AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER B—PERSONNEL

PART 21—COMMISSIONED OFFICERS

Subpart A—Definitions

Sec.
21.1 Meaning of terms.

Subpart B—Appointment

PROVISIONS APPLICABLE BOTH TO REGULAR AND RESERVE CORPS

21.21 Meaning of terms.
21.22 Submission of application and evidence of qualifications.
21.23 False statements as disqualification.
21.24 Physical examinations.
21.25 Eligibility; junior assistant grade.
21.26 Eligibility; assistant grade.
21.27 Eligibility; senior assistant grade.
21.28 Age requirements, Regular Corps, senior assistant grade and below.
21.29 Eligibility; grades above senior assistant grade.
21.30 Determination of creditable years of educational and professional training and experience.
21.31 Eligibility; all grades; academic and professional education and professional training and experience.
21.32 Boards; appointment of; powers and duties.
21.33 General service.
21.34 Certification by candidate; requirement of new physical examination.

PROVISIONS APPLICABLE ONLY TO REGULAR CORPS

21.41 Professional examinations, holding of; subjects to be included.
21.42 Examinations; junior assistant, assistant, or senior assistant grade.
21.43 Examination; full grade and above.
21.44 Clinical or other practical demonstration.
21.45 Rating values.
21.46 Merit roll.
21.47 Examination; anticipation of meeting qualifications.

PROVISIONS APPLICABLE ONLY TO RESERVE CORPS

21.51 Appointment of officers having specialized training or experience in administration and management.
21.52 Waiver of entrance qualifications for original appointment in time of war or national emergency.
21.53 Examination.
21.54 Students.
21.55 Appointment to higher grades; candidates exceptionally qualified in specialized fields.
21.56 Reappointment.
21.57 Examination for reappointment.
21.58 Physical examination for reappointment.

Subpart C—Involuntary Child and Spousal Support Allotments

21.70 Purpose.
21.71 Applicability and scope.
21.72 Definitions.
21.73 Policy.
21.74 Responsibilities.
21.75 Procedures.

Subpart A—Definitions

AUTHORITY: Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216.

§ 21.1 Meaning of terms.

As used in this part, the term:

(a) *Act* means the Public Health Service Act, 58 Stat. 682, as now or hereafter amended.

(b) *Department* means the Department of Health and Human Services.

(c) *Secretary* means the Secretary of Health and Human Services.

(d) *Service* means the Public Health Service.

(e) *Surgeon General* means the Surgeon General of the Public Health Service.

(f) *Commissioned officer* or *officer*, unless otherwise indicated, means either an officer of the Regular Corps or an officer of the Reserve Corps.

[21 FR 9806, Dec. 12, 1956]

Subpart B—Appointment

AUTHORITY: Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216; sec. 208, 58 Stat. 685, as amended; 42 U.S.C. 209.

SOURCE: 21 FR 9806, Dec. 12, 1956, unless otherwise noted.

PROVISIONS APPLICABLE BOTH TO REGULAR AND RESERVE CORPS

§ 21.21 Meaning of terms.

The terms *approved school*, *approved college*, *approved postgraduate school*, or

approved training course means, except as otherwise provided by law:

(a) A school, college, postgraduate school, or training course which has been accredited or approved by a professional body or bodies recognized by the Surgeon General for such purpose, or which, in the absence of such a body, meets generally accepted professional standards as determined by the Surgeon General, or

(b) In the case of a candidate who is applying for appointment as a medical officer, any non-approved medical school provided that the candidate has passed examinations given by a professional body or bodies recognized by the Surgeon General for such purpose.

[24 FR 1790, Mar. 12, 1959]

§ 21.22 Submission of application and evidence of qualifications.

(a) *Application form.* Every candidate for examination for appointment as an officer shall submit a written application on such form as may be prescribed by the Surgeon General.

(b) *Documentary evidence.* The application shall be accompanied by such documentary evidence as may be required by the Surgeon General.

§ 21.23 False statements as disqualification.

Willfully false statements shall be cause for rejection of the application or, as provided in subpart N of this part, for dismissal.

§ 21.24 Physical examinations.

