checkage originally was charged. The symbol number of the disbursing office requesting the checkage and a brief descriptive notation or explanatory note also will be entered in item 28 or item 40 if additional space is needed. Except for authorized withholding tax entries, all other checkages will be entered in item 28 commencing with line 61 and progressing upward. Authorized withholding tax entries will be entered commencing on line 50 and progressing downward.

Checkage may be entered on the pay record only for:

1. Items involving appropriations authorized for the payment of a member's pay and allowances;
2. Excess cost of shipment of household goods;
3. Erroneous payments, overpayments, or excess cost of transportation of the member or dependents;
4. Expenses incurred incident to return of absentee or deserter to naval jurisdiction, except when the amount of checkage is less than \$1 (see par. 046380-12e);
5. Hospital rations;
6. Deposits for savings;
7. Clothing and small stores which are properly chargeable against the account of the member;
8. Voluntary consent to checkage for loss or damage to government property;
9. Any other checkage which may be specifically authorized in this volume.

The amount of each checkage will be entered in item 19. If an agreement has been signed by the member authorizing checkage of his pay record for an indebtedness (for example, unpaid charges for rent, utilities, etc., included in a lease agreement of a member occupying rental housing), the disbursing officer will request the commanding officer to direct the member to make payment by direct remittance to the officer requesting the checkage. If such an agreement has been signed and the member has refused, or is unavailable, to make direct remittance, the disbursing officer will enter the checkage appropriately in item 28 of the member's pay record and, subject to the provisions and limitations set forth in par. 044596-3c(1), the procedures of par. 044596-3c(2) and (3) will apply. When the checkage is to be liquidated by installments, the disbursing officer currently carrying the pay record of the member involved will be responsible for making payment(s) to the claimant in the amount(s) so liquidated. The payment(s) will be expended on a Public Voucher for Purchases and Services Other than Personal (Standard Form 1034) and charged to the appropriation to which the member's pay was properly chargeable at the time the deduction was made. When installment liquidation extends over more than one pay record period, a Standard Form 1034 and a check payable to the "Treasurer of the United States" will be prepared at the end of each pay record period in the amount liquidated on the closed pay record. The check will be forwarded with a copy of the Standard Form 1034 to the claimant requesting collection. Each Standard Form 1034 prepared will make reference to the document requesting collection and to the account number, case number, or similar numerical reference which will identify the remittance with the account of the member and will further make reference that this is a partial payment. Appropriate information concerning such partial payment will be entered in item 40 of the member's closed pay record and such information will be carried forward to each succeeding pay record as long as installment liquidation continues. When the liquidation by installment checkage is finally accomplished, prior to final discharge or ultimate release from active duty, a final Standard Form 1034 and a check payable to the "Treasurer of the United States" will be prepared in the amount of the final payment and such check will be forwarded with a copy of the Standard Form 1034 to the claimant requesting collection. The same information referenced on the Standard Form 1034 for partial payments will be inserted on this final Standard Form 1034 except that reference will be made as to final payment instead of partial payment. If a member is discharged and does not immediately reenlist or is otherwise separated from the service and does not have sufficient funds to offset

the balance of the installment checkage from his final pay and allowances, the disbursing officer will make payment to the claimant requesting checkage only in the amount available for checkage. The Standard Form 1034 will make reference to the same information required for partial payments with additional information appropriately inserted as to the reason for not checking the entire amount of the indebtedness. Collection action for overpayments upon final discharge or ultimate release from active duty is provided for in par. 044455-3. When the checkage may be liquidated immediately and not by installments, the disbursing officer will prepare a Standard Form 1034 in the entire amount of the indebtedness which will be charged to the appropriation to which the member's pay is properly chargeable at the time the deduction is made and a checkage entry will be made in item 28 of the member's pay record showing the public voucher number and the amount. A check payable to the "Treasurer of the United States" will be prepared in the amount of the indebtedness and forwarded with a copy of the Standard Form 1034 to the claimant requesting collection with appropriate information referenced thereon. If such an agreement has not been signed by the member authorizing checkage of his pay record for an indebtedness which is for ultimate credit to an appropriation or fund under the cognizance of the Naval Establishment, the disbursing officer will request the commanding officer to direct the member to make payment voluntarily by direct remittance to the officer requesting the collection. However, if the member refuses to make such direct remittance or disputes the indebtedness, the debt will be noted in the member's service record or jacket and appropriate action will be taken to collect from the final pay and allowances due the member upon discharge or release from active duty. When checkage of pay for an indebtedness is to be liquidated by installments or when the indebtedness is to be noted in the member's service record or jacket for appropriate collection action upon discharge or release, notification of such action being taken will be forwarded to the claimant requesting collection.

§ 719.211 Appendix XI—Secretary of the Navy Instruction 7220.38A on remission of indebtedness of enlisted personnel (referred to in § 719.137).

SECNAV 7220.38A
JAG:134.1:PEH:am
19 January 1961

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON 25, D.C.

SECNAV Instruction 7220.38A

From: Secretary of the Navy.
To: All Ships and Stations.

Subj: Remission of indebtedness of enlisted Navy and Marine Corps members on active duty.

Ref:
(a) 10 U.S.C. 6161.
(b) NavCompt Manual, par. 044597-4.

1. *Purpose.* This Instruction delegates the authority of the Secretary of the Navy to remit the indebtedness of certain enlisted members and furnishes information and instructions for the submission of applications for remission of enlisted members' indebtedness.

2. *Cancellation.* This Instruction cancels and supersedes SECNAV Instruction 7220.38 of 14 July 1960.

3. *Information.* Reference (a) authorizes the Secretary of the Navy, if he considers it in the best interest of the United States, to remit or cancel any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining un-

paid before, or at the time of, that member's honorable discharge. This provision of law provides the Secretary of the Navy with the same statutory authority as the Secretaries of the other military departments have had for remitting enlisted members' indebtedness.

4. *Scope.* Any debt which was incurred as an incident to the service and over which the Department of the Navy has jurisdiction, except indebtedness due to a court-martial sentence of fine or forfeiture, may be considered for remission under the procedures of this Instruction. However, an indebtedness resulting from overpayment of basic allowance for quarters or "Q" allotment under the Dependents Assistance Act of 1950 will normally be subject to relief under the waiver authority as prescribed in reference (b).

5. *Limitation.* Indebtedness may not be remitted or canceled after the enlisted member has been discharged, unless he has reenlisted. The provisions of this Instruction are not applicable to retired members, members of the Fleet Reserve or Fleet Marine Corps Reserve and reservists not on active duty. Applications should be submitted in the course of an enlistment and, in any event, far enough in advance of anticipated discharge, release from active duty, or transfer to the retired or retainer rolls to permit the processing and issuance of a determination by the Chief of Naval Personnel or Commandant of the Marine Corps prior to the member's discharge, release, retirement, or transfer. If an indebtedness has not been remitted while a member is still on active duty, there is no further recourse for remission under this authority. A debt or part of a debt collected may not be remitted or canceled and the collected amount may not be refunded.

6. *Delegation.* The authority to carry out the intent of this statute is delegated by the Secretary of the Navy to the Chief of Naval Personnel for cases of enlisted members of the Navy and to the Commandant of the Marine Corps for enlisted members of the Marine Corps. Remissions of indebtedness shall be in accordance with the guidelines contained in this Instruction which the Secretary of the Navy has determined to be in the best interest of the United States.

7. *Guidelines.* Remission or cancellation will be granted only when it is determined that such action is in the best interest of the United States. In making this determination, the following are among the factors which will be considered:

a. *Injustice.* Remission or cancellation of the indebtedness may be granted in order to correct obvious wrongs or misrepresentations on the part of the Government which are caused by individuals acting in an official capacity. When an enlisted person has received an overpayment in good faith without fault or knowledge on his part but because of errors on the part of the Government, the enforced collection of this indebtedness may amount to an injustice if there is additional evidence that the repayment would involve some element of hardship. Injustice, however, will not in itself be the basis for granting remission or cancellation.

b. *Hardship.* Hardship will be a factor whenever the repayment of indebtedness will cause a service member or his family to suffer grossly thereby. In establishing hardship, the enlisted person must support his statement by evidence in detail substantiated by the commanding officer. Additionally, the following data as appropriate will be considered:

- (1) The number of dependents;
- (2) The varying costs for the support and education of children;
- (3) The availability of service facilities such as commissaries, post exchanges, medical care, etc.;
- (4) Unusual expenses which may have been incurred by the serviceman due to

medical or dental expenses not payable by the Government or to loss of personal or private property; and

(5) Other legitimate indebtedness incurred before the Government indebtedness became known.

c. *Checkage of pay causing a deterioration of morale.* A partial remission is appropriate whenever, because of the size of a checkage or the extent of the period over which the checkage must be applied in order to recover the indebtedness, the entire amount should not be recovered in order to avoid hardship or injustice.

d. *Member's value to the service.* In connection with the determination of any of the above factors, it is appropriate to consider the value of the enlisted member to the service. The investment in the training of the serviceman, his technical skills and knowledge, and any scarcity of personnel with his skills, his performance as evidenced by fitness marks, decorations, letters of commendation, etc., will be evaluated. Whenever any evidence of hardship or injustice exists, the value to the service will be given special consideration.

8. *Application.* Application for remission or cancellation of indebtedness will be made in letter form and may be initiated either by the enlisted member concerned or by his superior commissioned officer.

a. *Navy member.* Applications will be submitted via the member's commanding officer and the Comptroller of the Navy to the Chief of Naval Personnel. The commanding officer shall notify the disbursing officer when a request is forwarded. Where the disbursing officer is not a part of the command, request will be forwarded via the disbursing officer. The Comptroller of the Navy will determine the validity of the indebtedness. The case will be coordinated by the Chief of Naval Personnel with other interested bureaus and offices as necessary.

b. *Marine Corps member.* Application will be submitted via the member's commanding officer and disbursing officer to the Commandant of the Marine Corps (Code CD).

c. *Substantiation.* The application will be substantiated with the following documents and evidence as applicable:

(1) Copy of the document establishing the indebtedness if available (Pay Adjustment Authorization (DD Form 139); GAO Notice of Exception (Standard Form 1100); or other document establishing indebtedness) accompanied by a complete narrative statement of the background. If the indebtedness is a property charge, a copy of the survey report will also accompany the application.

(2) Amount previously collected (any amount withheld from the member's pay for application against the indebtedness will be considered as collected).

(3) Amount for which remission is requested.

(4) Date of expiration of member's current enlistment, release from active duty, or anticipated transfer to the retired or retainer rolls, and a statement of his total prior service.

(5) An itemized statement of member's monthly pay, allowances and allotments together with an itemized statement of total monthly living expenses of member's family.

(6) If application is based on extreme hardship being caused the enlisted member, evidence indicating the specific nature and degree of hardship, including the number and relationship of dependents with ages of children, and any unusual factors or obligations which affect the member's financial affairs.

d. *Commanding officer's action.* The commanding officer's endorsement will contain the following information:

(1) Verification of statements made by the enlisted member, particularly those relating to hardship, to the extent feasible.

(2) Brief statement concerning the member's efficiency and conduct including any significant matters of record, favorable or unfavorable, pertaining to him.

(3) Appropriate recommendation. If favorable action is recommended, statement as to how remission would serve the best interests of the Government.

9. *Action by disbursing officer.* The disbursing officer will furnish such information as prescribed under paragraph 8 which is available from the member's pay accounts, upon the request of the member's commanding officer, to be used in connection with application for remission of indebtedness. Upon receipt of evidence that a request for remission has been forwarded by the member's commanding officer, the disbursing officer will suspend collection of the remaining indebtedness. The checkage entry in item 28 will be prorated and extended through the date prior to date remission application is submitted and suspense entry made in item 39 for the unliquidated balance of the indebtedness, which will be carried forward to each succeeding pay record until the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, notification of determination is received. If all or part of the indebtedness is remitted or canceled, the fact will be entered in item 39 and the suspense entry lined out, but not obliterated. The notices of remission of indebtedness or of denial thereof issued by the Chief of Naval Personnel and the Commandant of the Marine Corps will be retained as group "R" pay record vouchers for Navy personnel and group "B" pay record vouchers for Marine Corps personnel. In the event remission notification has not been received at time of member's discharge or release from active duty (unless member immediately reenlists), checkage for the full amount of the suspended indebtedness will be entered in item 28 and collected to the extent permitted from member's final pay. In the event remission is denied, wholly or in part, the disbursing officer will resume or commence checkage from the date of receipt of the notice of denial.

10. *Reporting.* The Comptroller of the Navy for Navy members and the Commandant of the Marine Corps for Marine Corps members will submit to the Secretary:

a. Monthly and cumulative totals of dollar amount and number of cases remitted;

b. Monthly and cumulative totals of dollar amount and number of cases which were not remitted; and

c. Monthly and cumulative totals of dollar amount and number of the remitted portion of cases which were partially remitted and the same information for the portion which was not remitted.

The foregoing shall be broken down by major categories, which the Comptroller of the Navy may establish, such as reenlistment payments, travel and TAD, diving pay, longevity, etc. A copy of the final action taken by the Chief of Naval Personnel in each case will be furnished the Comptroller of the Navy.

11. *Implementation.* Such additional or amplifying instructions, as may be required by the Commandant of the Marine Corps, the Chief of Naval Personnel, and Comptroller of the Navy to implement, refine, or modify guidelines and criteria, shall be submitted to the Secretary for approval.

