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United States Coast Guard

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United States Coast Guard

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COMDTINST INSTRUCTION M5830.1

Subj: Administrative Investigations Manual

1. PURPOSE. This Manual establishes procedures for the appointment, conduct and review of administrative investigations.

2. DIRECTIVES AFFECTED. The Coast Guard Supplement to the Manual for Courts-Martial (CG-241) is cancelled on 1 April 1988.

3. DISCUSSION.

   a. This Manual is a substantial revision of the procedures to be followed in appointing, conducting, and reviewing administrative investigations. Administrative investigations are fact-finding bodies which are necessary or desirable in administering the Coast Guard but which are not specifically authorized or required by other regulations, such as The Uniform code of Military Justice, The U.S. Code, The Manual for Courts-Martial (1984), Code of Federal Regulations, or other Commandant Instructions. This Manual may, however, be used as a general guide for investigations authorized by other regulations, but in the case of conflict, the other regulation will govern.

   b. Users should carefully review the entire Manual to become familiar with its structure and contents. A detailed table of contents and index are contained in the Manual to assist a user in locating specific procedures. Particular attention is invited to the following provisions which are significant or which differ materially from prior regulations:

      (1) To simplify the reporting of many incidents, the use of a Letter Incident Report has been authorized.

(2) A party's right to counsel has been clarified, by requiring a counsel qualified pursuant to Article 27(b), UCMJ.

(3) The ability to designate parties to an investigation has been changed. Now, unless the investigation is "Formal", that is, required to hold a hearing, no parties may be designated.

(4) To protect members whose injuries may be found to be the result of misconduct or not in the line of duty, a special hearing and appeal procedure has been established.

(5) The policy of doing only one investigation, if feasible, has been emphasized.

(6) Authority to take final action has been delegated to area and district commanders, commanders of maintenance and logistics commands, and commanding officers of Headquarters units with a filled legal officer billet.

(7) Investigations will no longer be forwarded for "record purposes", but will be retained by the command that takes final action. An information copy will be sent to the operations, facility or support program manager.

(8) There are significant new procedural guidelines pertaining to the release of investigations to persons outside the Coast Guard.

(9) The Manual also recognizes that many investigations are done at the request of a Coast Guard attorney in anticipation of litigation, and gives effect to the "work-product" rule.

(10) A quick reference guide for informal investigations, designed especially for the novice investigating officer, has been provided as enclosure (9).

c. This Manual provides guidance and direction relating solely to internal administration of the U.S. Coast Guard. These investigations are neither designed nor intended to fix civil or criminal liability. They are conducted, if at all, to alert Coast Guard officials to any need for, or desirability of, particular management decisions or actions. Whether or not an investigation is conducted, and at what level and with what thoroughness, requires a

(Cont'd) balancing between the perceived need for some information, and the availability, and type, of investigative resources. Frequently this results in an investigation and some action which, while still benefiting the Coast Guard, may not be based on all available information or, may in fact, turn out to be based on only partially accurate information. Such internal investigations are thus inappropriate for use in judicial proceedings.

4. PROCEDURES. All district, maintenance and logistic command, and Headquarters unit legal officers shall review this manual on receipt, and coordinate training and review by commands within their jurisdiction, with a view to smooth implementation on the effective date.

5. ACTION. Area and district commanders, commanders of maintenance and logistics commands, unit commanding officers, and Commander, Coast Guard Activities Europe shall ensure compliance with this instruction.

6. EFFECTIVE DATE. This Manual is effective on 1 April 1988.

CLYDE L LUSK,. JE,
Chief of Staff

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CHAPTER 1. ADMINISTRATIVE INVESTIGATIONS - GENERALLY

A. General.

1. Definitions.

a. Administrative Fact-Finding Body. Any one of a number of administrative, as distinguished from judicial, entities, including a single individual serving as an investigating officer, which collects and records information regarding some subject. Almost all inquiries or investigations conducted in the Coast Guard, with the exception of courts-martial, fall within this definition.

b. Administrative Investigation (AI). The term "administrative investigation" is used to refer to any administrative fact-finding body constituted under chapters 1 through 6 of this manual. The administrative investigation is a tool - a means of obtaining needed information. There are three types, further described in section 1-D:

(1) Courts of Inquiry. The most formal of investigations, used when subpoena authority is required.

(2) Formal Investigations. For serious matters when parties are designated and hearings are required.

(3) Informal Investigations. For the vast majority of incidents requiring investigation.

c. Investigative Report (IR). A form of report produced by an administrative investigation, usually consisting of a preliminary statement, findings of fact, opinions, recommendations, and enclosures. A verbatim transcript of a hearing may be included as an enclosure to a formal investigative report.

d. Letter Incident Report (LIR). A form of report prepared by an administrative investigation (normally an informal one-officer investigation), or by any other person at the direction of the convening authority, for signature by the investigating officer or the convening authority. It may include enclosures when appropriate.

e. Other Regulations. Regulations, directives or procedures not included within this manual. In virtually all cases, such regulations are imposed by the Coast Guard and are contained in Commandant manual instructions, or Commandant instructions or notices. In some cases, these directives restate requirements imposed by a presidential directive (e.g., MCM) or by the Code of Federal Regulations.

f. Counsel. See paragraph 2-D-2.c for qualifications required for counsel serving before administrative investigations.

2. Abbreviations Used in this Manual.

a. MCM. Manual for Courts-Martial (1984).

b. RCM. Rules for Courts-Martial, contained in the MCM.

c. MRE. Military Rules of Evidence, contained in the MCM.

d. NJP. Nonjudicial Punishment, pursuant to article 15, UCMJ.

e. MJM. Coast Guard Military Justice Manual, COMDTINST M5810.1 (series).

f. AIM. This manual, the Administrative Investigations Manual, COMDTINST M5830.1 (series).

g. UCMJ. Uniform Code of Military Justice, 10 U.S.C. 801 - 936, available in the MCM.

h. GCMCA. General Court-Martial Convening Authority.

i. SPCMCA. Special Court-Martial Convening Authority.

j. NTSB. National Transportation Safety Board.

k. ROI. Report of Investigation prepared by Coast Guard Intelligence.

3. Functions.

a. Primary Function. The primary function of all administrative investigations is to search out, develop, assemble, analyze, and record available information relative to the matter under investigation. These bodies must resolve conflicting evidence and formulate clearly expressed and consistent findings of fact. (Resolutions of conflicting evidence are purely for internal purposes, as discussed in paragraph 1-A-4.)

b. Collateral Function. A collateral function of a court of inquiry and, when directed by the convening authority, an administrative investigation convened under chapter 4, is to afford a hearing, of the nature and scope prescribed, to any person whose conduct or performance of duty is subject to inquiry or who has a direct interest in the subject of the inquiry.

4. Purpose.

a. Information for Decisionmakers. The primary purpose of all administrative investigations is to provide the convening and reviewing authorities with adequate information upon which to base decisions in the matters involved. The Administrative Investigations Manual provides guidance and direction for these investigations, and thus relates solely to the internal administration of the U.S. Coast Guard.

b. No External Rights or Obligations Created. Since this Administrative Investigations Manual provides guidance and direction relating solely to matters of internal administration of the U.S. Coast Guard, it is not intended to create any undertaking or obligation with respect to other entities or persons who are not members of, or employed by, the U.S. Coast Guard. The rights of members and employees concerning particular investigations or other inquiries are addressed herein, and are encompassed in other applicable laws, regulations and directives.

c. Purpose and Nature are Administrative and not Judicial. Coast Guard investigations are administrative and not judicial in nature, and thus are neither designed nor intended to fix civil or criminal liability. They are conducted, if at all, to alert Coast Guard officials to any need for, or desirability of, particular management decisions or actions. Whether or not an investigation is conducted, and at what level and with what thoroughness, requires a balancing between the perceived need for some information, and the availability, and type, of investigative resources. Frequently this results in an investigation and some action which, while still benefiting the Coast Guard, may not be based on all available information, or which may be based on only partially accurate information. Such internal investigations are thus considered inappropriate for use in Judicial proceedings. Several specific reasons necessitate this conclusion:

(1) the absence of the extensive and credibility-enhancing discovery provisions of judicial and formal administrative procedural rules;

(2) the inapplicability of strict evidentiary rules;

(3) the experience, investigative sophistication of, and time-constraints upon, Coast Guard investigators;

(4) accessibility to documents or witnesses, and cooperation by witnesses;

(5) the investigator's ability to recognize legal issues or implications, and the concomitant degree of focus upon particular factual matters; and, most particularly; and

(6) the high expectations of conduct and performance imposed on Coast Guard personnel pursuant to the UCMJ and internal operating directives, which have little corollary to normal expectations in civilian endeavors, are intended to encourage public service above and beyond that minimum threshold of due care which would apply to determinations of civil liability.

In general, the fact-finding processes involved in litigation itself, rather than those involved in administrative investigations, are better suited to the full exposition and resolution of factual matters underlying judicial issues. Accordingly, it is the position of the U.S. Coast Guard that findings, approvals, and actions based on internal fact-finding processes (such as administrative investigations) should not be relied upon in judicial proceedings and thus do not preclude contrary assertions, based on newly adduced facts or other valid reasons, by the Coast Guard or the United States in such proceedings. This position is hereby incorporated by reference in all Administrative Investigation Reports conducted pursuant to this manual and shall be given effect over any inconsistencies contained in such reports.

5. Privacy Act Compliance. When an individual is requested by a Government representative to supply personal information which can be retrieved through use of that person's name or a unique personal identifier from a system of records (which we refer to in this manual as "protected personal information" (see paragraph 2-H-2)), the requester must comply with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. 552a) in accordance with section 2-H and enclosure (8).

B. Need and Importance.

1. General. The collection and preservation of important information by administrative investigations is vitally necessary and useful in a great many respects. Some of the purposes served are described in the following subsections.

2. Efficient Command or Administration (Self-Evaluation). The primary purpose of investigative reports and letter incident reports is to provide convening and reviewing authorities with information essential to the efficient administration and operation of the Coast Guard, and to its readiness. These reports are also routed to interested offices and divisions at Coast Guard Headquarters. They may be used as the basis for various actions, such as:

   a. Reevaluation of operational practices or standards.

   b. Redesign and improvement of material or equipment.

   c. Modification or adoption of instructions, regulations, and procedures.

   d. Timely and accurate reply to inquiries concerning incidents of legitimate public interest, resulting in improved public relations.

3. Proper Disposition of Claims and Potential Claims For or Against the Government. Investigations shall coordinate the procedures and requirements of this manual with those of chapter 2 of the Claims and Litigation Manual, COMDTINST M5890.9. See paragraph 1-C-2.c.

4. Redress of Injuries to Property. Investigations shall coordinate the procedures and requirements of this manual with those of paragraph 7-G-4 of the Claims and Litigation Manual, COMDTINST M5890.9.

5. Administrative Determinations Respecting Personnel and Former Personnel. Reports of administrative investigations provide the basis for making administrative determinations respecting personnel and former personnel. Examples of such determinations within the service are set forth below in paragraphs 1-B-5.a through d. Examples of such determinations outside the service are set forth in paragraphs 1-B-5.e through g.

   a. Whether, and in what degree, any commendatory or adverse action respecting an individual should be taken. For enlisted personnel, such determinations include desirability of retention in the service, and consideration for reduction for incompetency, pursuant to section 12-B of the Personnel Manual, COMDTINST M1000.6, and sections 6-L and 6-M of this manual. However, officer separation

(cont'd) proceedings, where an officer is provided a hearing to "show cause" for retention, are not governed by this manual, but are administrative hearings conducted pursuant to 14 U.S.C. 321-327, and article 12-A-15 of the Personnel Manual.

b. Whether lost time is required to be made good. For example, whether the time required for treatment of an illness or injury must be "made up" after what would otherwise have been the end of an enlistment or period of obligated active service, because such illness or injury is held to have been due to the individual's own misconduct. See 10 U.S.C. 972.

c. Whether an illness or injury is the result of "intentional misconduct or willful neglect" within the meaning of the disability separation statutes. See 10 U.S.C. 1201-1221.

d. Whether an illness or injury was incurred in the line of duty while employed on inactive duty training or active duty for training.

e. Whether dependents of deceased personnel are entitled to dependency and indemnity compensation or hospital benefits, based upon whether the evidence of record (not findings or opinions) indicates the death to have been due to the individual's willful misconduct. See 38 U.S.C. 310, 331, 610, and 612.

f. Whether personnel accountable for funds or property may be eligible for relief from personal liability for losses, based upon affirmative showing of record that there was no negligence of commission or omission on the part of the accountable persons which may have caused or contributed to the loss.

g. Whether personnel may be eligible for Civil Service preference. See 5 U.S.C. 2108 and 3309-3315.

6. Rights of a Party. (See chapter 2.) Fact-finding proceedings with a hearing are accorded persons to afford them an opportunity to assure that all matter favorable to them is set forth on the record to be available in connection with any future administrative determination.

C. Investigations Under Other Regulations.

1. General. In addition to the investigations required by this manual, various other investigative efforts are required by other regulations. Depending on the type and nature of the incident being investigated, there may be a requirement for only one investigation pursuant to either this manual or other regulations. However, under certain circumstances, the provisions of this manual and of some other regulation may both require an investigation. If more than one investigation is required, a determination should be made as to whether, and to what extent, the proceedings may be combined, or whether they must be separate. Care must be exercised in making that determination. It is Coast Guard policy that, whenever possible, a single investigation be utilized to address all command and program requirements, and that a single report be used to meet these requirements. It is also Coast Guard policy that the least

(cont'd) extensive type of investigation which will meet all service needs shall be utilized. Accordingly, if an investigation of an incident is being conducted under other regulations, and no useful purpose would be served by convening (or continuing) an investigation under this manual, then no administrative investigation of the incident should be convened. (If already convened, the administrative investigation should be dissolved.) The following broad guidelines are set forth to assist in making these determinations.

2. Single Purpose Investigations. If the only requirement for an investigation is imposed by other regulations, then those requirements alone should govern, and an administrative investigation under this manual should not be convened. For example:

   a. Disciplinary Action. If there is no basis for investigation other than prospective disciplinary action, a preliminary inquiry under RCH 303, MCM, or a pretrial investigation under article 32, UCMJ and RCM 405, MCM should be conducted without recourse to the proceedings of an administrative investigation under this manual.

   b. Reports Specifically Required by Other Regulations. If there is no basis to conduct an investigation other than to meet a reporting requirement of some other regulation (e.g., the letter report for firearms discharges required by App. A, paragraph 15 of the Maritime Law Enforcement Manual, COMDTINST M16247.1), then only an inquiry and report pursuant to that manual should be conducted.

   c. Claims Investigation. If the sole reason for an investigation is to assist attorneys representing the United States, then only an investigation and report pursuant to the Claims and Litigation Manual, COMDTINST M5890.9 (series), should be conducted. However, sometimes an investigation is convened pursuant to this manual in a case in which a claims investigation is also required. In such cases, it is Coast Guard policy that duplication of effort be avoided if at all possible, and that one investigation be used for both purposes. See paragraph 2-D-4 of the Claims and Litigation Manual. In any such case, both this manual and the Claims and Litigation Manual, COMDTINST M5890.9 (series), must be consulted, and the convening authority must consult with the servicing Coast Guard legal office, and must comply with section 4-A-3.d. In such cases, the investigation, while proceeding pursuant to the orders of the convening authority, is also considered to be acting as an agent of the Chief Counsel. Investigating officers, accordingly, must consult with the servicing Coast Guard legal officer responsible for claims settlement, who acts on behalf of the Chief Counsel, for advice and guidance concerning the claims and litigation aspects of the administrative investigation.

3. Special Situations In Which An Administrative Investigation Is Normally Not Required.

   a. An administrative investigation should normally not proceed at the same time as a law enforcement investigation by the Federal Bureau of Investigation, Coast Guard Intelligence, or local police department.

(cont'd) See Investigative Assistance, COMDTINST 5520.5C (series), the Investigations Manual, COMDTINST H5527.1A (series), and Appendix 3.1, MCM 1984. This will avoid interference with law enforcement investigations. It will also avoid the undesirable situation of having two Coast Guard investigations proceed (CGI and administrative investigation) on the same situation at the same time. This is a likely situation in cases of death, sabotage, and destruction of government property.

b. In any circumstance where an incident listed in paragraph 1-G-4 is being investigated (or a law enforcement investigation is being monitored) by CGI, an administrative investigation shall normally not be convened, or if convened shall abate. On conclusion of the law enforcement report of investigation (ROI), the convening authority should review the ROI. If all necessary questions are resolved and all needed information provided, further investigation should not be ordered. On the other hand, if there remains needed information, a limited administrative investigation may be convened to obtain it.

c. If circumstances appear to warrant a separate investigation under this manual of an incident being independently investigated by a law enforcement agency, the provisions of paragraph 1-H-1 should be complied with.

4. Non-Combinable Investigations.

a. Certain inquiries, which are controlled by other regulations, may not be combined with an administrative investigation. In these cases, a separate administrative investigation should be ordered only if specific reasons exist warranting the separate investigation. In these circumstances, the scope of the administrative investigation should be limited as much as possible so as to satisfy only these specific reasons, and to avoid unnecessary duplication of effort with other investigations. For example, in the case of a major casualty which is being investigated by a mishap investigation pursuant to the Safety and Occupational Health Manual, COMDTINST M5100.29 (series), an administrative investigation may be ordered for the purpose of ascertaining whether there was negligence or misconduct on the part of any personnel. In such case, the administrative investigation should be directed to not make findings of fact, opinions and recommendations on matters which the mishap board is investigating, except where such findings, opinions or recommendations are relevant to the purpose for which the administrative investigation was ordered. (In this instance, to the extent allowed by the Safety and Occupational Health Manual, COMDTINST H5100.29 (series), the evidence and findings of the mishap board should be made available to the administrative investigation and may be used and relied upon by that investigation in pursuing its objectives. See paragraph 6-A-6. Similarly, evidence and findings of other investigations listed in paragraph 1-C-4.b, when made available to the administrative investigation, may be used and relied on by that investigation in pursing its objective.)

b. Following is a list of investigations which may not be combined with an administrative investigation:

(1) Investigations conducted by law enforcement agencies. See paragraphs 1-C-3 and 1-N-1.

(2) Investigations conducted by the DOT Inspector General.

(3) Mishap investigations pursuant to the Safety and Occupational Health Manual, COMDTINST H5100.29 (series).

(4) Hearings conducted pursuant to the Physical Disability Evaluation System Manual, COMDTINST M1850.2A (series).

(5) Investigations conducted by the NTSB of incidents involving the Coast Guard. See 45 C.F.R. 4.40.

(6) Marine casualty investigations conducted pursuant to 46 U.S.C. Chapter 63 which are required to be open to the public may not be combined with an administrative investigation which is not open to the public. (Since most formal administrative investigations are open to the public, this provision rarely applies.)

(7) Investigations into complaints of discrimination pursuant to the Military Civil Rights Manual, COMDTINST M5350.11B (series).

