

provisions contained in this rule will have little or no direct effect on States or local governments.

**Regulatory Flexibility Act**

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

**List of Subjects in 32 CFR Part 724**

Administrative practice and procedure, Archives and records, Court-martial, Military personnel, Naval discharge.

For the reasons set forth in the preamble, amend part 724 of title 32 of the Code of Federal Regulations as follows:

**PART 724—NAVAL DISCHARGE REVIEW BOARD**

1. The authority citation for 32 CFR part 724 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1553.

**PART 724—[AMENDED]**

2. In 32 CFR part 724, revise all references to “he” to read “he/she”, and revise all references to “his” to read “his/her”.

3. Revise 32 CFR 724.108, as follows:

**§ 724.108 Administrative discharge.**

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Commander, Naval Personnel Command, but specifically excluding separation by sentence of a general court-martial.

4–5. In 32 CFR 724.109, revise paragraph (a)(4)(ii) as follows:

**§ 724.109 Types of administrative discharges.**

- (a) \* \* \*
- (4) \* \* \*

(ii) With respect to administrative matters outside the administrative separation system that require a characterization of service as Honorable or General, an Entry Level Separation shall be treated as the required characterization. An Entry Level Separation for a member of a Reserve component separated from the Delayed Entry Program is under honorable conditions.

\* \* \* \* \*

**§ 724.201 [Amended]**

5. In 32 CFR 724.201, remove the words “SECNAVINST 5430.7L” and add, in their place, the words “SECNAVINST 5730.7 series”, and remove the words “SECNAVINST 5420.135C” and add, in their place, the words “SECNAVINST 5420.135 series”.

**§ 724.210 [Amended]**

6. In 32 CFR 724.210(a)(2), remove the number “30” and add, in its place, the number “60”.

**§ 724.212 [Amended]**

7. In 32 CFR 724.212, remove and reserve paragraph (c).

Dated: September 29, 2000.

**C.G. Carlson,**

*U.S. Marine Corps, Alternate Federal Register Liaison Officer.*

[FR Doc. 00–25986 Filed 10–18–00; 8:45 am]

**BILLING CODE 3810–01–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 733**

**RIN 0703–AA66**

**Assistance to and Support of Dependents; Paternity Complaints**

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is updating its regulation on assistance to and support of dependents and paternity complaints. Significant changes were made to Marine Corps specific provisions to reflect the language found in the Marine Corps Legal Administration Manual. Other changes reflect administrative and nomenclature changes.

**DATES:** Effective October 19, 2000.

**ADDRESSES:** Office of the Judge Advocate General (Code 13), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander James L. Roth, JAGC, U.S. Navy, Head, Regulations and Legislation Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066, (703) 604–8200.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 733. This amendment provides notice that significant changes were made in sections 733.3 and 733.4 to paragraphs applicable to the Marine

Corps to reflect language found in the Marine Corps Legal Administration Manual (MCO 5800.16A (LEGADMINMAN)). Additionally, throughout Part 733 the term “basic allowance for quarters” was changed to “basic allowance for housing”, as well as other administrative changes. It has been determined that invitation of public comment on this amendment would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Part 336 or Secretary of the Navy Instruction 5720.45. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions of 32 CFR Part 733, or the instructions on which they are based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Lieutenant Commander James L. Roth, JAGC, U.S. Navy, Head, Regulations and Legislation Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066. It has been determined that this final rule is not a “significant regulatory action” as defined in Executive Order 12866.

**Executive Order 13132, Federalism**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

**Regulatory Flexibility Act**

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

**List of Subjects in 32 CFR Part 733**

Alimony, Child support, Housing, Marital status, Military personnel.

For the reasons set forth in the preamble, amend part 733 of title 32 of the Code of Federal Regulations as follows:

**PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS**

1. The authority citation for 32 CFR part 733 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 5013; 37 U.S.C. 101, 401, 403; 50 U.S.C. App. 2210; E.O. 11157, 29 FR 7973, 3 CFR 1964 Supp. p. 139, as amended.

**§ 733.1 [Amended]**

2. In § 733.1, remove the words “basic allowance for quarters” and add, in their place, the words “basic allowance for housing (BAH)” in the section heading.