RICHARD JACKSON,
Assistant Secretary of the Navy
(Personnel and Reserve Forces)

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§ 719.212 Appendix XII—Bureau of Naval Personnel Instruction 1640.5B on designation of places of confinement (referred to in § 719.138).

BUPERS 1640.5B
Pers-F4a-jbs
MarCorps DK
7 March 1960

DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
HEADQUARTERS, U.S. MARINE CORPS
WASHINGTON 25, D.C.

BUPERS INSTRUCTION 1640.5B

From:

Chief of Naval Personnel.
Commandant of the Marine Corps.

To: All Ships and Stations.

Subj: Criteria for designation of places of confinement for naval courts-martial prisoners.

Ref:

(a) Brig Manual 1956 (NavPers 15825 Rev).

(b) BUPERSINST 7312.5.

Encl: (1) Extract from art. 805, Brig Manual.
1. *Purpose.* To announce the criteria for designation of a confinement facility for personnel who are convicted by courts-martial.

2. *Cancellation.* This Instruction cancels BUPERS Instruction 1640.5A.

3. *Background.* This Instruction provides a scheduled cessation of prisoner input at the U.S. Naval Retraining Command, Camp Elliott, San Diego, California, which is to be disestablished on 30 September 1960. When fully implemented, it provides for confinement at the U.S. Naval Retraining Command, Portsmouth, New Hampshire, of nearly all prisoners who will be discharged and confinement in local brig of nearly all who will return to duty.

4. *Definitions.* As used herein the following definitions govern:

a. A restoree is a prisoner whose approved sentence does not include a discharge or, if included, it has been suspended.

b. A dischargee is a prisoner whose sentence as approved includes an unsuspended discharge. It also includes those prisoners for whom final authority has been received to discharge for reasons of unsuitability, unfitnes, or misconduct.

c. The normal release date is the date on which the full term of the sentence(s), as reduced by the number of days good conduct time earned, will expire. Good conduct time is computed in accordance with enclosure (1).

d. Minimum time to serve as used herein is 2 months of actual confinement, after allowing full credit for good conduct time, remaining to be served following arrival at a retraining command.

5. *Designation before transition period (until 1 May 1960)*—Restoree or dischargee. A retraining command (Portsmouth, New Hampshire—eastern area, or Camp Elliott, San Diego, California—western area) shall be designated as the place of confinement when the prisoner will have at least the minimum time to serve.

6. *Designation during transition period*—
a. *Restoree.* On and after 1 May 1960 a brig shall be designated as the place of confinement or temporary custody for restorees whose normal release date is on or after 1 September 1960. Restorees with minimum time to serve will be transferred to a retraining command provided their normal release date is before 1 September 1960. Input of restorees to both retraining commands ceases 1 July 1960 except as noted in paragraph 8.

b. *Dischargee.* On and after 1 May 1960 the U.S. Naval Retraining Command, Camp Elliott, San Diego, California, will be designated as the place of confinement or temporary custody for dischargees in the western area with minimum time to serve whose normal release date falls on or before 15 September 1960. U.S. Naval Retraining Command, Portsmouth, New Hampshire, will be designated as the place of confinement for all other dischargees with minimum time to serve. Input of dischargees to Camp Elliott ceases 15 July 1960.

7. *Designation after transition period*—
a. *Restoree.* After 1 July 1960, except as noted in paragraph 8 below, a brig will be designated as the place of confinement of all restorees.

b. *Dischargee.* After 15 July 1960 the U.S. Naval Retraining Command, Portsmouth, New Hampshire, will be designated as the place of confinement or temporary custody for dischargees provided: (1) the sentence involves at least 4-months' confinement, (2) the minimum time to serve after arrival at Portsmouth is at least 2 months after allowing full credit for good conduct time.

8. *Exceptions.* When the foregoing instructions are considered inapplicable or inappropriate, requests for designation of place of confinement or temporary custody other than the normal one shall be forwarded to the Chief of Naval Personnel (Pers F4). These requests shall give specific reasons for desiring exception to the procedure outlined above and include a recommendation as to the confinement facility to be used. After 1 May 1960 the Portsmouth Retraining Command should be designated as the place of confinement or temporary custody of a restoree with a sentence to confinement of more than 6 months.

9. *Officers.* Officers sentenced to confinement shall normally be retained at the place of trial until the sentence is ordered executed under such degree of restraint as the commanding officer considers necessary in each case. Where physical confinement is considered absolutely necessary and local facilities are inadequate for this purpose, requests for designation of a place of temporary custody shall be forwarded to the Chief of Naval Personnel (Pers F4). These requests must provide specific justification to warrant exception to the general procedures outlined herein.

10. *Redesignation.* Commanding officers operating brigs which receive prisoners for further transportation to a retraining command shall redesignate that brig as the place of confinement or temporary custody when the prisoner no longer meets the time-to-serve criterion (see paragraph 4d).

11. *Records and reports.* When a retraining command has been designated as a place of temporary custody or confinement, the transfer shall not be made until the required records and reports are available and complete. The following records and reports, except as noted below, shall accompany every prisoner at the time of transfer:

- a. Service record;
- b. Health record;
- c. Pay account;
- d. Three certified true copies of the court-martial order;
- e. One copy of the review of the legal officer;
- f. One copy of the Prisoner Data Card (NavPers 1521 Rev.), if available;
- g. One copy of the Prisoner Conduct Record (NavPers 1385).

In special courts-martial cases, items d and e above shall be forwarded to the retraining command by the supervisory authority immediately upon promulgation.

12. *Transfer.* It is not considered practicable, in view of the requirements of the

Navy and Marine Corps Correction Programs, to retain in a brig a prisoner whose sentence as approved by the convening authority includes an unsuspended discharge and confinement of 4 months or more. Accordingly, notwithstanding subparagraph 89(c)(6), Manual for Courts-Martial, an eligible prisoner shall be transferred to the place of confinement or temporary custody designated in that action as soon as practicable. Designation of a retraining command as the place of confinement or temporary custody constitutes authority to effect the transfer of a prisoner and to issue temporary additional duty orders to prisoner escorts required to deliver the prisoner. Chapter 4 of reference (a) prescribes the procedure for such transfers.

13. *Travel authorizations*—a. *Prisoner Escorts.* The travel expenses of Navy and Marine Corps military personnel assigned to escort prisoners convicted by general or special courts-martial to places of confinement are chargeable to allotments held by commandants of naval districts and river naval commands. Authority to charge and applicable accounting data must be obtained from the commandant of the local naval district or river naval command in advance of issuance of orders to prisoner escorts. In cases involving transfer from overseas, the necessary authority and accounting data will be obtained from the commandant of the naval district in which the designated place of confinement is located.

b. *Navy prisoner.* The following accounting data should be inserted in the permanent change of station orders chargeable to the appropriation "Military Personnel, Navy" for travel of a convicted Navy prisoner:

Appropriation symbol and subhead: For the fiscal year in which the member will be detached from duty station.

Month and year of detachment code: As required by reference (b).

Bureau control activity number, bureau control number, and purpose identification code: 22/31600.170 (CONUS); 22/31600.171 (Overseas).

Customer identification code if travel is to be performed by MATS: Constructed in accordance with reference (b).

c. *Marine prisoner.* (1) The following accounting data should be inserted in the permanent change of station orders chargeable to the appropriation "Military Personnel, Marine Corps" for travel of a convicted Marine prisoner:

Appropriations symbol and subhead: For fiscal year in which member will be detached from duty station.

Bureau control activity number: 27.

Bureau control number: 41690.

Object class: 029.

Expenditure accounting number officer travel: 74120.

Expenditure accounting number enlisted travel: 74121.

Customer identification code if travel is to be performed by MATS: Constructed in accordance with current Marine Corps order.

(2) Commands will forward to Commandant of the Marine Corps (Code DFF) a copy of all orders issued for transfer of Marine prisoners to a naval retraining command including a copy of modification of orders when local brig facilities are redesignated for prisoners received from overseas forces or forces afloat.

14. *General information.* It is the policy of the Navy Department to transfer certain serious offenders (nonrestorable felons) to Federal penal and correctional institutions. Such transfers are subject to the approval of the Chief of Naval Personnel and acceptance by the Director, Bureau of Prisons. Such transfers will ordinarily be made from a

retraining command in accordance with article 406.3 of reference (a).

ALMON E. LOOMIS,
Deputy Chief of Naval Personnel.

A. LARSON
By direction.

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ENCLOSURE (1)

**EXTRACT FROM ARTICLE 805 OF THE BRIG MANUAL
805 EARNING AND COMPUTING GOOD CONDUCT
TIME**

1. As a reward for satisfactory conduct during confinement, a prisoner who is serving a sentence to confinement for a definite term, other than for life, shall be credited monthly with a reduction in the time to be served in confinement. A prisoner may earn and forfeit good conduct time whether or not his sentence has been ordered executed. The rate of earning good conduct time is:

Five days for each month of the sentence, if the sentence is less than 1 year.

Six days for each month of the sentence, if the sentence is not less than 1 year, and is less than 3 years.

Seven days for each month of the sentence, if the sentence is not less than 3 years, and is less than 5 years.

Eight days for each month of the sentence, if the sentence is not less than 5 years, and is less than 10 years.

Ten days for each month of the sentence, if the sentence is 10 years or more.

NOTE: Good conduct time is not creditable on periods of confinement imposed under article 15, UC MJ, and is not granted on other sentences involving less than 1 month (30 days) confinement.

2. Subchapter E is amended by insertion of the following new Part 755:

**PART 755—CLAIMS FOR INJURIES TO
PROPERTY UNDER ARTICLE 139 OF
THE UNIFORM CODE OF MILITARY
JUSTICE**

- Sec.
755.1 Statutory authority.
755.2 Scope.
755.3 Claims not cognizable.
755.4 Limitations of applications.
755.5 Complaint by injured party.
755.6 Investigation.
755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.
755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.
755.9 Reconsideration.
755.10 Effect of court-martial proceedings.

AUTHORITY: §§ 755.1 to 755.10 issued under R.S. 161, secs. 831, 939, 5031, 70A Stat. 48, 78, 273, E.O. 10214 (3 CFR 1949-1953 Comp. page 408), as amended; 5 U.S.C. 22, 10 U.S.C. 831, 939, 5031.

NOTE: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this part as "the Code." E.O. 10214, prescribing the Manual for Courts-Martial, United States, 1951, with amendments, is referred to in this part as "Manual for Courts-Martial" or "MCM 1951."

§ 755.1 Statutory authority.

This part outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces. (Article 139 of the Code.)

§ 755.2 Scope.

Claims for damage, loss or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of article 139 of the Code, only if such damage, loss, or destruction is caused by riotous conduct, acts of degradation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under article 109 of the Code are cognizable under article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under article 109 or any other article of the Code. See § 755.10. Charges against pay under this part shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene, alone, at the time the damages were sustained, are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

§ 755.3 Claims not cognizable.

The following claims are not payable under this part.

(a) *Claims payable under other regulations.* Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of General, Personnel, Admiralty, and Foreign Claims Regulations set forth in Parts 750, 751, 752, and 753 of this chapter. No charge will be made under this part against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

(b) *Claims resulting from simple negligence.* Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

(c) *Claims of subrogees.* Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

(d) *Claims for personal injury or death.*

(e) *Acts or omissions within the scope of employment.* Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

(f) *Absence of riotous, violent and disorderly conduct.* Claims arising from larceny, wrongful appropriation, forgery or deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous, violent, or disorderly conduct; or claims for damages arising from breach of contract.

(g) *Government property.* Reimbursement for damage, loss, or destruction of property of the United States.

§ 755.4 Limitations of applications.

(a) *Time limitations.* In order to be cognizable under article 139 of the Code, a claim must be submitted within 30 days of the date of the incident out of which the claim arose.

(b) *Aliens.* Claims of aliens under article 139 of the Code, in addition to the exclusionary limitations of this part, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

(c) *Limitation of amount of assessment.* No assessment exceeding the amount of \$250.00 will be made against the pay of any offender under the provisions of article 139 of the Code for any single act or incident.

(d) *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

(e) *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

§ 755.5 Complaint by injured party.

(a) *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of article 139 of the Code, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally, to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally, shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of article 139, be considered the commanding officer of the offender. At the request of the commanding officer of an alleged offender, the commanding officer of any other naval activity shall investigate the matter as required by article 139 of the Code

and this part. Upon completion of such an investigation, the record shall be forwarded to the commanding officer who requested the investigation, for the action required by § 755.7. Where more than one offender or more than one command is involved, the matter shall be handled by one investigation, if it is possible. In this connection, see § 755.8.

(b) *Claimant.* In order for a claim to be cognizable under article 139 of the Code, the claimant must be within the provisions of § 750.30(a) of this chapter.

(c) *Content of a claim.* A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of § 750.32 of this chapter set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

§ 755.6 Investigation.

(a) *General.* The procedure for redress of injuries to property (article 139 of the Code) is accomplished by the use of a one officer investigation, a board of investigation or a court of inquiry. The claim is the subject of inquiry by one of these bodies. Accordingly, the rules governing the appropriate type of investigation are applicable.

(b) *Fact-finding body.* The body appointed to investigate a complaint under article 139 of the Code shall consist of from one to three commissioned officers. (Article 139(a) of the Code.) Where the need exists for a court of inquiry or a board of investigation (§ 719.151 of this chapter), the complaint shall be investigated by a court of inquiry or an investigation comprised of not more than three commissioned officers, in conjunction with such other pertinent and related matters as are directed in the appointing order. See paragraph (h) of this section. Subject to the provisions of this part, see the pertinent portions of §§ 750.37 and 750.38 of this chapter for the matters to be ascertained in investigating property damage. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

(c) *Statutory requirements and powers.* Under the authority of article 139 of the Code, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See MCM 1951 par. 115. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under article 139, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the article 139 complaint. Witnesses before such

investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received.

