

Dublin, Va.—New River Valley Arpt., ILS Rwy 6, Amdt. 1.

5. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, effective July 4, 1974:

Los Angeles, Calif.—Los Angeles Int'l. Arpt., RNAV Rwy 24R, Amdt. 2.

Los Angeles, Calif.—Los Angeles Int'l. Arpt., RNAV Rwy 25L, Amdt. 3.

Correction. In Docket No. 13669, Amendment 914, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated May 2, 1974, on page 15260, under § 97.29 effective June 13, 1974—Change effective date of Atlanta, Ga.—The William B. Hartsfield Atlanta Int'l. Arpt., ILS Rwy 27L, Amdt. 1, to May 30, 1974.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; (49 U.S.C. 1438, 1354, 1421, 1510), sec. 6(c) Department of Transportation Act, (49 U.S.C. 1655(c)) and (5 U.S.C. 552(a)(1)).

Issued in Washington, D.C., on May 16, 1974.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.74-12068 Filed 5-24-74; 8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

[Reg. ER-856; Amdt. 4]

PART 205—INAUGURATION AND TEMPORARY SUSPENSION OF SCHEDULED ROUTE SERVICE AUTHORIZED BY CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Director, Bureau of Operating Rights

Several sections of Part 205 continue to include outdated references to the "Chief, Routes and Agreements Division, Bureau of Economic Regulations." The purpose of this amendment is to correct those references to read, "Director, Bureau of Operating Rights."

This editorial amendment is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on June 17, 1974. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends Part 205 of the Economic Regulations (14 CFR Part 205) effective June 17, 1974, and adopted May 22, 1974, as follows:

1. Amend paragraphs (b) and (c) of § 205.8 to read as follows:

§ 205.8 Automatic suspension authority for involuntary postponement of inauguration or involuntary interruption of service.

(b) In the case of delayed inauguration or an interruption of service caused by a strike, the holder shall give immedi-

ate notice of such interruption to the Board (marked for the attention of the Director, Bureau of Operating Rights).

(c) If service at a point is interrupted or inauguration delayed for more than three (3) consecutive days for reasons beyond the certificate holder's control other than a strike, the holder shall give notice to the Board marked for the attention of Director, Bureau of Operating Rights) within three (3) days following the date of required inauguration of service or suspension, setting forth the date of suspension and a full and complete statement of the reasons therefor.

2. Amend § 205.11 to read as follows:

§ 205.11 Institution of service after suspension or postponement of inauguration: notice to the Board.

When service is inaugurated following postponement of inauguration, of resumed following suspension under either express or automatic authority, immediate notice thereof shall be given to the Board (marked for attention of the Director, Bureau of Operating Rights), stating the time when service was inaugurated or resumed.

3. Amend § 205.12 to read as follows:

§ 205.12 Strikes; report to be filed.

Within fifteen (15) days following resumption of service after a strike an air carrier shall file a report with the Board (marked for the attention of the Director, Bureau of Operating Rights) containing a list of all flights that were canceled, the date they were canceled, and the date service was restored.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc.74-12156 Filed 5-24-74; 8:45 am]

[Reg. ER-856, Amdt. 14]

PART 223—TARIFFS OF AIR CARRIERS: FREE AND REDUCED-RATE TRANSPORTATION

Carriers' Reports; Bureau of Economics

Paragraph (c) (3) of § 223.2 calls for reports thereunder to be filed with the "Bureau of Air Operations." Through reorganization some time ago, that bureau no longer exists, and the function of receiving carriers' reports under § 223.2 has been performed by the Bureau of Economics. The purpose of this amendment is to reflect the organizational change.

This editorial amendment is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on June 17, 1974. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends Part 223 of the Economic Regulations (14 CFR Part 223) effective June 17, 1974, and adopted May 22, 1974, as follows:

Amend subparagraph (3) of § 223.2(c) to read as follows:

§ 223.2 Persons to whom free and reduced-rate transportation may be furnished.

(c) * * *

(3) Such transportation is reported in a statement addressed to the attention of the Bureau of Economics, Civil Aeronautics Board, Washington, D.C. 20428, and forwarded so as to be received by the Board within ten (10) days after the end of the calendar month in which such transportation took place. Such statement shall list the name of each person provided such free transportation, his company affiliation, the specific nature of the observations made, the particular equipment or component of the aircraft observed, the reasons in-flight observation was deemed necessary, and the dates, flights and points between which such free transportation was provided.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc.74-12153 Filed 5-24-74; 8:45 am]

[Reg. ER-857, Amdt. 3]

PART 231—TRANSPORTATION OF MAIL; MAIL SCHEDULES

Director, Office of Facilities and Operation

Section 231.6 requires filings thereunder to be addressed to the "Office of the Secretary." Through reorganization, the function of receiving such filings is now performed by the Director, Office of Facilities and Operation, and the purpose of this amendment is to reflect the organizational change.

This editorial amendment is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on June 17, 1974. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends Part 231 of the Economic Regulations (14 CFR Part 231) effective June 17, 1974, and adopted May 22, 1974, as follows:

Amend § 231.6 to read as follows:

§ 231.6 Number of copies; filing address.

Each air carrier shall transmit to the Board three copies of each general schedule or revised page thereof, and three copies of the summary of additions and changes required by § 231.5, accom-

panied by a letter of transmittal (in duplicate if a receipt is desired) listing the general schedule or revised pages and summary that are transmitted for filing. The letter of transmittal and listed enclosures shall be included in one package addressed to: Civil Aeronautics Board, Director, Office of Facilities and Operations, Washington, D.C. 20428.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc. 74-12094 Filed 5-24-74; 8:45 am]

[Reg. ER-854; Amdt. No. 14]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Charges by Foreign Authorities for Airport and En Route Facilities and Services

By circulation of proposed rulemaking EDR-254, dated September 17, 1973 (Docket 25903) and published at 38 FR 26461 dated September 21, 1973, the Board gave notice that it had under consideration an amendment to Part 241 of its Economic Regulations which would require certificated route and supplemental air carriers to report charges by foreign governments for airport and en route facilities and services on a new quarterly Schedule P-11 of CAB Form 41.¹

The Board pointed out in EDR-254 that the need for this information arises from the fact that there has been a steady increase in the number of foreign governments levying such charges and the fact that the amounts of these charges have also been increasing. The reported data, the Board said, would insure that it is completely aware of developments in the area of cost recovery policies of foreign governments, and the trends associated therewith.

Comments in response to the notice were submitted by four route air carriers,² two supplemental air carriers³ and the Department of Transportation.

Upon consideration of the comments, the Board has decided to adopt the amendments with modifications herein-after discussed. Except to the extent modified herein, the tentative findings set forth in the Explanatory Statement of EDR-254 are incorporated herein and made final.

The Flying Tiger Line strongly supports the rule in its entirety and two other respondents—Pan American and The Department of Transportation (DOT)—also strongly support the rule, but, in addition offer various suggestions which they believe will improve the re-

ported data. While TWA does not specifically oppose the rule, it is uncertain whether the data reported will provide the Board with the information it is seeking, and like Pan American and DOT, recommends certain modifications which it feels will rectify asserted deficiencies.

Northwest, Trans International and World object to the rule, stating generally that it would be extremely burdensome and that the proposed report would have little or no practical value since it would provide only total costs incurred for certain services without any reference point or comparative value whatsoever; further, these respondents contend that the proposed recurrent reporting is unnecessary and a one-time study would suffice.

At the outset, the Board has not found the arguments in opposition to the proposed rule to be persuasive. As indicated in EDR-254, the instant rulemaking has been necessitated by the inadequacy of data submitted by air carriers concerning the user charges imposed upon them by foreign governments. Since none of the comments seriously questions our regulatory need for this information, we believe that the reporting burden which this rule would entail is too slight to outweigh the considerations favoring its adoption. However, insofar as some of the comments point out that the proposed report could be improved upon if it were revised to require the reporting of a unit charge for each item of expense, rather than total costs only, we accept the suggestion. The reporting requirement has been modified accordingly.

We are also adopting the suggestion by DOT and Pan American that the proposed single report be separated into two reports—one covering en route charges and the other covering airport charges. Filing these charges separately, in Schedule P-11(a) and P-11(b), respectively, will facilitate the identification of en route charges by route segment. Moreover, since the comments correctly point out that some of the charges are paid to foreign entities other than governments, (e.g., EUROCONTROL in Europe, ASECNA (Agency for Air Navigation Safety) in part of Africa, and COCESNA (Central American Air Navigation Services Corporation) in Central America), we are revising the proposed report so as to extend to such charges as well as those paid to foreign governments.