Every candidate for appointment as an officer shall undergo such physical examination as the Surgeon General may direct, and no candidate who is not found to be physically qualified shall be appointed as an officer.

§ 21.25 Eligibility; junior assistant grade.

(a) *Requirements; all candidates.* Except as provided in § 21.54, and as otherwise provided in this section, every candidate for examination for appointment in the grade of junior assistant:

(1) Shall be a citizen of the United States;

(2) Shall be at least 18 years of age; and

(3) Shall have been granted an academic or professional degree from an approved school, college, or postgraduate school, and, unless the required professional training has been otherwise obtained from an approved school, college, or postgraduate school, shall have majored in the profession in which the examination is being held.

(b) [Reserved]

(c) *Special requirement; therapists.* Every candidate for examination for appointment as a therapist shall have received a certificate from an approved school of physical therapy or an approved school of occupational therapy.

[21 FR 9806, Dec. 12, 1956, as amended at 30 FR 9437, July 29, 1965]

§ 21.26 Eligibility; assistant grade.

(a) *Requirements; all candidates.* Except as otherwise provided in this section every candidate for examination for appointment in the grade of assistant:

(1) Shall meet the requirements for eligibility for examination for appointment in the grade of junior assistant;

(2) Shall be at least 21 years of age; and

(3) Shall have had at least 7 years of educational and professional training or experience subsequent to high school, except that a candidate who applies for examination for appointment in the Reserve Corps to serve as a medical or dental intern may be examined for such appointment upon the completion of 6 years of such education, training, or experience.

(b) *Additional requirements; dietitians.* Every candidate for examination for appointment as a dietitian shall have successfully completed an approved training course for dietetic interns.

§ 21.27 Eligibility; senior assistant grade.

Every candidate for examination for appointment in the grade of senior assistant shall meet the requirements for eligibility for examination for appointment in the grade of assistant and shall have completed at least 10 years of educational and professional training or experience subsequent to high school.

§ 21.28 Age requirements, Regular Corps, senior assistant grade and below.

No candidate for appointment to the Regular Corps, except in the nurse category, shall be appointed (a) after age 31 to the permanent junior assistant grade, (b) after age 34 to the permanent assistant grade, or (c) after age 37 to the permanent senior assistant grade: *Provided,* That the Surgeon General may waive these age limitations, subject to other provisions of law, in the case of any officer of the Reserve Corps who is recommended for appointment to the Regular Corps by the Chief of the Bureau to which he is assigned and who has been on continuous active duty for at least two years immediately preceding the date of such recommendation. The age limitations for candidates who have had prior active service in the Commissioned Corps of the Public Health Service shall be increased by the period of such service.

[27 FR 3886, Apr. 24, 1962]

§ 21.29 Eligibility; grades above senior assistant grade.

Every candidate for examination for appointment in grades above that of senior assistant shall meet the requirements for eligibility for examination for appointment in the grade of senior assistant. Candidates for examination for appointment in the full, senior, or director grade shall have completed at least 7, 14, or 15 additional years, respectively, of postgraduate professional training for experience. When officers of the Service are unavailable for the performance of duties requiring highly specialized training and experience in special fields related to public health, the Surgeon General may specify that a candidate for appointment to the Regular Corps with such highly specialized training and experience shall be examined for appointment in the full or senior grade upon completion of at least 5 or 12 additional years, respectively, of postgraduate professional training or experience, except that the total number of such appointments during a fiscal year shall not exceed three.

[21 FR 9806, Dec. 12, 1956. Redesignated at 25 FR 5184, June 10, 1960]

§ 21.30 Determination of creditable years of educational and professional training and experience.

The level of academic attainment, the number of calendar years and the quality of educational and professional training and experience shall be considered in determining the number of years of such training and experience with which each candidate for appointment may be credited.

[25 FR 5184, June 10, 1960]

§ 21.31 Eligibility; all grades; academic and professional education and professional training and experience.

The Surgeon General is authorized, subject to the other provisions of this subpart to adopt additional standards by which the education, training, and experience required under this subpart, and evidence thereof, shall be of such specific kind and quality, pertinent to the particular profession concerned, as in his judgment are necessary to limit the examination to qualified candidates.