(d) *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See §§ 719.154 through 719.160 of this chapter. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such a case, submit a signed statement in regard thereto or to the effect that he does not desire to make a statement. If, by reason of unauthorized absence or other factors, the rights of a party can not be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an article 139 investigation, the identity of the offending party is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation and advised of his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. For rights against compulsory self-incrimination, see §§ 719.157 through 719.159 of this chapter. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not been completed.

(e) *Measure of damages.* The inquiry or investigation is to be guided by the General Claims Regulations (Part 750 of this chapter) in determining the measure of damage as a basis for recommending assessment.

(f) *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in this part pertaining to the validity of the claim under consideration and shall state its findings of fact or opinion, as appropriate, as to the person responsible for the damage upon which the claim is based. It shall further, using the appropriate measure of damage, determine the amount of damage incurred by the property owner.

(g) *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

(h) *Consolidation of investigations.* An investigation made under article 139 of the Code may be combined with an

investigation required for any other reason.

§ 755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.

(a) *Action by commanding officer.* When there is one offender or, if more than one, all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of article 139 of the Code and this part. If he finds that the claim is within such provisions, he will fix the amount to be assessed against an offender. Subject to the limitations of § 755.4, charges totaling the amount of damages assessed and approved shall be fixed in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no additional review is required as to redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, will be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, will forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer directing a charge against the pay of an offender, or in the denial of a claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid, or that no members of the command were pecuniarily responsible, will be promptly communicated to the claimant.

(c) *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual (par. 044274, quoted in § 719.204 of this chapter), be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under article 139 of the Code shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender will be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

§ 755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.

(a) *Action by common superior.* Where the offenders are members of different commands, the investigation or investigations conducted under article 139 of the Code shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report will be forwarded to such offender for his inspection prior to his making a statement regarding the incident or to the effect that he does not desire to make a statement. This statement will be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. No action shall be taken by such superior against any alleged offender until he has been given a hearing. The common superior commander shall fix the amount, if any, to be assessed against an offender and direct the appropriate commanding officers to take action accordingly. See § 755.7 (b), (c). The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

(b) *Forwarding to SECNAV (JAG).* Where it is not practicable or possible to carry out the procedure prescribed in paragraph (a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.9 Reconsideration.

In the absence of newly-discovered evidence, an adjudication pursuant to this part shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly-discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and acted upon in accordance with the provisions of this part.

§ 755.10 Effect of court-martial proceedings.

Administrative action under this part is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the Code without regard to proceedings under this part. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damages

is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the or approval or denial of a claim thereunder.

PART 765—RULES APPLICABLE TO THE PUBLIC

§ 765.20 [Deletion]

3. Section 765.20 is deleted.

(R.S. 161, secs. 936, 5031, 70A Stat. 77, 278; 5 U.S.C. 22; 10 U.S.C. 936, 5031)

By direction of the Secretary of the Navy.

[SEAL] ROBERT D. POWERS, JR.,
*Rear Admiral, U.S. Navy, Acting
Judge Advocate General of
the Navy.*

DECEMBER 1, 1961.

[F.R. Doc. 61-11606; Filed, Dec. 7, 1961;
8:45 a.m.]

PART 765—RULES APPLICABLE TO THE PUBLIC

Insignia To Be Worn on Uniform of Persons Not in the Service

Scope and purpose. Paragraphs (a), (b), (c), and (e) of § 765.13 are revised in order to conform with changes in the statutory law cited therein.

Paragraphs (a), (b), (c), and (e) of § 765.13 are revised to read as follows:

§ 765.13 Insignia to be worn on uniform by persons not in the service.

(a) Under Title 10, United States Code, section 773, members of military societies composed of persons discharged honorably or under honorable conditions from the United States Army, Navy, Air Force or Marine Corps, regular or reserve, may, when authorized by regulations prescribed by the President, wear the uniform duly prescribed by such societies to be worn by the members thereof.

(b) The law cited in paragraph (a) of this section further provides that instructors and members of duly organized cadet corps at certain institutions of learning may wear the uniform duly prescribed by the authorities of such institutions.

(c) The law cited in paragraph (a) of this section further provides that the uniform worn by members of the military societies or by members and instructors of the cadet corps referred to in paragraph (a) of this section shall include some distinctive mark or insignia prescribed by the Secretary of the military department concerned to distinguish such uniforms from the uniforms of the Army, Navy, Air Force, or Marine Corps.

(e) Within the meaning of paragraph (a) of this section, the occasions when members of the military societies may wear the uniform of their respective society are official functions which such a member attends in his capacity as a war veteran or as a member of such military society.

(R.S. 161, secs. 773, 5031, 70A Stat. 35, 278, as amended; 5 U.S.C. 22, 10 U.S.C. 773, 5031)

By direction of the Secretary of the Navy.

[SEAL] ROBERT D. POWERS, JR.,
*Rear Admiral, U.S. Navy, Acting
Judge Advocate General of
the Navy.*

DECEMBER 1, 1961.

[F.R. Doc. 61-11605; Filed, Dec. 7, 1961;
8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 29—RETIREMENT

Miscellaneous Amendments

1. Section 29.6 is amended by striking all material after paragraph (a) and inserting in lieu thereof the following:

§ 29.6 Disability retirement.

(b) (1) Each disability annuitant who has not attained age 60 shall be examined annually under direction of the Commission. Where it appears in any particular case that the nature of the disability is such as to warrant the conclusion that it will continue for a certain period, the Commission may waive the requirement for regular annual examinations for the period during which there is reasonable expectation of continuation of the disability, but in any case a medical or other examination may be ordered at any time to determine the facts relative to the nature and degree of disability of any employee thus retired. If the evidence shows that the disability is permanent in character, further examination shall not be ordered, unless warranted, and the annuitant shall be notified accordingly.

(2) When a medical examination made in compliance with the direction of the Commission shows that the annuitant has recovered, the annuity shall be discontinued at the expiration of one year from the date of such medical examination. If the annuitant is reemployed in the Government service within the one year, the annuity shall be discontinued from the date of such reemployment.

(3) If the recovered disability annuitant is not reemployed in a position subject to the Civil Service Retirement Act and, based on current medical examination, is found by the Commission to have again become totally disabled before reaching age 62 due to recurrence of the disability for which originally retired, his disability annuity of the same type and at the rate last payable shall be reinstated from the date of such medical examination or January 1, 1962, whichever is later. A current medical examination means any acceptable medical examination made not more than 90 days prior to its receipt in the Commission.

(c) (1) Each disability annuitant who has not attained age 60 shall be required to report annually, in such detail as may

be required by the Commission, his income from wages and self-employment for any period after retirement. If an annuitant fails to submit such report, the Commission may suspend annuity payments until entitlement to continuance of annuity is satisfactorily established.

(2) If, in each of two succeeding calendar years, the disability annuitant has received income from wages and self-employment equaling at least 80 percent of the current rate of compensation of the position from which he retired, the annuity shall be discontinued at the expiration of one year from the end of the two-year period. If the annuitant is reemployed in the Government service within the one year, the annuity shall be discontinued from the date of such reemployment. Receipt of such income will be presumed in respect to any calendar year for which the disability annuitant fails to make income report.

(3) If the restored disability annuitant is not reemployed in a position subject to the Civil Service Retirement Act, has not medically recovered from the disability for which retired, and is found by the Commission to have again lost his earning capacity before reaching age 62, his disability annuity of the same type and at the rate last payable shall be reinstated from the first of the year following the calendar year in which earning capacity was lost or January 1, 1962, whichever is later. Earning capacity shall be deemed lost if during any complete calendar year after 1960 the individual's income from wages and self-employment is less than 80 percent of the current rate of compensation of the position from which he retired.

(d) Reinstatement of a disability annuity shall, from reinstatement date, terminate the right to any non-disability annuity which the annuitant may be receiving or entitled to receive based on the same service, unless the annuitant elects in writing to retain instead the non-disability annuity. If the annuitant is in Government employment not subject to the Civil Service Retirement Act on the date disability annuity is reinstated, payment thereof shall be suspended until separation occurs.

2. The first sentence of § 29.9(a) is amended. As amended paragraph (a) reads as follows:

§ 29.9 Military service.

(a) Periods of honorable active service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the Coast and Geodetic Survey shall, after the employee has completed 5 years' civilian service, be credited under the retirement law. No credit for any military service shall be allowed if the employee is receiving retired pay awarded for reasons other than (1) service-connected disability incurred in combat with an enemy of the United States, (2) service-connected disability caused by an instrumentality of war and incurred in

line of duty during a period of war (as that term is used in Chapter 11 of Title 38, U.S.C.), or (3) under Chapter 67, Title 10, U.S.C.

3. Section 29.16(c) (3) is amended by adding a sentence at the end thereof. As amended, paragraph (c) (3) will read as follows:

§ 29.16 Appeals.

* * * * *

(c) * * * *

(3) In case of a disability annuitant who is found upon medical examination to have recovered, or is determined to have been restored to earning capacity, the time allowed for filing an appeal shall be not later than 90 days from the date of final notice of proposed discontinuance of annuity. In the case of a former disability annuitant denied reinstatement of disability annuity, the time allowed for filing an appeal shall be not later than 90 days from the date of final notice of the denial.

(Sec. 16, 70 Stat. 758; 5 U.S.C. 2266)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 61-11640; Filed, Dec. 7, 1961; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment) Department of Agriculture

[Amdt. 3]

PART 728—WHEAT

Subpart—Wheat Marketing Quota Regulations for 1961 and Subsequent Crop Years

EXCESS ACREAGE UTILIZATION DATES AND NORMAL HARVEST COMPLETION DATES

The amendments herein are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and are issued (1) to amend the final dates for the disposal of excess wheat acreage, effective for the 1962 and subsequent crops of wheat, in the States of Alabama, Arizona, California, Indiana, Kansas, Kentucky, Mississippi, Missouri, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming; and (2) to amend the dates on which harvest is normally substantially completed effective for the 1961 and subsequent crops of wheat in the States of Washington and West Virginia, and effective for the 1962 and subsequent crops of wheat in the State of Arizona. The list of dates on which harvest is normally substantially completed in counties in the State of Washington, as published in the FEDERAL REGISTER of May 30, 1961 (26 F.R. 4722-23), prescribed a definite date for each county in the State, followed

by the date of August 15 for all counties. The date of August 15 was intended to be applicable to all counties in the State of West Virginia and not to any county in the State of Washington, but the designation of the State of West Virginia was inadvertently omitted. For this reason, the clarification of the list of dates for the States of Washington and West Virginia is made effective for the 1961 and subsequent crops of wheat. Since many producers have seeded their winter wheat for 1962 and are signing their intentions to participate in the 1962 wheat stabilization program, it is important that State and county committees be notified of the amendments herein as soon as possible so that producers with 1962 excess wheat acreage may be notified of the final dates for utilization of such excess acreage as wheat cover crop and of the final dates for the adjustment of any farm marketing excess. Accordingly, it is hereby found that compliance with the public notice, procedure, and 30-day effective date provisions of section 4 of the Administrative Procedure Act is impractical and contrary to the public interest. Therefore, the amendments shall become effective upon publication in the FEDERAL REGISTER, as hereinafter provided.

1. In § 728.1145(b), the list of established dates in wheat-producing counties for the disposal of excess wheat as wheat cover crop is amended for the States of Alabama, Arizona, California, Indiana, Kansas, Kentucky, Mississippi, Missouri, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming, effective with respect to the 1962 and subsequent crops of wheat, to read as follows:

ALABAMA

April 25: Baldwin, Barbour, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Mobile, Monroe, Pike, Washington.

May 1: Autauga, Bibb, Bullock, Chambers, Chilton, Choctaw, Clay, Coosa, Dallas, Elmore, Greene, Hale, Lee, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Randolph, Russell, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Wilcox.

May 15: All other counties.

ARIZONA

(Winter Wheat)

April 25: Maricopa, Pima, Pinal, Santa Cruz, Yuma.

May 15: Cochise, Gila, Graham, Greenlee.
June 1: Mohave (south of Colorado River), Yavapai.

June 10: Apache, Coconino, Mohave (north of Colorado River), Navajo.

(Spring Wheat)

August 1: Coconino, Navajo.

CALIFORNIA

April 1: Imperial, Riverside (For Palo Verde).

April 15: San Benito (For Panoche).
May 1: Butte, Colusa, Fresno, Glenn, Kern (except for Tehachapi), Kings, Madera, Mariposa, Merced, Nevada, Orange, Placer, Riverside (except for Palo Verde), Sacramento, San Bernardino, San Diego, San Joaquin, Solano, Stanislaus, Sutter, Tehama, Tulare, Ventura, Yolo, Yuba.

May 15: Alameda, Amador, Calaveras, Contra Costa, Eldorado, Lake, Los Angeles,

RULES AND REGULATIONS

Marin, Monterey, Napa, San Benito (except for Panoche), San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta (for Anderson and Cottonwood), Sonoma, Tuolumne.

June 1: Alpine, Inyo, Kern (for Tehachapi), Mono.

June 15: Mendocino, Siskiyou (for Shasta Valley).

June 20: Humboldt.

July 1: Lassen, Modoc (except Durum Wheat), Plumas, Shasta (except for Anderson and Cottonwood), Sierra, Trinity.