Northwest, Pan American and TWA all point out that many times billings are received for a combination of services such as communication facilities, air traffic services and meteorological services which are not segregated on the billings. In these instances, the carriers state it is extremely difficult, if not impossible, to separate the costs associated with each. However, the fact that until now billings have not been particularized may signify nothing more than the fact that until now such particularization has not been thought to serve any useful purpose. We will not assume that foreign governments or other entities will henceforth refuse to provide billing particular-

ization in the manner which will be required to enable carriers to comply with the within reporting requirements. Should such a situation develop, we would expect the matter to be brought to our attention, and, where justified by particular circumstances, we would entertain requests for appropriate relief.

TWA states that because of the lack of a basic activity factor it will be most difficult for the Board to compare and/or analyze the differences in charges between airports and countries; TWA further states that, assuming that activity factors can be found to measure the change in rates, a potential distortion could nonetheless occur, period-to-period, as a result of currency fluctuations since Schedule P-11 shows amounts expressed only in U.S. dollars with no provisions for local currency equivalents. Accordingly, TWA suggests that, for meaningful comparisons, the report be modified to indicate charges expressed in U.S. dollars with an average rate of exchange for the period being reported on the form.

While the absence of a basic activity factor might have impaired the value of information reported under the proposed requirement, which called for total costs only, the revised reporting herein, by furnishing a unit charge for each item of expense should achieve the purpose described by TWA. However, we are not adopting TWA's recommendation insofar as it seeks to include the average foreign exchange rate in order to remove potential distortion. The Board believes that this potential distortion does not warrant the additional reporting burden of obtaining average rates of exchange.

In response to a question raised by Northwest, the expenses shown on Schedule P-11 will be reported on the accrual basis, pursuant to section 2-4 of the Uniform System of Accounts and Reports (USAR), but we see no reason to cross-reference or reconcile the P-11 figures to specific objective accounts in the USAR. Also, in response to comments by Northwest and Pan American, we are providing an explanation for the term "Ancillary Aviation Services."

In order to allow ample time for the carriers to establish proper coding and to issue proper instructions to their stations, so that the various expense items can be coded and segregated when the bills are paid, we are making the rule effective July 1, 1974. Expenses incurred thereafter will be covered by the within rule, so that the initial reports hereunder will be filed with respect to the quarter ending September 30, 1974.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 241 of the Economic Regulations (14 CFR Part 241), effective July 1, 1974 and adopted April 9, 1974, as follows:

Section 22 [Amended]

1. Amend paragraph (a) of Section 22—General Reporting Instructions as follows:

(a) Add Schedule P-11(a)—Charges by Foreign Governments and Foreign Entities for En Route Facilities and Serv-

¹ Filed as part of the original document.

² The Flying Tiger Line Inc.; Northwest Airlines, Inc.; Pan American World Airways, Inc.; and Trans World Airlines, Inc.

³ Trans International Airlines, Inc.; and World Airways, Inc.

ices, and Schedule P-11(b)—Charges by Foreign Governments for Airport Facilities and Services in the List of Schedules in CAB Form 41 report to read:

Schedule No.	Schedule title	Filing frequency
P-10	Payroll	Do.
P-11(a)	Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services.	Do.
P-11(b)	Charges by Foreign Governments for Airport Facilities and Services.	Do.
P-41	Taxes	Annually.

(b) Include Schedules P-11(a) and P-11(b) in the list of Due Dates of Schedules in CAB Form 41 for the following due dates: Feb. 10, May 10, Aug. 10 and Nov. 10.

2. Amend Section 24—Profit and Loss Elements to include, following the description of Schedule P-10, the following description of Schedules P-11(a) and P-11(b):

Section 24 [Amended]

Schedule P-11(a)—Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services

(a) Schedule P-11(a) shall be filed by all route air carriers that are performing international operations.

(b) This schedule shall reflect the charges for en route facilities and services by foreign governments and foreign entities, such as communication facilities and navigation aids, air traffic services, meteorological services, and other ancillary aviation services.

(c) Column (1) "Foreign Government or Foreign Entity" shall reflect the names of each foreign government or foreign entity to which charges for services were paid or accrued during the reporting quarter. Examples of foreign entities are: EUROCONTROL in Europe; ASECNA (Agency for Air Navigation Safety) in part of Africa; COCESNA (Central American Air Navigation Services Corporation) in Central America.

(d) Column (2) "Route Segment" shall reflect the direction of each flight on which charges for services were paid or accrued during the reporting quarter; e.g., PAR-GVA for flight from Paris to Geneva.

(e) For each separate entry in columns (1) and (2) show the unit charge and total charges paid or accrued for services during the reporting quarter for each of the various types of services provided in columns (3) through (11). Column (11) "Miscellaneous" shall reflect charges not classified elsewhere.

(f) Columns (9) and (10) "Ancillary Aviation Services" shall include charges for search and rescue services, etc. (en route).

(g) Column (12) "Grand Total

Charges" shall reflect the sum of columns (4), (6), (8), (10) and (11).

Schedule P-11(b)—Charges by Foreign Governments for Airport Facilities and Services

(a) Schedule P-11(b) shall be filed by all route air carriers that are performing international operations.

(b) This schedule shall reflect the charges for airport facilities and services by foreign governments such as through-put charges for aircraft fuel, landing fees, passenger head tax and other ancillary aviation services.

(c) Column (2) "Name of Airport" shall reflect the name(s) of the airport(s) under the jurisdiction of the foreign government to which charges for airport services apply.

(d) Columns (3) and (4) "Thru-Put Charges for Aircraft Fuel" is defined as a gallonage levy by a government or airport commission, assessed against the fuel vendor or concessionaire and passed on to the carrier—in a segregated and identifiable form.

(e) For each separate entry in columns (1) and (2) show the unit charge and total charges paid or accrued for services during the reporting quarter for each of the various types of services provided in columns (3) through (11). Column (11) "Miscellaneous" shall reflect charges not classified elsewhere.

(f) Columns (9) and (10) "Ancillary Aviation Services" shall include ancillary ground/landing aviation services (ramp and parking fees and field lighting, etc., where identified separately from landing fees).

(g) Column (12) "Grand Total Charges" shall reflect the sum of columns (4), (6), (8), (10) and (11).

Section 32 [Amended]

3. Amend paragraph (a) of Section 32—General Reporting Instructions as follows:

(a) Add Schedule P-11(a)—Charges by Foreign Government and Foreign Entities for En Route Facilities and Services, and Schedule P-11(b)—Charges by Foreign Governments for Airport Facilities and Services in the List of Schedules in CAB Form 41 report to read:

Schedule No.	Schedule title	Filing frequency
P-7	Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions—Group II and Group III Air Carriers.	Do.
P-11(a)	Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services.	Do.
P-11(b)	Charges by Foreign Governments for Airport Facilities and Services.	Do.
T-31	Statement of Traffic and Capacity Statistics	Monthly.

(b) Include Schedules P-11(a) and P-11(b) in the list of Due Dates of Schedules in CAB Form 41 for the following due dates: Feb. 10, May 10, Aug. 10 and Nov. 10.

Section 34 [Amended]

4. Amend Section 34—Profit and Loss Elements to include, following the description of Schedule P-7, the following description of Schedules P-11(a) and P-11(b):

Schedule P-11(a)—Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services

(a) Schedule P-11(a) shall be filed by all supplemental air carriers that are performing international operations.

(b) This schedule shall reflect the charges for en route facilities and services by foreign governments, such as communication facilities and navigation aids, air traffic services, meteorological services and other ancillary aviation services.

(c) Column (1) "Foreign Government or Foreign Entity" shall reflect the names of each foreign government or foreign entity to which charges for services were paid or accrued during the reporting quarter. Examples of foreign entities are: EUROCONTROL in Europe; ASECNA (Agency for Air Navigation Safety) in part of Africa; COCESNA (Central American Air Navigation Services Corporation) in Central America.

(d) Column (2) "Route Segment" shall reflect the direction of each flight on which charges for services were paid or accrued during the reporting quarter; e.g., PAR-GVA for flight from Paris to Geneva.

(e) For each separate entry in columns (1) and (2) show the unit charge and total charges paid or accrued for services during the reporting quarter for each of the various types of services provided in columns (3) through (11). Column (11) "Miscellaneous" shall reflect charges not classified elsewhere.

(f) Columns (9) and (10) "Ancillary Aviation Services" shall include charges for search and rescue services, etc. (en route).

(g) Column (12) "Grand Total Charges" shall reflect the sum of columns (4), (6), (8), (10) and (11).

Schedule P-11(b)—Charges by Foreign Governments for Airport Facilities and Services

(a) Schedule P-11(b) shall be filed by all supplemental air carriers that are performing international operations.

(b) This schedule shall reflect the charges for airport facilities and services by foreign governments such as through-put charges for aircraft fuel, landing fees, passenger head tax and other ancillary aviation services.

(c) Column (2) "Name of Airport" shall reflect the name(s) of the airport(s) under the jurisdiction of the foreign government to which charges for airport services apply.