[21 FR 9806, Dec. 12, 1956. Redesignated at 25 FR 5184, June 10, 1960]

§ 21.32 Boards; appointment of; powers and duties.

The Surgeon General shall from time to time appoint boards and subboards of officers to consider the qualifications of candidates for appointment as officers, and shall refer to such boards the applications of those candidates who are eligible for examination for appointment. Such boards and subboards shall consist of three or more officers, the majority of whom, so far as practicable, shall be of the same profession as the candidate. The Surgeon General shall prescribe the duties of boards and subboards in relation to the examination process not otherwise prescribed in this subpart.

[21 FR 9806, Dec. 12, 1956. Redesignated at 25 FR 5184, June 10, 1960]

§ 21.33 General service.

Officers shall be appointed only to general service and shall be subject to change of station.

[21 FR 9806, Dec. 12, 1956. Redesignated at 25 FR 5184, June 10, 1960]

§ 21.34 Certification by candidate; requirement of new physical examination.

If a candidate for appointment in the Regular Corps or an officer of the Reserve Corps on inactive service has passed a physical examination within a period of one year from the date on which it is contemplated that he will be appointed or called to active duty, he shall, prior to being appointed or called to active duty, certify that to the best of his knowledge and belief he is free from all disease or injury not noted in his record at the time of his examination and that he is willing to serve in any climate. If a candidate for appointment in the Regular Corps, or an officer of the Reserve Corps on inactive service, has not passed a physical examination within a period of one year from the date on which it is contemplated that he will be appointed or called to active duty, he may, prior to being appointed or called to active duty, be required to undergo such physical examination as the Surgeon General may direct to determine his physical qualification for appointment or call to active duty in accordance with standards prescribed for original appointment, or he may be appointed or called to active duty after executing the certificate described in this section, but shall be physically examined to determine his physical qualification for continued active service in accordance with standards prescribed for original appointment within a period of 15 days after reporting for duty at his first station.

[21 FR 9806, Dec. 12, 1956, as amended at 24 FR 1790, Mar. 12, 1959. Redesignated at 25 FR 5184, June 10, 1960]

PROVISIONS APPLICABLE ONLY TO REGULAR CORPS

§ 21.41 Professional examinations, holding of; subjects to be included.

From time to time the Surgeon General may order examinations to be held in such professions or specialties within professions and for such grades as he deems necessary for the purpose of providing merit rolls of eligible candidates for appointment in the Regular Corps and shall, if a professional examination is to be required, prescribe the subjects relating to each profession or specialty within such profession in which candidates will be examined.

[21 FR 9806, Dec. 12, 1956, as amended at 24 FR 1790, Mar. 12, 1959]

§ 21.42 Examinations; junior assistant, assistant, or senior assistant grade.

The examination for appointment to the junior assistant, assistant, or senior assistant grade in the Regular Corps shall consist of (a) a written professional examination relating to the fundamentals of the candidate's profession or specialty within his profession and their relationship to the activities of the Service, and (b) an examination as to the candidate's general fitness, which shall include an oral interview, and a review and evaluation of the candidate's academic and professional education and professional training and experience, and may include other written tests to determine the candidate's fitness for appointment as an officer. If an applicant for appointment to any of these grades is an officer of the Reserve Corps who has been on active duty for not less than one year immediately preceding his application, the Surgeon General may direct that the officer be examined as provided in § 21.43.

[21 FR 9806, Dec. 12, 1956, as amended at 24 FR 1790, Mar. 12, 1959; 25 FR 11099, Nov. 23, 1960]

§ 21.43 Examination; full grade and above.

The examination for appointment to the full, senior, or director grade in the Regular Corps shall consist of a review and evaluation of the candidate's academic and professional education and professional training and experience. The Surgeon General may, however, direct that the examination of a candidate for appointment to any such grade shall also include an oral interview, a written or oral professional examination, or both.

§ 21.44 Clinical or other practical demonstration.