July 15: Modoc (for Durum Wheat), Siskiyou (except for Shasta Valley).

INDIANA

May 20: Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Jackson, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Washington, Warrick.

June 1: Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jefferson, Jennings, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, Wayne.

June 10: All other counties.

KANSAS

May 10: Allen, Anderson, Barber, Barton, Bourbon, Butler, Chase, Chautauqua, Cherokee, Clark, Coffey, Commanche, Cowley, Crawford, Dickinson, Douglas, Edwards, Elk, Ellsworth, Ford, Franklin, Geary, Grant, Gray, Greenwood, Harper, Harvey, Haskell, Hodgeman, Jefferson, Johnson, Kingman, Kiowa, Labette, Leavenworth, Linn, Lyon, McPherson, Marion, Meade, Miami, Montgomery, Morris, Morton, Neosho, Osage, Pawnee, Pratt, Reno, Rice, Rush, Saline, Sedgwick, Seward, Shawnee, Stafford, Stanton, Stevens, Sumner, Wabaunsee, Wilson, Woodson, Wyandotte.

May 20: All other counties.

KENTUCKY

May 15: All counties.

MISSISSIPPI

May 10: All counties.

MISSOURI

May 15: Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Scott, St. Francois, Ste. Genevieve, Stoddard, Wayne.

May 25: Barry, Barton, Bates, Benton, Boone, Callaway, Camden, Carter, Cass, Cedar, Christian, Cole, Cooper, Crawford, Dade, Dallas, Dent, Douglas, Franklin, Gasconade, Greene, Henry, Hickory, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Laclede, Lafayette, Lawrence, Lincoln, Maries, McDonald, Miller, Moniteau, Montgomery, Morgan, Newton, Oregon, Osage, Ozark, Pettis, Phelps, Polk, Pulaski, Reynolds, Ripley, Saline, St. Charles, St. Clair, St. Louis, Shannon, Stone, Taney, Texas, Vernon, Warren, Washington, Webster, Wright.

June 1: All other counties.

NEW MEXICO

(Winter Wheat)

May 10: Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otera, Sierra.

May 20: Curry, De Baca, Guadalupe, Lincoln, Quay, Roosevelt, Socorro.

June 5: Bernalillo, Catron, Harding, McKinley, Sandoval, San Juan, Santa Fe, Torrance, Union, Valencia.

June 15: Colfax, Mora, Rio Arriba, San Miguel, Taos.

(Spring Wheat)

June 20: Bernalillo, Catron, McKinley, Sandoval, San Juan, Santa Fe, Torrance, Valencia.

July 1: Colfax, Mora, Rio Arriba, San Miguel, Taos.

OKLAHOMA

May 1: All counties.

OREGON

County	Area or type of wheat	Dates
Baker	Winter wheat	July 15
	Spring wheat	Aug. 1
Benton	Winter wheat	June 15
	Spring wheat	July 1
Clackamas	Winter wheat	June 15
	Spring wheat	July 1
Clatsop	Winter wheat	June 15
	Spring wheat	July 1
Columbia	Winter wheat	June 15
	Spring wheat	July 1
Coos	Winter wheat	June 15
	Spring wheat	July 1
Crook	All wheat	Aug. 1
Curry	Winter wheat	June 15
	Spring wheat	July 1
Deschutes	Winter wheat	July 15
	Spring wheat	Aug. 1
Douglas	Winter wheat	June 15
	Spring wheat	July 1
Gilliam	Under 2,000 feet	Do.
	Over 2,000 feet	July 15
Grant	Under 2,000 feet	Do.
	Over 2,000 feet	Aug. 15
Harney	All wheat	Aug. 1
Hood River	Winter wheat	June 15
	Spring wheat	July 1
Jackson	Winter wheat	June 15
	Spring wheat	July 1
Jefferson	Nonirrigated	July 20
	Irrigated	Aug. 1
	Warm Springs area	Do.
Josephine	Winter wheat	June 15
	Spring wheat	July 1
	Nonirrigated	Aug. 1
	Irrigated	Aug. 15
	Nonirrigated	July 20
	Irrigated	Aug. 5
Lake	Winter wheat	June 15
	Spring wheat	July 1
Lane	Winter wheat	June 15
	Spring wheat	July 1
Lincoln	Winter wheat	June 15
	Spring wheat	July 1
Linn	Winter wheat	June 15
	Spring wheat	July 1
Malheur	Under 3,000 feet	Do.
	Over 3,000 feet	July 15
Marion	Winter wheat	June 15
	Spring wheat	July 1
Morrow	Under 2,000 feet	July 1
	Over 2,000 feet	July 15
Multnomah	Winter wheat	June 15
	Spring wheat	July 1
Polk	Winter wheat	June 15
	Spring wheat	July 1
Sherman	Under 2,000 feet	July 1
	Over 2,000 feet	July 15
Tillamook	Winter wheat	June 15
	Spring wheat	July 1
Umatilla	Under 2,000 feet	Do.
	Over 2,000 feet	July 15
Union	Winter wheat	July 1
	Spring wheat	July 15
Wallowa	Winter wheat	July 20
	Spring wheat	Aug. 20
Wasco	Winter wheat	June 15
	Spring wheat	July 15
	Warm Springs area	Aug. 1
Washington	Winter wheat	June 15
	Spring wheat	July 1
Wheeler	All wheat	Aug. 1
Yamhill	Winter wheat	June 15
	Spring wheat	July 1

PENNSYLVANIA

June 7: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, York.

June 21: All other counties.

SOUTH CAROLINA

May 5: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee,

Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, Williamsburg.

May 15: All other counties.

TEXAS

May 1: All counties.

VIRGINIA

June 1: Accomack, Albemarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Elizabeth City, Essex, Fluvanna, Franklin, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, Nelson, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Pittsylvania, Powhatan, Prince Edward, Prince George, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, York.

June 15: All other counties.

WASHINGTON

County	Area or type of wheat	Dates
Adams	Winter wheat	June 30
	Spring wheat	July 20
Asotin	All wheat:	
	Areas 1 and 4	July 30
	Area 2	July 1
	Area 3	July 20
	Area 5	Aug. 15
Benton	Winter wheat	June 30
	Spring dryland	Do.
	Spring irrigated	July 15
Chelan	Area A:	
	Winter wheat	Aug. 25
	Spring wheat	Sept. 1
	Area B:	
	Winter wheat	July 20
	Spring wheat	Aug. 5
Clallam	All wheat	July 15
Clark	do	Do.
Columbia	Area 1:	
	Winter wheat	June 20
	Spring wheat	June 30
	Area 2:	
	Winter wheat	July 5
	Spring wheat	July 15
	Area 3:	
	Winter wheat	July 20
	Spring wheat	July 30
	All wheat	July 15
Cowlitz	Winter wheat	July 10
Douglas	Spring wheat	Aug. 1
Ferry	Winter wheat	Do.
	Spring wheat	Aug. 20
Franklin	Winter wheat	June 30
	Spring wheat	July 10
Garfield	Area 1:	
	Winter wheat	June 20
	Spring wheat	July 1
	Area 2:	
	Winter wheat	July 15
	Spring wheat	July 25
	Area 3:	
	Winter wheat	July 30
	Spring wheat	Aug. 10
Grant	Area 1: all wheat	July 15
	Area 2: all wheat	June 30
	Area 3: all wheat	Aug. 10
Grays Harbor	All wheat	July 15
Island	do	Do.
Jefferson	do	Do.
King	do	Do.
Kitsap	do	Do.
Kittitas	do	Aug. 10
Klickitat	Area 1:	
	Spring wheat, west of Rock Creek and west of Goodnoe Hills area.	July 30
	Winter wheat	July 10
	Area 2: Goodnoe Hills area and east of Rock Creek except north of area 2 miles south of the dividing line between townships 4 and 5 in ranges 19, 20, and 21:	
	Winter wheat	June 30
	Spring wheat	July 10
	Area 3: area north of line 2 miles south of dividing line between townships 4 and 5 in ranges 19, 20, and 21:	
	Winter wheat	Do.
	Spring wheat	July 25

WASHINGTON—Continued

County	Area or type of wheat	Dates
Lewis	All wheat	July 20
Lincoln	North Lincoln:	
	Winter wheat	July 10
	Spring wheat	Aug. 1
	South Lincoln:	
Winter wheat	June 30	
Spring wheat	Aug. 1	
Mason	All wheat	July 15
Okanogan	Area 1:	
	Winter wheat	Aug. 1
	Spring wheat	Aug. 20
	Area 2:	
Winter wheat	July 10	
Spring wheat	Aug. 1	
Pacific	All wheat	July 15
Pend Oreill.	do	Aug. 20
Pierce	do	July 15
San Juan	do	Do.
Skagit	do	Do.
Skamania	do	Do.
Snohomish	do	Do.
Spokane	Winter wheat	July 10
	Spring wheat	Aug. 1
	do	Do.
Stevens	Winter wheat	Do.
Spring wheat	Aug. 20	
Thurston	All wheat	July 15
Wahkiakum	do	Do.
Walla Walla	All wheat:	
	Above 1205 feet	Aug. 1
	Below 1205 feet	July 1
	All wheat	July 15
Whatcom	All wheat	July 15
Whitman	Winter:	
	Western	July 10
	Eastern	July 25
	Spring:	
Western	July 20	
Eastern	Aug. 15	
Yakima	All wheat	July 15

WEST VIRGINIA

June 15: All counties.

WISCONSIN

July 5: Barron, Brown, Burnett, Calumet, Chippewa, Clark, Door, Florence, Forest, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Oconto, Oneida, Outagamie, Polk, Price, Rusk, Sawyer, Shawano, Sheboygan, Taylor, Vilas, Washburn, Wood.
 July 15: Ashland, Bayfield, Douglas, Iron.
 June 20: All other counties.

WYOMING

(Winter Wheat)

June 30: Goshen, Laramie, Platte.
 July 5: Albany, Campbell, Carbon, Converse, Crook, Johnson, Natrona, Niobrara, Sheridan, Weston.
 July 20: Big Horn, Fremont, Hot Springs, Park, Washakie.
 August 1: Lincoln, Sublette, Sweetwater, Teton, Uinta.

(Spring Wheat)

June 30: Goshen, Laramie, Platte.
 July 20: Big Horn, Campbell, Converse, Crook, Fremont, Hot Springs, Johnson, Natrona, Niobrara, Park, Sheridan, Washakie, Weston.
 August 1: Albany, Carbon, Lincoln, Sublette, Sweetwater, Teton, Uinta.

2. In § 728.1152(a), the list of established dates in wheat-producing counties on which wheat harvest is normally substantially completed is amended for the States of Washington and West Virginia, effective with respect to the 1961 and subsequent crops of wheat, to read as follows:

WASHINGTON

August 25: Franklin.
 August 31: Garfield, King.
 September 1: Adams, Clark, Columbia, Cowlitz, East Ferry, Klickitat, Lincoln, Thurston, Walla Walla.
 September 10: Grant, Douglas.
 September 15: Asotin, Benton, Chelan, West Ferry, Spokane, Whitman.
 September 20: Jefferson, Lewis, Mason.

September 30: Grays Harbor, Pierce, Skagit, Snohomish.

October 1: Okanogan, Pend Oreille, Yakima, Stevens.

October 15: Clallam, Island, Kittitas, San Juan, Whatcom.

WEST VIRGINIA

August 15: All counties.

3. In § 728.1152(a), the list of established dates in wheat-producing counties on which wheat harvest is normally substantially completed is amended for the State of Arizona, effective with respect to the 1962 and subsequent crops of wheat, to read as follows:

ARIZONA

(Winter Wheat)

June 25: Maricopa, Pima, Pinal, Santa Cruz, Yuma.

July 15: Cochise, Gila, Graham, Greenlee.
 August 1: Apache, Coconino, Mohave, Navajo, Yavapai.

(Spring Wheat)

September 15: Coconino, Navajo.

(Secs. 374, 375, 52 Stat. 65, as amended, 66, as amended, 68 Stat. 904, 7 U.S.C. 1374, 1375)

Effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 4, 1961.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 61-11617; Filed, Dec. 7, 1961; 8:45 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 252—LANDING OF ALIEN CREWMEN

PART 253—PAROLE OF ALIEN CREWMEN

Requirements for Admission and Parole of Alien Crewmen

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER of November 3, 1961 (26 F.R. 10358), pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) and in which there were set out in full the terms of the proposed rules pertaining to the requirements for admission and parole of alien crewmen. No representations were received concerning the proposed rules. The published rules have not been amended. The rules as set out below are adopted.

1. Paragraph (c) of § 252.1 is amended to read as follows:

§ 252.1 Examination of crewmen.

* * * * *

(c) *Requirements for admission.* Every alien crewman applying for land-

ing privileges in the United States must make his application in person before an immigration officer, present a passport issued by the country of his nationality, valid for the period set forth in section 212(a)(26) of the Act, and a valid unexpired visa if his name does not appear on the crew list visaed by a consular officer, and establish to the satisfaction of the immigration officer that he is not subject to exclusion under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

2. Paragraph (d) is amended and paragraphs (e) and (f) are added to § 253.1 to read as follows:

§ 253.1 Parole.

* * * * *

(d) *Medical treatment or observation.*

Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked may, upon the request of the master or agent, be paroled into the United States under the provisions of section 212(d)(5) of the Act in the custody of the agent of the vessel or aircraft and at the expense of the transportation line for medical treatment or observation.