(d) Columns (3) and (4) "Thru-Put Charges for Aircraft Fuel" is defined as a gallonage levy by a government or air-

port commission, assessed against the fuel vendor or concessionaire and passed on to the carrier—in a segregated and identifiable form.

(e) For each separate entry in columns (1) and (2) show the unit charge and total charges paid or accrued for services during the reporting quarter for each of the various types of services provided in columns (3) through (11). Column (11) "Miscellaneous" shall reflect charges not classified elsewhere.

(f) Columns (9) and (10) "Ancillary Aviation Services" shall include ancillary ground/landing aviation services (ramp and parking fees and field lighting, etc., where identified separately from landing fees).

(g) Column (12) "Grand Total Charges" shall reflect the sum of columns (4), (6), (8), (10) and (11).

5. Amend CAB Form 41¹ by adding new Schedules P-11(a) and P-11(b) in the form attached hereto¹ as appendices and made a part hereof.

(Secs. 204(a) and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

NOTE: The reporting requirements herein have been approved by the General Accounting Office in accordance with the Federal Reports Act of 1942, as amended.

[FR Doc.74-12152 Filed 5-24-74; 8:45 am]

[Reg. ER-858, Amdt. 3]

PART 244—FILING OF REPORTS BY AIR FREIGHT FORWARDERS, INTERNATIONAL AIR FREIGHT FORWARDERS, AND COOPERATIVE SHIPPERS ASSOCIATIONS

Annual Report; Bureau of Accounts and Statistics

Paragraph (b) of § 244.20 calls for reports thereunder to be addressed to the "Office of Carrier Accounts and Statistics." The name of that office has been changed, for some time, to the "Bureau of Accounts and Statistics," and the purpose of this amendment is to reflect the organizational change.

This editorial amendment is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on June 17, 1974. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends Part 244 of the Economic Regulations (14 CFR Part 244) effective June 17, 1974 and adopted May 22, 1974, as follows:

Amend paragraph (b) of § 244.20 to read as follows:

§ 244.20 Annual report.

(b) The aforesaid report shall be filed annually and in sufficient time so as to be

¹ Filed as part of original document.

received by the Board within forty-five (45) days after the termination of the prescribed period. All documents filed in connection with the report shall be considered a part thereof and included within the certification pertaining to the report. The report shall be addressed to the Board, attention of the Bureau of Accounts and Statistics.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc.74-12154 Filed 5-24-74; 8:45 am]

[Reg. ER-859, Amdt. 23]

PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS AND MEMORANDA

Period of Preservation of Records by Supplemental Air Carriers

Category No. 14 of the categories of records listed in § 249.8 describes certain documents pertaining to "Part 295 of the Economic Regulations." Since Part 295 was repealed some time ago, by ER-664, the purpose of this amendment is to delete the present Category No. 14 and to redesignate the present Category No. "15" as "14."

This editorial amendment is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on June 17, 1974. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends Part 249 of the Economic regulations (14 CFR Part 249) effective June 17, 1974, and adopted May 22, 1974 as follows:

Amend § 249.8 by deleting Category No. 14 of the categories of records listed thereunder and redesignate Category No. "15" as "14," the section as amended to read in part as follows:

§ 249.8 Period of preservation of records by supplemental air carriers.

Category of records	Period to be retained
13.	
14. The following documents pertaining to Part 208 of the Economic Regulations:	
(a) Every Statement of Supporting Information.	2 years
(b) Proof of the commission paid to any travel agent by the carrier.	Do.
(c) Written confirmation and accompanying passenger list, and copy of request therefor and copy of accompanying passenger list, all pursuant to § 208.202b of this chapter.	Do.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C.

1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc.74-12155 Filed 5-24-74; 8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT REGULATIONS

FOREIGN-BASED WAREHOUSE PROCEDURE AND COMMODITIES SUBJECT TO MONITORING AND SHORT SUPPLY LICENSING

The provisions of the Foreign-Based Warehouse Procedure have been revised to eliminate the assigning of a customer's "C" number on Form FC-243 and replace it with the distributor's assigned "D" number as handwritten on his approved Form FC-143. This will facilitate processing of these forms.

In the past, on an approved Form FC-143, the distributor was assigned (and will continue to be assigned) a distributor's number; for example, D-123. Customers of the distributor were assigned, on their approved Forms FC-243, "C" numbers sequentially keyed to the distributor's number. The first customer of that distributor approved on an FC-243 was assigned number C-123-1; the second, C-123-2; the third C-123-3; etc. Under the revised procedure all customers of a distributor will receive as their reference numbers on approved FC-243's in place of "C" numbers, the same number (a "D" number) as the distributor, handwritten in the "Validation" box, immediately below the stamped validation number. In the example above, the distributor's assigned number is D-123. Therefore, all of the distributor's customers will have the number D-123 indicated on their approved FC-243's and will not be assigned a "C" number. Discontinuing issuance of the sequential "C" numbers will improve service to the exporter by reducing processing time.

The Warehouse Procedure is also clarified by (1) specifying that the reference number to be included on applications for export licenses covering any of the three types of shipments set forth in § 373.4(e) (2), is the distributor's handwritten assigned "D" number, and (2) establishing the letter "H" as the prefix of the stamped validation number in the future.

PART 373—SPECIAL LICENSING PROCEDURES

Accordingly, §§ 373.4(c) (4), 373.4(d) (1) and (2), and 373.4(e) (2) are revised as follows:

§ 373.4 Foreign-based warehouse procedure.

(c)
(4) *Other documents.* In addition to the Forms FC-243 required above, if the customer is located in Switzerland or Yugoslavia, the exporter or his distrib-

utor must obtain for each transaction a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate showing the United States as the country of origin of the commodities to be distributed. The Swiss Blue Import Certificate need not be submitted to the Office of Export Administration but shall be retained in accordance with the record-keeping provisions described in paragraph (h) of this section. The original of each Yugoslav End-Use Certificate issued, or a reproduced copy if the original is required by the government of the country in which the distributor is located, shall be immediately forwarded by the distributor to the U.S. exporter. The originals or reproduced copies received from the distributor shall be submitted by the U.S. exporter, on a monthly basis to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230.

(d) *Action on application to participate in the foreign-based warehouse procedure*—(1) *U.S. exporter*. When a Form FC-143 is approved the exporter will receive two copies of the form with a validation number stamped in the "Validation" box at the lower left corner of the reverse side. The exporter shall keep one copy of the validated form and send the other to his distributor. The validation number includes a facsimile of the U.S. Department of Commerce seal and the letter "H" followed by a series of numbers to indicate the year, month, and day of approval. In addition to the stamped validation number, a distributor's assigned "D" number is handwritten immediately below the validation stamp in the "Validation" box. The distributor's handwritten assigned number consists of the written letter "D" followed by a one, two, or three digit written number. The expiration date is entered in the "Expiration Date" box. Generally, the expiration date is June 30 of the second year following the date on which the Form FC-143 is signed by the U.S. exporter, unless an earlier termination date is requested. The distributor is permitted, until the expiration or revocation of his validated Form FC-143, to distribute or reexport the commodities stocked abroad, without obtaining prior Office of Export Administration approval for each separate individual transaction, to any customer who has been approved by the Office of Export Administration; whether such customer is in the country where the foreign-based stock is located or in any other country. If the Form FC-143 is not approved, the form will be returned to the U.S. exporter with a notice informing him of the reason for this action. The letter of transmittal to any approval customer other than an end user shall notify each customer that he will be receiving from the exporter reprints of the U.S. Department of Commerce "Table of Denial and Probation Orders Currently in Effect" and addenda thereto, listing individuals and firms to whom the consignee may not sell or otherwise dispose of the U.S. commodities received.

(2) *Customer of distributor*. When a Form FC-243, or a letter request covering a foreign government agency, is approved, two validated copies will be sent to the U.S. exporter. An approved form or letter will receive a validation stamp number of the type described in § 373.4 (d) (1). The approved Form FC-243 will have entered, in addition, below the validation stamp, the distributor's handwritten assigned number beginning with the written letter "D", as described in the abovementioned paragraph. The exporter, upon receipt of two copies of Form FC-243, shall keep one copy and shall send the other copy to the foreign office from which the distribution is controlled. These forms and letters shall be used in assuring that distribution under the Foreign-Based Warehouse Procedure will be made only to customers approved by the Office of Export Administration. If the customer is not approved, the Form FC-243, or letter request covering a foreign government agency, will be returned with a notice informing the exporter of the reason. A Form FC-243 is generally valid until June 30 of the second year following the date on which the form is signed by the customer unless an earlier expiration date is requested. An approved letter covering a foreign government agency remains valid until the related Form FC-143 and extensions thereto expire; no renewal need be requested prior to that time.