D. Types of Administrative Fact-Finding Bodies.

1. General. Fact-finding bodies may be distinguished by their membership and their procedure. General guidance for selecting the type of investigation is provided in section 1-E. The distinctions set forth in this section are summarized in enclosure (1).

a. On the basis of membership, there are three types of administrative investigations:

(1) Courts of inquiry.

(2) Boards of investigation (any formal or informal administrative investigation with more than one member).

(3) One-officer investigations (any formal or informal administrative investigation with only one member).

b. On the basis of procedure, there are three types of administrative investigations;

(1) Courts of inquiry, which have procedures similar to, but slightly different from, formal investigations.

(2) Formal investigations, which use a hearing procedure. In most cases, all testimony is taken under oath, and in some more serious cases, a verbatim record of the proceedings may be required. The convening authority may also authorize the designation of parties by the investigation during the proceedings.

(3) Informal investigations, which do not use a hearing procedure, and are not appropriate when the matter under investigation involves designated parties. Unless otherwise directed by the convening authority, the investigation may determine the fact-finding methods that best ensure accurate and expeditious assembly of the evidence under the circumstances.

2. Courts of Inquiry. The principal distinguishing features of a court of inquiry are as follows:

a. It consists of at least three commissioned officers as members and a commissioned officer as counsel for the court. The president must be a lieutenant commander or higher. The counsel for the court must be qualified in accordance with article 27(b), UCMJ.

b. It is convened by a written appointing order.

c. It uses a hearing procedure, and must take all testimony under oath and record all proceedings verbatim (see paragraph J-P-1) regardless of whether such is directed in the appointing order.

d. Persons subject to the UCMJ whose conduct is subject to inquiry must be designated parties.

e. Persons subject to the UCMJ, or employed by the Department of Defense, who have a direct interest in the subject of inquiry must be designated parties upon their written request to the court. Other civilian employees, such as those employed by the Coast Guard or other Federal agencies, or other persons, who have a direct interest in the subject of inquiry may be so designated upon their written request to the court.

f. It possesses the power to subpoena civilian witnesses. See. article 47, UCMJ, which provides for prosecution in the United States district court for failing to appear, to testify, or to produce evidence.

3. Formal Investigations. The principal distinguishing features of a formal investigation (other than a court of inquiry) are:

a. It consists of one or more commissioned officers as member or members. For a board of investigation (an investigation with more than one member), the senior member should be at least a lieutenant commander; for a one-officer investigation the member should be at least a lieutenant commander. All members should be senior to any party.

b. It is convened by a written appointing order.

c. The appointing order may direct that the body take all testimony under oath and/or record all proceedings verbatim.

d. It uses a hearing procedure.

e. Persons whose conduct is subject to inquiry or who have a direct interest in the subject of the inquiry may be designated parties by the convening authority in the appointing order. Additionally, the convening authority may authorize the investigation to designate parties during the proceedings.

f. It does not possess the power to subpoena witnesses (unless convened under article 139, UCMJ - see Claims and Litigation Manual, COMDTINST M5890.9 (series)).

4. Informal Investigations. The principal distinguishing features of an informal investigation are:

a. It consists of one or more commissioned officers, (chief petty officers may be used in a one-officer investigation but are not normally used in a board), as member or members. (If convened under article 139, UCMJ, only commissioned officers may be used). For a board of investigation, the senior member should normally be at least a lieutenant.

b. It may be convened orally or in writing.

c. It is ordinarily not directed to take testimony under oath or to record testimony verbatim.

d. It does not use a hearing procedure, but rather uses informal procedures in collecting evidence, including personal interviews, telephone inquiries and correspondence.

e. It does not possess the power to subpoena witnesses.

f. It may report its findings, opinions and recommendations in a "standard" format. See enclosure (5). Alternatively, if the convening authority concurs, it may prepare for its own or the convening authority's signature a simple letter incident report to higher authority. See enclosure (6). (A preliminary investigation pursuant to section 1-0 is in reality a one-officer administrative investigation, but normally reports in summary fashion to the convening authority who will use the report as the basis of further investigative decision-making.) See also paragraph 4-C-6.

5. Letter Incident Report. A letter incident report is a type of report which is produced by an administrative investigation (normally by an informal investigation), or by any other person directed by the convening authority, for the signature of the convening authority. It differs from an investigative report in that the person charged to do the inquiry normally does not produce and personally sign an investigative report; rather this person prepares a letter for the signature of the convening authority. A letter incident report may also be signed by a one-officer informal investigation if so authorized by the convening authority. It should be noted and emphasized that the use of a letter incident report does not allow a less thorough investigation than would otherwise be necessary, and this is particularly true in gathering evidence, witness

(cont'd) statements, etc., in matters involving potential claims. (See, e.g., enclosure (6)). Rather, it authorizes a simplified and expedited form of report - a. simple letter (with enclosures when appropriate). This letter reports the substance of the matter to higher authority. It has the following characteristics:

a. It is prepared by an informal investigation, or by any other person under the command of the officer directing the report.

b. No written appointing order is required or normally used.

c. Testimony is not taken under oath or reported verbatim.

d. Information is gathered by informal procedures.

e. It is often for information purposes only, and is generally considered "final" without action by higher authority.

f. It may substitute for a "standard" investigative report, (enclosure (5)), in which case it may be subject to the usual review and approval procedures. See sections 1-J, 1-K and 1-L.

E. Selection of Type of Investigation and Designation of Parties.

1. Selection of Type of Investigation. The several types of administrative investigations described in the preceding section are summarized in enclosure (1). They are designed to allow for the selection of an appropriate type investigation for a particular situation. Paragraph 1-G-4 and enclosure (2) list many of the situations commonly experienced in the Coast Guard, and may be used to identify those situations potentially requiring an administrative investigation and report pursuant to this manual, or some other type inquiry or report pursuant to some other regulation. Selection of the type of administrative investigation in a specific instance should be largely determined by such factors as the necessity for subpoena authority, the level of formality deemed appropriate, the purposes of the investigation, the relative seriousness of the subject of the investigation, the complexity of the factual issues involved, the time allotted for completion of the investigation, and other such factors. Much must be left to the judgment and discretion of the convening authority. The last two of these types, the formal and informal investigations, provide many options concerning composition and procedure. The convening authority has broad discretion to pick and choose the options best suited to the individual incident under review. The simplest method of obtaining needed information which is appropriate to the circumstances should be used. The following guidelines should be considered in the selection of the type of administrative investigation to be employed.

a. Court of Inquiry. The court of inquiry is normally reserved for the most serious of situations requiring the most formal procedural requirements. It is also appropriate for those situations where a formal board of investigation is insufficient due to the lack of subpoena power over civilians.

b. Formal Investigation. A formal investigation must be used in any circumstance where parties are designated. It is also appropriate and may be used whenever it appears that the incident under investigation involves significant loss of life or where significant international or legal consequences may be involved. It is similarly appropriate for other serious incidents requiring investigation, such as grounding, collision, flooding, and other major afloat casualties, particularly if significant loss of life resulted. Whether the incident should be investigated by a board or by a single officer depends on the complexity and seriousness of the incident. Testimony in either case should normally be under oath, but the preparation of a verbatim transcript need not invariably be imposed, particularly in a one-officer investigation.

c. Informal Investigation. An informal investigation will ordinarily be adequate in most cases, including most death cases, and many casualties of an operational nature which are of less serious consequence. Most instances requiring investigation can be adequately addressed by this type investigation. For many cases which are of a less complex nature, a simple letter incident report will serve all command and program needs. The "standard" format investigative report may be reserved for incidents requiring its more structured format.

In any case in which there is doubt as to the type of administrative investigation which should be ordered, the servicing Coast Guard legal officer may be consulted, or the matter may be referred to a superior in command for determination.

2. Designation of Parties. Whether to designate parties will be one of the first questions a convening authority must address, for in addition to establishing certain rights of persons involved in an incident under investigation, the designation of parties materially reduces the convening authority's options in choosing the type of investigation to order. In answering the question, the following factors should be considered:

a. Only a court of inquiry or a formal investigation may be used when parties are designated. At a court of inquiry, strict rules apply which require designation of certain persons as parties. See paragraph 2-B-2.a. At a formal investigation, parties may be designated by the convening authority, but the formal investigation may not itself designate parties unless authorized to do so by the convening authority. In most cases, not designating parties does no harm to the member (see paragraph 1-E-2.b), makes the investigation substantially easier for the command to conduct, and does not in any way reduce the command's options to take any appropriate administrative or disciplinary action deemed necessary at a later date.

b. When selecting the type of administrative investigation, the desirability of designating parties and thus affording the persons so designated all party rights must similarly be considered.

(1) In general, the designation of parties in administrative investigations (other than courts of inquiry - see paragraph 2-B-2.a(1)) is unnecessary because other regulations provide for Judicial or administrative proceedings (subsequent to the investigation) before adverse action may be taken against an individual. These further proceedings contain adequate safeguards to protect the rights of persons so involved. For example, in an investigation into a casualty involving a small boat, a member (the coxswain) might be suspected of dereliction of duty in the operation of a the boat. The investigation could proceed to gather all available evidence, including any statement provided by the coxswain subsequent to a proper warning (see paragraph 2-E-3), and to prepare a report. Prior to taking disciplinary action based on the report, the command would be required to comply with the procedures provided for that action in the MJM or the MCM, which provide for full due process for the member, including where appropriate the right to legal counsel. Similarly, a member injured and made the subject of a line of duty investigation will be provided full due process protection at a hearing conducted by the command (see section 5-M) prior to any adverse line of duty or misconduct findings being rendered. Thus, in almost all circumstances, no options for action are lost to the command, and no rights of the member are infringed, by the lack of a party designation.

(2) If, however, the subject matter of the investigation involves such disputed issues of fact that a substantial risk of injustice to a person or persons would exist if they were not afforded the rights of a party during the investigation, a court of inquiry or a formal investigation should be ordered, and parties should be designated.

c. Depending on the circumstances, consideration should be given to expressly authorizing the formal investigation to designate parties. If during the course of any informal investigation it appears that consideration should be given to designating parties and changing the type of investigation, the investigation should immediately communicate that fact to the convening authority.

F. Convening Authority - Power to Order.

1. Court of Inquiry. A Court of Inquiry may be convened by any person authorized to convene a general court-martial (GCHCA).

2. Other Fact-Finding Bodies. Any GCMCA, and the Chief of Staff of the Coast Guard, may convene a formal investigation. Any SPCMCA (includes the commanding officer of all Coast Guard units) may, after consulting with the servicing Coast Guard legal officer regarding options and resources, convene a formal investigation. Any officer listed above or a Headquarters office chief may convene an informal investigation (only a SPCMCA may convene an investigation involving redress of injury under article 139, UCMJ). Any officer listed above, or any officer in charge (including an enlisted OINC) may order any person of the command to

(cont'd) prepare a letter incident report for that officer's signature. The authority to sign an appointing order for an administrative investigation other than a court of inquiry may be delegated.

G. Convening Authority - Responsibility to Order.

1. General Considerations. The officer in command of the unit or activity concerned is primarily responsible for initiating an investigation into an incident arising in the command. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and indicates that conduct of the investigation by the afloat command would not be feasible. In any case in which a question arises as to whether the commanding officer should be designated a party, the matter should be referred to the appropriate superior in the chain of command who shall resolve the issue and either take or direct appropriate action regarding convening the investigation. In any case of doubt as to who should convene the administrative investigation, the matter may be referred to the appropriate superior in the chain of command who shall resolve the issue and ensure that any required action is carried out. The servicing Coast Guard legal officer should be consulted in any case of doubt to assist in resolving issues at the earliest and lowest level.

2. Incidents Far Removed from Location of Command. Commands required to make investigations under this manual may be geographically far removed from the scene of incidents for which they have responsibility. A typical situation of this kind is one where personnel are injured or die under doubtful circumstances at a place distant from the command to which they are assigned, or where the command (usually a vessel) is required to move from the locality of an incident before a thorough investigation can be completed. In such cases, commanding officers and officers in charge may refer the matter to another officer qualified to order the appropriate administrative investigation if the investigation can be more expeditiously accomplished by that command. For instance, the district commander of the district in which the incident occurred (or the MLC commander for that area) may be requested to convene the appropriate investigation (even though the personnel involved are from outside that district or MLC area). The request shall contain all available information such as: date, time, place, and nature of the incident; full names, grades, service numbers, and leave status of personnel involved; names and addresses of all known witnesses; all available evidence and statements; and copies of all reports of the incident made to Commandant or other superior authority.

3. Incidents Involving More Than One Command or In Which Officer in Command May Be a Party. Whenever more than one command is involved in an incident requiring investigation, a single investigation should be conducted if practicable. Such an investigation may be convened by the officer in command of any of the units concerned, and all units concerned shall cooperate in the expeditious conduct of the investigation. If any difficulty or dispute arises in the convening of such an investigation, the matter should be referred to a common superior for resolution. If there is reason to believe that the conduct or performance of duty of the officer in command of any unit involved in the incident may be subject to

(cont'd) inquiry, the superior in command should convene the investigation. Whenever a single investigation of an incident involving more than one unit is conducted, all units involved shall provide all available information to the command conducting the investigation.

4. Specific Incidents or Circumstances Which Ordinarily Require Investigation. The following is a nonexclusive list of types of incidents and circumstances which experience has shown ordinarily require an investigation or inquiry of some sort. The program(s) concerned are indicated in parentheses. This list should be used in conjunction with enclosure (2) to ascertain specific reporting requirements for certain incidents, and to ascertain program responsibility for that investigative requirement. Most investigative requirements arise from command or program needs rather than any legal requirement. Only claims for and against the government are investigated solely to answer needs of the legal program. Other investigative requirements respond to mandates of other operational, facility and/or support program managers. Whether or not to order an investigation in any given case, the type of investigation to order, and the type of report which will be required, are subject to the discretion of the commanding officer, exercised within the bounds of this manual and the bounds of other regulations promulgated by the applicable operational, facility, or support program manager. All cases of claims or potential claims, and any cases of doubt, should be discussed with the servicing legal officer so that pertinent issues may be explored. For cases listed below, either an investigative report or a letter incident report should normally be considered a requirement, in the absence of a concurrence by the command exercising final reviewing authority pursuant to section 1-K that no written report is required.

   a. Claims made against the Government (or notification of potential claims). (G-L)

   b. Claims in favor of the Government, including circumstances where a member or dependent is injured and is furnished hospital, medical, surgical, or dental care at government expense, under circumstances which may give rise to a claim in favor of the United States. An investigation is not necessary for claims purposes when full payment of the claim has been made, or there is reasonable assurance that such payment will be forthcoming within a short period. (G-L; operating program)

   c. When Government property is damaged, lost or destroyed under circumstances which may give rise to a claim in favor of the United States. (See Claims and Litigation Manual, COMDTINST M5890.9, paragraph 2-B-2). Similarly, when such damage, loss or destruction occurs as a result of Coast Guard activities and the pecuniary loss exceeds $5,000.00. In the case of damage to or loss of an aircraft, or a vessel exceeding 65 feet in length, the pecuniary loss limit is increased to $15,000. (G-L; operating program)

   d. Damage to or loss of Government property (in any amount), or injury to personnel, believed to be the result of an intentional or negligent act or omission, or gross inefficiency of any person of the Coast Guard, military or civilian. (Command)

e. Accidents involving a GSA vehicle where there is in excess of $500.00 property damage, or bodily injury results. See section 6-I. (G-E)

f. When death or injury occurs, as follows:

(1) Death of a member of the Coast Guard from other than natural causes (particularly all apparent suicides). (G-P)

(2) Injury of a member of the Coast Guard which might result in entitlement to disability benefits, or which results in lost time in excess of 24 hours, and in which the circumstances suggest that a finding of "misconduct" may result (the injury is the result of apparent intentional misconduct or willful neglect), or that a finding of "not in the line of duty" may result. (G-P; G-K)

(3) In any case in which civilians or other non-Coast Guard personnel are found dead on a Coast Guard installation under peculiar or doubtful circumstances, or die as a result of Coast Guard activities. (Command; operating program; G-L)

(4) When a civilian employee of the Coast Guard, acting within the scope of employment, suffers death or serious injury. (G-P)

(5) In any case involving death in which the adequacy of government furnished medical care is reasonably an issue. (G-K)

g. Whenever Government firearms are lost, and in some cases of their discharge. See also paragraph 1-C-2.b. (G-0)

h. Whenever classified material is lost, destroyed, or disclosed without authority, or otherwise compromised. (G-O; G-R).

i. Whenever a Coast Guard aircraft is involved in an incident requiring a report under any other regulation, an investigation under this manual may be warranted. Similarly, whenever a Coast Guard vessel is involved in a grounding or a collision with another vessel, floating structure, craft of any description, bridge, wharf, or other shore structure, or entanglement with fish nets or underwater cable, and damage to the vessel is expected to exceed the amounts set forth in paragraph 1-G-4.c, or personal injury requiring an investigation results. (If the incident involves a Coast Guard vessel and a nonpublic vessel, an investigation pursuant to a variety of other regulations may be necessary. These include those set forth in paragraphs 1-C-4.b(3), (5) and.(6), and others set forth in enclosure (2). Coordination with all interested programs should be effected in an effort to accomplish only one Coast Guard investigation, and to otherwise minimize duplication of effort or interference.) (G-O; G-M, G-L, G-CSP)

j. When a marine casualty (see Marine Safety Manual, COMDTINST M16000.3 (series)) involving loss of life or serious personal injury occurs during rescue operations by the Coast Guard. (G-O; G-M, G-L)

k. When an enlisted person is being evaluated for incompetence or unfitness for retention in the Coast Guard. Such administrative investigations follow special procedures as set forth in sections 6-L and 6-H of this manual and section 12-B of the Personnel Manual, COMDTINST M1000.6. (G-P)

l. Whenever significant damage or loss occurs in housing for which the Coast Guard is responsible. (G-P; G-E)

m. When a complaint is made either that willful damage has been done to the property of any person by members of the Coast Guard or that such property has been wrongfully taken by members of the Coast Guard. (Command, G-L)

n. Whenever investigation is required by other Coast Guard regulations. In these cases, the procedures set forth in this manual may be helpful as guidance for the investigation, but the other directive shall control. The type report made may be as set forth in this manual, but will follow a particular format if one is set forth in the requiring directive. (Care should be taken to distinguish those directives which not only impose an investigative requirement, but which establish their own procedures as well. See paragraph 1-C-4. See also enclosure (2) for a listing of many such requirements.) (Various operating, facility and support programs)

o. Whenever an apparent violation of the Anti-Deficiency Act has occurred through authorization of expenditures exceeding an appropriation (31 U.S.C. 1341), or acceptance of voluntary services without authority (31 U.S.C. 1342). (G-F)

p. Whenever, in the opinion of the convening authority, an administrative investigation would be desirable. (Command)

H. Dissolution. An administrative investigation is considered dissolved when its duties have been completed, and no formal order to that effect is necessary. An administrative investigation may be terminated, and the requirement for a report eliminated, on the convening authority's own initiative, or upon request of the senior member, if during the course of the investigation it becomes evident that no useful purpose will be served by continuing it. The following are among the factors which should be considered. If any of these factors is not met, however, an investigation may be required:

1. The incident under investigation was not due to the actionable negligence or misconduct of any person involved.

2. There were us disabling injuries as a result of the incident under investigation which could give rise to an entitlement to benefits as compensation.