(e) *Crewman alleging persecution.*

Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

(f) *Other crewmen.*

Any alien crewman not within the purview of paragraphs (a) through (e) of this section may for other emergent reasons or for reasons deemed strictly in the public interest be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

The basis and purpose of the above-prescribed rules are to require that alien crewmen applying for landing privileges in the United States present passports issued by the countries of their nationality and that certain alien crewmen alleging persecution abroad may be paroled into the United States.

This order shall become effective 30 days after the date of its publication in the FEDERAL REGISTER.

Dated: December 5, 1961.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 61-11649; Filed, Dec. 7, 1961; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

[Reg. Q]

PART 217—PAYMENT OF INTEREST ON DEPOSITS

Maximum Rates of Interest

1. Effective January 1, 1962, § 217.6 (Supplement to Regulation Q) is amended to read as follows:

§ 217.6 Maximum rates of interest payable on time and savings deposits by member banks.

Pursuant to the provisions of section 19 of the Federal Reserve Act and § 217.3, the Board of Governors of the Federal Reserve System hereby prescribes the following maximum rates¹ of interest payable by member banks of the Federal Reserve System on time and savings deposits:

(a) *Maximum rate of 4 percent.* No member bank shall pay interest accruing at a rate in excess of 4 percent per annum, compounded quarterly,² regardless of the basis upon which such interest may be computed:

(1) On that portion of any savings deposit that has remained on deposit for not less than 12 months,

(2) On any time deposit having a maturity date 12 months or more after the date of deposit or payable upon written notice of 12 months or more,

(3) On that portion of any postal savings deposit which constitutes a time deposit that has remained on deposit for not less than 12 months.

(b) *Maximum rate of 3½ percent.* No member bank shall pay interest accruing at a rate in excess of 3½ percent per annum, compounded quarterly,² regardless of the basis upon which such interest may be computed:

(1) On any savings deposit, except as otherwise provided in paragraph (a) (1), of this section,

(2) On any time deposit having a maturity date less than 12 months and not less than 6 months after the date of deposit or payable upon written notice of less than 12 months and not less than 6 months,

(3) On any postal savings deposit which constitutes a time deposit, except as otherwise provided in paragraph (a) (3) of this section.

(c) *Maximum rate of 2½ percent.* No member bank shall pay interest accruing at a rate in excess of 2½ percent per annum, compounded quarterly,² regardless of the basis upon which such interest may be computed:

¹ The maximum rates of interest payable by member banks of the Federal Reserve System on time and savings deposits as prescribed herein are not applicable to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia.

² This limitation is not to be interpreted as preventing the compounding of interest at other than quarterly intervals, provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest at the rate above prescribed when compounded quarterly.

(1) On any time deposit (except postal savings deposits which constitute time deposits) having a maturity date less than 6 months and not less than 90 days after the date of deposit or payable upon written notice of less than 6 months and not less than 90 days.

(d) *Maximum rate of 1 percent.* No member bank shall pay interest accruing at a rate in excess of 1 percent per annum, compounded quarterly,² regardless of the basis upon which such interest may be computed:

(1) On any time deposit (except postal savings deposits which constitute time deposits) having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days.

2a. The purpose of the amendment is to increase the maximum permissible rates of interest which member banks of the Federal Reserve System may pay on savings deposits and on certain time deposits, either certificates or open accounts.

b. The notice and public procedure described in section 4(a) and 4(b) of the Administrative Procedure Act, and the prior publication described in section 4(c) of such act, are not followed in connection with this amendment for the reasons and good cause found, as stated in section 2(e) of the Board's rules of procedure (12 CFR 262.2(e)), and especially because in connection with this liberalizing amendment such procedures would prevent the action from becoming effective as promptly as is desirable for the convenience of the banks.

(Sec. 11(1), 38 Stat. 262; 12 U.S.C. 248(i)) [Interprets or applies secs. 19, 24, 38 Stat. 270, 273, as amended, sec. 8, 48 Stat. 168, as amended; 12 U.S.C. 264(c)(7), 371, 371a, 371b, 461]

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 61-11656; Filed, Dec. 7, 1961;
8:49 a.m.]

Chapter III—Federal Deposit Insurance Corporation

PART 329—PAYMENT OF DEPOSITS AND INTEREST THEREON BY INSURED NONMEMBER BANKS

Maximum Rates of Interest Payable on Time and Savings Deposits

1. Effective January 1, 1962, § 329.6 of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 329.6) is amended to read as follows:

§ 329.6 Maximum rates¹² of interest payable on time and savings deposits by insured nonmember banks.

(a) *Maximum rate of 4 percent.* No insured nonmember bank shall pay in-

¹² The maximum rates of interest payable by insured nonmember banks on time and savings deposits as prescribed herein are not applicable to any deposit which is payable only at an office of an insured nonmember bank located outside of the States of the United States and the District of Columbia.

terest accruing at a rate in excess of 4 percent per annum, compounded quarterly,¹³ regardless of the basis upon which such interest may be computed:

(1) On that portion of any savings deposit that has remained on deposit for not less than 12 months,

(2) On any time deposit having a maturity date 12 months or more after the date of deposit or payable upon written notice of 12 months or more.

(3) On that portion of any postal savings deposit which constitutes a time deposit that has remained on deposit for not less than 12 months.

(b) *Maximum rate of 3½ percent.* No insured nonmember bank shall pay interest accruing at a rate in excess of 3½ percent per annum, compounded quarterly,¹³ regardless of the basis upon which such interest may be computed:

(1) On any savings deposit, except as otherwise provided in paragraph (a) (1) of this section,

(2) On any time deposit having a maturity date less than 12 months and not less than 6 months after the date of deposit or payable upon written notice of less than 12 months and not less than 6 months,

(3) On any postal savings deposit which constitutes a time deposit, except as otherwise provided in paragraph (a) (3) of this section.

(c) *Maximum rate of 2½ percent.* No insured nonmember bank shall pay interest accruing at a rate in excess of 2½ percent per annum, compounded quarterly,¹³ regardless of the basis upon which such interest may be computed:

(1) On any time deposit (except postal savings deposits which constitute time deposits) having a maturity date less than 6 months and not less than 90 days after the date of deposit or payable upon written notice of less than 6 months and not less than 90 days.

(d) *Maximum rate of 1 percent.* No insured nonmember bank shall pay interest accruing at a rate in excess of 1 percent per annum, compounded quarterly,¹³ regardless of the basis upon which such interest may be computed:

(1) On any time deposit (except postal savings deposits which constitute time deposits) having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days.

2. The purpose of the amendment is to increase the maximum permissible rates of interest which insured nonmember banks may pay on savings deposits and on certain time deposits, either certificates or open account.

3. The notice and public participation described in section 4 of the Administrative Procedure Act and Part 302 of the Corporation's rules and regulations (12 CFR Part 302) and the deferral of the effective date of this amendment are found to be unnecessary because this amendment does not diminish but en-

¹³ This limitation is not to be interpreted as preventing the compounding of interest at other than quarterly intervals, provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest at the rate above prescribed when compounded quarterly.

larges the rights of depositors and insured nonmember banks and such deferral would prevent the amendment from becoming effective as promptly as is desirable for the convenience of the banks.

(Sec. 9, 64 Stat. 881; 12 U.S.C. 1819) [Interprets or applies sec. 18, 64 Stat. 891; 12 U.S.C. (1828)]

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F.R. Doc. 61-11641; Filed, Dec. 7, 1961; 8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerances for Residues of Maneb

A petition was filed with the Food and Drug Administration by E. I. duPont de Nemours and Company, Inc., Wilmington 98, Delaware, requesting the establishment of a tolerance for residues of maneb (manganese ethylenebisdithiocarbamate) in or on pumpkins at 7 parts per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities are amended by adding to § 120.110 (21 CFR 120.110; 26 F.R. 2594) a tolerance for residues of maneb on pumpkins. As amended, the item "7 parts per million" is changed to read as follows:

§ 120.110 Tolerances for residues of maneb.

* * * * *

7 parts per million in or on apples, beans (dry form), carrots (roots), carrots (tops), cranberries, cucumbers, eggplants, figs, grapes, melons, onions, peppers, pumpkins, summer squash, sweet corn (kernels plus cob with husks removed), tomatoes, turnip roots, winter squash.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the Fed-

ERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11647; Filed, Dec. 7, 1961; 8:48 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerance for Residues of Toxaphene

A petition was filed with the Food and Drug Administration by Hercules Powder Company, Wilmington, Delaware, requesting the establishment of a tolerance for residues of toxaphene in or on lint-bearing cottonseed at 5 parts per million.

Data in the petition show that residues in cottonseed at the tolerance level will not be concentrated at a higher level in cottonseed oil or flour prepared for human consumption. The data also show that residues in cottonseed meal and hulls from such cottonseed, when fed to livestock, do not result in residues in meat and milk.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.3, 120.138; 26 F.R. 1465, 8071) are amended as set forth below:

1. Section 120.3 is amended by adding to paragraph (d) a new subparagraph (3) reading as follows:

§ 120.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *
(3) Where tolerances are established for both terpene polychlorinates (chlorinated mixture of camphene, pinene, and related terpenes, containing 65 percent-66 percent chlorine) and toxaphene (chlorinated camphene containing 67 percent-69 percent chlorine) on the same raw agricultural commodities, the total amount of such pesticides shall not yield more residue than that permitted by the larger of the two tolerances, calculated as a chlorinated terpene of molecular weight 396.6 containing 67 percent chlorine.

2. Section 120.138 is amended by adding thereto the following new tolerance:

§ 120.138 Tolerances for residues of toxaphene.

* * * * *

5 parts per million, calculated as a chlorinated terpene of molecular weight 396.6 containing 67 percent chlorine, in or on cottonseed.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11648; Filed, Dec. 7, 1961; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

PROPYLENE OXIDE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by the Dried Fruit Association of California, 478 West San Carlos Street, San Jose, California, and other relevant material, has concluded that the following regulation should issue in conformance with section 409

of the Federal Food, Drug, and Cosmetic Act with respect to the food additive propylene oxide as a package fumigant on dried prunes and glacé fruit. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetics Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR Part 121) are amended by adding to Subpart D the following new section:

§ 121.1076 Propylene oxide.

The food additive propylene oxide may be safely used in or on dried fruits in accordance with the following prescribed conditions:

(a) It is used or intended for use in or on dried prunes and glacé fruit as a package fumigant.

(b) It is used in accordance with directions registered with the United States Department of Agriculture, and so used that residues of propylene glycol present from such application shall not exceed 700 parts per million.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11646; Filed, Dec. 7, 1961;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

REINFORCED WAX

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Milprint, Inc., 4200 North Holton Street, Milwaukee, Wisconsin, and other relevant material, has concluded that the following regulation

should issue with respect to reinforced wax in contact with cheese products. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR Part 121) are amended by adding to Subpart F the following new section:

§ 121.2530 Reinforced wax.

Reinforced wax may be safely used as an article or component of articles intended for use in producing, manufacturing, packing, processing, transporting, or holding food subject to the provisions of this section.

(a) Reinforced wax consists of petroleum wax to which have been added certain optional substances required in its production, or added to impart desired physical or technical properties.

(b) The quantity of any optional adjuvant substance employed in the production of or added to reinforced wax does not exceed the amount reasonably required to accomplish the intended physical or technical effect or any limitation provided in this section.

(c) Any substance employed in the production of reinforced wax, including any optional substance, that is the subject of a regulation in Subpart F of this part, conforms with any specifications in such regulation, and any substance that is not the subject of a regulation in Subpart F conforms with the specifications, if any, prescribed by a current order extending the effective date of the statute for such substance as an indirect additive to food.

(d) The substances and optional adjuvant substances employed in the production of or added to reinforced wax include:

(1) Substances generally recognized as safe in food.

(2) Substances subject to prior sanction for use in reinforced wax and used in accordance with such sanction or approval.

(3) Substances identified in this subparagraph and subject to any limitations provided therein:

List of substances	Limitations
Copolymer of isobutylene modified with isoprene	-----
Petroleum wax, Type I and Type II	-----
Polyethylene	-----

(e) Reinforced wax conforming with the specifications in this paragraph is used as provided in subparagraph (2) of this paragraph.

(1) The chloroform-soluble portion of the water extract obtained by exposing reinforced wax to demineralized water at 70° F. for 48 hours shall not exceed 0.5 milligram per square inch of food-contact surface.

(2) It is used as a packaging material or component of packaging materials for cheese and cheese products.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, De-

partment of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11636; Filed, Dec. 7, 1961;
8:46 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SURFACE LUBRICANTS USED IN MANUFACTURE OF METALLIC ARTICLES

The Commissioner of Food and Drugs, having evaluated the data submitted in petitions filed by Allegheny Refining Company, Plum Street, Verona, Pennsylvania and Harry Miller Corporation, Fourth and Bristol Streets, Philadelphia 40, Pennsylvania, and other relevant material, has concluded that the following regulation should issue with respect to food additives resulting from the use of surface lubricants in the manufacture of metallic articles that contact food. Under the prescribed conditions of use, substances permitted for use in the lubricants are not expected to become components of food in any significant amount. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR Part 121) are amended by adding to Subpart F the following new section:

§ 121.2531 Surface lubricants used in the manufacture of metallic articles.

Surface lubricants may be safely used in the manufacture of metallic articles that contact food, in accordance with the following prescribed conditions:

(a) The surface lubricants are used to facilitate the rolling, drawing, stamping, and forming of metallic articles.

(b) The quantity used shall not exceed the least amount reasonably required to accomplish the intended technical effect and shall not be intended to nor, in fact,

accomplish any effect in the food itself; and

(1) The total residual lubricant remaining on the metallic article in the form in which it contacts food shall not exceed 2 milligrams per square foot of metallic food-contact surface.