(e) * * *

(2) *Types of shipments*. A qualified U.S. exporter may apply for export licenses covering any of three different types of shipments under the provisions set forth below. All such license applications must be received in the Office of Export Administration within the validity period of the supporting Forms FC-143 and/or 243.

(i) If a shipment is to be made to a distributor for subsequent distribution under this procedure, the application shall contain the following statement in the space entitled "Additional Information" on the application form, or on an attachment thereto:

The ultimate consignee named in this application is an approved distributor of U.S. commodities stocked abroad and has been assigned distributor's number (insert Form FC-143 handwritten distributor's "D" number).

(ii) If an urgent direct shipment to a distributor's customer is to be made, an application may be submitted: *Provided*, That the distributor has notified the U.S. exporter that he has an order from an approved customer for an approved commodity which is not in the distributor's foreign-based stock and for which the customer has an urgent need or specialized requirement. Upon receipt of this license, the U.S. exporter may ship the commodity directly from the United States to his distributor's customer. The license application shall include the following statement in the space entitled "Additional Information" or on an attachment thereto:

The ultimate consignee named in this application is an approved customer of our foreign distributor. Our distributor (insert Form FC-143 handwritten distributor's "D" number) requests that shipment be made directly from the United States to fill an urgent need or specialized requirement.

(iii) If a shipment of parts and components is to be made directly to a distributor's customer, an application may be submitted if all of the conditions set forth in paragraph (e) (2) (iii) (a) through (c) of this section are met. Each order received from the distributor's customer should, whenever possible, include a certification from the customer that he will comply with all the provisions of paragraph (e) (2) (iii) (a) and (b) of this section. Regardless of whether the certification appears on the order, the U.S. exporter will, at the time of filling the order, transmit a written notification to the customer setting forth these restrictions.

(a) The commodities are included on the customer's validated Form FC-243 and represent parts and components that are either for use by the distributor's customer to repair equipment originally manufactured by the U.S. exporter or are used by another party exclusively for this purpose. The parts and components may be authorized for reexport only to the countries listed on the customer's validated Form FC-243. Reexports will not be authorized to Country Group Q, S, W, Y, or Z.

(b) The commodities will not be used to repair equipment owned or controlled by, or leased or chartered to, a country in Group Q, S, W, Y, or Z or a national thereof.

(c) The commodities are in a quantity which the exporter expects to ship to the customer during the next six calendar months for use in repairing equipment originally manufactured by the exporter's firm. If the licensed quantity proves insufficient, a request for an amendment to increase the quantity may be submitted in accordance with the provisions of Part 372 of this Chapter. However, no amendment will be granted to extend the validity period of such a license. Instead, the exporter should submit a new application for license 30 days prior to the expiration date of the outstanding license, accompanied by a statement showing the total quantity and value of each commodity shipped under the previous license as of the date of the new application.

(d) The license application includes the following statement in the space entitled "Additional Information" or on an attachment thereto:

The ultimate consignee named in this application is an approved customer of our foreign distributor (insert Form FC-143 handwritten distributor's assigned "D" number). Before making any shipment under this license, if granted, I (we) shall: (1) obtain an export order from the ultimate consignee, (2) wherever possible, obtain a written certification from the ultimate consignee on the export order with regard to the restrictions set forth in § 373.4(e) (2) (iii) of the Export Administration Regulations, and (3) for each shipment notify the ultimate consignee, in writing, of these restrictions.

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

PART 377—SHORT SUPPLY CONTROLS

To provide better continuity in the regulations, the monitoring provisions, which have been divided between Parts 376 and 377, are consolidated in Part 376; the ferrous scrap and petroleum commodities affected by short supply controls are separated into two supplements to Part 377; and the 1974 ferrous scrap licensing system, formerly § 377.4A, is redesignated as § 377.4.

The portions of the Regulations relating to monitoring and short supply are now arranged as follows:

A. § 376.3; *Monitoring of Ferrous Scrap*. (These provisions were formerly in § 377.1(c).)

B. § 376.5; *Monitoring of Fertilizers*. (No change.)

C. *Supplement No. 1 to Part 376; Ferrous Scrap Subject to Monitoring*. (These provisions were formerly in Supplement No. 2 to Part 377.)

D. *Supplement No. 2 to Part 376; Reserved for future use*. (No change.)

E. *Supplement No. 3 to Part 376; Fertilizer Materials Subject to Monitoring*. (No change.)

F. § 377; *Ferrous Scrap Export Licensing System for 1974*. (These provisions were formerly in § 377.4A.)

G. *Supplement No. 1 to Part 377; Ferrous Scrap Commodities Subject to Short Supply Licensing Controls*. (Title changed as shown.)

H. *Supplement No. 2 to Part 377; Petroleum and Products Subject to Short Supply Licensing Controls*. (These provisions were formerly in Supplement No. 1 to Part 377.)

Accordingly, the Export Administration Regulations (15 CFR Parts 376 and 377) are amended by redesignating § 377.1(c) as § 376.4, redesignating Supplement No. 2 to Part 377 as Supplement No. 1 to Part 376, redesignating § 377.4A as § 377.4, and establishing a new Supplement No. 2 to Part 377 consisting of the material pertaining to Petroleum and Petroleum Products that heretofore had been located in Supplement No. 1 to Part 377.

Effective date: June 1, 1974.

RAUER H. MEYER,
Director,

Office of Export Administration.

[FR Doc.74-12072 Filed 5-24-74;8:45 am]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER C—PERSONNEL

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Nonjudicial Punishment and Courts-Martial Procedures

On November 6, 1973, Change 4 of the "Manual of the Judge Advocate General," Department of the Navy was promulgated throughout the Navy. This Change 4 revised, in part, Chapter I of

the "Manual of the Judge Advocate General." The revisions concern nonjudicial punishment and courts-martial procedures, the authority to grant immunity, and procedures associated with the administration of military justice in the Navy. Those portions of Change 4 thereof having general applicability and legal effect necessitate a revision of Part 719 of Chapter VI of Title 32 of the Code of Federal Regulations. Accordingly, effective May 24, 1974, Part 719 of Chapter VI of Title 32 of the Code of Federal Regulations is revised to read as follows:

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 Preparation of convening orders.

719.105 Changes in membership after court has been assembled.

719.106 Convening special courts-martial.

719.107 Restrictions on exercise of court-martial jurisdiction.

719.108 Superior competent authority defined.

Subpart C—Trial Matters

719.109 Trial guides.

719.110 Reporters and interpreters.

719.111 Oaths.

719.112 Authority to grant immunity from prosecution.

719.113 Article 39(a), UCMJ, sessions.

719.114 Pretrial agreements in general and special courts-martial.

719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

719.116 Preparation and forwarding of charges.

719.117 Optional matter presented when court-martial constituted with military judge.

719.118 Court-martial punishment of reduction in grade.

719.119 Forfeitures, detentions, fines.

719.120 Preparation of records of trial.

Subpart D—Post-Trial Matters

719.121 Request for appellate defense counsel.

719.122 Review by staff judge advocate.

719.123 Action on courts-martial by convening authority.

719.124 Promulgating orders.

719.125 Review of summary and special courts-martial.

719.126 Action on special courts-martial by general court-martial convening authorities.

719.127 Supervision over court-martial records and their disposition after review in the field.

719.128 Criminal activity, disciplinary infractions, and court-martial report.

719.129 Remission and suspension.

719.130 Effective date of confinement and forfeitures when previous sentence not completed.

719.131 Vacation of suspension.

719.132 Approval of sentences extending to dismissal of an officer.

719.133 Service of decision of Navy court of military review on accused.

719.134 Execution of sentence.

719.135 Request for immediate execution of discharge.

719.136 Filing of court-martial records.

Subpart E—Miscellaneous Matters

Sec.

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

719.138 Fees of civilian witnesses.

719.139 Warrants of attachment.

719.140 Security of classified matter in judicial proceedings.

719.141 Court-martial forms.

719.142 Suspension of counsel.

719.143 Petition for new trial under Article 73, UCMJ.

719.144 Application for relief under Article 69, UCMJ, in cases which have been finally reviewed.

719.145 Set-off of indebtedness of a person against his pay.

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

719.147 Apprehension by civilian agents of the Naval Investigative Service.

719.148 Search and seizure forms.

719.149 Interrogation of criminal suspects form.

719.150 Court-martial case report.

719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 801-840, 5031; and 18 U.S.C. 3481.

NOTE: This Part 719 is derived from Chapter I of the "Manual of the Judge Advocate General."

Subpart A—Nonjudicial Punishment

1. Section 719.101 is amended by revising paragraphs (b)(3), (c), (d), (e)(2) and by adding a new paragraph (f)(8) to read as follows:

§ 719.101 General provisions.

(b) ***

(3) *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, as a matter of policy while the unit is embarked therein, refrain from exercising his powers 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 Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the officer of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in

unusual cases concerning incidents occurring on board his ship.