3. There were no fatalities.

4. There was no damage to non-Coast Guard property.

5. The incident did not give rise to any claim or potential claim for or against the government.

6. The incident is being investigated under other regulations and no useful purpose would be served by continuing the administrative investigation.

In making a decision to terminate an investigation, the convening authority shall first confer with the servicing Coast Guard legal officer, who should concur with the decision to terminate an investigation prior to that action being taken. It is entirely possible that the convening authority might be unaware of some aspect of the case (in particular a claim or a potential claim) which would be known or apparent to the legal officer.

I. The Investigative Report - Generally.

1. Content. The investigative report must be made as complete as possible to ensure preservation of evidence relating to the incident investigated and to give authorities in the Coast Guard an adequate basis on which to take action. Illustrative facts which should be established and supported by enclosures in particular situations are outlined in chapter 6. These are suggestions, however, and are not all-inclusive. Any information that will aid in understanding or help reviewers analyze the report should be included. Except for facts of which a court may take judicial notice (see MRE 201 and 201a, MCM 1984), an administrative investigation should not arrive at findings of fact which are not supportable by evidentiary enclosures or personal observation. For limitation on opinions, see paragraph 4-C-7.d.

2. Copies. Each copy of the investigative report must be complete within itself and should contain all necessary enclosures and exhibits. Copies should be completely legible and readable. Enough complete copies should be made to also provide parties with a copy, as required by paragraph 2-D-9.

3. Classification. Because of the wide circulation in the Coast Guard of investigative reports, classified information should be omitted unless inclusion is essential. Information not inherently of a classified nature, although derived from classified messages, shall be paraphrased without identifying the original message by date-time group. An investigative report containing information so derived need not be classified for this inclusion alone, provided that the information paraphrased is not classified. When classified matter is necessarily included in an investigative report, the report shall be assigned the classification of the highest subject matter contained therein. Encrypted versions of messages shall not be included in or attached to investigative reports in which the content, substance, or purport of such message is divulged, regardless of the classification given the report. See Coast Guard Security Manual, COMDTINST M5500.11 (series).

J. The Investigative Report - Action By Convening and Reviewing Authorities.

1. Intermediate Routing. The investigative report is reviewed by the convening authority and appropriate superior authorities in the chain of command. The report will ordinarily be forwarded via the chain of

(cont'd) command, but should also be routed via all superior commanders having a direct official interest in the recorded facts (that is, the facts relate to a subject matter affecting their command responsibility).

a. All reports affecting areas within the responsibility of a maintenance and logistics command (MLC) should be routed via the cognizant MLC.

b. All reports from Headquarters units, with or without a filled legal officer billet, which affect areas within the responsibility of the cognizant district commander, or MLC commander (primary GCMCA), should be routed to or via that command.

c. As a general rule, reports should be routed to the operational commander (Commandant, area, MLC, or district) via support or administrative commanders. For example, a report from an area WHEC involving engineering and personnel issues would be routed to the cognizant area commander via the MLC. If the facts found affect matters within the cognizance of the local district commander (for example, relations with a district unit "host" command), the cognizant district commander would also be an intermediate reviewing authority. Similarly, where the incident investigated in one district involves personnel attached to another district, the convening authority should forward the report to the reviewing authorities via the commander of the other district.

The reviewing authorities will take action as set forth in paragraph 1-J-2, and sections 1-K and 1-L.

2. Review and Forwarding.

a. General. The convening authority and each field authority to whom the investigative report is routed shall transmit it by endorsement, either forwarding or returning the report as follows:

(1) Forward the investigative report commenting that it contains no matter of direct official interest to the authority and is therefore transmitted without comment or recommendation.

(2) Return the investigative report for further investigation, noting any incomplete, ambiguous, or erroneous action of the administrative investigation or a prior reviewing authority.

(3) Return the investigative report for further corrective action, stating in detail the inadequacy or incompleteness noted.

(4) Forward the investigative report in accordance with paragraph 1-J-2.b below.

b. Specific Actions By Convening and Intermediate Reviewing Authorities.

(1) The convening and intermediate reviewing authorities shall forward the investigative report setting forth appropriate comments and recording approval or disapproval, in whole or in part, of the proceedings, findings of fact, opinions, and recommendations.

(cont'd) These authorities may amend, expand, or modify findings of fact, and may comment on or make new opinions or recommendations without returning the record, so long as that action is supported by evidence of record. In this connection, such authorities may, in an appropriate case and in lieu of returning the record, conduct their own supplemental investigation to ascertain additional facts.

(2) For the benefit of subsequent reviving authorities, convening and intermediate reviewing authorities shall state clearly (in separate statements or paragraphs) any action taken, or to be taken, and/or recommendations made as a result of matters contained in the record. If the investigative body is also conducting a claims investigation, or if the investigating body is also acting as a board for redress of injuries to property, the reviewing authority's action shall be governed by the applicable provisions of the Claims and Litigation Manual, COMDTINST M5890.9 (series). If the investigating body is inquiring into the loss, compromise, or subjection to compromise, of classified information, the reviewing authority's action will be governed by the applicable provisions of the Coast Guard Security Manual, COMDTINST M5500.11 (series). See also paragraph 1-L-5.

c. Specific Actions By Final Reviewing Authority. The final reviewing authority shall take final action to "approve (or disapprove) the findings of facts (with the following exceptions)". Opinions and recommendations should not be addressed in the final action except to the extent necessary to properly resolve issues and take action. In such cases, the action or opinion or finding of the final action authority shall either state that it is "based on the approved findings of fact", or the action shall include a brief statement of the facts or reasoning which supports the action. The result sought is that the final action is either a "stand alone" document which closes the case, or which is (at the least) complete without reference to prior opinions and recommendations.

3. Disciplinary Action. Unless an individual has been fully accorded the rights of a party before a court of inquiry or an investigation with a hearing, nonjudicial punishment (NJP) may not be predicated exclusively upon the proceedings of an administrative investigation. In such cases, NJP may be premised on the investigative report, but may only be taken after a hearing conducted pursuant to article 15, UCMJ. Whenever punitive disciplinary action is contemplated, initiated, or taken respecting any person as the result of the incident which was the subject of the investigation, such action (its specific nature, including current status) shall be noted in the endorsement of the convening or reviewing authority. Punitive letters of censure, copies, or recommended drafts thereof, shall be included in an investigative report as enclosures. Nonpunitive letters of censure are private in nature and the issuance of such shall not be mentioned in any portion of an investigative report; nor shall a copy or recommended draft of such a nonpunitive letter be included as an enclosure to the report. (Nonpunitive letters shall be separately forwarded to the appropriate commander for issuance.)

4. Additional Information. Each reviewing authority's action will include any information known or reasonably ascertainable at the time of the review concerning actions taken or being taken in the case but not contained in the record or previous endorsements.

5. Format of Actions. To assist in complying with the mandate of the Freedom of Information Act (to make it easier to release the releasable portions of actions by reviewing authorities), convening and reviewing authority actions should reasonably segregate comments on factual matters and on actions they have taken, from comments on opinions and recommendations. See paragraph 1-L-5.

6. Letter Incident Reports (LIR). Letter incident reports are designed to be responsive to two situations.

   a. LIRs provide the operational commander with a report on incidents of a relatively minor nature, but which are important or significant enough to warrant a written report, and which are fully within the capability of the initiating command to resolve.

   b. LIRs provide an alternate method of reporting, and may be used in lieu of a standard investigative report, in incidents which require some further action beyond the initiating command, but are of a relatively simple and straightforward nature. Their use in such circumstances is discretionary with the convening authority after a preliminary evaluation of all the evidence. Letter incident reports requiring action beyond the level of the initiating unit shall be forwarded and processed the same as any other investigative report to the final action authority. Letter incident reports which report matters "fully within the capability of the initiating unit to resolve" may, but need not be, forwarded beyond the level of the immediate operational commander.

K. The Investigative Report - Allocation of Final Reviewing Authority.

1. Officers in Command Other Than the Commandant. Subject to the limitation contained in paragraph 1-K-2:

   a. A district commander has authority to take final action on all investigations convened by the district or by district units.

   b. The Commanding Officer, Coast guard Headquarters, and the commanding officers of Headquarters units with a filled legal officer billet, have authority to take final action on all investigations convened by their respective commands.

   c. The Commander of an MLC has authority to take final action on all investigations convened by that command, and except for reports finalized pursuant to paragraph 1-K-1.a or 1-K-1.b, on all investigations convened by units assigned within the geographic limits of the MLC area of responsibility.

d. Except for reports finalized pursuant to paragraph 1-K-1.a, 1-K-1.b, or 1-K-1.c, the area commander has authority to take final action on all investigations convened by the area or by area units.

Officers listed in paragraphs 1-K-1.a through 1-K-1.d may act through their delegate. Final action on findings of "misconduct" or "not in the line of duty" are subject to appeal pursuant to paragraph 5-N-2. In addition, the Commandant retains overall supervisory authority regarding reports of administrative investigations. On reports (LIR or IR) for which the Commandant is final reviewing authority, officers listed in paragraphs 1-K-1.a through 1-K-1.d may, and normally should, take final action on those aspects of the report which are within their cognizance.

2. Commandant. The Commandant will act as the final reviewing authority only for the following types of administrative investigations:

a. All courts of inquiry.

b. All other reports of administrative investigations involving:

(1) Alleged violations of the Anti-Deficiency Act.

(2) Loss or unauthorized disclosure of classified documents.

(3) Loss, damage or destruction of Coast Guard property where any replacement action, or corrective action to prevent recurrence, is the responsibility of Headquarters.

(4) Significant aviation, shore activity, and motor vehicle casualties, and significant marine casualties, including collisions, groundings, strandings, explosions, and fires, involving Coast Guard vessels longer than 65 feet. Significant is intended not to refer to those cases that are merely important enough that the Commandant should be made aware of them, but rather those cases on which action at a lower level would be inappropriate. All casualties which meet the requirements to be categorized Class A or B mishaps pursuant to the Safety and Occupational Health Manual, COMDTINST M5100.29 (series), shall be considered significant casualties.

(5) Any matter which, in the reviewing authority's judgment, is of such importance as to require final action by the Commandant.

L. Disposition of Investigative Reports.

1. General. The convening authority shall, by endorsement, forward the original of the investigative report as set forth in paragraph 1-J-1. Sufficient copies of the investigative report, including its enclosures, shall be made in order that each level of review may retain a complete copy. If the record of proceedings is treated as a pretrial investigation, or for other reason the original must be retained by the convening authority, or in cases of claims where the original is forwarded to the legal office exercising claims adjudication authority, a copy will be prepared and forwarded to the final reviewing authority in lieu of the original.

2. Reports for which the Commandant is Final Reviewing Authority. The original and one copy of these records will be forwarded to the Commandant (G-LGL). Commandant (G-LGL) will review each record for completeness and compliance with this manual and then route it to all Headquarters divisions with an apparent interest in the matter (including the facility managers, safety program managers, and/or the training and professionalism manager where appropriate) for review and comment. Routing shall terminate with the cognizant operating, facility or support program manager, who will prepare the final action. Commandant (G-CSP) shall review all reports of incidents which are class A or B mishaps as defined in chapter 2 of COMDTINST M5100.29. Any significant differences between the findings of the report and the findings of the mishap investigation shall be reported to the Chief of Staff for resolution, Commandant (G-LGL) will assist the cognizant program manager in the preparation of the final action, or in cases of reports to be signed by the Chief Counsel, will prepare the final action. Authority to sign the final action is set forth as follows:

   a. Commandant. The Commandant will sign the final action on:

      (1) Reports involving matters of substantial Congressional interest, substantial public complaints against the actions of Coast Guard personnel, or substantial public criticism of Coast Guard operations.

      (2) Reports which in the opinion of the Chief Counsel or any office chief concerned are of such importance that the Commandant should take final action.

   b. Office Chiefs. The cognizant office chief will sign the final action on reports particularly within the cognizance of that office.

   c. Chief Counsel. The Chief Counsel will sign the final action on all other reports.

   The above officers may redelegate this authority, except that authority to sign actions which disagree with an action personally signed by a flag officer listed in paragraph 1-K-1 may not be redelegated. Commandant (G-LGL) is custodian of all records finalized pursuant to this paragraph. The cognizant action office will forward copies of final actions as set forth in paragraphs 1-L-3.a and 1-L-3.b. Copies of all records and the final actions shall be forwarded to Commandant (G-LGL) for custody. Commandant (G-LGL) will route a copy of all final actions which direct further corrective action by Commandant to Commandant (G-CSP). Commandant (G-CSP) will monitor the accomplishment of such actions and keep the Chief of Staff apprised of their status. Cognizant program managers shall notify Commandant (G-CSP) when they have completed a corrective action directed by the final action on a report.

3. Reports For Which Final Action Is Taken By Officers in Command Other Than the Commandant. The final reviewing authority is the custodian for, and shall retain the original of, all records finalized. The final reviewing authority shall forward copies as follows:

a. Injury Reports and Reports of Illness of Reservists. A copy will be filed in the field service record of the individual, and a copy forwarded to Commandant (G-PO), (G-PE) or (G-RSA), as appropriate.

b. Other Reports Involving Line of Duty/Misconduct Determinations. The final action shall recite the misconduct/line of duty findings, and the finding shall be noted (or a copy of the final action, if appropriate, shall be filed) in the service record and a copy of the final action forwarded as in paragraph 1-L-3.a above. When appeals are taken from adverse misconduct or line of duty findings, the entire record shall accompany the appeal, as provided for in paragraph 5-N-2. In these cases, filing of copies of the action shall not be accomplished pending action on the appeal. Finally, if the report addressed any matters other than line of duty/misconduct, a copy of the entire report shall be forwarded as in paragraph 1-L-3.c below.

c. All Other Reports.

(1) Standard Investigative Reports. A complete copy of the record shall be forwarded to the appropriate Headquarters operations, facility or support program manager having primary cognizance of the subject matter of the report. The program manager will review the report, and route it to all other Headquarters staff components having any potential interest in any aspect of the report. After it has served its purpose, the copy shall be destroyed using appropriate methods, e.g., burn bag, shredding, etc. See Paperwork Management Manual., COMDTINST M5212.12 (series).

(2) Letter Incident Reports. Letter incident reports are often final upon signature of the initiating officer and forwarding to the immediate operational commander. See paragraph 1-J-6. Further routing or review of such reports is at the discretion of the immediate operational commander. In those cases where, by the nature of the incident, the report is not final (see paragraph 1-J-6), it should be forwarded in the usual manner. In any case where a LIR is forwarded, the immediate operational commander has the option to deem the LIR insufficient for the circumstances, and to direct that a standard investigative report be prepared.

4. Advance Copy of Certain Investigative Reports. In particularly serious cases, and in cases in which the convening authority believes the Commandant or the office adjudicating claims should have advance information, an advance copy of the report may be forwarded directly to Commandant (G-LGL) or to the claims adjudicating official by the senior member of an administrative investigation, and the original report shall so note. In such cases, an advance copy of the endorsement by the convening and reviewing authorities should also be forwarded to Commandant (G-LGL).

5. Freedom of Information Act Considerations. The following information is provided to facilitate locating, in the investigations arena, the policy guidance provided in the Privacy and Freedom of Information Acts Manual, COMDTINST M5260.2 (series). That manual and this manual have been fully

(cont'd) coordinated, with the statements of policy generally presented only in the Privacy and Freedom of Information Acts Manual. Should there be found any discrepancy between the information in this manual and that contained in the Privacy and Freedom of Information Acts Manual, that discrepancy must be resolved in favor of the latter publication.

a. Background. Investigative reports are subject to the term of the Freedom of Information Act (FOIA), 5 U.S.C. 552. Portions of these reports are exempt from release. See the Privacy and Freedom of Information Acts Manual, paragraph 11-F-4. For those reports affecting claims, see also paragraphs 4-A-3.d and 1-A-4.

b. Policy. The policies underlying the application of the FOIA are contained in the Privacy and Freedom of Information Acts Manual, paragraph 11-F-4.a. To apply these policies to administrative investigations, it is necessary, both in the investigative report and in actions on the report, to continue to clearly distinguish those matters which are factual, or which refer to actions taken, from opinions and recommendations and other items which may be determined to be pre-decisional or which may pertain to or reveal the deliberative process. See the Privacy and Freedom of Information Acts Manual, paragraph 11-F-4.b.

c. Procedure.

(1) Investigative Reports. Release of reports of administrative investigations shall be in accordance with the FOIA.

(2) Action on Reports. Convening and intermediate reviewing authorities shall take action on investigative reports as set forth in paragraph 1-J-2.b. Final reviewing authorities shall take action pursuant to paragraph 1-J-2.c. Release of actions of reviewing authorities shall be in accordance with the FOIA. See the Privacy and Freedom of Information Acts Manual, paragraph 11-F-4.b.

M. Right of a Party to a Copy of the Record. A party to a court of inquiry or a formal investigation is entitled, upon request, to a copy of the findings of fact, opinions and recommendations of that body, and to any other material upon which the convening authority action on the proceedings is based. A party is also entitled to copies of any actions taken by subsequent reviewing authorities on the proceedings. (Release of records to a party pursuant to this paragraph is a limited and protected release, and does not change the exempt status of these materials under the FOIA, and thus should not be construed as modifying the provisions of paragraph 1-L-5.) When an administrative investigation is classified, the party will be advised through other means of the content of the proceedings as they relate to the party and of the actions of reviewing authorities on the administrative investigation.

N. Investigations by Coast Guard Intelligence.

1. General. The investigative areas of responsibility of Coast Guard Intelligence (CGI) are set forth in Appendix 3.1 of the MCM, 1984, the Investigations Manual, COMDTINST M5527.1A (series), and COMDTINST 5520.5C (series) dealing with investigative assistance. Officers in command are cautioned to comply with the provisions and spirit of those instructions.

(cont'd) Matters pertaining to espionage, sabotage, subversive activities, fraud against the Government, and major violations of the UCMJ are included within the jurisdiction of CGI. Where CGI is utilized, the officer in command shall take appropriate measures to preserve evidence and to ensure that any other phases of investigation do not compromise or otherwise impede the investigative activities of CGI. In the event the officer in command deems it necessary to proceed with an administrative investigation prior to the completion of the investigative phase by CGI (or other law enforcement agency), the servicing legal officer should be consulted, and communication shall be established with the local CGI office to ensure coordination of the investigative effort. Questions or conflicts should be referred for resolution to the appropriate officer exercising general court-martial jurisdiction.