In the discretion of the Surgeon General a candidate for appointment to any grade up to and including the senior assistant grade in the Regular

Corps may be required to perform successfully a clinical or other practical demonstration which, if required, shall constitute a part of the professional examination.

§ 21.45 Rating values.

The examination of every candidate for appointment to any grade in the Regular Corps shall be rated by a board appointed pursuant to § 21.30 in accordance with such relative values for each part of the examination as are prescribed by the Surgeon General. No candidate who receives a final rating below 80 shall be appointed in the Regular Corps.

§ 21.46 Merit roll.

Each board appointed pursuant to § 21.30 to consider the qualifications of candidates for appointment as officers shall assign a numerical rating to each candidate for appointment in the Regular Corps who passes the examination, and shall submit a report to the Surgeon General of the ratings and the relative standing of all such candidates for each grade in each profession or specialty within a profession. The Surgeon General shall submit each such report with his recommendations to the Secretary, and, if approved by the Secretary, the report shall constitute a merit roll from which the Secretary shall, in accordance with relative standing, recommend available persons to the President for nomination as commissioned officers of the Regular Corps. A board may consider any newly discovered evidence relating to the physical, professional, or personal qualifications of any candidate examined for appointment. Upon recommendation of such board after review of such evidence, the Surgeon General, with the approval of the Secretary, may correct the rating of a candidate or may qualify or disqualify a candidate. The placing of a candidate's name on a merit roll shall give no assurance of an appointment. A merit roll shall expire when a new merit roll in the same profession or specialty within a profession and grade has been established, but no merit roll shall continue in effect longer than two years after its approval by the Secretary. Every candidate who has not been nominated by the President for appointment prior to the expiration of a merit roll on which his name appears, shall, unless he requests the opportunity to be reexamined, be rated with the next group of candidates of the same profession or specialty within a profession for appointment in the same grade and shall be given the same rating he had on the expired merit roll. If two candidates who were examined at the same time receive the same numerical rating the elder candidate shall assume relative standing on the merit roll over the younger candidate. If a candidate whose name is being transferred from an expired to a new merit roll has the same numerical rating as a candidate whose name is being placed on the new merit roll for the first time, the former shall assume relative standing on the merit roll over the latter. The name of a candidate may be removed from a merit roll in the event that he refuses an appointment when offered. No candidate's eligibility for appointment shall exceed two years unless he again becomes eligible as the result of another examination.

[21 FR 9806, Dec. 12, 1956, as amended at 24 FR 1790, Mar. 12, 1959]

§ 21.47 Examination; anticipation of meeting qualifications.

A potential candidate for appointment in any grade in the Regular Corps may be examined within a period of nine months prior to the date upon which it is anticipated that he will qualify for appointment under this subpart. Upon successful completion of the examination, his name will be entered on a merit roll. In the event that his name, in order of relative standing among all candidates, precedes that of fully qualified candidates, his name, for purpose of appointment, shall be passed over in favor of fully qualified candidates until such time as he becomes fully qualified, but in no event shall he otherwise lose his relative standing on the merit roll, except as provided in § 21.46. If the candidate fails to qualify for appointment at the time that it was anticipated that he would qualify, his name shall be removed from the merit roll.

PROVISIONS APPLICABLE ONLY TO RESERVE CORPS

§ 21.51 Appointment of officers having specialized training or experience in administration and management.

The Surgeon General may recommend for original appointment in the Reserve Corps candidates who have specialized training or experience in administration and management relating to the functions of the Service. All such candidates shall be subject to the same eligibility requirements for original appointment as are applicable to other candidates, except that such a candidate may substitute experience in administration or management for the requirement of professional training or experience.

§ 21.52 Waiver of entrance qualifications for original appointment in time of war or national emergency.