(c) *Nonpunitive measures.* (1) Commanding officers and officers in charge are authorized and expected to use nonpunitive measures, including administrative withholding of privileges not extending to deprivation of normal liberty, in furthering the efficiency of their commands. Such measures may include the temporary withholding of club, base exchange, commissary, theatre, etc., privileges depending upon the nature of the disciplinary infraction involved.

(2) These measures are not punishment and may be administered either orally or in writing. (See paragraph 128c, MCM.) Nonpunitive letters of censure, other than those issued by the Secretary of the Navy, shall not be forwarded to the Bureau of Naval Personnel or the Commandant of the Marine Corps, quoted or appended to fitness reports, or otherwise included in the official departmental records of the recipient. A sample nonpunitive letter of caution is set forth for guidance in Appendix section 1-a.¹

(d) *Procedures.* The procedures prescribed in paragraph 133b, MCM and in this subsection shall be followed in imposing nonjudicial punishment. The requirements of § 719.102 (d) and (e) are also applicable if a letter of admonition or reprimand is to be imposed as punishment.

(1) *Advice prior to imposition.* Prior to holding mast or office hours, the officer contemplating imposition of nonjudicial punishment shall ensure that the individual concerned is fully advised of his legal rights associated with the possible imposition of nonjudicial punishment. This advice shall contain the following as a minimum:

(i) The offense(s) that the accused is suspected of having committed.

(ii) That the commanding officer is contemplating mast or office hours for the alleged offense(s).

(iii) That, if the accused is not attached to or embarked in a vessel, he has the right to demand trial by court-martial in lieu of mast or office hours.

(iv) That if the accused accepts mast or office hours, he will receive a hearing at which time he will be accorded the following rights:

(A) To be present before the officer conducting the hearing.

(B) To be advised of the offense(s) of which he is suspected.

(C) To have his rights under Article 31 of the Uniform Code of Military Justice explained to him.

(D) To be present during the presentation of all information against him, either by testimony of a witness in person or by the receipt of his written statement(s), copies of the latter being furnished to the accused.

(E) To have available for his inspection all items of information in the nature of physical or documentary evidence

to be considered by the officer conducting the hearing.

(F) To have full opportunity to present any matter in mitigation, extenuation, or defense of the offense(s) of which he is suspected.

(G) To be accompanied at the hearing by a personal representative to speak on his behalf, provided by the accused, who, may, but need not, be a lawyer.

(v) That, if he accepts mast or office hours, and if nonjudicial punishment is awarded to him, he will have the right to appeal to higher authority.

(v) That, if he accepts mast or office by court-martial in lieu of mast or office hours, the alleged charges against him may be referred to a court-martial.

(2) *Hearing requirements.* (1) An alleged offender in the Navy or the Marine Corps has the right to be accompanied at his Article 15 hearing by a personal representative to advise him and make a statement on his behalf. An accused's right to be accompanied by a personal representative does not create an obligation on the officer contemplating the imposition of nonjudicial punishment to provide such a personal representative to advise and speak on behalf of the accused. It is the responsibility of the accused to obtain and arrange for the presence of such a personal representative if he wishes one. Such a personal representative may, but need not be, a lawyer. The right to be accompanied by a personal representative does not constitute a right to representation in the sense of paragraph 48, MCM, 1969 (Rev.). The granting of this right does not imply that an Article 15 hearing is to become a formal adversary proceeding.

(ii) The elemental hearing requirements of paragraph 133b, MCM, are expanded to provide that, when there are controverted questions of fact concerning the suspected, offense, witnesses, if present on the same ship, camp, station, or otherwise available, shall be called to testify if this can be done at no cost to the Government.

(iii) In addition to the specific hearing requirements prescribed in paragraph 133b, MCM, all Article 15 hearings shall, when requested by the alleged offender, be open to the public to the extent permitted by available space unless, in the opinion of the officer contemplating the imposition of nonjudicial punishment, security interests dictate otherwise. The presence of representative members of the command as observers during all Article 15 hearings is authorized and encouraged as a method of dispelling erroneous perceptions which may exist concerning the integrity and fairness of the imposition of nonjudicial punishment. Nothing in this requirement shall preclude the alleged offender from exercising his right to confer privately with the officer contemplating the imposition of nonjudicial punishment to relate matters which, in the opinion of the alleged offender, are of a personal nature.

(3) *Nonjudicial punishment based on report of fact-finding.* (1) If nonjudicial punishment is contemplated on the basis

of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the impartial hearing prescribed in paragraph 133b, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(4) *Advice Subsequent to Imposition.* (1) The officer who imposes punishment under Article 15, UCMJ, shall again ensure that the offender is fully informed of his right to appeal.

(2) *Punishments involving restraint and extra duties.* The punishments of arrest in quarters, correctional custody, confinement on bread and water or diminished rations, extra duties, and restriction, if unsuspended, take effect when imposed upon an accused attached to or embarked in a vessel. When any such punishments are authorized for, and are imposed upon, an accused not attached to or embarked in a vessel, such punishments, if unsuspended, will take effect when imposed; *Provided however*, That if an accused indicates an intent to appeal his punishment at the time of imposition of nonjudicial punishment, such punishment will be stayed pending completion of such appeal, unless the accused requests otherwise. If an accused does not indicate an intent to appeal at the time of imposition of nonjudicial punishment but later indicates an intent to appeal in a timely manner, as prescribed by paragraph (f) of this section further serving of punishment will be stayed pending completion of such appeal, unless the accused requests otherwise. As with forfeiture and detention, any prior punishment involving restraint will be completed before the second begins to run. In addition, commanding officers and officers in charge at sea may, when the exigencies of the service require, defer execution of correctional custody and confinement on bread and water or diminished rations for a reasonable period of time, not to exceed fifteen days, after imposition. When correctional custody is to be served in a regular confinement facility, the conditions of service and the provisions for release therefrom shall be as prescribed in the Corrections Manual. Otherwise, correctional custody shall be imposed and

¹ Filed as part of original document.

administered in accordance with SEC NAVINST 1640.7 series.

(8) *Contents.* In accordance with the requirements of paragraph 135, *MCM, 1969 (Rev.)*, appeals will be submitted in writing and may include the appellant's reasons for regarding the punishment as unjust or disproportionate. The contents of the forwarding endorsement of the officer who imposed the punishment should normally include:

(i) Comment on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous.

(ii) Recitation of any facts concerning the offenses which are not otherwise included in the appeal papers. If such factual information was brought out at the mast or office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the mast or office hours. Any other adverse factual information set forth in the endorsement, unless it recites matter already set forth in official service record entries, should be referred to appellant for comment, if practicable, and he should be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.

(iii) As an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 (Rev. 5-72)) or office hours report form (NAVMC 10132PD (Rev. 7-66)).

(iv) As enclosures, copies of all documents and signed statements which were considered as evidence at the mast or office hours hearing, or if the non-judicial punishment was imposed on the basis of the record of a court of inquiry or other factfinding body in accordance with paragraph (d) (3) of this section, a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(v) As an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or NAVMC 118(3) (Marine).

2. Revise § 719.103(d) (2) as follows:

§ 719.103 Designation of additional convening authorities.

(d) * * *

(2) If authority to convene special or summary courts-martial is desired for commanding officers other than those listed in subparagraphs (3) and (4) of this paragraph, and such commanding officers are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 23(a) (7), UCMJ, or Article 24(a) (4), UCMJ, as appropriate.

3. Revise § 719.107(c) as follows:

§ 719.107 Restrictions on exercise of court-martial jurisdiction.

(c) *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, as a matter of policy 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 Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the commanding officer of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in unusual cases concerning incidents occurring on board his ship.

4. Revise § 719.112 (a), (b), (d) (7) and (f) to read as follows:

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity 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 and whether or not the matter has been referred for trial. The approval

of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government shall be forwarded to the cognizant officer exercising general court-martial jurisdiction by 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 factfinding body, or the investigator when no charges have been preferred. 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 judge advocate for consideration and advice.

(d) * * *

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(f) *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(1). In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(2).¹

5. Revise § 719.120(e) (5) as follows:

§ 719.120 Preparation of records of trial.

(e) * * *

(5) *Court-Martial Data Form.* [Reserved]—Pending printing and availability in the Navy Supply System of NAVJAG 5813/1 (Rev. 6-72), refer to

¹ Filed as part of the original document.

JAGNOTE 5813 of 14 July 1972 for instructions.

6. Revise § 719.122(b) as follows:

§ 719.122 Review by staff judge advocate.

(b) *Distribution of staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, and § 719.120(e) (2), a copy of the review of the staff judge advocate shall be forwarded to the military defense counsel and a copy 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. In addition to the foregoing, one copy of the review of the staff judge advocate shall be forwarded to the President, Naval Clemency and Parole Board, Washington, D.C. 20370, in those cases wherein the sentence includes confinement for eight months or more, or an unsuspended punitive discharge. The original and all copies must be legible.