2. Polygraph Examinations. The inclusion in administrative investigations of polygraph examination reports or their results is prohibited. If any polygraph report or its results appear to be necessary or relevant to an informed decision by any reviewing authority for law enforcement or security purposes, an appropriate cross-reference notation should be made in the investigative report showing its availability. Arrangements for polygraph examinations which are relevant to Coast Guard investigations are normally made by CGI, and the reports and results thereof are retained by that organization.

3. CGI Reports of Investigation (ROI). ROIs should not be included in records of administrative investigations. CGI investigations consist of the ROI (the narrative summary portion) and enclosures. CGI should be notified if enclosures to the ROI will be included in the investigative report. Absent objection by the Senior Agent, clearance is not required for such inclusion. If any ROI appears to be necessary or relevant to an informed decision by any authority reviewing the administrative investigation, an appropriate cross-reference notation should be made in the investigative report indicating its availability.

O. Preliminary Investigation of Incidents.

1. General. Often when an incident occurs, particularly a relatively serious one, it is difficult for the convening authority to initially determine what type of investigation would be most appropriate. In addition, it is almost always desirable to ensure that an investigation is begun as soon as possible so that evidence is not lost through delay. Any of the more complex types of investigations (courts of inquiry and formal boards of investigation) take quite a bit of time to get organized, and will require a significant degree of advance investigation and preparation prior to the hearing. In all these cases, a preliminary determination of the sequence of events, and a determination of which witnesses have information concerning the incident, will significantly assist in the ultimate resolution of the investigation.

2. Suggested Procedure. In any case where it is deemed advisable, the convening authority may immediately order a preliminary investigation by a single individual to ascertain the seriousness of the incident, to interview all witnesses and prepare a summary of their testimony, and to gather and preserve documentary and tangible evidence. Procedures for

(cont'd) such an investigation are those of a one-officer informal investigation. The convening authority may direct (a written appointing order is not required and is normally not used) that an oral report be submitted by a specified date or time. At the time of the oral report, the convening authority has several options. One is to order this single individual to continue to pursue a one-officer informal investigation, and produce a written report (either an IR or a LIR) as set forth in enclosure (5) or (6). Alternatively, the convening authority may convene a court of inquiry or a formal investigation. Summaries of testimony or evidence developed in the preliminary investigation may be used as an aid by the later investigative body. Inasmuch as all courts of inquiry and formal boards of investigation have a counsel for the court or recorder appointed, consideration should be given to detailing the individual who conducted the preliminary investigation to assist such counsel or recorder.

3. Function. The function of the preliminary investigation is to amass sufficient evidence and perspective on the incident that the convening authority will be able to determine the appropriate type investigation to convene. It is not the function of such preliminary investigation to ultimately fix responsibility for the incident or event. Its duties are to obtain statements of witnesses and to gather such evidence as is immediately available, and then to inform the convening authority of this information so that an informed decision may be made.

P. Authority to Administer Oaths. A person on active duty appointed to serve as a one-officer investigation or as a member of a board of investigation, or to serve as president or counsel for the court of any court of inquiry, is empowered by article 136(b), UCMJ, to administer oaths necessary in the performance of these duties. In addition, any person on active duty appointed to serve as recorder for an administrative investigation is hereby empowered to administer oaths necessary in the performance of these duties. See article 136(b)(6), UCMJ, and 14 U.S.C. 636.

A. Definitions.

1. Party. A "party" is an individual who has been so designated in connection with an administrative investigation. See paragraphs 1-E-2.b., 2-B-1 and 2-B-2 for information regarding designation of parties. An individual may be the subject of the investigation (as in an informal misconduct/line of duty investigation (see section 5-M)) without being designated a party. See also paragraphs 2-B-1 and 1-E-2.b.

2. Subject to Inquiry. A person's conduct or performance of duty is "subject to inquiry" when the person is involved in the incident under investigation in such a way that disciplinary action may follow, or the person's rights or privileges may be adversely affected, or personal reputation or professional standing may be jeopardized.

3. Direct Interest. A person has a "direct interest" in the subject of inquiry when the findings, opinions, or recommendations of the administrative investigation:

   a. may reflect questionable or unsatisfactory conduct or performance of duty; or

   b. may relate to a matter over which the person has a duty or right to exercise official control.

B. Designation of Parties.

1. Effect of Designation. The purpose and effect of designating an individual a party is to afford that individual a hearing concerning possibly adverse information about the individual's conduct or performance of duty. The majority of investigations, although inquiring to some degree into conduct or performance of duty, have resulted in relatively few instances in which adverse action is taken without separate administrative or judicial proceedings. Accordingly, as discussed in paragraph 1-E-2, it is generally not necessary to designate parties to investigations unless the subject matter of the investigation involves such disputed issues of fact that a substantial risk of injustice to the person or persons would exist if they were not afforded the rights of a party during the investigation.

2. Who May Be Designated a Party.

   a. Court of Inquiry.

      (1) Any person subject to the UCMJ whose conduct or performance of duty is subject to inquiry shall be designated a party.

      (2) Any person subject to the UCMJ or employed by the Department of Defense who has a direct interest in the subject of inquiry shall, upon request to the court or convening authority, be designated a party.

(3) Any member of the Coast Guard Reserve, if not subject to the UCMJ, whose conduct or performance of duty is subject to inquiry, or any person employed by the Coast Guard or another agency of the Federal government, or a member of the Coast Guard Auxiliary, who has a direct interest in the subject of inquiry, may upon the person's request to the court or convening authority, be designated a party.

(4) No other person my be designated as a party unless expressly authorized by Commandant (G-LGL).

b. Formal Investigations (Those Required to Conduct a Hearing).

(1) Any member of the Coast Guard, or Coast Guard Reserve, subject to the UCMJ whose conduct or performance of duty is subject to inquiry may be designated a party before a formal investigation constituted under this manual.

(2) Any member of an armed force, other than the Coast Guard, subject to the UCMJ; any person employed by the Department of Defense or the Department of Transportation; any member of the Coast Guard Reserve not subject to the UCMJ; or any member of the Coast Guard Auxiliary; who has a direct interest in the subject of inquiry may, upon that person's request, be designated a party before a formal investigation constituted under this manual.

(3) No other person may be designated a party unless expressly authorized by Commandant (C-LGL).

c. Informal Investigations (Those Not Authorized to Conduct a Hearing). No person may be designated a party before informal investigations constituted under this manual. However, such persons may be entitled to the earnings discussed in paragraph 2-E-3.

3. Who May Designate. Parties may (or shall, as appropriate) be designated by the convening authority of a court of inquiry or formal investigation, by any court of inquiry, or by a formal investigation when expressly authorized to do so by the convening authority, subject to the following considerations:

a. When parties are to be designated, and it is apparent at the time of issuance of the appointing order that a person should be designated (and the person may be designated without that person's request), the convening authority should include such designation in the appointing order. The convening authority's power to designate continues during the entire proceedings before a court of inquiry or formal investigation.

b. If at any time during the course of an investigation by a court of inquiry, or by a formal investigation authorized to designate parties, it appears to the court of inquiry or investigation that any person not previously designated a party should be so designated, that person shall be informed of that conclusion, designated (or advised of the right to request to be designated) a party, and when designated be informed of and accorded rights as such.

C. Change In Status of a Party. If it no longer appears that a person previously designated a party is materially involved in the matter under investigation, that person shall be informed of that conclusion, and the designation as a party may be withdrawn by the court of inquiry or formal investigation upon application of that party or upon the court or body's own initiative.

D. Rights of a Party.

1. General. A person designated a party before an administrative investigation shall be advised of and accorded the following rights:

a. To be given due notice of such designation.

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

c. To be represented by counsel. See paragraph 2-D-2 below,

d. To examine and to object to the introduction of physical and documentary evidence and written statements.

e. To object to the testimony of witnesses and to cross-examine witnesses other than the party's own.

f. To introduce evidence.

g. To testify as a witness.

h. The right against self-incrimination; and, if applicable, the rights set forth in article 31, UCMJ.

i. To make a voluntary unsworn statement, oral or written, to be included in the record of proceedings.

j. To make an argument at the conclusion of presentation of evidence.

k. To be properly advised concerning the Privacy Act of 1974. See section 2-H and enclosure (8).

NOTE: In courts of inquiry only, a party shall be advised of and accorded two additional rights.

l. To challenge members of the court of inquiry for cause stated to the court. See article 135(d), UCMJ, section 3-F, and enclosure (4) of this manual.

m. If charged with an offense, not to be called as a witness unless the party so wishes.

2. Right to Counsel.

a. Military Parties. A military party is entitled to be represented during the proceedings of any administrative investigation by civilian counsel provided by the party at no expense to the government or by military counsel provided by the government at no expense to the party. In any case in which a party declines to be represented by a qualified appointed counsel, the party is not entitled to have a different counsel appointed. Refer to the Military Justice Manual, COMDTINST M5810.1 (series), for rights to counsel in an administrative investigation which is to be used as an investigation pursuant to article 32, UCMJ.

b. Civilian Parties. A civilian party is entitled to be represented during the proceedings of any administrative investigation by civilian counsel provided by the party at no expense to the government. Appointed military counsel will not be provided for a civilian party except under one of the following circumstances:

(1) the highly unusual situation wherein the civilian party is subject to trial by court-martial, and the court of inquiry or investigation is to be used as a pre-trial investigation under article 32, UCMJ, or

(2) doubt exists as to the mental or physical competency of the civilian party, and the party is not represented by counsel capable of adequately protecting the party's interests.

c. Qualifications of Counsel. Appointed military counsel shall be qualified under article 27(b), UCMJ. If it is not practicable to appoint such qualified counsel, the convening authority may appoint counsel qualified under article 27(b)(1) only, or if such is not practicable counsel with lesser qualification, but in either case the convening authority shall provide an explanation for such action in the record. There are no special legal qualifications required of civilian counsel provided by the party. In any case in which the court or investigation is to be used as an investigation under article 32, UCMJ, and the party utilizes nonlawyer civilian counsel or requests unqualified military counsel, the party must be carefully advised of the right to the appointment of qualified military counsel, and that proceeding without such counsel will be considered a waiver of this right.

d. Duties of Counsel. It is the duty of counsel to represent the party to the best of the counsel's ability and to protect and safeguard the interests of the party by all ethical and legal means. If counsel for a party is absent, the court of inquiry or formal investigation shall not proceed until counsel's return, or until a new counsel for the party is retained by the party or appointed by the convening authority, or an adequate opportunity to retain counsel has been provided. The party may waive the right to have counsel present provided the party understands the right to counsel and the effect of the waiver. The explanation of this right and any waiver shall be reported verbatim in the record.

e. Counsel for an Incompetent Party. When directing that a court of inquiry or an administrative investigation be convened, and a medical officer states that a member to be designated a party is incompetent due to injuries or disease and will remain so for at least 60 days, the convening authority will ensure that a qualified counsel is appointed to represent the party during the proceedings of the court or investigation. Such counsel is obligated to exercise those of the party's rights which can be exercised by counsel, and to represent the party as though the party were present.

3. Explanation of Rights. At the outset of the proceeding of a court of inquiry or formal investigation, all designated parties shall be informed of the rights set forth in paragraph 2-D-1, and shall be asked if further explanation is desired regarding any of such rights. Further explanation shall be provided to any party who requests it. Counsel for any party, if qualified under article 27(b), UCMJ (article 27(b)(1) for civilian counsel), may waive such information and explanation by stating to the investigative body that the party to the proceeding has been fully informed and understands the rights of a party. Upon designation of a person as a party during the course of the investigative proceeding, the same course shall be followed as regards information and explanation as to rights. A waiver may similarly be made by counsel.

4. Examination of Previous Record by Party Designated During Proceedings; Recall of Witnesses. The record of proceedings to the point the investigation has progressed will be made available for examination by a newly designated party and counsel. Such a party may request that specified witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit the recalling of a witness, evidence may be obtained by means set forth in section 3-I. In the absence of compelling justification, investigative proceedings shall not be suspended pending the obtaining of such evidence.

5. Previous Testimony of Witness Thereafter Designated as a Party. Any testimony given by a person as a witness prior to designation as a party remains in the record and is considered and used thereafter without regard to the subsequent designation as a party.

6. Person on Witness Stand When Designated Party. If a person is on the witness stand at the time of designation as a party, or is thereafter called as a witness, see section 2.E. (Witnesses) for the procedure to be followed.

7. Failure to Accord Rights.

   a. Nonjudicial punishment is not permitted solely on the basis of the record of a court of inquiry or investigation before which the accused was not accorded the rights of a party. A separate NJP proceeding would be required in such case.

b. No adverse determination respecting the contracting, or incurrence of, a disease or injury (i.e., not in line of duty or as the result of misconduct), is permitted solely on the basis of the record of an administrative investigation before which the person concerned was not designated a party or accorded the rights of a party. A limited informal hearing pursuant to section 5-M would be required in such case.

c. In cases where a general court-martial is contemplated, the record of a court of inquiry or administrative investigation before which the accused was not designated a party or accorded the rights of a party may not be used in lieu of a formal pretrial investigation of the offenses charged against the accused under article 32, UCMJ.

d. In case of charges brought against an accused at a court-martial or other tribunal required to follow the Military Rules of Evidence, sworn testimony contained in the record of proceedings of a court of inquiry or formal investigation, before which the accused was not designated a party or accorded the rights of a party, is subject to the evidentiary limitations contained in article 50, UCMJ.

8. Waiver of Rights of a Party. Waiver of rights listed in paragraph 2-D-1 which involve notice, information, or advice to be given a party (except regarding an offense of which the person is accused or suspected), may be effected by explicit statement on the record by the party or by the party's counsel when that counsel is qualified under article 27(b), UCMJ (article 27(b)(1) for civilian counsel). Advice as to rights set forth in article 31(b) may not be waived. Any other right is conclusively waived by the party's failing to exercise it unless there appears on the record a request to exercise it, and such request has been denied.

9. Right to a Copy of the Record. A party to an investigation is entitled to a copy of the investigative report. Consideration should be given to conducting a separate pretrial investigation when the investigative report contains either classified material or any unclassified material which might be of assistance in the prosecution or support of a claim against the United States.

E. Witnesses.

1. Calling Witnesses. Only courts of inquiry and investigations convened for the redress of injuries to property (see article 139, UCMJ, and chapter 7 of the Claims and Litigation Manual, COMDTINST M5890.9) have powers to subpoena witnesses. However, all administrative investigations may request civilian witnesses to attend, whether or not they are connected in any way with the Coast Guard, and may request cognizant commanding officers to make members of the Armed Forces and persons employed by the Department of Transportation available to testify. An administrative investigation is not confined to a federal reservation in its quest for relevant testimony.

2. Competency of Witnesses. Any party or other person charged with an offense relating to the matter under investigation shall be a competent witness before a court of inquiry, only at that person's own request (18 U.S.C. 3481). A person is charged with an offense when formally accused by indictment or information, or by the preferring of charges and specifications pursuant to article 30, UCMJ. Subject to this statutory limitation, any party or other person, regardless of whether charged with or suspected of an offense, is competent as a witness before any administrative investigation, and may be called whether or not the person requests to be a witness.

3. Advice to Witnesses. The rights against self-incrimination, and the provisions of article 31, UCMJ, are fully applicable to administrative investigations. The administrative investigation should advise an apparently uninformed witness of the right to decline to answer any question which might tend to incriminate. See MRE 301(b), MCM 1984. If the person is suspected of or charged with an offense, advice shall also be given of the rights set forth in article 31(b), UCMJ, Miranda and Tampia. See paragraph 4-B-2.d(2) and enclosure 5, Military Justice Manual, COMDTINST M5810.1A. Thereafter, the right to refrain from testifying regarding the offense of which suspected or charged must be claimed by the witness. Despite assertion of such a right, the witness may be questioned on matters other than the offense of which suspected or charged. However, in most cases, prior to proceeding with such questions, the investigation would be well advised to seek legal advice. See paragraphs 3-D-7 and 4-A-2.g.

F. Warning Required Before Requesting Statements Regarding Disease or Injury.

A member of the armed forces may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that the member has. Any such signed statement against the member's interests, is invalid. See 10 U.S.C. 1219. Any person in the armed forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury suffered, shall be advised of the right not to sign such a statement. The spirit of this section will be deemed violated if a person, in the course of an investigation, obtains the member's oral statement and reduces it to writing, unless the above advice was given first. In addition, the coast Guard imposes limitations on the use of certain information obtained as part of epidemiological surveys. See paragraph 4.h. of COMDTINST 6220.1.

G. Warning Witnesses Not to Discuss Testimony.

The administrative investigation may direct witnesses who are subject to Coast Guard authority to not discuss their testimony with other witnesses or persons who have no official interest in the matter until the investigation is completed. Other witnesses may be requested, in a similar manner, not to discuss their testimony. This warning may be given to ensure that the matter before the administrative investigation can be fairly heard and to eliminate the possibility that disclosures of the substance of the testimony may influence the testimony of witnesses still to be heard.

H. Advice Required by the Privacy Act. The following procedures shall be applicable to all administrative fact-finding bodies.

1. Advice Required. When any individual is requested by a person acting on the Government's behalf to supply protected personal information in the course of the investigation, the person making the request shall first provide the individual, in duplicate, a Privacy Act statement containing the particular information prescribed in the Privacy and Freedom of Information Acts Manual, COMDTINST M5260.2 (series). See enclosure (8) for a form useful for this purpose when the investigation is to determine whether a misconduct or not in the line of duty findings are appropriate. Individuals shall not be required to acknowledge receipt of a Privacy Act statement, either by signing the statement or by any other means. The requirement for a Privacy Act statement is in addition to other applicable warnings or advisements required by this manual, or warnings under article 31, UCMJ, and related court decisions, where applicable.

2. Protected Personal Information Defined. For purposes of this manual, protected personal information is defined as personal information solicited from an individual which will be placed in a record (system of records) and which is retrievable from that record by using that persons name or personal identifier.

3. Practical Application. It is not necessary to give a Privacy Act statement to every person interviewed during an investigation. It is necessary to give a Privacy Act statement to any individual who is interviewed in connection with an investigation only if that individual is:

   a. the subject of the investigation (e.g., the injured member subject to a line of duty investigation);

   b. a party to the investigation; or

   c. identified in the subject line of the investigative report.

4. Privacy Act Statement Contents. Enclosure 8, pages 1 to 3, provides guidance to supplement the Privacy and Freedom of Information Acts Manual, COMDTINST M5260.2 (series). It is intended to include those items of information that would be required for a Privacy Act statement in connection with many kinds of administrative investigations. Page 4 contains a Privacy Act statement which has been designed to be given to the subject of a line of duty investigation. Questions regarding the use of enclosure (8) should be addressed to the servicing Coast Guard legal officer.

A. Statutory Authority. Statutory authority to conduct courts of inquiry is contained in article 135, UCMJ (10 U.S.C. 935).