(2) The use of the lubricants in the manufacture of any article which is the subject of a regulation in Subpart F of this part must comply with any specifications and limitations prescribed by such regulation for the finished form of the article.

(c) Subject to any prescribed limitations, substances permitted to be used in surface lubricants used in the manufacture of metallic articles include substances subject to prior sanction or approval for such use and employed under the conditions of use prescribed by such sanction or approval, substances generally recognized as safe for use in food, and the following substances:

Dipropylene glycol.
Mineral oil.
Oleic acid.

(d) Any substance employed in the production of surface lubricants used in the manufacture of metallic articles which is the subject of a regulation in Subpart F of this part conforms with any specifications in such subpart; and any substance which is not the subject of a regulation in such subpart conforms with the specification, if any, prescribed by an order extending the effective date of the statute for such substance as an indirect additive to food.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348 (c) (1))

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11637* Filed, Dec. 7, 1961;
8:46 a.m.]

No. 236—6

SUBCHAPTER C—DRUGS

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Miscellaneous Amendments

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tests and methods of assay and certification of penicillin and penicillin-containing drugs (21 CFR Parts 141a, 146a) are amended as follows:

1. Section 141a.5 is amended by changing paragraph (b) to read as follows:

§ 141a.5 Sodium penicillin, calcium penicillin, potassium penicillin.

* * * * *

(b) pH. Dilute the sample to be tested with carbon-dioxide-free distilled water so that the resulting solution contains 30 milligrams per milliliter. Determine the pH of this solution at 25° C. using a pH meter equipped with a glass and a calomel electrode.

§ 146a.24 [Amendment]

2. In § 146a.24 *Sodium penicillin* * * *, paragraph (a) (6) is changed to read as follows:

(6) Its pH in aqueous solution of 30 milligrams per milliliter is not less than 5.0 and not more than 7.5.

§ 146a.48 [Amendment]

3. In § 146a.48 *Ephedrine penicillin* * * *, paragraph (a) (6) is changed to read as follows:

(6) Its pH in aqueous solution of 30 milligrams per milliliter is not less than 5 and not more than 7.5.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since the amendments provide more efficient tests and methods of assay for penicillin preparations in order to assure accurate and reliable analyses of the drugs to establish compliance with applicable standards of strength, quality, and purity.

Effective date. This order shall become effective 30 days from the date of its publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11635; Filed, Dec. 7, 1961;
8:46 a.m.]

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

Miscellaneous Amendments

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tests and methods of assay and certification of antibiotic and antibiotic-containing drugs (21 CFR 141c.231, 146a.15, 146c.224) are amended as follows:

1. In § 141c.231 *Capsules tetracycline and oleandomycin phosphate* * * *, paragraph (d) is amended by adding thereto the following new subparagraph (7):

(7) *Crystallinity.* Proceed as directed in § 141a.5 (c) of this chapter.

2. In § 146a.15 *Dimethoxyphenyl penicillin sodium (sodium-2, 6-dimethoxyphenyl penicillin)*, paragraph (d) (3) (i) is changed to read as follows:

(i) For all tests except sterility: Nine packages, each containing approximately 300 milligrams, plus one package containing approximately 2 grams.

3. In § 146c.224 *Tetracycline hydrochloride-nystatin capsules* * * *, paragraph (b) is amended to read as follows:

(b) In addition to the labeling prescribed for tetracycline hydrochloride capsules or tetracycline phosphate complex capsules, each package shall bear on its label or labeling the number of units of nystatin in each capsule of the batch. Its expiration date shall be the date that is 18 months after the month during which the batch was certified, except that the date may be one of the longer dates permitted in § 146c.204 if the person who requests certification has submitted to the Commissioner results of tests and assays showing that after having been stored for such period of time such drug as prepared by him complies with the standards prescribed therefor by this section.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since the amendments are editorial in nature and serve only to simplify existing regulations.

Effective date. This order shall be effective on the date of publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11634; Filed, Dec. 7, 1961;
8:45 a.m.]

PART 147—ANTIBIOTICS INTENDED FOR USE IN THE LABORATORY DIAGNOSIS OF DISEASE

Antibiotic Sensitivity Discs; Correction

In F.R. Doc. 61-11214, published in the FEDERAL REGISTER of November 28, 1961 (26 F.R. 11211), the amendatory language to amendment 2 is corrected to read as follows:

2. By deleting from paragraph (d) subparagraphs (1) through (6), inclusive, and substituting therefor the following tabulation:

(Sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357)

Dated: December 4, 1961.

JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11633; Filed, Dec. 7, 1961;
8:45 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 779—THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES

Excise Taxes Not at Retail Level

Pursuant to the Fair Labor Standards Act of 1938 (secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65-75; 29 U.S.C. 201-219), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A (15 F.R. 3290) of the Secretary of Labor, § 799.265 of Part 779 of the Code of Federal Regulations, as recently revised (26 F.R. 8333-8370), is hereby amended by adding thereto two sentences illustrating the application of its provisions.

The amendment shall become effective upon publication in the FEDERAL REGISTER. The amendment is interpretative. Therefore, the procedural and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

As amended, 29 CFR 779.265 (26 F.R. 8351) reads as follows:

§ 779.265 Excise taxes not at the retail level.

There are also a wide variety of taxes levied at the manufacturer's or distribu-

tor's level and not at the retail level. It should be noted, however, that the circumstances surrounding the levying and collection of taxes must be carefully considered. In some cases these circumstances may reflect that despite the fact that such taxes may be levied upon the manufacturer or distributor, nevertheless they may be, in practical operation, taxes at the retail level and may be so regarded for the purpose of this provision. For example, the circumstances surrounding the levying and collection of the federal excise taxes on gasoline reflect that, although they are listed under the title of "Manufacturers Excise Taxes", they are, in practical operation, taxes "at the retail level." Federal excise taxes on gasoline, when "separately stated", may therefore be excluded in computing the annual gross volume of sales of a gasoline service establishment for the purpose of determining coverage under section 3(s) (5) of the Act.

(Secs. 1-19, 52 Stat. 1065; as amended; 75 Stat. 65-75; 29 U.S.C. 201-219)

Signed at Washington, D.C., this 4th day of December 1961.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 61-11650; Filed, Dec. 7, 1961;
8:49 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 7—SOLDIERS' AND SAILORS' CIVIL RELIEF

Miscellaneous Amendments

1. Sections 7.0 and 7.1 are revoked.

§ 7.0 Form of application for benefits. [Revoked]

§ 7.1 Form of report by insurer. [Revoked]

2. Section 7.20 is revised to read as follows:

§ 7.20 The insured.

The term "insured" includes any person on active duty with the military, air and naval forces of the United States (including Coast Guard), whose life is insured under and who is the owner and holder of and has an interest in a policy as defined in § 7.21.

(a) The phrase "person in military service" as used in section 400(c) includes any member of the Army of the United States, the United States Air Force, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army, Air Force or the Navy and the term "military service" as hereinafter used shall mean service in the Army of the United States, the United States Air Force, the United States Navy, the Marine Corps, and the Coast Guard. A statement over the signature of the Commanding Officer or a commissioned officer of equal or higher rank than the

insured, on the application by the insured, may be accepted as a certification that the insured is a person in the military service. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record. If application is made by a person designated by the insured, or is made by the beneficiary, evidence that the insured is a person in the military service will be procured by the Veterans Administration from the service department.

3. In § 7.26 paragraphs (b), (c), and (d) are amended to read as follows:

§ 7.26 Application.

(b) The form of application for benefits is prescribed as VA Form 9-380 (as revised). An informal application will be supplemented by an application on the prescribed form. The original of the application for benefits will be mailed or delivered to the insurer at its principal office or to the office or agency to which the last premium on the policy has been paid. The copy of the application for benefits will be mailed or delivered to the Veterans Administration at Washington 25, D.C.

(c) When an application for benefits is received by an insurer, a report thereof will be made within 30 days to the Veterans Administration at Washington D.C., on the form prescribed for that purpose, VA Form 9-381 (as revised). The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the act.

(d) Upon receipt of a report from the insurer on VA Form 9-381, the Manager, Veterans Benefits Office, District of Columbia, will determine if the policy is entitled to the protection of the act, and the insurer and the insured will be notified of the decision.

4. in § 7.29, paragraph (e) is amended to read as follows:

§ 7.29 Maturity.

(e) The statement of account will show the amount of indebtedness by reason of the premiums with interest and the credits, if any, then available and will be subject to audit and approval by the Manager, Veterans Benefits Office, District of Columbia. The statement of account will include the rate of interest charged on all indebtedness, the dates of debit and credit entries, and such other information as may be deemed necessary in making an audit of the account. If there is a balance due by the United States to the insurer, payment in favor of the insurer will be certified.

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective December 7, 1961.

[SEAL] A. H. MONK,
Associate Deputy Administrator.

[F.R. Doc. 61-11638; Filed, Dec. 7, 1961;
8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers,
Department of the Army

PART 203—BRIDGE REGULATIONS

Mount Desert Narrows, Maine

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.4 governing the operation of the highway bridge across Mount Desert Narrows, Trenton, Maine, is hereby revoked effective on publication in the FEDERAL REGISTER since the bridge has been removed, as follows:

§ 203.4 Mount Desert Narrows, Maine; highway bridge between the mainland and Thompson Island at Trenton, Maine. [Revoked]

[Regs., November 21, 1961, 285/91 (Mount Desert Narrows, Maine)—ENG CW—ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 61-11620; Filed, Dec. 7, 1961; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2545]

[Oregon 010623]

OREGON

Withdrawing Lands for Protection of the Galice Creek Timber Access Road

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described Revested Oregon and California Railroad grant lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604), as amended, or

forest products under the Act of August 28, 1937 (50 Stat. 874), and reserved under the jurisdiction of the Bureau of Land Management, Department of the Interior, for protection of the Galice Creek Timber Access road:

WILLAMETTE MERIDIAN

T. 35 S., R. 8 W.,
Sec. 3, SW $\frac{1}{4}$ of lot 9, S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ of lot 9, NE $\frac{1}{4}$ of lot 11, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ of lot 11, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing approximately 60 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

DECEMBER 4, 1961.

[F.R. Doc. 61-11628; Filed, Dec. 7, 1961; 8:45 a.m.]

[Public Land Order 2547]

[1926430]

COLORADO

Revoking Public Land Order No. 61 of November 18, 1942, Which Reserved Minerals Belonging to the United States for War Purposes

By virtue of the authority vested in the President, and pursuant to Executive Order 10355 of May 26, 1952, it is ordered as follows:

Public Land Order No. 61 of November 18, 1942, which reserved the minerals belonging to the United States in the following-described lands within the exterior boundaries of the Arapaho National Forest, under the jurisdiction of the Secretary of the Interior for use in connection with the prosecution of the war, is hereby revoked:

SIXTH PRINCIPAL MERIDIAN

T. 3 S., R. 75 W.,
Sec. 29, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 30, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 31, N $\frac{1}{2}$ N $\frac{1}{2}$.

The areas described, including both national forest and patented lands, aggregate 366.57 acres.

The mineral resources released from withdrawal by this order are hereby restored to the operation of the mining and mineral leasing laws of the United States beginning at 10:00 a.m. on January 9, 1962.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

DECEMBER 4, 1961.

[F.R. Doc. 61-11629; Filed, Dec. 7, 1961; 8:45 a.m.]

[Public Land Order 2548]

[Fairbanks 026761]

ALASKA

Reserving Lands in Bethel Townsite for Use of Bureau of Indian Affairs

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to existing valid rights, the following described lands in the Townsite of Bethel are hereby withdrawn from sale or disposal and reserved for use of the Bureau of Indian Affairs as an administrative site:

U.S. SURVEY 3230 A AND B

Block 11: lots 4, 5, 6, and 7.

Containing 1.29 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

DECEMBER 4, 1961.

[F.R. Doc. 61-11630; Filed, Dec. 7, 1961; 8:45 a.m.]

[Public Land Order 2549]

[New Mexico 075121]

NEW MEXICO

Modification of Grazing District Boundaries, New Mexico Grazing District No. 6

By virtue of the authority vested in the Secretary of the Interior by the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315 et seq.), as amended, known as the Taylor Grazing Act, it is ordered as follows:

The following-described lands are hereby added to and made a part of New Mexico Grazing District No. 6, as heretofore established and modified:

NEW MEXICO PRINCIPAL MERIDIAN

T. 7 S., R. 17 E.,
Sec. 1;
Sec. 2, E $\frac{1}{2}$, NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
Secs. 11 to 14, incl.;
Sec. 23, N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
Secs. 24 and 25;
Sec. 26, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
Sec. 35.

The areas described aggregate approximately 6,728 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

DECEMBER 4, 1961.