7. Revise § 719.125(b) (1) and (2) as follows:

§ 719.125 Review of summary and special courts-martial.

(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 directly to the Navy Appellate Review Activity for review by the Navy Court of Military Review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM. In addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, such a convening authority will forward a copy of his action on the record to the military defense counsel of record.

(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, and thereafter the reviewing authority, in addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, will forward a copy of his action on the record, or, where review under Article 65(b), UCMJ, cannot be accomplished in the field, as described hereinafter, a copy of the letter explaining why review under Article 65(b), UCMJ, was not accomplished, to the military defense counsel of record.

8. Revise § 719.128 as follows:

§ 719.128 Criminal activity, disciplinary infractions, and court-martial report.

(a) [Reserved] Pending printing and availability in the Navy Supply System of NAVJAG 5800/9 (Rev. 7-72) and NAVJAG 5800/9A (Rev. 7-72) refer to JAGNOTE 5800 of 10 August 1972 for instructions.

9. Revise § 719.141(a) as follows:

§ 719.141 Court-martial forms.

(a) *List.* The forms listed below are used in courts-martial by the naval service:

- STD 1156 Public Voucher for Fees and Mileage of Witnesses
- STD 1157 Claim for Fees and Mileage of Witness
- 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
- DD 491 Summarized Record of Trial
- DD 493 Extract of Military Records of Previous Convictions
- DD 494 Court-Martial Data Sheet (Optional)
- DD 1722 Request for Trial Before Military Judge Alone
- NAVJAG 5800/9 Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 7-72) and 5800/9A Supplemental Report (Rev. 772)
- NAVJAG 5813/1 Court Martial Data (Rev. 6-72)
- NAVJAG 5813/2 Court Martial Case Report (Rev. 6-69)

10. Revise § 719.144 (c) and (d) as follows:

§ 719.144 Application for relief under Article 69, UCMJ, in cases which have been finally reviewed.

(c) *Contents of applications.* All applications for relief shall contain:

- (1) Full name of the applicant;
- (2) Social Security number and branch of service, if any;
- (3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);
- (9) Type of court-martial which convicted the applicant;
- (10) General grounds for relief which must be one or more of the following:
 - (i) Newly discovered evidence;
 - (ii) Fraud on the court;
 - (iii) Lack of jurisdiction over the accused or the offense;
 - (iv) Error prejudicial to the substantial rights of the accused;

(10) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires);

(11) Any other matter which the applicant desires to submit; and

(12) Relief requested.

The applicant's copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(d) *Signatures on applications.* Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter.

11. Revise § 719.145(a) as follows:

§ 719.145 Set off of indebtedness of a person against his pay.

(a) *Court-martial decisions.* When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging, or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in NAVSUPMAN paragraph 1136(a)(b), have been convicted by court-martial, 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 persons at the time of dismissal, discharge, or release from active duty.

12. Add new § 719.151:

§ 719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee's right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

MAY 20, 1974.

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PART 725—DISPOSITION OF CASES INVOLVING PHYSICAL DISABILITY

Miscellaneous Amendments

The Disability Evaluation Manual, Department of the Navy, was revised on November 9, 1971, and changes were made in the regulations contained therein pertaining to medical boards and physical evaluation boards. In order to have these changes accurately set forth in the Code of Federal Regulations, Subparts C and E of Part 725, Chapter VI, of Title 32, Code of Federal Regulations, are revised to read as follows:

Subpart C—Medical Boards

- Sec.
- 725.300 Full instructions concerning Medical Boards.
- 725.301 Convening authority.
- 725.302 Composition.
- 725.303 Purpose.
- 725.304 Necessity for accurate medical evaluation.
- 725.305 Board procedure.
- 725.306 Board preparation.
- 725.307 Patients who refuse medical, dental, or surgical treatment.
- 725.308 Disposition of report.
- 725.309 Action by convening authority.
- 725.310 Line of duty/misconduct reports.
- 725.311 Cases involving discipline.
- 725.312 Request for medical records.
- 725.313 Requests for statements of service.
- 725.314 Terminal/death imminent cases.
- 725.315 Expedited disability separation.

Subpart E—Physical Evaluation Boards

- 725.519 Recommended findings, members on active duty for 30 days or less, or training duty under 10 U.S.C. 270(b).

Subpart C—Medical Boards

§ 725.301 Convening authority.

(a) A Medical Board may be convened by the commander of a fleet, force, squadron, or flotilla, by commanding generals of Fleet Marine Force units, or by the commandant, commander or commanding officer of a shore (field) activity of the Department of the Navy, upon any member of the Armed Forces under his command, on the recommendation of the medical officer of the command to which such person is attached. A Medical Board may also be convened by the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Personnel, or the Chief, Bureau of Medicine and Surgery.

(b) Individual cases shall be referred to the Board, in such manner as the convening authority directs.

§ 725.302 Composition.

(a) Medical Boards will be composed of two Medical Corps officers of the Armed Forces or Public Health Service. A third member may be assigned at the discretion of the convening authority.

(b) One of the Medical Board members shall be a senior officer with detailed knowledge of the directives pertaining to standards of medical fitness and unfitness, disposition of patients, and disability separation procedures. Whenever possible, the Medical Board

shall be composed of the Chief of Service (or his designated representative) and the medical or dental officer responsible for the patient's care. Other medical or dental officers may be assigned as the convening authority directs.

(c) When a member of the medical board does not have training in the specialty of the patient's primary impairment, appropriate specialty consultations shall be obtained prior to consideration of the case by the medical board.

(d) When the party before the board is a reservist, the membership of the board shall include Reserve representation. In any instance where Reserve members are not available, the convening authority shall so indicate in his forwarding endorsement.

(e) In cases involving questions of mental competency, the membership of the board shall include a psychiatrist.

§ 725.303 Purpose.

The medical board serves to report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding physical fitness of service personnel.

§ 725.304 Necessity for accurate medical evaluation.

(a) Although medical and dental officers do not determine physical unfitness for service, they should be familiar with the basic policies and concepts to be able to carry out the responsibility for identifying members whose physical fitness for full duty may be in doubt. There is no provision or authority for waiving a defect that would interfere with a member's ability to reasonably perform his duties. It is not possible to list and define all the medical factors that may compromise a member's ability to reasonably perform his duties; however, SECNAVINST 1830.3B provides certain guidelines on conditions which normally render an individual unfit because of physical disability and should be referred to in questionable cases. On the other hand, there is no substitute for competent and mature military medical judgment in appraising all the relevant factors in a given case.

(b) The mere presence of a physical defect does not in itself automatically require or justify referring a case to a PEB. The test must always be whether the defect interferes with the member's reasonable performance of his assigned duties. Initial enlistment and commissioning physical standards must not be confused with physical capability to perform duty. Once he is enlisted or commissioned, the fact that a member may later fall below initial entry standards does not require that his case be referred to a PEB. Similarly, there are prescribed minimum physical standards for special duties such as flying. Disqualification for special duties does not necessarily imply physical unfitness unless the disqualifying defect would also interfere with per-

formance of other duties. Medical board evaluation is appropriate only in instances where the member's ability to reasonably perform military service is in doubt.

(c) Information contained in medical boards may play an important role in determining the rights of an individual to certain benefits (such as pensions, compensation, promotion, retirement, income tax exemptions, etc.). It is, therefore, essential to include in the report all available information with adequate documentation concerning the origin, nature, aggravation by service, and other significant facts concerning all the member's conditions which unfit the member and those which do not.

§ 725.305 Board procedure.

(a) The board shall consider and report upon the case of a member who is referred to it by competent authority. It shall require and examine such records in the case as are necessary to formulate a considered conclusion regarding the member's present state of health and the recommendations required. The board's report and recommendations shall be discussed with the member provided it is considered by competent medical authority that such discussion will not adversely affect his health.

(b) Unless it is considered that the information contained in the board's report might have an adverse effect on the member's physical or mental health.

(1) The member shall be allowed to read the board's report or be furnished a copy thereof;

(2) Significant findings and opinions and recommended disposition shall be brought to the member's attention;

(3) He shall be afforded an opportunity to submit a statement in rebuttal to any portion of the board's report. If a member submits a statement in rebuttal, the board shall review same and make any change which is considered appropriate or prepare a statement in surrebuttal.

(c) The NAVMED Form 6100/2 statement concerning the findings and recommendations of the board shall be completed, referred to the member for signature, and witnessed. This form and statement in rebuttal, if applicable, shall accompany the board's report but shall not be incorporated into it.

§ 725.306 Board preparation.

(a) The medical board report shall be submitted to the convening authority on NavMed Form 6100/1 (Medical Board Report Cover Sheet). The SF 502 (Narrative Summary) may be used for the body of the board's report provided the SF 502 includes all pertinent data concerning the case; otherwise, the body of the report shall be prepared on plain white bond paper.