B. Appointing Order.

1. Authority. Authority to convene a court of inquiry in the Coast Guard is vested only to officers authorized to convene general courts-martial.

2. Form of Appointing Order. Courts of inquiry are convened by an appointing order signed by the convening authority. The appointing order shall be in letter form addressed to the prospective president of the court. When circumstances warrant, a court of inquiry may be convened on oral or message orders. Written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of oral orders shall be included in the record of proceedings of the court.

3. Contents of Appointing Order. The appointing order of a court of inquiry shall name the president, the members, and the counsel for the court. Other counsel shall be detailed by the cognizant legal officer or staff judge advocate in the same manner as for counsel at courts-martial. When appropriate, the convening authority shall also designate parties to the inquiry. The appointing order shall specify the time and place for initial meeting. It shall recite the specific purposes of the inquiry and shall contain explicit instructions as to the scope of the inquiry. Since the information developed by the court is used not only by the convening authority, but also by authorities remote from the command, the appointing order should contain ample instructions to ensure the accomplishment of the purposes for which the court was convened. The court shall be directed to report findings of fact. If the convening authority desires, the appointing order may also direct that opinions and recommendations be submitted. The appointing order should, in appropriate cases, provide for the appointment of reporters and interpreters. For an example of an appointing order for a court of inquiry, see enclosure (3).

4. Seniority of Members. Whenever feasible, all members of a court of inquiry should be senior in rank to any officer designated a party in the appointing order. However, even if some members are junior to a party, the majority of the members of a court of inquiry shall be senior to any designated party. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified in order to revise the membership in accordance with the seniority principle. Whenever it has not been feasible to adhere to the seniority principle in membership, the convening authority shall attach an explanation of the reasons therefor in the action on the record of proceedings. The counsel for the court need not be senior to any of the parties.

5. Amendments. The convening authority may, at any time prior to the final report of the court, amend the appointing order to change the membership, limit or increase the scope of the inquiry, name additional parties, or to provide additional instructions.

6. Advance copies. The convening authority shall forward au advance copy of the appointing order to Commandant (G-LGL) to keep Headquarters informed of significant occurrences and actions being taken in connection with the court.

C. Duties of the Court.

1. The President of the Court. The president shall decide upon matters relating to the routine business of the court. The president may recess or adjourn the court to meet at a time or place as will be convenient and proper. Whenever it appears desirable to any member of the court that certain information be elicited or developed in the interest of establishing or clarifying any matter, the president will advise the counsel for the court and request that witnesses be called, further lines of questioning be pursued, or other evidence be adduced The president should ensure that the counsel for the court has done adequate advance investigation, assembled witness statements, and marshalled the documentary and tangible evidence, so that the formal hearing proceedings may proceed in an orderly and efficient fashion.

2. The Members of the Court. Attendance at the proceedings of a court of inquiry becomes the primary duty of an officer appointed a member. Members are expected to be in attendance at the designated time and place unless prevented by illness, ordered away by competent authority, or excused by the convening authority. In the absence of a member, the court may proceed with the inquiry only if authorized and directed to do so by the convening authority. Unless at least three members and a majority of the total membership are present, no business other than adjournment shall be conducted. If it appears that a member will be absent for more than a short period of time and the absence reduces the court to less than three members, the convening authority shall be advised. The convening authority shall appoint additional members to ensure that at least three members will be present. Any substitute or additional member appointed shall examine the record of the proceedings conducted prior to sitting as a member, and accomplishment of that shall be noted on the record. After reviewing the record, each substituted and additional member shall participate fully in the subsequent proceedings of the court, its deliberations, findings of fact, opinions, and recommendations. When a member of the court who has been temporarily absent returns, the record of that part of the proceedings conducted in the member's absence shall be examined by the member, and such noted in the record. A temporary absence does not preclude that member's full participation in the deliberations of the court relative to findings of fact, opinions, and recommendations.

3. Reserved.

4. Counsel for the Court.

a. Appointment. The appointment of a counsel for the court is mandatory. The counsel for the court must be a law specialist qualified in accordance with article 27(b), UCMJ. Assistant counsel for the court, who need not be law specialists, may be appointed. If an understanding of the matters under inquiry involves a high degree

(cont'd) of technical knowledge, convening authorities are encouraged to appoint an officer who possesses this technical knowledge as assistant counsel for the court. The counsel for the court may communicate directly with the convening authority or the president of the court on preheating matters.

b. Initial Investigation. Prior to the hearing, the counsel for the court conducts an initial investigation of the incident. All witnesses should be interviewed, and witness statements taken and in most cases reduced to writing for later use by the court. The counsel for the court shall insure that section 2-H is complied with prior to requesting an individual to supply protected personal information. Documentary evidence should be assembled, and tangible evidence identified and marshalled for presentation to the board.

c. Hearing. The counsel for the court shall call witnesses except those requested or called by a party, and arrange for a place for the court to meet, and for the assistance of reporters, interpreters, orderlies, and clerical assistants. Additionally, the counsel for the court shall administer the oath or affirmation to all members, reporters, interpreters, and witnesses, and supervise the recording of the proceedings and the preparation of the record. The counsel for the court shall insure that the Privacy Act is fully complied with prior to requesting an individual to supply protected personal information. See section 2-H. If the counsel for the court is absent, an assistant counsel for the court who is a qualified law specialist, may, in the discretion of the court, act as counsel for the court, and the proceedings may continue. Otherwise, the court shall adjourn, report the absence to the convening authority, and await the return of the counsel for the court or the appointment of a new counsel for the court.

d. Responsibilities. The counsel for the court is not a prosecutor. The primary responsibility of the counsel for the court is to explore all sources of information in order to bring out the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. The counsel for the court may, and on request should, defer to counsel for the party, if any, to bring forward evidence favorable to that party. The counsel for the court may oppose motions made by counsel for a party, argue in behalf of the court considering certain evidence, and make an argument at the conclusion of presentation of the evidence.

5. Reporters and Interpreters.

a. Reporters. The reporters appointed to record the proceedings of the court of inquiry may use longhand, shorthand, or a mechanical or electronic recording device. A verbatim record of the proceedings shall be compiled.

b. Interpreters. In all courts of inquiry where testimony is to be given in other than English language, an interpreter shall be appointed. Prior to assuming the duties of the office, the court shall be satisfied that the interpreter is fully conversant with the language to be interpreted and has a good command of the English language. If it appears to the court that the interpreter is experiencing difficulty in interpreting, or if there is an objection by a party that the interpreter is not fully and correctly interpreting, the court shall immediately inquire into the matter. If it appears that the interpreter is not able to interpret accurately and intelligently, the court shall report this to the convening authority and request that a competent person be appointed. Until the appointment of another interpreter, no further examination of the witness whose testimony is to be interpreted shall be undertaken.

6. Counsel for the Parties. Counsel rights for a party are set forth in paragraph 2-D-2. A party is entitled to be represented by counsel during the proceedings. If counsel for a party is absent, see paragraph 2-D-2.d.

D. General Procedure.

1. General. A court of inquiry is governed generally by the principles of military law, applying procedural rules similar to those for trials by general courts-martial where appropriate. The court should refer to the Manual for Courts-Martial, Court-Martial Reports, Military Justice Reporter, and other authoritative legal publications for guidance. However, the specific purposes of the inquiry and the explicit instructions as to the scope of the inquiry set forth in the appointing order shall be given primary consideration in the determination of procedural questions not expressly covered in this manual. A court of inquiry shall assemble at the place and, as nearly as practicable, at the time named in the appointing order. The court may adjourn, when desirable, to any place as may be convenient to the court. The members shall take their seats in the same order as on courts-martial. Courts of inquiry are usually cleared (of nonmembers) until the order constituting them and the instructions contained in the appointing order have been read and the manner of proceeding decided. At the discretion of the president, counsel for the court need not withdraw when the court is cleared for preliminary procedures.

2. Sessions. The proceedings shall be public unless the convening authority or the court, for security reasons or other good cause (which shall be noted in the record), directs that the entire proceedings or any portion be closed to the public. The fact that the inquiry is not open to the public does not require exclusion of the parties to the inquiry or their counsel. If the matter to be heard requires a security clearance, and counsel or the parties have not been granted such clearance, the convening authority shall be advised. Granting of a security clearance to a counsel or a party shall be in accordance with the Coast Guard Security Manual, COMDTINST M5500.11 (series).

3. Clearing the Court. The court may be cleared at any time for deliberation or consolation, whereupon parties and their counsel will withdraw. The counsel for the court will also withdraw. During an open hearing when numerous spectators are present, the court may withdraw to another room for diliberation or consultation

4. Spectators - Publicity. As a general rule, members of the press will be permitted to attend open sessions of a court of inquiry. No special section of the hearing room shall be set aside for the press. During any session of the court, recording or video taping, or radio or television broadcasting of the proceedings, or the taking of photographs in the courtroom or from the courtroom shall not be permitted.

5. Recess and Adjournment. Courts of inquiry may recess or adjourn for such time as may be necessary without permission of the convening authority. However, if the adjournment is for more than three days, the convening authority shall be informed by the president.

6. Rules of Evidence. The court is not bound by the Military Rules of Evidence (MRE) prescribed for trials by court-martial, except that the court shall apply the privileges contained in section V of the MRE. Admission of reliable evidence, notwithstanding an exclusionary rule, is a matter of discretion. The court should, however, impose reasonable bounds of relevance, and compliance with the general spirit of the MRE will promote orderly processing and insure a full, fair, and impartial investigation. The rights of witnesses and parties shall be safeguarded to the fullest extent possible by the court.

7. Resolution of Disputed Issues. In some circumstances, the court may be called upon to decide matters of procedure or evidence, or other matters upon which it has received conflicting argument from the counsel for the court and counsel for a party, or may otherwise be in need of advice from a competent source independent of the court. In such case, the servicing Coast Guard legal officer should be consulted, and a law specialist may be made available to provide legal advice to the court.

E. Presence of Party and Counsel.

1. At Organization of Court. As soon as the court has determined the manner of proceeding and whether the court will be open or closed to the public, each party named in the appointing order shall be called before the court. Parties may be called individually, in groups, or all together. Any party represented by counsel may appear before the court with counsel at this time. The appointing order shall be read, and the rights as set forth in section 2-D of this manual shall be fully explained by the counsel for the court, unless waived as set forth in paragraph 2-D-3. If any party is not represented by counsel of choice and desires such representation at no expense to the government, the court shall recess and the party shall be given a reasonable opportunity to retain such counsel. If it is essential that the court take the testimony of a person not a party to the inquiry, which might otherwise become impossible to obtain, then, in lieu of recessing, the court shall appoint counsel (a law specialist qualified under article 27(b), UCMJ) to represent the party

(cont'd) until counsel of choice is retained and present, or until the completion of the testimony that made the appointment of counsel necessary. The court may then proceed with the taking of such testimony.

2. Waiver. A party to a court of inquiry may waive the right to be present during any portion of the proceedings. This waiver must be intelligently and knowingly made by the party, or by counsel if qualified to make such a waiver as discussed in paragraph 2-D-3, and the court shall carefully consider such waiver prior to proceeding in the absence of a party. Unauthorized absence of a party after the convening of the court may be construed to be a waiver of this right. Likewise, where a party is represented by counsel, the party may waive the presence of counsel at any session of the court. In the event of the absence of a party or counsel, the record shall reflect such absence, and the express waiver of the right to be present by the party. The record shall also affirmatively note the beginning and the end of the absence of any party or counsel.

F. Challenge of Members of a Court.

1. The Right. Any member of a court of inquiry may be challenged for cause at any time during the proceedings. The court will not entertain a challenge to more than one member of the court at a time. After stating the ground for challenge, the party may examine the member concerning that ground. This examination shall be under oath, and it shall be recorded verbatim. The counsel for the court may cross-examine the challenged member. After the examination and cross-examination, any other evidence pertinent to the challenge will be heard.

2. Decision on Challenge. The burden of proving the ground for challenge is on the party who made the challenge. The decision on the challenge shall be according to the preponderance of the evidence. A sustained challenge is immediately reported to the convening authority. Challenges to members shall be heard and decided by the remaining members out of the presence of the challenged member. If a successful challenge against a member reduces the number of members below three, the court shall adjourn until the convening authority appoints another member. If the membership is not reduced below three, the court may proceed with its inquiry unless otherwise directed by the convening authority.

G. Oaths.

1. Counsel for the Court. The counsel for the court shall, before entering upon the duties of the office, make an oath or affirmation, administered by the president, in the following form.

> "Do you swear or affirm that you will faithfully perform the duties of counsel for the court (or assistant counsel for the court) to this court. So help you God."

2. Court Members. Before the court begins the inquiry prescribed by the appointing order, the counsel for the court shall administer to the members the following oath or affirmation.

"Do you, AB, CD, and EF, swear or affirm that you will faithfully perform all the duties incumbent upon you as members of this court, and that you will examine and inquire, according to the evidence, into the matter now before you without partiality. So help you God."

3. Reporter. The reporter shall, before entering upon the duties of the office, make an oath or affirmation, administered by the counsel for the court, in the following form.

"Do you swear or affirm that you will faithfully perform the duties of reporter to this court. So help you God."

4. Interpreter. Every interpreter shall, before entering upon the duties of the office, make oath or affirmation, administered by the counsel for the court, in the following form.

"Do you swear or affirm that you will faithfully perform the duties of interpreter to this court. So help you God."

5. Challenged Member. When a challenged member is to be examined under oath as to fitness to serve, the counsel for the court shall administer the following oath or affirmation.

"Do you swear or affirm that you will answer truthfully to the questions touching your competency to serve as a member of the court in this case. So help you God."

6. Witnesses. All persons who testify before the court shall be examined on oath or affirmation, administered by the counsel for the court before they first testify, in the following form.

"Do you swear or affirm that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth. So help you God."

Note: If it is known in advance that the individual being sworn will "affirm" rather than "swear," the words "swear or" and "so help you God" should be omitted from the oath.

H. Witnesses.

1. Order of Presentation. Witnesses are usually examined in the following order: witnesses called by the counsel for the court; witnesses called by a party; witnesses called by the counsel for the court in rebuttal; witnesses called by a party in rebuttal; and witnesses requested by the court. The order of examining each witness is usually direct examination, cross-examination, redirect examination, recross-examination, and examination by the court. Each witness will then be permitted to make a statement relating to matters pertinent to the inquiry not previously brought out in testimony. Thereafter, the counsel for the court and counsel for the parties will be permitted to examine the witness further concerning these matters as well as any matters touched upon in examination by the court. The foregoing order of presentation need not be

(cont'd) followed when the court, in the exercise of its sound discretion, feels that a deviation therefrom will secure a more effective presentation of the evidence. However, such deviation should not be permitted to prejudice the interests of any party.

2. Attendance of Witnesses. It is the duty of the counsel for the court to arrange for the attendance of all witnesses, both military and civilian. Witnesses may be summoned to appear and be examined before courts of inquiry in the same manner as provided for courts-martial. See section 2-Q, Military Justice Manual, COMDTINST H5810.1. A court of inquiry possesses subpoena power.

3. Interviewing Witnesses. The counsel for the court, any party, and counsel for any party are not precluded from interviewing any witness at any reasonable time, regardless of whether such witness has previously testified. It would not be unusual, for example, for the counsel for the court to have fully investigated the incident by gathering evidence and interviewing all witnesses, following procedures associated with informal investigations, prior to any witness appearing before the court of inquiry.

4. Exclusion of Witnesses. Witnesses other than a party should be excluded from the courtroom except when testifying. In some cases expert witnesses may not be able to testify in an informed manner unless they are fully aware of all the circumstances surrounding the incident under inquiry. In such instances, and where the expert witnesses cannot give direct testimony concerning the incident, it may be necessary to allow the expert to be present during the open sessions of the court in order that the expert may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the incident. In these instances, the record should affirmatively show that the witness was present during the testimony of other witnesses.

5. Examination of Witnesses. A witness, once sworn, should be informed of the nature of the inquiry unless it appears from the record that the witness has been previously so informed. The court should protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into private affairs. To prevent the false shaping of testimony through collusion, coercion, or other means, the court may request or direct witnesses to refrain from discussing their testimony or prospective testimony with other witnesses or any other person not having an official interest in the inquiry.

I. Affidavits and Depositions.

1. Conditions for Use of Affidavits. Under appropriate circumstances, when the testimony of a witness is desired by a court of inquiry, but is not readily obtainable, an affidavit of the witness may be received in evidence by the court. Such circumstances may include cases where the present whereabouts of the witness is unknown, or where the witness resides or is beyond the state, territory, commonwealth, or judicial district in which the court is sitting, or beyond the distance of one hundred miles from the place where the court is sitting. They may also include cases wherein the witness, by reason of age, sickness, bodily

(cont'd) infirmity, imprisonment, military necessity, immunity to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place where the court is sitting. In addition, an affidavit in lieu of testimony may be used in the discretion of the court when all parties concur.

2. Situations in which Depositions are Desired. If a situation arises in which it would be desirable to take a deposition pursuant to oral or written interrogatories, this may be accomplished in such manner as the court of inquiry directs after hearing presentations by the counsel for the court and parties concerned. The use of videotape is authorized and may be preferred to more traditional vehicles for depositions. If there is any likelihood that the deposition might be required in a subsequent court-martial proceeding, the procedures should comply with Rule 702, MCM, 1984, and guidelines prescribed in decisions of the Court of Military Appeals.

J. Real Evidence. In addition to the discussion in this section, the material in section 4-B, particularly paragraph 4-B-2, should be reviewed.

1. Documents. The original of a document or writing is superior in evidentiary value to a copy. This is true even as regards modern photographic duplications, which are susceptible to tampering through such devices as masking or page substitutions. Often it is not feasible to incorporate originals in court of inquiry records due to such factors as inconvenience involved in obtaining them, or their required retention in official files, or for use in a subsequent court-martial or civil court proceeding. In such cases, the record of proceedings should reflect the location of the original, contain the most reliable copy obtainable, and indicate how its reliability was established (e.g., certificate of custodian of official records or comparison of copy with original document by counsel and/or members of the court of inquiry). A court of inquiry may receive a copy of a document, noting upon the record at the time that later assurance of the veracity and authenticity of the document will be submitted to the court or to the convening or reviewing authorities for attachment to the record.

2. Exhibits.

a. General. Exhibits will be numbered in the sequence in which they are received in evidence. It is ordinarily impracticable to attach real evidence (physical objects such as weapons, clothing, pieces of equipment, etc.) to the record. Such exhibits should be clearly and accurately described in the record by testimony or other means (photographs, for example) so that they may be properly considered on review.

b. Custody. At the conclusion of the inquiry, articles received in evidence should be delivered by the counsel for the court to the convening authority (or designated representative), to be preserved for subsequent use as evidence if disciplinary action is to be taken. When final action has been taken in the case, the articles shall be returned to their rightful owners. If the owners are not known, appropriate disposition may be made of them.

c. Copies. When original deck logs, bell books, or other Coast Guard records are received as exhibits, an accurate copy will be substituted when the record is prepared for submission.