If, in time of war or national emergency proclaimed by the President, the Secretary determines that there is need for commissioned personnel to meet the needs of the Service, other than persons eligible for examination for original appointment under the eligibility requirements prescribed in this subpart, he may prescribe standards of eligibility for examination for the original appointment of officers in the Reserve Corps without regard to such eligibility requirements. Such standards shall, however, authorize the examination only of candidates with specialized experience in administration or management or candidates with training or experience in fields relating to public health. The permanent grade of an officer who becomes eligible for examination for appointment pursuant to such standards and who becomes eligible for appointment after passage of an examination shall be limited to the junior assistant or the assistant grade, except that, if upon examination a candidate is found to be exceptionally qualified for the performance of highly specialized duties with the Service pursuant to § 21.55, he may be recommended for appointment to any grade up to and including the director grade.

[21 FR 9806, Dec. 12, 1956, as amended at 24 FR 1790, Mar. 12, 1959]

§ 21.53 Examination.

The examination of candidates for original appointment as officers to any grade in the Reserve Corps shall consist of a review and evaluation of their academic and other education and their training and experience. In the discretion of the Surgeon General the examination of any such candidate may include an oral interview, a written examination, or both.

§ 21.54 Students.

A potential candidate for appointment in the Regular Corps who is pursuing a course of instruction which, upon completion, would qualify him under § 21.25 or § 21.26 for examination for appointment in the junior assistant or assistant grade may be examined for and appointed in the Reserve Corps in the junior assistant grade but shall not be called to extended active duty until the successful completion of such course of instruction, except that: (a) He may be called to active duty for purposes of training for periods not to exceed 120 days during any fiscal year, and (b) those students who have completed at least 3 years of collegiate or professional study leading to the qualifying degree for appointment may be called to active duty for the purpose of completing the requirements of § 21.25(a)(3). An appointment made under this subpart shall be terminated upon the officer's failure to continue a full-time course of study or failure to meet the requirements of § 21.25(a)(3) within 18 months after entering on active duty.

[34 FR 706, Jan. 17, 1969]

§ 21.55 Appointment to higher grades; candidates exceptionally qualified in specialized fields.

Any candidate eligible for examination for appointment in the grade of assistant pursuant to § 21.26 who, upon examination for such purpose, is found

exceptionally qualified for the performance of duties requiring highly specialized training or experience may be recommended for appointment in the Reserve Corps in any grade up to and including the director grade without regard to the additional years of postgraduate training or experience prescribed for grades above the assistant grade.

§ 21.56 Reappointment.

An officer of the Reserve Corps, after being examined and found qualified for reappointment, may be recommended for reappointment to the same grade in the event that his commission expires before he becomes eligible for reappointment to a higher grade, or may be recommended for reappointment to a higher grade to be effective on or after the date on which he meets the qualifications prescribed in this subpart for original appointment to such higher grade.

§ 21.57 Examination for reappointment.

The examination of an officer of the Reserve Corps on active duty who is being considered for reappointment in such corps shall consist of a review and evaluation of his record with the Service. The examination of an officer of the Reserve Corps on inactive duty who is being considered for reappointment in such corps shall consist of (a) a review and evaluation of his record with the Service while on active duty, if any, and (b) the record of his training or experience during the period of his inactive duty preceding such examination. In the discretion of the Surgeon General the examination for reappointment of an officer, whether on active or inactive duty, may include an oral interview.

§ 21.58 Physical examination for reappointment.

Every officer of the Reserve Corps being considered for reappointment shall undergo such physical examination as the Surgeon General may direct. An officer on active duty may be recommended for reappointment unless he is found to have a physical disability which is determined to render him physically unfit to perform the duties of his office under section 402 of the Career Compensation Act of 1949, as amended. An officer may be recommended for promotion only if he meets the physical qualifications for original appointment. If an officer is not available to be physically examined because of circumstances which make it impracticable for the Service to require such examination, he may, in the discretion of the Surgeon General, be reappointed without such examination, but shall be examined as soon thereafter as practicable and his physical qualification or disqualification for continued or future active service shall be determined on the same basis as if the physical examination had been given prior to reappointment.

Subpart C—Involuntary Child and Spousal Support Allotments

AUTHORITY: 37 U.S.C. 101, 15 U.S.C. 1673, 42 U.S.C. 665.

SOURCE: 49 FR 7235, Feb. 24, 1984, unless otherwise noted.

§ 21.70 Purpose.