(1) The cover sheet shall be completed in accordance with the guidelines set forth in article 18-24, ManMed.

(2) The body of the report shall present, in narrative form, all pertinent data concerning each complaint, symp-

tom, disease, injury or disability presented by the member which causes or is alleged to cause impairment of health. The facts should be presented briefly and concisely. Emphasis must be placed on the detailed recording of each physical disability in such a manner that subsequent evaluation by adjudicative bodies can be made on the basis of the records.

(3) The narrative section of the board's report should be no more and certainly no less than a well written narrative summary and should answer the following questions:

- (i) Why did the patient enter the hospital?
- (ii) What physical findings (negative and positive) were found?
- (iii) What were the results of pertinent laboratory and X-ray tests?
- (iv) What medical or surgical treatment was rendered?
- (v) What is the current physical condition of the patient at the time the medical board is written?
- (vi) What is the prognosis and recommendation of the board concerning the disposition to be effected in the case?
- (vii) What instructions were given to the patient, such as medication to be taken, physical restrictions, etc.?
- (viii) Have all conditions and abnormalities been recorded?

(b) Since the medical board is considered the heart of the naval disability evaluation system, incomplete, inaccurate, misleading, or delayed reports may result in an injustice to the member or the Government. The history of his illness; objective findings on examinations; results of X-ray and laboratory tests; reports of consultations; and subjective conclusions with the reasons therefor, are pertinent evidence to support findings and recommendations. The mere presence of a physical disability does not necessarily render the member unfit for duty. The board's report shall clearly reflect the member's functional impairment, if any.

(1) Apparent contradictions in the records, such as disagreement with a report or consultation, should be thoroughly explained. The condition of a patient following therapy, his response thereto, the degree of severity of his disease or injury, and, when appropriate, their effect on his functional ability must be described in detail.

(c) If a previous medical board has been prepared, it is not necessary to repeat the detailed information contained therein pertaining to past history. In such cases, attention may be invited to the previous report and the description of the present illness restricted to the interval history and currently pertinent data.

(d) Any facts which are not a matter of record or of personal knowledge to a member of the board, but which are based on the member's own statement, should be recorded as "according to the member's own statement." Medical-social reports must be held in the strictest confidence, should not be shown to the member, and information derived

therefrom shall not be entered in the board's report. Such data are obtained primarily for the benefit of the patient in diagnosis and treatment, and may be utilized for the purpose of further interrogation of the patient if pertinent. Any additional history so obtained from the patient or from other sources contacted as a result of "lead information" may be incorporated as a part of the history of the case.

(e) In the following instances, the board's report shall contain a statement concerning the member's capability to manage his own affairs:

- (1) All psychoses.
- (2) Organic brain disorders when the board's report indicates impairment of judgment.
- (3) Psychoneuroses, severe, where possible impairment of judgment is indicated.
- (4) Any case in which a member has previously been declared incapable of managing his own affairs.
- (5) All psychiatric cases of sufficient severity to require further hospitalization.
- (f) Except where considered necessary, the information reported on the cover sheet need not be repeated in the body of the board's report.

§ 725.307 Patients who refuse medical, dental, or surgical treatment.

(a) When a member refuses to submit to recommended therapeutic measures for a remedial defect or condition which has interfered with his performance of duty and following prescribed therapy the member is expected to be fit for full duty, the following procedures shall apply:

(1) After being counseled concerning the matter, any member of the naval service who refuses to submit to recommended medical, surgical, dental or diagnostic measures, other than routine treatment for minor or temporary disabilities, shall be transferred to a naval hospital for further evaluation and appearance before a medical board. (See article 3-14, ManMed, concerning compulsory medical or surgical treatment.)

(2) The board shall study the case, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(b) In surgical cases, the board's report shall contain answers to the following questions:

(1) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(2) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(3) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and his reasons for refusing treatment, is the refusal reasonable or un-

reasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for whatever weight may appear appropriate.)

(c) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Cases of major surgical operations may be reasonable or unreasonable, according to the circumstances. The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks, should all be taken into consideration.

(d) As a matter of policy, surgery shall not be performed on a person over his protest if he is mentally competent.

(e) In medical, dental or diagnostic cases, the board should show the need and risk of the recommended procedure.

(f) If a medical board decides that a diagnostic, medical, dental or surgical procedure is indicated, these findings must be made known to the patient. The board's report shall show that the patient was afforded an opportunity to submit a written statement explaining the grounds for his refusal, and any statement submitted shall be forwarded with the board's report. The patient should be advised that even if his disability originally arose in line of duty, its continuance would be attributable to his unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(g) The patient should be advised that section 1207 of Title 10, U.S. Code, precludes disposition of his case under Chapter 61 of Title 10, U.S. Code, if his disability is due to intentional misconduct or willful neglect, or if it was incurred during a period of unauthorized absence. He should be further advised that benefits from the Veterans' Administration will be dependent upon a finding that his disability is in line of duty and is not due to his own willful misconduct. He should be further advised that the Social Security Act contains special provisions relating to benefits for "disabled" persons, and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and "not in the line of duty."

(h) The board's report will be forwarded direct to the Central PEB except in those cases where the convening authority desires that the case be referred for Departmental review.

§ 725.308 Disposition of report.

The report of the medical board shall be signed by all the members of the board and transmitted to the convening authority.

§ 725.309 Action by convening authority.

(a) When the indicated disposition is appearance before a physical evaluation board and the convening authority of the medical board concurs and is the Commanding Officer of a naval hospital or U.S. Naval Hospital, the Commanding Officer of the Naval Submarine Medical Center, or the Commandant of the Fourteenth Naval District, he shall endorse and forward an original and two copies of the medical board report and other required documents to the Central PEB located in the Office of Naval Disability Evaluation, Washington, D.C. 20390. In this connection, a copy of the member's current Health Record, injury report or investigative report (when appropriate), and the following clinical record documents shall accompany the medical board report—a copy (photostatic, quickcopy, typed, etc.) of the history, physical examination, doctor's progress notes, all laboratory, X-ray, and operative reports, copies of previous medical board reports relating to the condition for which the member is presently being reported on, and all consultations. Colored photographs (2 x 2 color slides are acceptable) should be provided in those cases involving scarring with disfigurement, pigmentation, or in cases of unusual deformities such as ankylosis of individual fingers. In addition, a copy of the request for a statement of service shall be attached (see § 725.313). Orders shall not be issued for personal appearance before a PEB until, and unless, the ONDE (Central PEB) advises the appropriate authority that the member has requested personal appearance before the PEB. Also, orders for personal appearance shall not be issued in the case of mentally incompetent members.

(b) When the convening authority of the medical board is other than the above and referral to a PEB is the recommended disposition, the medical board report shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, for appropriate action.

(c) When the recommended disposition is appearance before a PEB and the convening authority of the medical board does not concur, the convening authority shall advise the member concerned of his nonconcurrence and afford the member an opportunity to submit a statement in rebuttal. The convening authority shall then forward the medical board report, the member's signed statement, and a full statement setting forth his reasons for nonconcurrence to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, via the Chief, Bureau of Medicine and Surgery, for determination as to disposition to be effected.

(d) Orders for a personal appearance before a PEB empowered to conduct a formal hearing shall be issued by the authority which referred a case to the Disability Evaluation System upon notification from the Director, ONDE, that such appearance has been requested by the party or that a formal hearing is in

the best interest of the party and the Government. Personnel who are in a patient status shall be transferred from hospital to hospital for personal appearance before a PEB in accordance with U.S. Navy Travel Instructions. Transportation through facilities of the Medical Air Evacuation System shall be utilized to the fullest extent possible.

(e) If further hospitalization is indicated, the member shall be retained on the sicklist until recommended findings have been made by the Central PEB. If further hospitalization is not indicated, the member may be discharged from the sicklist and transferred to a nearby appropriate administrative command to await counseling. The member shall not be sent home awaiting orders, granted other than emergency leave, or transferred to another activity until the recommended findings of the Central PEB have been received and accepted by the member. In those cases where the member has been discharged from the sicklist and does not accept the recommended findings of the Central PEB, the member shall be transferred through medical channels to the appropriate hospital for a formal hearing.

(f) The convening authority of a medical board for good and sufficient reason, and with the consent of the member concerned, may withdraw any case he has referred to the Central PEB so long as the case is still before the Central PEB and recommended findings have not yet been made. If recommended findings have been made by the Central PEB and the convening authority considers that good and sufficient reasons exist for withdrawal of the case from the Disability Evaluation System, the convening authority may, with the consent of the member concerned, request the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, or the Chief, Bureau of Medicine and Surgery, to withdraw the case under the provisions of Subpart H of this part.

§ 725.310 Line of duty/misconduct reports.