K. Communications with the Converting Authority. If at any time during the course of the proceedings it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge or restrict the scope of the inquiry, to alter the composition of the court (whether by augmentation or substitution), or to cancel or otherwise modify any instruction set forth in the appointing order, a report should be made by the president to the convening authority. The court may include recommendations in this report. The convening authority may take such action on this report as is deemed appropriate. Copies of all such communications and replies shall be appended to the record.

L. Visiting Scene of Incident. When practical, it may be desirable to visit the scene of the incident. Usually no testimony is taken at the scene, the sole purpose being to acquaint the court with the physical characteristics of the scene. The court should normally be accompanied to the scene by counsel for the court, the parties and their counsel, and the reporter, but any party may waive attendance.

M. Statements of the Parties. Regardless of whether a party has previously testified as a witness, the party may make an unsworn statement to the court after all the witnesses have testified and before the arguments. The party may not be cross-examined upon this unsworn statement. The counsel for the court or any of the other parties to the inquiry may, however, introduce evidence to rebut any statements of fact contained therein. The statement may be oral or written, and may be made by the party or the counsel. The statement should be factual, not argumentative, in nature.

N. Opening and Closing Argument. After the testimony and statements by the parties, the counsel for the court and the counsel for the parties shall be permitted to present argument if they so desire. The counsel for the court has the right to make the opening argument and, if any argument is made on behalf of a party, a closing argument. The court may, if it so desires, set any reasonable limitation on the arguments.

O. Report by the Court.

1. General. After all the evidence has been presented and all statements and arguments have been received, the court shall declare the inquiry closed. The members will then consider the evidence, statements, and arguments. The instructions contained in the appointing order shall be carefully reexamined and scrupulously followed. Unless specifically directed by the convening authority, the inquiry is not reopened for the announcement of findings of fact, opinions, and recommendations. Rather, the report of findings of fact, opinions and recommendations is prepared in writing and made part of the record. See paragraph 3-0-6.

2. Findings of Fact. The court, after deliberating on the evidence received during the inquiry, shall first proceed to record the facts found which constitute a detailed description of the matter investigated. Care shall be taken to state only facts. The findings of fact shall include only

(cont'd) those facts which the court believes the evidence establishes, and nothing further. A fact need not be proved beyond a reasonable doubt to be listed as such; believable information in the record established by a preponderance of the evidence is adequate.

3. Opinions. If opinions are called for in the appointing order, the court shall list all of its opinions drawn from and supported by the facts. Depending upon the nature of the inquiry and the provisions of the appointing order, opinions may include inferences drawn from the facts, opinions as to performance of duty by individuals concerned or as to performance of functions by equipment involved, and opinions required by regulation.

4. Recommendations. When the appointing order calls for recommendations, the court shall make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the facts found and opinions expressed. If any member of the court recommends trial by court-martial of any party to the inquiry, a charge sheet, signed and sworn to by the member who has so recommended, shall be prepared and submitted to the convening authority with the record of proceedings. See Rule 301, MCM, 1984. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter will be prepared and forwarded with a record of proceedings. If a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the record of proceedings.

5. Disagreement Among Members. The report of the court shall be based upon the opinion of the majority. If a member does not concur with the findings, opinions, or recommendations of a majority of the court, that member shall append a minority report to the record and state explicitly the parts of the majority report with which there is disagreement and the reasons therefore. The minority report may also include additional findings of fact, opinions, or recommendations.

6. Obligation of Secrecy. Although not prohibited by the oath, no member or counsel for the court, or other person officially connected with the inquiry, shall disclose or publish any findings, opinions, or recommendations of the court or the individual members without prior approval of the convening or higher reviewing authority.

P. Preparation and Submission of the Record.

1. Composition. The record of proceedings of a court of inquiry shall include the original appointing order and any other communications from the convening authority. It shall contain the verbatim testimony of all witnesses, all statements of the parties, and arguments of counsel. The verbatim record is intended to be coextensive with the record required in a general court-martial, except that, in the discretion of the court, routine proceedings of the court may be described in the past tense as actions taken in lieu of the present tense recording of language actually used by participants. Advice provided as to the rights of parties, or statements or actions of parties respecting the exercise or waiver of such

(cont'd) rights, shall be in all cases be recorded verbatim. The written report of findings of fact, opinions, and recommendations shall precede the verbatim transcript, and all documents and exhibits received in evidence by the court shall follow it.

2. Signing and Authenticating. All concurring members shall sign the record immediately under the findings of fact, opinions, and recommendations. This includes an officer who participated in only part of the proceedings (provided the officer participated at the time of the findings). Such limited participation shall be disclosed in the record of proceedings. In the case of a minority report, the respective reports must be signed by the members of the court concurring therein. The proceedings shall be authenticated by the signatures of the president and counsel for the court. In case the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president, and in case the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

3. Forwarding. The record of proceedings, together with the number of complete copies required by the circumstances, shall be forwarded to the convening authority by the president using a short letter of transmittal. One complete copy, plainly marked on the cover page "Advance Copy" shall be mailed directly to Commandant (G-LGL).

A. General Provisions for Convening an Investigation.

1. Scope of This Section. This section (4-A) contains procedural options available for convening an administrative investigation under this chapter. A convening authority should include in the order appointing an investigation the options that best fit the circumstances of the matter under investigation. Since each option has certain procedural requirements or safeguards, selecting an option necessarily incorporates those procedural requirements or safeguards prescribed for that option.

2. Convening Authority Options When Ordering an Investigation.

a. General. The types of administrative investigations which may be ordered are set forth in paragraphs 4-A-2.b(1) through 4-A-2.b(5), and are summarized in schematic format in enclosure (1). In most cases, a one-officer informal investigation (which can produce a letter incident report) will ensure adequate and timely investigation. Additional guidance concerning selection of the appropriate administrative investigation is provided in sections 1-D & 1-E.

b. Composition (Membership). See paragraph 4-A-3.e for policy regarding seniority of investigating officers.

(1) Letter Incident Report (LIR). This is not an investigation, but rather a type of report normally prepared for, and signed by, the convening authority. When authorized by the convening authority, an LIR may constitute a report of investigation and be signed by the one-officer investigation. An LIR may be prepared by any person appointed or directed by the convening authority.

(2) One-Officer Informal Investigation. A one-officer informal investigation should consist of one commissioned officer, but may consist of a chief petty officer when the convening authority considers it appropriate. Such an investigation may either produce an investigative report (IR), or prepare a LIR.

(3) Informal Board of Investigation. An informal board of investigation should consist of two or more commissioned officers. Whenever feasible, the senior member should be at least a lieutenant. When the convening authority considers it appropriate, chief petty officers may be assigned as members in addition to at least one commissioned officer.

(4) One-Officer Formal Investigation. A one-officer formal investigation consists of one commissioned officer. Whenever feasible, that officer should be a lieutenant commander or higher.

(5) Formal Board of Investigation. A formal board of investigation should consist of two or more commissioned officers. Whenever feasible, the senior member should be at least a lieutenant commander.

c. Designation of Parties. Subject to requirements and limitations in paragraph 2-B-2, a person whose conduct or performance of duty is subject to inquiry may be designated by a convening authority as a party before a formal investigation. See also paragraph 1-E-2. Additionally, a convening authority may authorize such an investigation to designate parties during the proceedings. Such authorization may be granted or withheld even though the convening authority designated a party or parties in the appointing order. Authorization may be granted broadly or it may be limited. For example, the administrative investigation may be empowered to designate as a party any person whose conduct or performance of duty may be subject to inquiry, subject to limitations contained in paragraph 2-B-2.b, or it may be empowered to designate parties from a specified class of persons, for instance, commissioned officers. For contents of an appointing order authorizing designation of parties, see paragraph 4-A-3.c. When parties are designated, a convening authority must convene a formal investigation.

d. Use of Hearing Procedure. A formal investigation must use the hearing procedures contained in section 4-D (board of investigation) or section 4-E (one-officer investigation). These hearing procedures should not be confused with, or used in place of, the misconduct and line of duty informal hearings required in line of duty investigation cases. See section 5-M.

e. Testimony under Oath. When convening an administrative investigation, a convening authority may direct taking all witness testimony under oath. Such direction is usually reserved for formal investigations. For general procedures regarding witnesses, see sections 2-E, 2-F, 2-G, 2-H, and paragraph 4-B-2.d.

f. Verbatim Transcripts. When convening a formal investigation, a convening authority may require a verbatim transcript of all open proceedings. See paragraph 4-D-10.

g. Legal Counsel. Legal counsel is not required and normally shall not be appointed for any administrative investigation convened pursuant to this chapter. If in an unusual case it is considered desirable to provide legal counsel for an investigation, the servicing Coast Guard legal officer should be consulted, and a law specialist may be made available to provide legal advice to the investigation.

h. Recorder. A recorder is required for all formal boards of investigation. The junior member of the board will serve as recorder unless a separate recorder is authorized by the convening authority. Such authorization need not be reflected in the appointing order. If a separate recorder is authorized, the officer appointed shall be qualified in accordance with article 27(b), UCMJ, and shall be detailed by the servicing Coast Guard legal officer/SJA in the same fashion as counsel for the government are provided for courts-martial. A separate recorder for an administrative discharge board is not required to be qualified in accordance with Article 27(b), UCMJ. Normally, the cognizant legal officer will not detail a recorder qualified under Article 27(b), UCMJ, for an administrative discharge board. See paragraph 6-L-3.

i. Contents of Investigative Report. All administrative investigations convened under this chapter (with the exception of those which produce letter incident reports) must be directed to produce an investigative report setting forth findings of fact, opinions and recommendations.

j. Administrative Support. A convening authority may authorize reporters and interpreters and authorize other assistance necessary to effect timely completion of an investigation. Such authorization need not be reflected in the appointing order.

3. Appointing Order.

a. Authority to Convene. See paragraph 1-F-2.

b. Form of Appointing Order. A written appointing order signed by a convening authority is required for all formal investigations convened under this chapter. Informal investigations may be convened by written, message, or oral orders, although informal boards of investigation convened by oral orders should be confirmed by a written appointing order or a message. Letter incident reports may be ordered to be prepared by any means. When required, a written appointing order must be in official letter form addressed to the senior member of a board of investigation or to the investigating officer of a one-officer investigation. Whenever circumstances warrant, investigations requiring a written appointing order may be initially convened on oral or message orders, with signed, written confirmation issued subsequently.

c. Contents of Appointing Order. An appointing order must name the members, and must recite the specific purposes of the investigation, and contain explicit instructions about the scope of the investigation. Because information developed by an administrative investigation is used not only by the convening authority, but also by authorities remote from the command, an appointing order must contain sufficient instructions to ensure accomplishing the purposes of the investigation. It must direct the administrative investigation to report findings of fact, opinion, and recommendations. When a hearing procedure is required, the appointing order must specify the time and place for initial meeting, name any parties designated by the convening authority, and state whether or not the administrative investigation has authority to designate parties, and the scope of that authority. See paragraph 4-A-2.c. An appointing order shall contain directions for complying with the Privacy Act of 1974 (see section 2-H of this manual), and article 31 of the Uniform Code of Military Justice, whenever the convening authority determines in advance that either will apply, but the investigation has the independent duty and responsibility to apply these statutes wherever appropriate whether or not the appointing order makes reference to them. The appointing order shall contain directions for complying with paragraph 4-B-2.d of this manual in all appropriate cases. The convening authority may direct that oaths be administered to witnesses or that a verbatim transcript of the proceedings be prepared. The appointing order may, but need not, reflect the convening authority's authorization for administrative assistance, and for a separate recorder. Sample appointing orders are in enclosure (3).

d. Claims Investigation. An investigation my be convened with one of its principal purposes:

(1) to gather information to adjudicate an administrative claim against the United States, or

(2) to examine a potential claim in favor of the United States, or to examine circumstances which suggest that litigation against the United States is reasonably foreseeable.

In any such case, the convening authority shall direct the investigating officer to consult with the servicing Coast Guard legal officer as early as possible in (and preferably before commencing) the investigation. In addition, the appointing order, and the preliminary statement of the investigative report (or first paragraph of a letter incident report), must contain the following language: "This investigation is (appointed) (being conducted and this report is being prepared) in contemplation of litigation and to assist attorneys, acting on behalf of the Chief Counsel, representing interests of the United States in this matter." See Coast, Guard Claims and Litigation Manual, COMDTINST M5890.9 (series).

e. Seniority of Members. Whenever feasible, when a convening authority designates parties, or authorizes an administrative investigation to designate parties, all members should be senior in rank to any designated party. However, even if some members are junior to a party, the majority of the members of a board of investigation shall be senior in rank to any designated party. Should an officer senior in rank to any member be designated a party during proceedings, the convening authority must be notified so that membership may be revised, if feasible, in accordance with the seniority principle. When it is impracticable to adhere to the seniority principle in membership, the convening authority must state reasons therefor in the action on the record of proceedings. The seniority principle does not apply to the recorder, except when the junior member of an administrative investigation also acts as the recorder.

f. Amendments. A convening authority may amend an appointing order at any time to change membership, to limit or increase the scope of the investigation, to name parties, to provide additional instructions, or to dissolve the administrative investigation (e.g., when it is determined that no investigation or a different investigation is required).

g. Advance Copies. On occasion it may be advisable to forward an advance copy of an appointing order to interested superiors to inform them of action taken. See paragraph 1-L-4.

B. General Guidance for Investigators.

1. Scope of This Section. The primary functions of an administrative investigation are to search out, develop, assemble, and analyze all available information so basic questions as to "who", "what," "when," "where," "how," and "why" can be answered concerning any matter under investigation. Regardless of the type of investigation convened, the manner of proving relevant facts is essentially the same. Section 4-B contains general fact-finding guidance for investigating officers and board members. Additional procedural requirements for an investigation are in subsequent sections of this chapter.

2. Proof of Facts.

a. General. Facts concerning a matter under investigation are derived from evidence, including (1) tangible evidence, (2) documentary evidence, and (3) statements of witnesses. In addition, some facts may be of such common, indisputable knowledge that there is no need to obtain specific evidence to support them. In this category are, for example, general facts and laws of nature, general facts of history, locations of major units of the Coast Guard, organization of the Department of Transportation and its components, and similar matter. This category includes, but is not necessarily limited to, matters of which judicial notice may be taken. See Mil. R. Eyed. 201, MCM, 1984.

b. Tangible Evidence. Often, the condition or characteristics of a piece of tangible, or real, evidence will be helpful to developing the facts. The investigative report should contain a photograph or description of that evidence. Also, there should be a statement from a witness certifying that the photograph, description, etc., accurately reflects the piece of evidence. If the physical layout of a room, compartment, or other structure is helpful in understanding the facts, include a plan or chart of the space. Also, if the relative location of items in a general area is significant, include maps, aerial photographs, or similar projections in the report. In addition, investigators and board members can also be witnesses about tangible evidence. If an investigator or board member observes an item and gains sense impressions, (e.g., noise, texture, smells, or any other impression not adequately portrayed by a photograph, chart, map, or other representation), a statement about these impressions should be included as an enclosure to the report. General guidance on handling tangible evidence is contained in paragraph 3-J-2.

c. Documentary Evidence. Documentary evidence includes records, documents, letters, diaries, reports, existing statements, and other written, printed, or graphic sources by which the existence or nonexistence of a fact may be inferred or presumed. This evidence is often the best and most persuasive available. Investigators and boards should be alert to discover all such items which may be relevant to the matter under investigation, and to attach originals or copies to their report. Whenever their status is not clear, original documents in a report should be accompanied by statements of authenticity (that is, a statement that the document is what it purports to be). Paragraph 3-J-1 provides guidance on the use (and need for authentication) of copies in an investigation.

d. Testimony or Statements of Witnesses.

(1) Witnesses not suspected of misconduct or improper performance of duty. Ordinarily, initial statements of witnesses should be obtained during informal interviews. Oral statements should be reduced to writing. They should then be signed by the witnesses, but may be certified by an investigator to be an accurate summary or verbatim transcript. If a signed statement is obtained, an investigator or board member may assist a witness in preparing the written statement to avoid irrelevant material or omission of important facts. However, care should be taken to ensure that any statement is phrased in the actual language of the witness. Probing questions as to "who," "what," "where," "when," "how," and "why" should usually be pursued. The interviewer must avoid coaching a witness or suggesting the existence or nonexistence of material facts. If the administrative investigation is using a hearing procedure, the witness should be asked, at the hearing, to authenticate the initial statement, if one was made, and then, during examination and cross-examination, be given the opportunity to expand upon and explain the statement.

(2) Witnesses suspected of an offense, misconduct, or improper performance of duty. Ordinarily an investigator or board should collect all relevant information from all other available sources before interviewing or examining at the hearing persons suspected of offenses, misconduct, or improper performance of duty. Before interviewing a member of the armed forces suspected of misconduct or improper performance of duty (not amounting to an offense under the UCMJ), that member should be advised generally of the nature of the investigation and the possible effect of an ultimate adverse determination. The servicing Coast Guard legal officer should be contacted in any case in which a member requests an opportunity to discuss the matter with an attorney. It is Coast Guard policy that such members, on request, be provided an opportunity to consult with a law specialist or lawyer prior to being interviewed. Providing the proceedings will not be unduly delayed, such members may, at their own expense, consult with a civilian lawyer in lieu of a military lawyer. An attorney-client relationship shall attach when the opportunity to consult is accepted, but for attorney-client privilege purposes only. Law specialists or lawyers appointed for consultation purposes shall not undertake to represent the member unless directed to do so by proper authority. In the case of a member suspected of an offense, comply with article 31(b), UCMJ. See enclosure 5, Military Justice Manual, COMDTINST M5810.1.

(3) Witnesses suffering from a disease or injury. A member of the armed forces, prior to being asked to make or sign any statement relating to the origin, incurrence, or aggravation of any disease or injury suffered, must be advised of the statutory right to not sign such a statement. See section 2-F. In addition, the Coast Guard has imposed limitations on the use of certain information obtained as part of epidemiological surveys. See paragraph 4.h. of COMDTINST 6220.1.

(4) Privacy Act. An investigating officer not comply with section 2-H of this manual prior to requesting an individual to supply protected personal information.

e. Classified Material. Exclude classified information from an investigative report unless inclusion is essential. See paragraph 1-I-3 for further guidance on classification matters.

C. Informal Investigation Procedures.

1. Scope of This Section. This section (4-C) establishes procedures for conducting an informal administrative investigation.