**§§ 733.1, 733.2, and 733.3 [Amended]**

3. In addition to the amendments set forth above, in 32 CFR 733 remove the words “basic allowance for quarters” and add, in their place, the word “BAH” in the following places:

- a. Section 733.1(a).
- b. Section 733.2.

4. Amend § 733.3 as follows:

a. In paragraph (a)(2), revise the sixth sentence.

b. Redesignate paragraph (a)(2)(i) as paragraph (b) and revise it.

c. Add a new paragraph (c).

The revisions and addition read as follows:

**§ 733.3 Information and policy on support of dependents.**

(a) \* \* \*

(2) \* \* \* The support scales set forth in paragraphs (b) and (c) of this section are not intended as a fixed rule.

\* \* \* \* \*

(b) *Navy members.* (1) The amount of support to be provided in the absence of a mutual agreement or court order is as follows:

For spouse only— $\frac{1}{3}$  gross pay

For spouse and one minor child— $\frac{1}{2}$  gross pay

For spouse and two or more children— $\frac{3}{5}$  gross pay

For one minor child— $\frac{1}{6}$  gross pay

For two minor children— $\frac{1}{4}$  gross pay

For three or more children— $\frac{1}{3}$  gross pay

(2) For purposes of this support guide, gross pay will include basic pay and BAH, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(c) *Marine Corps members.* (See MCO 5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN))

(1) In the absence of a court order or a written agreement between the parties as to an amount of support to be furnished by the Marine, the following shall apply to establish interim support

requirements. Note that gross pay is defined as basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence.

(2) *Single family.* (i) For a single family living in Government housing (civilian spouse): interim support shall be \$200.00 per supported person, up to a maximum of  $\frac{1}{3}$  gross pay, per month.

(ii) For a single family not living in Government housing (civilian spouse): interim support shall be either \$200.00 per supported family member, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of  $\frac{1}{3}$  gross pay, per month.

(3) *Multiple families (not including a spouse in the armed forces).* Interim support for each family member shall be either \$200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of  $\frac{1}{3}$  gross pay, per month.

(4) *Both spouses in the armed forces.*

(i) No children of the marriage: no support obligation, regardless of any disparities in pay grade.

(ii) All the children of the marriage in the custody of one spouse: interim support shall be either \$200.00 per supported child, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of  $\frac{1}{3}$  gross pay, per month.

(iii) If custody of children of the marriage is divided between the two parents: interim support shall be either \$200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of  $\frac{1}{3}$  gross pay, per month.

(5) Support amounts required pursuant to this section will be paid until a court order or written agreement is obtained.

(6) Form and timing of financial support payments

(i) Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made in one of the following ways:

- (A) Check.
- (B) Money order.
- (C) Electronic transfer.
- (D) Voluntary allotment.
- (E) Cash.
- (F) Involuntary allotment.
- (G) Garnishment.

(ii) As an exception to paragraph 15002.6a of the LEGADMINMAN, a commanding officer may direct compliance with the financial support requirements of this section by making in-kind financial support. For example,

paying non-Government housing expenses on behalf of family members, automobile loans, or charge accounts.

(7) *Alimony and child support.* (i) Dependents for whom BAH or other allowances are payable are defined by law. For purposes of qualifying for BAH, medical care, or other benefits, a former spouse is not a dependent even though alimony has been decreed. Marines are expected to comply with the terms of court orders which adjudge alimony payments (even though BAH is not payable) until the responsibility for compliance is terminated by a court of competent jurisdiction; a written agreement between the persons concerned; relinquishment by the former spouse in writing; or the waiver of the support requirement is granted by the general court-martial (GCM) authority in writing.

(ii) If the decree is silent as to alimony payments, it is presumed that the court did not intend such payments.

(iii) When a valid court order exists and the Marine concerned is financially unable to comply, the Marine will be advised that noncompliance with the terms of that order renders the Marine liable to further civil court action.