Under references 37 U.S.C. 101, 15 U.S.C. 1673, and 42 U.S.C. 665, this subpart provides implementing policies governing involuntary child or child and spousal support allotments, assigns responsibilities, and prescribes procedures.

§ 21.71 Applicability and scope.

(a) This subpart applies to officers in the Public Health Service Commissioned Corps. The term ''Public Health Service,'' hereinafter shall be referred to as Service.

(b) Its provisions pertain to officers of the Service under a call or order to active duty for a period of six months or more.

§ 21.72 Definitions.

(a) *Child support.* Periodic payments for the support and maintenance of a child or children, subject to and in accordance with State or local law. This includes, but is not limited to payments to provide for health care, education, recreation, clothing, or to meet

other specific needs of such a child or children.

(b) *Spousal support.* Periodic payments for the support and maintenance of a spouse or former spouse in accordance with State or local law. It includes, but is not limited to, separate maintenance, alimony pendente lite, and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouse or former spouse.

(c) *Notice.* A court order, letter, or similar documentation issued by an authorized person, which provides notification that an officer has failed to make periodic support payments under a support order.

(d) *Support order.* Any order providing for child or child and spousal support issued by a court of competent jurisdiction or by administrative procedures established under State law that affords substantially due process and is subject to judicial review. A court of competent jurisdiction includes Indian tribal courts within any State, territory, or possession of the United States and the District of Columbia.

(e) *Authorized person.* (1) Any agent or attorney of any State having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651–665), who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision); and (2) the court which has authority to issue an order against the officer for the support and maintenance of a child, or any agent of such court.

(f) *Active duty.* Full-time duty in the Service, including full-time training duty.

(g) *Legal officer.* Shall be an officer of the Service or employee of the Department who is a lawyer and who has substantial knowledge of the regulations, policies, and procedures relating to the implementation of section 172 of Pub. L. 97–248.

§ 21.73 Policy.

(a) It is the policy of the Department of Health and Human Services to withhold allotments from pay and allowances of commissioned officers on active duty in the Service to make involuntary allotments from pay and allowances as payment of child, or child and spousal, support payments when the officer has failed to make periodic payments under a support order in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person to the designated official of the Department. Such notice shall specify the name and address of the payee to whom the allotment is payable. The amount of the allotment shall be the amount necessary to comply with the support order including amounts for arrearages as well as for current support. However the amount of the allotment, when added to any other amounts withheld from the officer's pay pursuant to a support order, shall not exceed the limits for involuntary allotments from pay as prescribed in section 303 (b) and (c) of the Consumer Credit Protection Act, 15 U.S.C. 1673. An allotment under this Subpart shall be adjusted or discontinued upon notice from any authorized person.

(b) Notwithstanding the above, no action shall be taken to withhold an allotment from the pay and allowances of any officer until such officer has had an opportunity to consult with a legal officer of the Department to discuss the legal and other factors involved with respect to the officer's support obligation and his or her failure to make payments. The Department shall exercise continuing good faith efforts to arrange such a consultation, but must begin to withhold allotments on the first end-of-month payday after 30 days have elapsed since notice of an opportunity to consult was sent to the officer.

§ 21.74 Responsibilities.

(a) The General Counsel, Office of the Secretary, Department of Health and Human Services, shall be the Designated Official for the Department

and shall provide guidance to the Service regarding administration of the provisions of these regulations.

(b) The Commissioned Personnel Operations Division, Office of Personnel Management, Office of Management, Office of the Assistant Secretary for Health, shall implement the provisions of these regulations.

§ 21.75 Procedures.

(a) *Service of notice.* (1) An authorized person shall serve on the designated official of the Department a signed notice including:

(i) Full name of the officer;

(ii) Social security number of the officer;

(iii) Duty station location of the officer, if known;

(iv) A statement that support payments are delinquent by an amount at least equal to the amount of support payable for two months;

(v) A photocopy, along with any modifications, of the underlying support order;

(vi) A statement of the amount of arrearages provided for in the court order and the amount which is to be applied each month toward liquidation of the arrearages, if applicable;

(vii) The full name and address of the payee to whom the allotment will be payable;

(viii) Any limitations on the duration of the support allotment.