2. Duties. Duties prescribed in section 4-D or 4-E apply when they may be adapted to, and they are not inconsistent with, an informal investigation conducted pursuant to the procedures set forth in this section.

a. Letter Incident Report Preparer. To the extent that a letter incident report preparer conducts an investigation, this person must comply with applicable provisions of this section in conducting the investigation.

b. One-Officer Investigator. A one-officer investigator must comply with provisions of this section in conducting an investigation.

c. Senior Member of Board of Investigation. The senior member of the board determines the time, place, and manner in which the investigation is conducted.

d. Participation of an Expert as a Member of a Board of Investigation. Persons possessing technical knowledge may be appointed to an administrative investigation under this section for either full participation or the limited purpose of utilizing their special experience. The appointing order should specify which. If appointed for a limited purpose, the expert need not participate in any aspect of the investigation not concerning the specialty. In such cases the investigative report must make clear any limited participation by a member.

3. Parties. Parties must not be designated by a convening authority or by an administrative investigation in an investigation convened under this section.

4. Oaths. A one-officer investigator and members of a board need not be sworn. Ordinarily, the testimony or statements of witnesses to administrative investigations under this section are not made under oath.

5. Procedures.

a. General. Since an informal administrative investigation does not afford a hearing, it is free to determine and use the most effective methods of collecting, analyzing, and recording all relevant information. For example, a board may assign certain issues,

(cont'd) witnesses, or specific evidentiary matters to individual members for investigation, holding later meetings to review information collected for completeness. It may call witnesses to present testimony before assembled members or it may obtain relevant information from witnesses by personal interview, correspondence, telephone inquiry, or other means. An administrative investigation under this part may employ any method it finds most effective in performing its investigative function of compiling reliable evidence concerning the incident under investigation.

b. Rules of Evidence. An informal administrative investigation is not bound by formal rules of evidence applicable before courts-martial, and may collect, consider, and include in the record any credible (reasonably believable) evidence which is relevant to the matter under investigation. Care should be taken to authenticate - that is, indicate the genuineness of - tangible and documentary evidence, or reproductions thereof. See paragraph 4-B-2. A witness statement should be signed by the witness, but may be certified by an investigator to be either an accurate summary of, or a verbatim transcript of, an oral statement made by the witness.

6. Communications with Convening Authority. If at any time during the investigation it appears that a convening authority might consider it advisable to enlarge, restrict, or modify the scope of investigation, or to change in any material respect any instruction provided in the appointing order, a written or oral report should be made to the convening authority. The convening authority may take any action on this report deemed appropriate. In any instance when a one-officer investigator determines that the matter may more appropriately be resolved by preparing a letter incident report for the convening authority's signature rather than a standard investigative report addressed to the convening authority, that determination should similarly be reported to the convening authority. If the convening authority concurs, a letter incident report may be prepared in lieu of a standard investigative report.

7. Investigative Report.

a. General. Except in instances where a letter incident report is authorized by the convening authority, reports submitted by boards of investigation or by one-officer investigations are normally submitted in a "standard" investigative report letter form. See enclosure (5). Each such report will include a preliminary statement, findings of fact, opinions, recommendations, and enclosures. In some very extensive or complex investigations, deviation from the strict format of enclosure (5) may be considered necessary to more adequately manage the volume of evidence, and to coherently present the facts. In such cases, facts, opinions, or recommendations may be segregated into categories, or presented as a series of narratives, or the format of enclosure (5) may be otherwise modified. Consultation with the servicing Coast Guard legal officer should be effected in such cases.

b. Preliminary Statement. A preliminary statement informs the convening and reviewing authorities that all reasonably available evidence has been collected or is forthcoming and that each directive of the convening authority has been met, or has not been met and the reasons therefore. After setting forth the nature of the investigation, it should describe in detail any difficulties encountered in the investigation, limited participation in the investigation by any member, and any other information necessary for a complete understanding of the case. The itinerary of an investigator or board in obtaining information is not required. A preliminary statement does not eliminate the necessity for findings of fact as to pertinent material matters. For example, despite expressions in both the subject line and the preliminary statement that an investigation concerns the crash of an airplane and resulting fatal injuries to the pilot, initial findings of fact must describe the airplane, time and place of the accident, identity of the pilot, and other pertinent information. See paragraph 4-A-3.d for language required in a preliminary statement when an investigative report is being prepared to support adjudication of an administrative claim or in contemplation of litigation.

c. Findings of Fact. Findings of fact are based on evidence collected. They must be as specific as possible as to times, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. An administrative investigation determines the most effective method for its presentation of a case. Each finding of fact must reference the enclosure or enclosures supporting it.

d. Opinions. Opinions are reasonable evaluations, inferences, or conclusions based on facts found. An investigative report must list all appropriate opinions supported by facts. Opinions as to the credibility of witnesses and the weight to be given to evidence are of particular value to reviewing authorities. Other opinions may be unnecessary, or may be desirable depending on the circumstances. For guidance as to opinions which maybe appropriate in specific situations, see chapters 5 and 6. Each opinion should reference the finding or findings of fact supporting it or to which it refers. Issues of legal liability and negligence are matters for resolution by settlement authorities and courts. Investigative reports shall not include opinions concerning legal liability. In any case where claims or potential claims are involved, opinions as to negligence shall be avoided, except in cases where such opinions are relevant to specific recommendations for disciplinary or other administrative action regarding specifically named individuals.

e. Recommendations. An administrative investigation must make its recommendations in view of the nature of the facts found and opinions expressed. A convening authority may require recommendations in general or in limited subject areas. If trial by court-martial is recommended, then a draft charge sheet may be prepared and submitted as an enclosure to the investigative report. Charges shall not be signed and sworn to without prior consultation with the staff judge advocate. Failure to comply with the procedural requirements for

(cont'd) preferral and notice of charges under RCM 307, 308, and 707, MCM 1984 may preclude military justice action, if the speed trial provisions are violated. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter must be prepared and forwarded as an enclosure to the investigative report. If a nonpunitive letter of censure is recommended, a draft should be prepared and separately forwarded to the appropriate issuing authority, but it may not included as part of the investigative report nor referenced therein.

f. Enclosures. The signed, written appointing order, or signed, written confirmation of oral or message appointing orders, should be the first enclosure. Subsequent enclosures should contain all evidence developed by the investigation. Each statement, affidavit, transcript of testimony, photograph, map, chart, document, or other exhibit should be a separate dated enclosure. Signatures of board members, or of a one-officer investigation, on an investigative report letter constitute authentication of all enclosures. Nevertheless, individual authentication may be necessary in situations discussed in paragraphs 4-B-2.b, 4-B-2.c, and 4-C-5.b.

g. Signing and Authenticating.

(1) All persons who participated in an investigation must sign the investigative report. This includes all persons who participated in an investigation at the time of findings, even though their participation was limited.

(2) If there are two members of a board of investigation and they cannot agree on findings of fact, opinions, or recommendations, the report must be signed by the senior member. The other member must, in a signed dissenting report, state clearly the parts of the report with which there is disagreement and the reasons therefor. If a board consists of three or more members, the majority provides the investigative report, and attaches the signed dissenting report of any member or members.

8. Sample Report. A sample investigative report for a one-officer investigation under this section is contained in enclosure (5). This sample report may also be used for preparing an investigative report for a board of investigation under this section. Appropriate changes in terminology must be substituted.

D. Procedures for a Formal Board of Investigation.

1. Scope of This Section. This section (4-D) establishes procedures for conducting a formal board of investigation.

2. Duties of the Board.

a. The Senior Member of the Board. The senior member shall decide upon matters relating to the routine business of the board, including recessing or adjourning the board to meet at a time or place as will be convenient and proper. Whenever it appears desirable to any member

(cont'd) of the board that certain information be elicited or developed in the interest of establishing or clarifying any matter, the senior member will advise the recorder and request that witnesses be called, further lines of questioning be pursued, or other evidence be produced. The senior member should ensure that the recorder has done adequate advance investigation, assembled witness statements, and marshalled the documentary and tangible evidence, so that the formal hearing portion of the investigation may proceed in an orderly and efficient fashion.

b. The Members of the Board. Attendance at the proceedings of a board of investigation becomes the primary duty of any officer appointed as a member. Members are expected to be in attendance at the designated time and place unless prevented by illness, ordered away by competent authority, or excused by the convening authority. In the absence of a member, the board may proceed with the investigation only if authorized and directed to do so by the convening authority. Unless a majority of the total membership is present, no business other than adjournment shall be conducted. If it appears that a member will be absent for more than a short period of time and the absence reduces the board to less than a majority of the total membership, the convening authority shall be advised. The convening authority shall appoint additional members to ensure that at least two members will be present. Any substitute or additional member appointed shall examine the record of the proceedings conducted prior to sitting as a member, and accomplishment of that shall be noted on the record. After reviewing the record, each substituted and additional member shall participate fully in the subsequent proceedings of the board, its deliberations, findings of fact, opinions, and recommendations. When a member of the board who has been temporarily absent returns, the record of that part of the proceedings conducted in the member's absence shall be examined by the member, and noted in the record. A temporary absence does not preclude that member's full participation in the deliberations of the board relative to findings of fact, opinions, and recommendations.

3. Legal Counsel for the Board. Legal counsel is not required and normally shall not be appointed. If in an unusual case it is considered desirable to provide legal counsel for a formal board, the servicing Coast Guard legal officer should be consulted, and a law specialist may be made available to provide legal advice to the board as requested by the senior member. Such counsel does not function as a member of or participant in the board proceedings.

4. Recorder.

a. General. The appointment of a recorder for the board is mandatory. If a separate recorder is appointed, the recorder must be a law specialist qualified in accordance with Article 27(b), UCMJ. Such qualification is not required for a discharge board. See paragraph 4-A-2.h. and 6-L-3. If a separate recorder is not appointed, the junior member of the board shall serve as the recorder. An assistant recorder may be appointed. If an understanding of the matters under investigation involves a high degree of technical knowledge, convening authorities are encouraged to appoint an officer who possesses this technical knowledge as assistant recorder.

b. Initial Investigation. Prior to the hearing, the recorder conducts an initial investigation of the incident. All witnesses should be interviewed, and witness statements taken and in most cases reduced to writing for later use by the board. The recorder shall insure that section 2-H of this manual is fully complied with prior to requesting an individual to supply protected personal information. Documentary evidence should be assembled, and tangible evidence identified and marshalled for presentation to the board.

c. Hearing. The recorder shall call witnesses except those requested or called by a party, and arrange for a place for the board to meet and for the assistance of reporters, interpreters, orderlies, and clerical assistants. Additionally, the recorder shall administer any oath or affirmation to the reporters, interpreters, and witnesses and supervise the recording of the proceedings and the preparation of the record. The recorder is not a prosecutor. The primary responsibility of the recorder is to exploit all sources of information in order to bring out the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. If the recorder is absent, an assistant recorder, may, in the discretion of the board, act as recorder and the proceedings may continue. Otherwise, the board shall adjourn, report the absence to the convening authority, and await the return of the recorder or the appointment of a new recorder.

5. Applicable Court of Inquiry Provisions. The principles and rules of procedure applicable to courts of inquiry set forth in chapter 3 apply to boards of investigation except to the extent inconsistent with the provisions of this chapter. In some cases, obvious changes in terminology (e.g., substituting "formal board of investigation" for "court of inquiry", "recorder" for "counsel for the court", and "senior member" for "president") to fit the board situation must be made. The following portions of chapter 3 apply to boards of investigation:

a. Reporters and interpreters, paragraph 3-C-5 (when a verbatim record of proceedings has been directed).

b. General procedure, section 3-D.

c. Meeting of the court, paragraphs 3-D-2 through 3-D-4.

d. Recess and adjournment, paragraph 3-D-5.

e. Rules of evidence, paragraph 3-D-6.

f. Presence of a party and counsel, section 3-E.

g. Order of presentation, paragraph 3-H-1.

h. Interviewing witnesses, paragraph 3-H-3.

i. Exclusion of witnesses, paragraph 3-H-4.

j. Examination of witnesses, paragraph 3-H-5.

k. Affidavits and Depositions, section 3-I.

l. Real Evidence, section 3-J.

m. Communications with the convening authority, section 3-K.

n. Visiting scene of incident, section 3-L.

o. Statements of parties, section 3-H.

p. Report by the court, section 3-O.

q. Preparation and submission of the record, section 3-P. (Provisions concerning a verbatim record apply only when the board of investigation was directed to submit a verbatim record of proceedings. The verbatim transcript shall be authenticated by the signature of the senior member of the board.) All members sign the investigative report (or minority report).

6. Oaths. Members of and a recorder for a board of investigation need not be sworn. Oaths for reporters, interpreters, and witnesses, from section 3-G, are administered by the recorder for the board.

7. Attendance of Witnesses. A board of investigation has no power to subpoena witnesses. Otherwise, section 3-H applies.

8. Arguments. Section 3-N applies to boards of investigation. If the junior board member is designated or acts as recorder for the board, this member may not make an argument. In this event, only parties or their counsel may make argument.

9. Challenges. If any party to an investigation believes a member should not sit, the party may present evidence to show such reason. A party may examine a member about the member's fitness, and such examination may be under oath at the party's discretion. If requested, the recorder shall administer an appropriate oath from paragraph 3-G-6. The board does not decide the issue; instead it reports the facts to the convening authority who must determine if the member continues to sit. Copies of the communication and reply must be appended to the record.

10. Sample Record. The sample record of proceedings of a court of inquiry in enclosure (4) may be used as a guide in conducting proceedings and preparing a record of a board of investigation with appropriate changes in terminology (for example, "board" must be substituted for "court" and "senior member" for "president"). Nothing in the sample record, however, constitutes authority to depart from provisions of this chapter. Deviations from sample proceedings, when not inconsistent with provisions of this chapter, may be necessary to execute more effectively the primary fact-finding mission. Appendix 8, MCM, 1984 should be consulted for general guidance when procedural steps are taken which are not covered in the sample record.

E. Procedures for a One-Officer Formal Investigation.

1. Scope of This Section. This section (4-E) establishes procedures for conducting a one-officer formal investigation.

2. Duties of Investigating Officer. During a hearing, the investigating officer maintains order and decides matters about routine business of the investigation. The investigating officer may recess or adjourn the proceedings to meet at a specified time and place. Prior to the hearing, the investigating officer conducts such informal investigation as is necessary to ensure the hearing phase is conducted in an efficient and effective manner.

3. Procedure. A one-officer investigation is governed by rules and principles prescribed for a formal board of investigation under section 4-D of this chapter when those rules and principles logically apply to a one-officer investigation. An investigating officer must sign the record.

4. Challenge. If a party contends an investigating officer cannot approach the fact-finding mission as a disinterested investigator, the investigating officer reports that contention and any relevant facts to the convening authority who must take appropriate action. An investigating officer for a one-officer formal investigation is not subject to examination by a party.

5. Sample Record. General guidance in paragraph 4-D-10 also applies to this section.

A. Purpose of Investigation and Determination. The reports of administrative investigations provide the basis for line of duty and misconduct determinations both within and without the service. Section 5-E lists those instances in which such determinations are required. Among the principal uses are the following:

1. Extension of Enlistment and Longevity and Retirement Multiplier. An enlisted member who is unable for more than one day to perform duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from the member's own misconduct:

   a. is liable, after return to full duty, to serve for a period which, when added to the period served before incapacity for duty, amounts to the term for which the member was enlisted or inducted. (10 U.S.C. 972); and

   b. may not include such periods in determining "creditable service" for increases in pay because of longevity, or for cumulative years for retirement.

2. Disability Retirements and Severance Pay.

   a. General. When members of the Coast Guard on active duty sustain disabilities which are or may be permanent, they may be eligible to receive certain retirement or severance pay benefits. To receive these benefits, the requirements of the applicable statutes must be met. One of these requirements is that the disability must not result from the member's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence. See 10 U.S.C. 1201, 1203, 1204, 1206, and 1207.

   b. PDES System. Physical Disability Evaluation System determinations are made independently of this manual, and are controlled by the provisions of the Physical Disability Evaluation System Manual, COMDTINST M1850.2 (series). Determinations made under the PDES system are not controlled by misconduct-line of duty findings or conclusions recorded under the provisions of this manual. Nevertheless, investigations conducted pursuant to this manual often provide the primary source of factual information upon which PDES system determinations are made, and misconduct-line of duty findings made pursuant to this manual are considered by physical disability evaluation boards in making their determinations.

3. Health Benefits of Coast Guard Reserve. Members of the Coast Guard Reserve who suffer sickness, disease, disability, or death shall be entitled to the same benefits' as prescribed by law for members of the Naval Reserve who suffer sickness disease, disability, or death under similar conditions. (14 U.S.C. 705(c))

4. Benefits For Members of the Temporary Reserve. In case of physical injury, or death resulting from physical injury, to any temporary member of the reserve incurred while performing active Coast Guard duty, or engaged in authorized travel to or from such duty, an investigation shall be made to establish whether the injury or death occurred incident to military service (14 U.S.C. 707 (a) - (c)). Temporary members of the reserve who incur physical disability or contract sickness or disease while performing any specific duty to which they have been duly assigned shall be entitled to the same hospital treatment afforded a member of the Regular Coast Guard (14 U.S.C. 707).

5. Injury or Death of Member of Coast Guard Auxiliary. When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any specific duty to which assigned by competent Coast Guard authority, such member, or the member's beneficiary, shall be entitled to the same benefits provided for temporary members of the reserve who suffer physical injury or death resulting from physical injury incurred incident to service. Auxiliary members who incur physical injury or contract sickness or disease while performing any specific duty to which they have been duly assigned shall be entitled to the same hospital treatment afforded officers and enlisted personnel of the Coast Guard (14 U.S.C. 832).

6. Benefits Administered by the Veterans Administration. In determining whether a veteran or the veteran's survivors or dependents are eligible for certain benefits, the Veterans' Administration makes its own determinations with respect to misconduct and line of duty. As a practical matter, these determinations must rest upon the evidence available. Generally, this will be those facts which have been officially recorded and are on file within the Coast Guard. Statutes governing these benefits generally require that disabling injury or death be "service connected" which means that the disability was incurred or aggravated or that the death resulted from a disability incurred or aggravated "in line of duty." The statutory criteria for making such determinations are contained in 38 U.S.C. 105.

B. What Constitutes Line of Duty.

1. General Rule. For the purposes of these regulations, injury or disease incurred by a member of the Coast Guard while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

   a. As a result of the member's own misconduct as determined under the regulations contained in this chapter.

   b. While avoiding duty by deserting the service.

   c. While absent without leave and such absence materially interferes with the performance of military duties.

   d. While confined under sentence of a court-martial which included an unremitted dishonorable discharge.

e. While confined under sentence of a civil court following conviction of an offense which is defined as a felony by the law of the jurisdiction where convicted.