[F.R. Doc. 61-11631; Filed, Dec. 7, 1961; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Part 74]

SCABIES IN SHEEP

Proposed Designation of Pennsylvania as Eradication Area

Notice is hereby given in accordance with section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that, pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, and the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 115, 117, 120, 123, 125), it is proposed to amend § 74.3(a) (1) of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, by adding the entire State of Pennsylvania to the list of areas therein designated as eradication areas since the cooperative sheep scabies eradication program is now being conducted in this State. The entire State of Pennsylvania is now included in the infected areas as sheep scabies is known to exist in this State.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendment may do so by filing them with the Director, Animal Disease Eradication Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C., within 45 days after publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., this 4th day of December 1961.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 61-11632; Filed, Dec. 7, 1961;
8:45 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 18, 43]

[Regulatory Docket No. 984; Draft Release
No. 61-26]

PERFORMANCE OF MAINTENANCE BY AN AIR CARRIER ON OTHER THAN AIR CARRIER AIRCRAFT

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (14 CFR 405.27), notice is hereby given that there is under consideration a proposal to amend Parts 18 and 43 of the Civil Air Regulations as hereinafter set forth.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room C-226,

1711 New York Avenue NW., Washington 25, D.C., on or before February 8, 1962. Thereafter, such comments will be available in the Docket Section to all interested persons. After examination of the original comments received, interested persons may submit such additional comments in response thereto as they may desire. Such additional comments must be submitted on or before March 12, 1962. (Photostatic copies of comments on file in the Docket Section may be obtained upon payment of the cost of such copies.) All original comments and additional comments in response thereto received by the dates specified for receipt thereof will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this notice may be changed in the light of comments received.

Persons engaged in executive flying activities operating large transport type piston- and turbine-powered aircraft are experiencing difficulty in obtaining continuing maintenance support for their aircraft throughout the country in a manner they believe to be essential to safety. While there are several qualified certificated repair stations throughout the states, which can perform the necessary maintenance at a fixed location, such agencies are not always able to provide continuing maintenance support during the time the aircraft is being operated away from such fixed location.

There are a number of air carrier main base and en route maintenance facilities located throughout the country which are equipped to handle the transport type aircraft being used in executive operations. The use of these facilities together with the facilities of certificated repair stations could provide the maintenance support, including progressive inspections, needed by the executive operators. However, under the currently effective provisions of Part 18 of the Civil Air Regulations, appropriately certificated air carriers are not authorized to perform maintenance work on other than air carrier aircraft. Furthermore, the regulations do not authorize such air carriers to perform 100-hour, periodic, or progressive inspections on aircraft requiring these services. In order to do this type of work, air carriers are required to obtain repair station certificates in accordance with Part 52 of the Civil Air Regulations. While some air carriers have obtained repair station certificates to work on other than air carrier aircraft, others have not. This may be due to the fact that an air carrier is not required to hold a repair station certificate to work on his own or another air carrier's aircraft, and until recently, transport-type aircraft were operated almost exclusively by air carriers. The maintenance requirements contained in Parts 40, 41, 42, and 46 of the Civil Air Regulations presently require air carriers to establish maintenance facilities, or-

ganizations, and practices which, in effect, are comparable to those required of a certificated repair station. Additionally, it appears that nothing significant in the way of safety or improved maintenance would be achieved by requiring an air carrier to obtain a repair station certificate to conduct maintenance on any aircraft of a type for which it is equipped and approved to maintain under its air carrier operating certificate. However, it appears that safety would be promoted if the facilities of air carriers also could be made available as a supplement to those facilities now provided by repair stations for maintaining transport type aircraft operated by persons other than air carriers.

The rules proposed herein would authorize an appropriately certificated air carrier to perform maintenance, repairs, and alterations on aircraft of a type operated by the air carrier and maintained under its approved continuous airworthiness maintenance and inspection program. Such authorization would include performance of the required 100-hour, periodic, and progressive inspections. In order to implement this proposal, it would be necessary to make concurrent amendments to the provisions of §§ 18.21-1, 18.22-2, 18.23-1, 18.30-18, 18.30-19, and 43.22-2 to insert the words "air carrier" where appropriate.

In consideration of the foregoing, it is proposed to amend Parts 18 and 43 of the Civil Air Regulations as follows:

1. By amending § 18.10(e) of Part 18 by adding a new sentence at the end thereof to read as follows: "In addition, an appropriately certificated air carrier who has the proper equipment and facilities may perform maintenance, repairs, and alterations on other aircraft or aircraft components, including propellers and appliances, if such aircraft, aircraft components, propellers, and appliances are of a type operated and maintained by the air carrier under its approved maintenance and inspection program."

2. By amending § 18.12 (a), (b), and (c) by adding new subparagraphs (4) to read as follows:

(4) An appropriately certificated air carrier if the aircraft is of a type operated and maintained by the air carrier under its approved maintenance and inspection program.

3. By deleting the note at the end of § 18.12.

4. By amending §§ 18.21-1 and 18.22-2 by deleting the phrases "certificated repair station or the manufacturer", "repair station or manufacturer", and "certificated repair stations and manufacturers" as they appear in these sections and inserting in lieu thereof the phrases "certificated repair station, air carrier, or the manufacturer", "repair station, air carrier, or manufacturer", and "certificated repair stations, air carriers, and manufacturers", respectively.

5. By amending §§ 18.23-1, 18.30-18, and 18.30-19 by deleting the phrases "mechanic, repair station, or aircraft manufacturer", "mechanic, repair station or manufacturer", "mechanic, repair station or the manufacturer", "repair station's or manufacturer's", and "certificated mechanic, or repair station, or the manufacturer" as they appear in these sections and inserting in lieu thereof the phrases, "mechanic, repair station, air carrier, or aircraft manufacturer", "mechanic, repair station, air carrier or manufacturer", "mechanic, repair station, air carrier or the manufacturer", "repair station's, air carrier's or manufacturer's", and "certificated mechanic, or repair station, or air carrier, or manufacturer", respectively.

6. By amending § 43.22-2 of Part 43 by deleting the phrase, "mechanic, and airframe repair station, or the manufacturer" as it appears in this section and inserting in lieu thereof the phrase, "mechanic and airframe repair station, air carrier, or the manufacturer".

These amendments are proposed under the authority of sections 313(a), 601, 605 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 778; 49 U.S.C. 1354(a), 1421, 1425).

Issued in Washington, D.C., on December 1, 1961.

GEORGE C. PRILL,
Director, Flight Standards Service.

[F.R. Doc. 61-11621; Filed, Dec. 7, 1961;
8:45 a.m.]

Notices

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13822, 13823; FCC 61M-1897]

BI-STATES CO. (KHOL-TV) AND TOPEKA BROADCASTING ASSOCIATION, INC. (WIBW-TV)

Order Continuing Hearing Conference

In re applications of Bi-States Co. (KHOL-TV), Kearney, Nebr., Docket No. 13822, File No. BPCT-2718; Topeka Broadcasting Association, Inc., (WIBW-TV), Topeka, Kans., Docket No. 13823, File No. BPCT-2743; for construction permits for new transmitter sites.

The hearing examiner having under consideration the informal written request of Bi-States Co. dated November 29, 1961, requesting that the further prehearing conference in the above-entitled matter scheduled for December 1, 1961 be continued for a period of 60 days to allow further engineering investigations to be made that might alleviate further proceedings; and

It appearing, that counsel for the other applicant and the Broadcast Bureau are agreed that a grant of the requested continuance would be in order and that good cause exists therefor;

It is ordered, This 1st day of December 1961 that the request of Bi-States Co. for a continuance, be, and the same is, hereby granted; and that the further prehearing conference presently scheduled for December 1, 1961, be, and the same is, hereby continued to February 1, 1962 at 9:30 a.m.

Released: December 4, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11652; Filed, Dec. 7, 1961;
8:49 a.m.]

[Docket No. 14406; FCC 61M-1887]

LAKE SHORE BROADCASTING CO., INC. (WDOE)

Order Scheduling Hearing

In re application of Lake Shore Broadcasting Co., Inc. (WDOE), Dunkirk, N.Y., Docket No. 14406, File No. BML-1943; for modification of license.

It is ordered, This 29th day of November 1961, that Forest L. McClenning will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 1, 1962, in Washington, D.C.: *And it is further ordered*, That a prehearing conference in the proceeding will be convened by

11806

the presiding officer at 9:00 a.m., Friday, January 5, 1962.

Released: December 1, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11653; Filed, Dec. 7, 1961;
8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-13218]

LONE STAR PRODUCING CO.

Findings and Order Severing Docket, Vacating Certificate of Public Convenience and Necessity and Permitting Withdrawal of Related Rate Schedule

DECEMBER 1, 1961.

On May 22, 1961, Lone Star Producing Co. (Lone Star) filed a motion to vacate so much of the Commission's order accompanying Opinion No. 315 issued September 4, 1958, as granted a certificate of public convenience and necessity to Lone Star in Docket No. G-13218 authorizing the sale of natural gas to Transcontinental Gas Pipe Line Corp. (Transco) from certain acreage in the Hahnville area, in St. Charles Parish, La., dedicated under Lone Star's FPC Gas Rate Schedule No. 62.

It appears that the single gas well completed on the subject acreage was incapable of producing gas in commercial quantities, that two additional wells drilled on said acreage were dry and that no gas has ever been produced and delivered as contemplated by the certificate outstanding in this docket.

The subject Docket No. G-13218 is presently included in the pending consolidated proceedings designated as Docket Nos. AR61-2 et al.

The Commission finds:

(1) Lone Star Producing Co., an independent producer, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order accompanying Opinion No. 315 issued September 4, 1958 (Docket Nos. G-13143 et al., 20 FPC 264).

(2) It is appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the proceeding designated as Docket No. G-13218 be severed from the pending consolidated proceedings designated as Docket Nos. AR61-2 et al., and that so much of the Commission's order accompanying Opinion No. 315 issued September 4, 1958, as granted a certificate of public convenience and necessity

to Lone Star in said Docket No. G-13218 be vacated, as hereinafter ordered.

(3) The related filed Lone Star Producing Co.'s FPC Gas Rate Schedule No. 62 should be permitted to be withdrawn.

The Commission orders:

(A) The proceeding designated as Docket No. G-13218 be and the same is hereby severed from the pending consolidated proceedings designated as Southern Louisiana Area Rate Proceeding et al., Docket Nos. AR61-2 et al.

(B) So much of the Commission's order accompanying Opinion No. 315 issued September 4, 1958, as granted a certificate of public convenience and necessity to Lone Star Producing Co. in Docket No. G-13218 be and the same is hereby vacated.

(C) The rate filing designated as Lone Star Producing Co.'s FPC Gas Rate Schedule No. 62 is hereby permitted to be withdrawn.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11623; Filed, Dec. 7, 1961;
8:45 a.m.]

[Docket No. E-7016]

GULF STATES UTILITIES CO.

Notice of Application

DECEMBER 1, 1961.

Take notice that on November 27, 1961, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by Gulf States Utilities Co. (Applicant), a corporation organized under the laws of the State of Texas and doing business in the States of Texas and Louisiana, with its principal business office at 285 Liberty Avenue, Beaumont, Tex., seeking an order authorizing the issuance of unsecured promissory notes to commercial banks in an aggregate principal amount of up to \$20,000,000. Applicant proposes to issue the aforesaid notes to the Irving Trust Co. and the Chase Manhattan Bank, both of New York City, under agreements dated November 20, 1961, under which the Applicant may borrow or reborrow at any time and from time to time during the period December 29, 1961 to December 31, 1962, inclusive, up to an aggregate principal amount of \$20,000,000 on unsecured notes which mature on December 31, 1962. The interest rate on the aforesaid notes will be the lender's prime rate in effect at the time of each borrowing. Applicant states that the aforesaid promissory notes will be issued and sold so that Applicant may carry forward its construction program in 1962 and provide for other corporate requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 18th day of December 1961 file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11624; Filed, Dec. 7, 1961; 8:45 a.m.]

[Docket Nos. RI62-196—RI62-205]
**SUNRAY MID-CONTINENT OIL CO.
ET AL.**

**Order Providing for Hearings on and
Suspension of Proposed Changes
in Rates¹**

DECEMBER 1, 1961.