(2) The service of notice shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate designated official of the Department. The designated official shall note the date and time of receipt on the notice.

(3) Valid service is not accomplished until the notice is received in the office of the designated official.

(4) If the order of a court or duly authorized administrative agency seeks collection of arrearages, the notice must state that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations found in 15 U.S.C. 1673. Supporting evidence must be submitted to the Department establishing that the support order is 12 or more weeks in arrears.

(5) When the information submitted is not sufficient to identify the officer the notice shall be returned directly to the authorized person with an explanation of the deficiency. However, before returning the notice, an attempt should be made to inform the authorized person who caused the notice to be served that it will not be honored unless adequate information is supplied.

(6) Upon proper service of notice of delinquent support payments and together with all required supplementary documents and information, the Service shall identify the officer from whom moneys are due and payable. The pay of the officer shall be reduced by the amount necessary to comply with the support order and liquidate arrearages if any, if provided by order of a court or duly authorized administrative agency. The maximum amount to be alloted under the provision together with any other moneys withheld from the officer for support pursuant to a court order may not exceed:

(i) 50 percent of the officer's disposable earnings for any month when the officer asserts by affidavit or other acceptable evidence that he or she is supporting a spouse or dependent child or both, other than a party in the support order. When the officer submits evidence, copies shall be sent to the authorized person, together with notification that the officer's support claim will be honored. If the support claim is contested by the authorized person, the authorized person may refer it to the appropriate court or other authority for resolution. Pending resolution of a contested support claim, the allotment shall be made but the amount of such allotment may not exceed 50 percent of the officer's disposable earnings;

(ii) 60 percent of the officer's disposable earnings for any month when the officer fails to assert by affidavit or other acceptable evidence, that he or she is supporting a spouse or dependent child or both;

(iii) Regardless of the limitations above, an additional five percent of the officer's disposable earnings shall be withheld when it is stated in the notice that the officer is in arrears in an amount equivalent to 12 or more weeks' support.

(b) *Disposable earnings.* (1) The following moneys, as defined in the U.S. Public Health Service Commissioned Corps Personnel Manual, are subject to inclusion in computation of the officer's disposable earnings:

(i) Basic pay;

(ii) Basic allowances for quarters for officers with dependents and officers without dependents;

(iii) Basic allowance for subsistence;

(iv) Special pay for physicians, dentists, optometrists, and veterinarians;

(v) Hazardous duty pay;

(vi) Flying pay; and

(vii) Family separation allowances (only for officers assigned outside the contiguous United States).

(c) *Exclusions.* The following moneys are excluded from the computation of the officer's disposable earnings. Amounts due from or payable by the United States shall be offset by any amounts:

(1) Owed by the officer to the United States.

(2) Required by law to be deducted from the remuneration or other payment involved including but not limited to:

(i) Amounts withheld from benefits payable under title II of the Social Security Act when the withholding is required by law;

(ii) FICA.

(3) Properly withheld for Federal and State income tax purposes if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he or she were entitled. The withholding of additional amounts pursuant to 26 U.S.C. 3402(i) may be permitted only when the officer presents evidence of a tax obligation which supports the additional withholding.

(4) Deducted for the Servicemen's Group Life Insurance coverage.

(5) Advances of pay that may be due and payable by the officer in the future.

(d) *Officer Notification.* (1) As soon as possible, but not later than 30 calendar days after the date of receipt of notice, the Commissioned Personnel Operations Division shall send to the officer at his or her duty station, written notice:

(i) That notice has been served, including a copy of the documents submitted;

(ii) Of the maximum limitations set forth, with a request that the officer submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(iii) That by submitting supporting affidavits or other necessary documentation, the officer consents to the disclosure of such information to the party requesting the support allotment;

(iv) Of the amount of percentage that will be deducted if the officer fails to submit the documentation necessary to enable the designated official of the Service to respond to the legal process within the time limits set forth;

(v) That a consultation with a legal officer is authorized and will be provided by the Department. The name, address, and telephone number of the legal officer will be provided;

(vi) That the officer may waive the personal consultation with a legal officer; however if consultation is waived action will be taken to initiate the allotment by the first end-of-month payday after notification is received that the officer has waived his/her consultation;

(vii) That the allotment will be initiated without the officer having received a personal consultation with a legal officer if the legal officer provides documentation that consultation could not be arranged even though good faith attempts to do so had been made; and

(viii) Of the date that the allotment is scheduled to begin.