(iv) The duty of Marines to support their minor children is not terminated by desertion or other misconduct on the part of the Marine’s spouse. Similarly, the obligation to support a child or children is not eliminated or reduced by the dissolution of the marriage through divorce, unless a judicial decree or order specifically negates the obligation of child support. The fact that a divorce decree is silent relative to support of minor children, or does not mention a child or children, will not be interpreted by command authorities as relieving the Marine of the inherent obligation to provide support for the child or children of the marriage.

(v) A commanding officer may consider releasing a Marine under his/her command from the specific requirements of this regulation in the situations described below. A commanding officer may reconsider any prior decision made by himself/herself or by a prior commanding officer:

(A) When the Marine cannot determine the whereabouts and welfare of the child concerned;

(B) When it is apparent that the person requesting support for the child does not have physical custody of the child;

(C) When the Marine has been the victim of a substantiated instance of physical abuse (this section applies only to a requirement to support a spouse, not dependent children. Commanding officers are strongly encouraged to

consult the installation family counseling center concerning such issues. In addition, commanders should exercise extreme caution in denying dependent support in cases where the servicemember is also a perpetrator of spousal abuse.); or

(D) The dependent is in jail.

(vi) All command directed support waivers shall be in writing and a copy shall be provided to the disenfranchised family member by the command. The command shall also retain a copy. Alleged verbal support waivers shall be given no force or effect.

(vii) The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parent. A Marine who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support, once adopted, for such child during its minority.

5. In § 733.4, revise paragraph (a)(1) to read as follows:

**§ 733.4 Complaints of nonsupport and insufficient support of dependents.**

(a) \* \* \*

(1) *Waiver of support of spouse.* If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity or in the case of a member of the U.S. Marine Corps, the general court-martial convening authority, may grant such a waiver for support of a spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) *U.S. Navy members.* An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer, and written admissions by the spouse contained in letters written by that spouse to the service member or other persons. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(ii) *U.S. Marine Corps members.* The Marine's commander may consider all pertinent facts and circumstances. The general court-martial convening authority may consider any reliable evidence including, but not necessarily limited to, the following: affidavits of the Marine, relatives, or other witnesses; admissions of the spouse, including verbal and written statements or letters written by the spouse to the Marine or

other persons; pertinent photographs or court orders; and admissions by the person with whom the spouse allegedly had sexual liaisons. Witness statements should ordinarily state facts that were personally observed. Statements that merely state a conclusion without providing the personal observations on which the conclusion is based are generally unpersuasive.

(iii) The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or in the case of a member of the U.S. Marine Corps, the general court-martial convening authority, with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

\* \* \* \* \*

**§ 733.5 [Amended]**

6. In § 733.5, remove the next to last sentence in paragraph (b) introductory text.

Dated: October 10, 2000.

**C.G. Carlson,**

*Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.*

[FR Doc. 00-26793 Filed 10-18-00; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 734**

**RIN 0703-AA67**

**Garnishment of Pay of Naval Military and Civilian Personnel for Collection of Child Support and Alimony**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is updating its regulation on garnishment of pay of naval military and civilian personnel for collection of child support and alimony. This amendment reflects changes to the Marine Corps provision on receipt of legal process and other administrative changes.

**DATES:** Effective October 19, 2000.

**ADDRESSES:** Office of the Judge Advocate General (Code 13), 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374-5066.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander James L. Roth, JAGC, U.S. Navy, Head, Regulations and Legislation Branch, Administrative Law

Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374-5066, (703)604-8200.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 734. This amendment updates information on legal process brought against a Marine Corps member for the enforcement of a legal obligation to provide child support or alimony payments. Additionally, administrative changes were made to change reference to "Marine Corps Manual" to "MCO 5800.16A, Marine Corps Manual on Legal Administration (LEGADMINMAN)" on order to more accurately describe the manual. It has been determined that invitation of public comment on this amendment would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Part 336 or Secretary of the Navy Instruction 5720.45. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions of 32 CFR Part 734, or the instructions on which they are based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Lieutenant Commander James L. Roth, JAGC, U.S. Navy, Head, Regulations and Legislation Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374-5066. It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866.

**Executive Order 13132, Federalism**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

**Regulatory Flexibility Act**

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).