Sunray Mid-Continent Oil Co., Docket No. RI62-196; J. Ray McDermott & Co., Inc. (Operator), Docket No. RI62-197; Ben F. Brack Oil Co., Inc. (Operator) et al., Docket No. RI62-198; The Atlantic Refining Co. (Operator) et al., Docket

No. RI62-199; Cities Service Petroleum Co. Operator et al., Docket No. RI62-200; Cities Service Petroleum Co., Docket No. RI62-201; Gulf Oil Corp. (Operator) et al., Docket No. RI62-202; Gulf Oil Corp., Docket No. RI62-203; The Pure Oil Co., Docket No. RI62-204; J. M. Huber Corp., Docket No. RI62-205.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI62-199...	The Atlantic Refining Co. (Operator), et al., P.O. Box 2819, Dallas 21, Tex.	175	4	Northern Natural Gas Co. (McKinney Field, Clark and Meade Counties, Kans.).	\$8,525	11-3-61	1-1-62	6-1-62	\$ 14.0	\$ 15.0	-----
RI62-200...	Cities Service Petroleum Co. (Operator), et al., Cities Service Building, Bartlesville, Okla.	97	4	Panhandle Eastern Pipe Line Co. (Light Field, Beaver County, Okla.).	951	11-3-61	1-1-62	6-1-62	\$ 15.0	\$ 16.0	-----
RI62-201...	Cities Service Petroleum Co., Cities Service Building, Bartlesville, Okla.	127	2	Northern Natural Gas Co. (Harper Ranch Field, Clark County, Kans.).	7,390	11-3-61	1-1-62	6-1-62	\$ 15.0	\$ 16.0	-----
RI62-202...	Gulf Oil Corp. (Operator), et al., P.O. Drawer 2100, Houston 1, Tex.	93	5	Texas Gas Transmission Corp. (South Bell City Field, Calcasieu Parish, La.) (South Louisiana).	14,802	11-6-61	1-1-62	6-1-62	\$ 18.75	\$ 19.75	-----
RI62-203...	Gulf Oil Corp., P.O. Drawer 2100, Houston 1, Tex.	152	2	Texas Gas Transmission Corp. (Grand Lake Field, Cameron Parish, La.) (South Louisiana).	2,677	11-6-61	1-1-62	6-1-62	\$ 18.75	\$ 19.75	-----
RI62-196...	Sunray Mid-Continent Oil Co., P.O. Box 2039, Tulsa 2, Okla.	20	14	United Gas Pipe Line Co. (North McFaddin Field, Victoria County, Tex.) (R.R. District No. 2).	40,139	11-1-61	12-2-61	5-2-62	\$ 13.1348	\$ 14.6	-----
		53	14	United Gas Pipe Line Co. (Keeran and North Keeran Fields, Victoria County, Tex.) (R.R. District No. 2).	3,783	11-1-61	12-2-61	5-2-62	\$ 9.1024	\$ 14.6	-----
RI62-197...	J. Ray McDermott & Co., Inc. (Operator), Houston Club Building, Houston, Tex.	11	6	Texas Eastern Transmission Corp. (May Field, Kleberg County, Tex.) (R.R. District No. 4).	18,652	11-3-61	12-4-61	5-4-62	\$ 15.0	\$ 15.2	RI61-105
RI62-198...	Ben F. Brack Oil Co., Inc. (Operator), et al., c/o Dale M. Stucky, attorney, 901 First National Bank Building, Wichita 2, Kans.	1	1	Cities Service Gas Co. (W. Medicine Lodge Field, Barber County, Kans.).	1,146	11-3-61	12-4-61	5-4-62	\$ 12.0	\$ 13.0	-----
RI62-204...	The Pure Oil Co., 200 East Golf Road, Palatine, Ill.	70	14	Texas Eastern Transmission Corp. (Vienna Field, Lavaca County, Tex.) (R.R. District No. 2).	732	11-6-61	12-7-61	5-7-62	\$ 15.0	\$ 15.2	-----
RI62-205...	J. M. Huber Corp., 2401 East Second Avenue, Denver 6, Colo.	36	2	Northern Natural Gas Co. (McKinney Field, Meade County, Kans.).	4,545	11-9-61	1-1-62	6-1-62	\$ 14.0	\$ 15.0	-----

¹ The stated effective date is the first day after expiration of the required statutory notice or, if later, the date requested by respondent.

³ The pressure base is 15,025 psia.

⁴ Renegotiated increase.

⁵ Periodic increase by contract.

The proposed increased rates exceed the applicable area price levels.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:
(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), public hearings shall be

held upon dates to be fixed by notice from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37) on or before January 16, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11625; Filed, Dec. 7, 1961; 8:45 a.m.]

[Docket No. CP61-107]

**UNITED FUEL GAS CO. ET AL.
Order Approving Adjournment**

DECEMBER 1, 1961.

United Fuel Gas Co., Amere Gas Utilities Co., Atlantic Seaboard Corp.; Docket No. CP61-107.

¹ This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

At the hearing herein on November 14, 1961, Cincinnati Gas & Electric Co., by its counsel, requested the presiding examiner to adjourn the hearing until December 11, 1961, to allow it time to prepare its case for presentation. Said counsel stated that the information upon which it planned to predicate its case had not been available until November 8, 1961.

The presiding examiner has stated that prior commitments preclude any further hearings herein during the weeks of December 11 or December 18, 1961, and for that reason a recess was taken until January 9, 1962. Upon inquiry, there was no objection by any of the participants to the recess until January 9, 1962.

Arrangement was made for the service of proposed testimony in written form upon all parties of record on or before December 20, 1961, so that the case may proceed directly to cross-examination upon reconvening.

The Commission finds: Good cause has been shown for the adjournment of the hearing herein until January 9, 1962.

The Commission orders: The adjournment of the hearing herein by the presiding examiner until January 9, 1962, and the same is hereby approved.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11626; Filed, Dec. 7, 1961;
8:45 a.m.]

[Docket No. CP61-332]

NORTHERN NATURAL GAS CO.
Notice of Application and Date of
Hearing

DECEMBER 5, 1961.

Take notice that on June 19, 1961, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr., filed an application, as supplemented on August 23, 1961, in Docket No. CP61-332, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of measuring and regulating facilities and the delivery of firm and interruptible volumes of natural gas to the Brockway Glass Co., Inc. (Brockway), for use in Brockway's new manufacturing plant located near Rosemount, Minn., all as more fully set forth in the application, as supplemented, on file with the Commission and open to public inspection.

Pursuant to a gas sales agreement, dated May 23, 1961, Northern by October 1962, will sell and deliver, through its Peoples Division, to Brockway, and Brockway shall purchase 1,600 Mcf of firm gas per day. All gas purchased over and above the daily contract demand will be sold as interruptible volumes.

The combined firm and interruptible sales are estimated to total 351,600 Mcf in the first year and 619,300 Mcf in the second and third years.

Brockway will pay to Peoples Division a demand charge of \$4.25 per Mcf of contract demand per month in addition to a commodity charge of 30.5 cents per Mcf of gas delivered.

The application shows that the proposed service will provide Brockway with a direct natural gas supply for use as a fuel in two furnaces producing both flint and amber glass. The application indicates that firm gas is required because the high degree of control necessary in glass production does not lend itself to the interruption required by conversion to a standby fuel.

The cost of Applicant's proposed facilities is estimated to be \$23,600 which cost will be financed from general funds.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 8, 1962, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 26, 1962. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11642; Filed, Dec. 7, 1961;
8:47 a.m.]

[Docket No. CP62-78]

NORTHERN NATURAL GAS CO.
Notice of Application and Date of
Hearing

DECEMBER 4, 1961.

Take notice that on September 26, 1961, Northern Natural Gas Co. (Appli-

cant), 2223 Dodge Street, Omaha, Nebr., filed an application in Docket No. CP62-78, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the delivery of natural gas on a firm basis to Minnesota Mining & Manufacturing Co. (Minnesota), an existing interruptible customer, all as more fully set forth in the application on file with the Commission and open to public inspection.

Minnesota manufactures chemicals, lithograph plates and reflective tapes at its Chemolite Plant in Washington County, Minn. The application shows that Minnesota has several different heating processes that require closely controlled combustion conditions, and that firm service would be more advantageous than interruptible service since Applicant's curtailment procedure would result in a change of fuels many times during a heating season and would affect the efficiency of fuel use as well as plant operation if the heating processes were not closely controlled.

Pursuant to a gas sales agreement, dated September 11, 1961, Applicant will deliver, through its Peoples Division, up to 720 Mcf per day of firm gas to Minnesota.

Applicant states that Minnesota will continue to purchase small volumes of interruptible gas when the same are available.

The combined firm and interruptible annual sales to Minnesota are estimated to be 196,600 Mcf; of that amount 4,600 Mcf are interruptible.

Minnesota will pay Applicant's Peoples Division a demand charge of \$4.25 per Mcf of contract demand per month in addition to a commodity charge of 34 cents per Mcf.

No new facilities will be required to render the proposed service.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 8, 1962, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 26, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11643; Filed, Dec. 7, 1961; 8:47 a.m.]

[Docket Nos. G-19040, etc.]

NORTHERN NATURAL GAS CO. ET AL.

Notice Reconvening Hearing

DECEMBER 5, 1961.

On June 24, 1961, the Presiding Examiner recessed the hearing in the above-designated matters.

Take notice that the hearing in this matter will be reconvened at 9:30 a.m., December 13, 1961, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11644; Filed, Dec. 7, 1961; 8:47 a.m.]

[Docket No. RI61-532 etc.]

PAN AMERICAN PETROLEUM CORP. ET AL.

Order Approving Continuance

DECEMBER 5, 1961.

Pan American Petroleum Corp. (Operator) et al., Docket No. RI61-532; J. M.

Huber Corp. et al., Docket No. RI61-533; Kansas Natural Gas, Inc., Kansas Natural Gas, Inc. (Operator) et al., N. Appleman Co. et al., Graham-Michaelis Drilling Co. (Operator) et al., William Graham Oil Co. (Operator) et al., Northern Pump Co. (Operator) et al.; John B. Hawley, Jr., John B. Hawley, Jr., Trustee, G. S. and Norma D. Davidson, G. A. Kane et al., W. L. Hartman (Operator) et al., Salmon Corp., W. E. Bakke Oil Co. (Operator) et al., National Associated Petroleum Co. et al., W. J. Coppinger (Operator) et al., The PWC Corp. et al., Austin Brady, Petroleum, Inc., Graham-Michaelis Drilling Co., Walter F. Kuhn et al., Docket No. RI62-100.

On November 15, 1961, Cities Service Gas Co., an intervener, orally moved that the hearing in the above-entitled consolidated proceedings be recessed until January 9, 1962. There were no objections by any party to Cities Service's motion. The presiding examiner granted the motion subject to the Commission's approval as provided in § 1.13(e) of the Commission's rules of practice and procedure. On November 16, 1961, the presiding examiner certified the record to the Commission for its consideration of this ruling.

The Commission finds: Good cause has been shown for approving the continuance of hearing in the above-entitled proceedings to January 9, 1962.

The Commission orders: The ruling of the presiding examiner made on the record in the above-entitled proceedings on November 15, 1961, granting a continuance herein to January 9, 1962, is hereby approved.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11645; Filed, Dec. 7, 1961; 8:47 a.m.]

FEDERAL RESERVE SYSTEM

FIRST VIRGINIA CORP.

Order Extending Time for Acquisition of Voting Shares of Richmond Bank and Trust Co.

In the matter of the application of The First Virginia Corp. for prior approval of acquisition of voting shares of Richmond Bank and Trust Co., Richmond, Va.

Whereas, there has come before the Board of Governors, pursuant to section 3(a) (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and section 4(a) (2) of Federal Reserve Regulation Y (12 CFR 222.4(a) (2)), an application by The First Virginia Corp., Arlington, Va., for approval of the acquisition of 80 percent or more of the voting shares of Richmond Bank and Trust Co.; and said application has been granted by order of the Board dated September 5, 1961 and published in the FEDERAL REGISTER (26 F.R. 8499), which order included a proviso that such acquisition be completed within three months from the date thereof; and

Whereas, The First Virginia Corp. has applied to the Board for a 90-day extension of the period prescribed by said proviso, and it appears to the Board that such an extension would not be inconsistent with the public interest;

It is hereby ordered, That the time within which said acquisition shall be completed is extended to March 5, 1962.

Dated at Washington, D.C., this 4th day of December 1961.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 61-11627; Filed, Dec. 7, 1961; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

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CFR SUPPLEMENTS
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1960 Supplement to Title 3 (\$0.50); Titles 1-4 (Revised) (\$4.00); Title 5 (Revised) (\$4.00); Title 6 (\$2.25); Title 7, Parts 1-50 (\$0.55); Parts 51-52 (\$0.60); Parts 53-209 (\$0.55); Parts 210-399 (\$0.35); Parts 400-899 (\$1.25); Parts 900-959 (\$1.75); Parts 960 to end (\$2.75); Title 8 (\$0.40); Title 9 (\$0.40); Titles 10-13 (\$0.75); Title 14, Parts 1-199 (Revised) \$3.75; Parts 200-399 (Revised) (\$1.50); Parts 400-599 (Revised) (\$1.00); Parts 600 to end (Revised) (\$2.25); Title 15 (\$1.25); Title 16 (\$0.35); Title 17 (\$1.00); Title 18 (Revised) (\$6.75); Title 19 (Revised) (\$5.50); Title 20 (Revised) (\$5.50); Title 21 (\$1.75); Titles 22-23 (\$0.50); Title 24 (\$0.55); Title 25 (\$0.50); Title 26, Part 1 (§§ 1.0-1-1.400) (Revised) (\$5.50); Part 1 (§§ 1.401-1.860) (Revised) (\$5.50); Part 1 (§ 1.861 to end) to Part 19 (Revised) (\$5.00); Parts 20-29 (Revised) (\$4.25); Parts 30-39 (Revised) (\$3.50); Parts 40-169 (Revised) (\$4.50); Parts 170-299 (Revised) \$6.25; Parts 300-499 (Revised) (\$4.00); Parts 500-599 (Revised) (\$4.25); Parts 600 to end (Revised) (\$3.00); Title 27 (Revised) (\$3.00); Titles 28-29 (\$1.75); Titles 30-31 (\$0.60); Title 32, Parts 1-39 (Revised) (\$5.50); Parts 40-399 (Revised) (\$4.00); Parts 400-699 (\$2.00); Parts 700-799 (\$1.00); Parts 800-999 (\$0.40); Parts 1000-1099 (\$1.00); Parts 1100 to end (\$0.60); Title 32A (\$0.60); Title 33 (\$1.75); Title 35 (\$0.30); Title 36 (\$0.30); Title 37 (\$0.30); Title 38 (\$1.25); Title 39 (\$1.50); Titles 40-41 (Revised) (\$1.50); Title 42 (\$0.35); Title 43 (\$1.00); Title 44 (\$0.30); Title 45 (\$0.40); Title 46, Parts 1-145 (\$1.25); Parts 146-149 (1961 Supp. 1) (\$1.00); Parts 150 to end (\$1.00); Title 47, Parts 1-29 (\$1.25); Parts 30 to end (\$0.40); Title 49, Parts 1-70 (\$1.00); Parts 71-90 (\$1.00); Parts 91-164 (\$0.50); Parts 165 to end (Revised) (\$5.00); Title 50 (Revised) (\$3.75); General Index (\$1.00).

Order from Superintendent of Documents,
Government Printing Office, Washington
25, D.C.