(2) The Commissioned Personnel Operations Division shall inform the appropriate legal officer of the need for consultation with the officer and shall provide the legal officer with a copy of the notice and other legal documentation served on the designated official.

(3) If possible, the Commissioned Personnel Operations Division shall provide the officer with the following:

(i) A consultation in person with the appropriate legal officer to discuss the legal and other factors involved with

the officer's support obligation and his/her failures to make payment;

(ii) Copies of any other documents submitted with the notice.

(4) The legal officer concerned will confirm in writing to the Commissioned Personnel Operations Division within 30 days of notice that the officer received a consultation concerning the officer's support obligation and the consequences of failure to make payments. The legal officer concerned must advise the Commissioned Personnel Operations Division of the inability to arrange such consultation and the status of continuing efforts to contact the officer.

(e) *Lack of money.* (1) When notice is served and the identified officer is found not to be entitled to any moneys due from or payable by the Department of Health and Human Services, the Commissioned Personnel Operations Division shall return the notice to the authorized person, and advise in writing that no moneys are due from or payable by the Department of Health and Human Services to the named individual.

(2) Where it appears that moneys are only temporarily exhausted or otherwise unavailable, the Commissioned Personnel Operations Division shall advise the authorized person in writing on a timely basis as to why, and for how long, the moneys will be unavailable.

(3) In instances where the officer separates from active duty, the authorized person shall be informed in writing on a timely basis that the allotment is discontinued.

(f) *Effective date of allotment.* Allotments shall be withheld beginning on the first end-of-month payday after the Commissioned Personnel Operations Division is notified that the officer has had a consultation with a legal officer, has waived his/her right to such consultation, or the legal officer has submitted documentation that a consultation with the officer could not be arranged after good faith attempts to do so were made by the legal officer. The Service shall not be required to vary its normal allotment payment cycle to comply with the notice.

(g) *Designated official.* Department of Health and Human Services, General Counsel, Room 5362 North Building, 330 Independence Avenue, SW., Washington, DC 20201.

(Approved by the Office of Management and Budget under control number 0937–0123)

PART 22—PERSONNEL OTHER THAN COMMISSIONED OFFICERS

HANSEN'S DISEASE DUTY BY PERSONNEL OTHER THAN COMMISSIONED OFFICERS

SPECIAL CONSULTANTS

Sec.

22.3 Appointment of special consultants.
22.5 Leave without pay while on detail.

AUTHORITY: Sec. 208(e) of the Public Health Service Act, 42 U.S.C. 210(e); E.O. 11140, 29 FR 1637.

HANSEN'S DISEASE DUTY BY PERSONNEL OTHER THAN COMMISSIONED OFFICERS

SPECIAL CONSULTANTS

§ 22.3 Appointment of special consultants.

(a) When the Public Health Service requires the services of consultants who cannot be obtained when needed through regular Civil Service appointment or under the compensation provisions of the Classification Act of 1949, special consultants to assist and advise in the operations of the Service may be appointed, subject to the provisions of the following paragraphs and in accordance with such instructions as may be issued from time to time by the Secretary of Health and Human Services.

(b) Appointments, pursuant to the provisions of this section, may be made by those officials of the Service to whom authority has been delegated by the Secretary or his designee.

(c) The per diem or other rates of compensation shall be fixed by the appointing officer in accordance with criteria established by the Surgeon General.

(Sec. 208(c), 58 Stat. 686, as amended; 42 U.S.C. 209(e); sec. 207(f), 58 Stat. 686 as amended by 62 Stat. 40; 42 U.S.C. 209(f))

[21 FR 9821, Dec. 12, 1956, as amended at 31 FR 12939, Oct. 5, 1966]