In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made. Responsibility to order investigation in such cases is contained in the JAG Manual, section 0806. Whenever a copy of the report of investigation or injury report is not forwarded with the medical board report, a copy of all communications initiated by the hospital, with copies of all replies received, to obtain a copy of the investigative or injury report shall be attached to the medical board report with a statement explaining the circumstances of the injury. The statement shall include the name and address of the command having responsibility for

the investigation, or a finding of not misconduct and in line of duty.

§ 725.311 Cases involving discipline.

(a) When a medical board report is considered necessary and an administrative involuntary separation or court-martial proceedings or investigative proceedings are pending, indicated, or have been completed, and in cases of uncompleted sentences of courts-martial involving confinement where the disciplinary features of the case warrant resolution prior to or in connection with further disposition, the medical board report together with all pertinent facts relative to the disciplinary aspects of the case shall be submitted to the Navy Department for such administrative action as is deemed warranted and no orders directing disposition or authorizing the appearance of the member before a PEB shall be issued by the convening authority.

(b) The Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, may either direct disciplinary processing, direct disability processing, or direct concurrent disciplinary and disability processing of the member's case.

§ 725.312 Request for medical records.

When the indicated disposition of the medical board is referral to a PEB and the convening authority concurs and is the Commanding Officer of a naval hospital or U.S. Naval Hospital, the Commanding Officer of the Naval Submarine Medical Center, or the Commandant of the Fourteenth Naval District, he shall advise BUMED (Code 3342), and request that the member's medical records be forwarded to the ONDE (Central PEB). In all other cases, where the indicated disposition is referral to a PEB, the Central PEB shall take such action as may be necessary to obtain the medical records. (See: art. 18-25 ManMed.)

§ 725.313 Requests for statements of service.

The command responsible for making the determination that a member's case be referred to a PEB (generally the convening authority of the medical board, the Chief of Naval Personnel, or the Commandant of the Marine Corps) shall initiate a request to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, that a statement of service for the member concerned be provided to the Central PEB. Requests addressed to the Chief of Naval Personnel shall be sent to Pers-E. Requests addressed to the Commandant of the Marine Corps shall be sent to Code DM. All requests should be by message, when appropriate, and should include the member's social security number, full name, grade or rate and Navy Enlisted Classification code (NEC) or Military Occupation Speciality (MOS), when appropriate. (See: art. 18-26, ManMed.)

§ 725.314 Terminal/death imminent cases.

(a) The provisions of this section apply to members of the Navy and the

Marine Corps who are patients in a hospital.

(b) It is not within the mission of the Department of the Navy to provide definitive medical care to members on active duty requiring prolonged hospitalization, who are unlikely to return to duty. The time at which a member should be processed for disability separation must be determined on an individual basis, taking into consideration the interests of both the Government and the member. However, before initiating disability evaluation procedures on a patient who has been identified as a terminal case, the hospital commanding officer shall insure that "optimum hospital improvement" has been attained. When "optimum hospital improvement" has been attained, disposition of the patient shall be governed by humanitarian consideration, with due regard for the economic conditions of the patient and his beneficiaries. However, terminal cases shall neither be retained nor separated solely for the purpose of increasing their retirement or separation benefits.

(c) Normally, a terminal medical case will be processed in accordance with the instructions of the other chapters of this Manual. However, if death is so imminent as to preclude completion of routine procedures, and application of the criteria set forth in paragraph (b) of this section warrants early separation of a member, whose case has not been presented to a PEB, a message report from the hospital commanding officer, or telephone communication, if necessary, shall be made directly to the Office of Naval Disability Evaluation, Washington, D.C., providing information necessary for disposition to be made. Outside of normal working hours these communications shall be made to the Duty Officer, Bureau of Medicine and Surgery. Such communications shall include the following information, insofar as possible:

- (1) Member's full name, rank/rate, SSN, USN/USNR, USMC/USMCR;
- (2) Member's duty station (i.e., activity holding records);
- (3) Dependency status (i.e., single, married, children, other relatives listed in available Emergency Data personnel records);
- (4) Whether member has Government insurance and amount;
- (5) Status of member as regards Retired Serviceman's Family Protection Plan;
- (6) Approximate length of ACTIVE service;
- (7) Life expectancy (i.e., hours or days);
- (8) Diagnosis and diagnostic nomenclature number (IDCA);
- (9) If death is imminent, as a result of an injury, as opposed to a disease;
- (i) Duty status of member at time of accident (i.e., leave or liberty, authorized or unauthorized);
- (ii) Opinion of investigating officer, regarding line of duty/conduct;
- (iii) Brief of circumstances of accident, including time and date of injury.
- (d) In a case in which the PEB proceedings have already been forwarded to

the Office of Naval Disability Evaluation and then death becomes imminent, such fact shall be made known to the Office of Naval Disability Evaluation immediately, so that action may be expedited, if warranted. Outside of normal working hours, the procedure described in paragraph (c) of this section shall be followed.

(e) Commanding officers of naval hospitals or other authorized persons shall insure that the spouse, or (if there is no spouse) the legal guardian or custodian of the child or children of mentally incompetent members, is promptly advised of her/his right to request the Secretary of the Navy to make an election in their behalf regarding the Retired Serviceman's Family Protection Plan.

(f) Upon effecting a member's disability retirement, the member, or his next of kin if the member is mentally incompetent (including unconsciousness resulting from disease or injury), shall be immediately advised of the right to file for "Disabled Veterans' Insurance" under the National Service Life Insurance Act, as amended 38 U.S.C. 722. In cases of mental incompetence, as defined in this subsection, if the next of kin or some other close family member to whom this information can be furnished is not available, so apprise the Chief of Naval Personnel or the Commandant of the Marine Corps (DN), as appropriate, immediately of that fact, and as to the date on which, and the person to whom, such information was furnished.

§ 725.315 Expedited disability separation.

(a) The provisions of this section apply only to members of the Navy and Marine Corps who are patients in a service hospital.

(b) When it appears obvious at the time of admission to the hospital that a member's condition is of such a nature that he is never likely to return to duty, and immediate transfer to a Veterans Administration Hospital is medically indicated, the member may be processed for physical disability retirement prior to attaining optimum hospital improvement in the service hospital. The medical officer treating the case will, within the first 10 days of the member's hospitalization, inform the hospital commanding officer, who shall immediately forward the following information to the ONDE (PRC) by speedletter (air mail where appropriate, telephone in extreme cases), with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the Judge Advocate General, and the Chief, Bureau of Medicine and Surgery. Simultaneously, if indicated, a request to the Armed Services Medical Regulating Office (ASMRO) for bed designation in a VA hospital should be submitted, if the member requires further hospitalization and the member can be transported. The speedletter shall refer to this paragraph and shall state:

- (1) Member's full name, rank/rate, SSN, USN/USNR, USMC/USMCR;

(2) Member's duty station (i.e., activity holding records);

(3) A VA Claim has been prepared and reviewed by a VA representative and is ready for submission upon execution of TDRL orders;

(4) Approximate length of ACTIVE service.

(5) Diagnosis and diagnostic nomenclature number (appending an interim Narrative Summary, to include a description of functional impairment);

(6) If the condition which renders the member unfit is the result of an injury, as opposed to a disease:

(i) Duty status of member at time of accident (i.e., leave or liberty, authorized or unauthorized);

(ii) Opinion of investigating officer regarding line of duty/conduct;

(iii) Brief of circumstances of accident. In addition to the interim Narrative Summary, there shall be appended to the speedletter report a statement signed by the member concerned agreeing to the special processing of his case and waiving his right to a full and fair hearing before a physical evaluation board (NAVMED Form 1900/1).

(c) Subject to the availability of space and facilities and capabilities of the professional staff, hospital commanding officers may approve requests from members processed under this paragraph for retention in a service hospital until optimum service hospital improvement has been achieved.

(d) In those instances where the member, after counseling, declines special processing of his case, he shall sign a statement to that effect, to be made a permanent part of his record, and his case shall be processed routinely in accordance with applicable provisions of this part.

(e) Hospital commanding officers shall, upon transfer of a member to a Veterans Administration Hospital, request that the VA hospital forward to the ONDE (PRC) a copy of the Narrative Summary prepared upon the member's discharge from treatment, or interim summaries at six-month intervals, whichever is appropriate.

Subpart E—Physical Evaluation Boards

§ 725.519 Recommended findings, members on active duty for 30 days or less, or training duty under 10 U.S.C. 270(b).

* * * * *

H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

MAY 17, 1974.

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SUBCHAPTER D—PROCUREMENT, PROPERTY PATENTS, AND CONTRACTS

PART 736—DISPOSITION OF PROPERTY

Excess and Surplus Property

Part 736 of Chapter VI of Title 32 of the Code of Federal Regulations pertains to the disposal of excess and surplus property under the jurisdiction of the Department of the Navy. Pertinent reg-