2. Active Service Defined. "Active service" as used in this section includes full-time duty in the Coast Guard, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

3. Presumption. It is presumed that an injury or disease suffered by a member of the Coast Guard was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

4. Unauthorized Absence.

a. Whether absence without leave materially interferes with the performance of required military duties necessarily depends upon the facts of each situation, to which must be applied a standard of reality and common sense. No definite rule can be formulated as to what constitutes material interference." Generally speaking, absence in excess of twenty-four hours constitutes a material interference unless there is evidence to establish the contrary. Similarly, an absence of shorter duration will not be considered to be a material interference unless there is clear and convincing evidence to establish the contrary. A statement of the individual's commanding officer, division officer, or other responsible official, and any other available evidence to indicate whether an absence without leave constituted a material interference with the performance of required military duties, should be included in the record whenever appropriate.

b. It should Be noted that under 10 U.S.C. 1207 a member is ineligible for physical disability retirement or physical disability severance benefits from the Armed Forces if the disability was incurred during a period of unauthorized absence, regardless of the length of such absence and regardless of whether such absence constituted a material interference with the performance of required military duties.

C. What Constitutes Misconduct.

1. Generally. As used in this chapter, misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the injury or disease was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result." The fact that the conduct violates a law, regulation, or order - or the fact that the conduct is engaged in while the individual is intoxicated - does not, of itself, constitute a basis for a determination of misconduct. Such circumstances must, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the incurrence of injury or disease was a proximate result of such conduct.

2. Presumption. It is presumed that injury or disease suffered by a member of the Coast Guard is not the result of the member's own misconduct. Clear and convincing evidence is required to overcome this presumption.

3. Examples. If an individual is injured by an intentionally inflicted gunshot wound, the injury is due to own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby is wounded, that too would be an injury due to own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to own misconduct because they would not have been a reasonably foreseeable result (proximate result) of the wrongful conduct in which the individual was engaged. In this latter example, the injuries are said to be the result of an independent intervening cause.

D. Relationship Between Misconduct and Line of Duty. For purposes of these regulations, "misconduct" can never be "in line of duty." Hence a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissible, however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." (As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of required military duties a finding of "not in line of duty" must result. Similarly, if a member of the Coast Guard Reserve were injured or got a disease while traveling to or from active duty for training or inactive duty training, but had materially deviated from the authorized travel route, such would result in a finding of "not in the line of duty".) Accordingly, the three possible combinations of findings are as follows:

1. "In line of duty" and "not due to the member's own misconduct,"

2. "Not in line of duty" and "not due to the member's own misconduct," or

3. "Not in line of duty" and "due to the member's own misconduct."

E. When Line of Duty/Misconduct Determinations Required.

1. General. Findings concerning line of duty and misconduct must be made in each case in which a member of the Coast Guard incurs an injury which:

a. (1) might result in an entitlement to disability benefits, or

(2) results in lost time (a member's physical inability to perform duties) for a period in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation), and

b. in which the circumstances suggest that:

(1) a finding of "misconduct" may reset (the injury is the result of apparent intentional misconduct or willful neglect), or

(2) a finding of "not in the line of duty" may result.

See paragraph 5-N-4 for the usual method of reporting injuries which have been investigated but in which there are findings favorable to the member. See paragraph 5-E-4 for injuries requiring neither investigation nor report.

2. Temporary Reserve and Auxiliary Members. In cases relating to temporary members of the reserve or Auxiliary members, a line of duty/misconduct determination will not be made. Instead, a finding of whether the injury or disease is incident to service will be made.

3. Death Cases. No finding or opinion concerning misconduct or line of duty will be made after the death of a member. See paragraph 5-J-1. "Incident to service" determinations will be made in the case of death of an auxiliarist or temporary reservist.

4. When Determinations Not Required: Entry in Service Record. No administrative investigation need be convened and no report need be forwarded. concerning misconduct and line of duty when, in the opinion of a medical officer (or appropriate, competent medical personnel), concurred in by the commanding officer, the injury is not likely to result in a permanent disability and was incurred "in line of duty" and "not as a result of the member's own misconduct." In such cases, appropriate entries to that effect should be made in the member's service record. See also paragraphs 5-N-4.a and 1-L-3.a.

F. Responsibility To Order Investigations.

1. Members of the Coast Guard. It is the responsibility of the commanding officer of the member who is the subject of the line of duty investigation to convene the investigation. If the command is unable to conduct the investigation, a request shall be submitted to superior authority to convene the investigation. When Coast Guard personnel from more than one command are injured or die in an incident which must be investigated under this manual, a single investigation of the matter should be conducted whenever practicable. The involved commanding officers should agree upon which command will investigate and process the case. The agreement will be noted in the investigative report. Conflicts shall be resolved under paragraph 1-G-3.

2. Members of other Armed Services. Whenever a member of an armed service other than the Coast Guard is injured, dies, or incurs disease under circumstances that would warrant investigation under these regulations, and it would be appropriate for an officer in command of an activity of the Coast Guard to convene an investigation (e.g., the individual is attached to a Coast Guard command or is being treated in a Coast Guard medical facility), the nearest command of the parent service of the individual shall be notified. If requested, an appropriate investigation under these regulations shall be convened and the report thereof forwarded in accordance with the request. No further action need be taken within the Coast Guard.

G. Mental Responsibility.

1. General Rule. Members may not be held responsible for their acts and their foreseeable consequences if, as the result of mental defect, disease or derangement, they were unable to comprehend the nature of such acts or to control their actions. Additionally, members may not be held responsible for their acts or their foreseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and not itself the result of prior misconduct, they were unable to comprehend the nature of such acts or to control their actions. However, character and behavior disorders manifested by a defect of personality, lack of will power, antisocial behavior, ungovernable passion, etc., do not necessarily demonstrate a lack of mental responsibility authorizing exoneration of the member for the member's actions.

2. Certain Induced Impairments. An injury which was the proximate result of acts performed while the member's mental faculties were impaired would be deemed to have been incurred as the result of the member's own misconduct, if the impairment was as the result of wrongful (e.g., voluntary) ingestion of a hallucinogenic drug or other substance (e.g., controlled substance) which the member knew or should have known would cause impairment of physical or mental capabilities. Certain properties of such drugs are notorious and their use is prohibited by Coast Guard Regulations; hence the impairment would support a finding of misconduct.

3. Presumption. There is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases that an administrative investigation seek evidence that a member was mentally responsible at a certain time unless substantial credible evidence is developed or discovered tending to indicate that the member was not mentally responsible at that time. Such evidence may consist of circumstances attending certain acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. In any case in which there is substantial evidence raising the issue of the mental responsibility of a member, the presumption of mental responsibility ceases to exist and the member's mental responsibility must be established by clear and convincing evidence before the presumptions of "in line of duty" and/or "not due to own misconduct" may be overcome. In such cases, evaluation by a psychiatrist may be required.

4. Suicide Attempts.

   a. In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, is considered to rebut the presumption of mental responsibility, and to create a strong inference of lack of mental responsibility. Substantial evidence of such an attempt is sufficient to raise the issue, thus rebutting the presumption and raising the inference. In these cases:

(1) further evidence must be sought on the question of mental responsibility, including, in most circumstances, expert psychiatric evaluation, and

(2) the determination of whether the disease or injury resulting from the attempt was due to misconduct must necessarily rest upon other evidence (which would have to establish mental responsibility by clear and convincing evidence).

b. Intentional self-inflicted injury, not prompted by a bona fide suicide intent, is at most a suicidal gesture, and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct.

c. Where the suicide attempt or suicidal gesture occurred while the member was absent without authority, mental responsibility at the beginning of the absence without authority must be determined in addition to mental responsibility at the time of the suicide attempt.

5. Specific Circumstances.

a. Except as provided for in paragraph 5-G-2, if appropriate medical authority determines that a member was not mentally responsible at the time an injury, disease, or incapacity for duty was incurred, a finding of misconduct shall not be made.

b. If the injury, disease, or incapacity for duty occurred during the member's unauthorized absence, the member's mental state at the start of the unauthorized absence must be considered before a line of duty/misconduct determination is made. Except as provided for in paragraph 5-G-2, a member is not absent without proper authority if, at the inception of such absence, the member was not mentally responsible, and this lack of mental responsibility continued without interruption until the time of the injury or disease. Under these circumstances the absence should be excused as unavoidable.

H. Intoxication and Drug Abuse.

1. Intoxication.

a. General. When an injury is incurred as the proximate result of prior and specific voluntary intoxication, the presumption of not misconduct may be rebutted, and the injury may have been incurred as the result of misconduct. The question is determined by the degree of impairment, and the nature of the conduct or activity undertaken in that state. In order for intoxication to be the basis for a determination of misconduct respecting a related injury, there must be clear and convincing evidence that:

(1) the member's physical or mental faculties were impaired due to intoxication at the time of the injury,

(2) the extent of the impairment was such as to render the conduct grossly negligent (such as to demonstrate a reckless disregard for the consequences), and

(3) the impairment was a proximate cause of the injury.

b. Example. A member becomes intoxicated at a wetting down party. The blood alcohol level is .14. The member is legally intoxicated in the jurisdiction.

(1) On the walk from the party to the waiting taxicab, the member trips on a small crack in the sidewalk and falls, producing a disabling injury. This is not misconduct, even though if sober the member would not have fallen, since the conduct is not grossly negligent.

(2) The member leaves the party, successfully navigates the walk to the member's car, and proceeds to drive toward home. On the way, the member has an single car accident by failing to negotiate a turn in the road. The member was probably exceeding the speed limit by some amount which is undetermined. These facts support a finding of misconduct since driving under the influence of alcohol constitutes the kind of activity which demonstrates a reckless disregard for the consequences. In the absence of direct evidence concerning the precise cause of the accident, driving while under the influence supports an inference of proximate causation. This is a situation where the presumption of not misconduct is abated, where proximate causation may be inferred from the circumstances of impairment and conduct, and where the finding is based on the degree of impairment coupled with the type activity engaged in.

(3) In the same fact situation, the member achieves a blood alcohol level of .28. At this level of intoxication, it may be that. undertaking virtually any activity constitutes grossly negligent conduct. However, it will depend on the member, and the specific circumstances. In this case, the fall on the walk might still be not misconduct. Alternately, if the fall was after forcefully rejecting warnings and offers of assistance, or if the fall occurred while engaging in conduct which may not be unsafe for sober persons but is obviously hazardous for intoxicated persons (e.g., trying to walk across a dangerous highway against the light), a misconduct finding might be proper.

c. Source of Intoxication. Intoxication (impairment) may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. For a further description of drugs and drug abuse, see 9-2-14 and 9-2-15 of U.S. Coast Guard Regulations, COMDTINST M5000.3A, and chapter 20 of the Coast Guard Personnel Manual, COMDTINST M1000.6.

2. Alcohol and Drug Induced Disease. Inability to perform duty resulting from disease which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor or habit-forming drugs is the result of misconduct. Habituation may or may not be associated with a specific inability to perform duty which is

(cont'd) directly due to the specific and proximate use of alcohol or drugs, but only the period of actual inability to perform duty directly related to the specific and proximate use of alcohol or drugs may be charged as time lost due to misconduct. Time spent in evaluating habituation without specific inability to perform duty shall not be charged as time lost due to misconduct.

I. Medical and Dental Treatment.

1. Refusal of Treatment. If a medical board convened under paragraph 2-A-4(b)(4) of the Medical Manual, COMDTINST H6000.1, finds that a member unreasonably refuses recommended medical, surgical or dental treatment which is not life threatening, any disability that proximately results from that refusal shall be deemed to have been incurred as a result of the member's own misconduct.

2. Venereal Disease. Any disability resulting from venereal disease is not due to misconduct if the member has complied with regulations requiring the member to report and receive treatment for such disease.

3. AIDS. Any disability resulting from AIDS is not due to misconduct if the member has complied with regulations requiring testing, epidemiological assessment, and treatment.

J. Specific Consideration in Death Cases.

1. Findings Concerning Misconduct and Line of Duty Prohibited. While it is important that the facts leading up to a death be determined in a timely manner, no survivor's benefits are affected by a line of duty finding. To express recommendations or findings concerning misconduct or line of duty in death cases serves no useful purpose. They are not desired by the Veteran's Administration. Accordingly, administrative investigations shall express no opinion concerning misconduct or line of duty in death cases; nor shall the convening authority or reviewing authorities enter any finding in this regard. If such determination or finding has been recorded inadvertently or recorded after the injury or disease but before death occurred, the record need not be returned for correction. Reviewing authorities should indicate its lack of validity in the forwarding endorsement. In any case, including death cases, in which the record contains an adverse reference or opinion with respect to line of duty or misconduct, reviewing authorities should disclose any known additional data not in the record which may either tend to counter or support such finding or opinion.

2. Death in a Combat Zone. No line of duty investigation is required in the case of death resulting from enemy action. An administrative investigation should be convened in any case in which peculiar or doubtful circumstances are involved. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the investigation should determine whether death resulted from accidental causes, natural causes, or enemy action, within or without a combat zone.

3. Inquest Duties. The administrative investigation ordered to investigate the death of a member, or of any person found dead on a Coast Guard facility, will perform the duties of an inquest if the death occurred under peculiar or doubtful circumstances. In such cases, a commissioned officer of the United States Public Health Service, serving with the Coast Guard, or other uniformed services medical officer, should normally be a member of the administrative investigation. The investigation will proceed to the place where the body is located, identify it and note the surroundings if pertinent. Release of the remains of deceased personnel is to be expedited in all cases. Such medical witnesses as may be available shall be interviewed or their official reports obtained, including whenever possible, evidence from the doctor who performed the autopsy, if one was made, or a doctor who assisted or witnessed such autopsy. The administrative investigation will ascertain from these medical witnesses the exact condition of the body and the medical opinion as to the cause of death. The date of death shall be stated as a fact or as an opinion with the time of death fixed as precisely as the evidence permits. Copies of the autopsy protocol and the death certificate shall be appended as enclosures to the record.

4. Autopsies. The appointed administrative investigation shall provide the medical officer designated to conduct the autopsy with a detailed preliminary report of circumstances surrounding the death in the following cases:

   a. When death of a member of the uniformed services on active duty or active duty for training occurs under any circumstances set forth in paragraph 5-B-4 of the Medical Manual, COMDTINST M6000.1;

   b. When an autopsy is authorized by the commanding officer upon advice of the administrative investigation or medical officer; and

   c. In any other cases in which authorization from proper authority has been obtained.

   In those cases in which authorization for autopsy has been granted by other than the commanding officer, the medical officer shall be responsible for advising command authority that such authorization has been granted so as to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the administrative investigation with a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The administrative investigation shall provide the medical officer conducting the autopsy with a copy of the final investigative report.

5. Timely Submission of Reports. Notwithstanding the guidance contained in paragraphs 5-J-3 and 5-J-4 above, completion of a death investigation and its forwarding will not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely essential to the completion of the investigative report. The unavailability of such documents should be noted; the investigation report completed and forwarded. Documents subsequently obtained shall be

(cont'd) forwarded by separate correspondence via the review chain, with appropriate reference to the investigative report or forwarding endorsement.

K. Relationship to Disciplinary Action. An adverse determination as to misconduct or line of duty is not a punitive measure. Disciplinary action, if warranted, shall be taken independently of any such determination. A favorable determination as to misconduct and line of duty does not preclude disciplinary action nor does a favorable determination have any bearing on the issue of guilt or innocence. The loss of rights or benefits resulting from adverse determinations as to misconduct and line of duty may be relevant to the punishment awarded in a disciplinary proceeding and, at the request of the accused, may be admissible as matters in extenuation and mitigation.

L. When Claims or Other Matters Are Involved.

1. Examination of Reports. Any report involving injury or death should be carefully prepared and examined whenever potential claims by or against the Government may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims. Similar care should be exercised in any case involving death, serious injury, or serious illness in which the adequacy of medical care is reasonably in issue.

2. Combining Investigations. There is no prohibition against combining line of duty investigations with claims investigations. Facts elicited in a claims investigation may be sufficient and may be used as a basis for entering "in line of duty" and "not due to own misconduct" findings in the service record as authorized by paragraph 5-E-4, or in making abbreviated (letter incident) reports as authorized by paragraph 5-N-4.

3. Forwarding Copies of Reports in Certain Circumstances. Where investigations have been combined, (or directed to fulfill more than one function) and/or there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the retaining command shall ensure that a legible copy with all enclosures is forwarded for review. This same rule would apply if the original record were forwarded for claims purposes to another command, such as to Commandant (G-K) in a Medical Care Recovery Act case. See paragraph 1-L-1.

M. Action on the Record: Misconduct and Line of Duty Informal Hearings.

1. Action by Convening Authority. In each case in which a member of the Coast Guard has incurred an injury or contracted a disease, and the circumstances are such that an administrative investigation was required and conducted under paragraph 1-G-4.f, the convening authority shall either return the investigative report for further investigation, or shall take one of the following actions:

a. The convening authority shall express, in the action on the record, the conclusion that an injury or disease was incurred "in line of duty" and "not due to the member's own misconduct" when:

(1) the administrative investigation was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, and

(2) the convening authority concludes that this is the correct finding (or that clear and convincing evidence is not available to rebut the presumption of in line of duty and not misconduct).

This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the administrative investigation.

b. The convening authority may express, in the action on the record, any of the permissible findings described in section 5-D concerning misconduct and/or line of duty, when:

(1) the administrative investigation was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, and

(2) the member involved was designated a party before the administrative investigation which conducted a hearing, and was fully accorded party rights.

This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the administrative investigation.

c. The convening authority shall afford the member a hearing, or shall forward the investigative report to the command to which the member is then attached so that a hearing may be afforded when:

(1) the member was not designated a party before the administrative investigation, or having been so designated, the member was not fully accorded party rights, and

(2) upon review of the investigative report, the convening (or higher) authority has substantial doubt that the injury or disease of the member was incurred in line of duty, or was not due to the member's own misconduct.

2. Misconduct and Line of Duty Informal Hearings. The hearing required by this section is an informal appearance before the commanding officer (convening authority) designed to ensure that the member has the opportunity to present any information the member wishes the commanding officer to consider on the issue of a potential adverse misconduct or not in the line of duty finding. It shall include the following elemental requirements:

a. The member shall be advised that questions have arisen concerning the circumstances under which an injury or disease was incurred and that line of duty and misconduct determinations must be made.

b. If the member is suspected of having committed an offense, advice as required by article 31(b), UCMJ, shall be given.

c. The member shall be advised of the right not to give information regarding the origin, incurrence, or aggravation of an injury or disease that the member may have. See section 2-F.

d. The investigative report, and any statement, record, or other evidentiary matter considered by the convening authority shall be made available for inspection by the member.

(1) The member shall in all cases be provided the opportunity to discuss the report and all other materials to be considered with counsel (or with another disinterested person of the members choosing.) If the member desires to consult with counsel, a telephonic consultation is in most cases envisioned, unless the counsel is geographically located in close proximity to the command. For the consultation to be effective, it may be necessary to provide a copy of the report, and any other materials to be considered, to the counsel prior to the consultation.

(2) In all cases convened pursuant to paragraph 5-E-1.a(1) (where the injury might result in an entitlement to disability benefits), the member shall in addition have the right to be represented by counsel as set forth in paragraph 2-D-1.c.

e. The member shall be given full opportunity to present any relevant matter in refutation, explanation, rebuttal, or otherwise respecting the incurrence of the injury or disease. A reasonable period of time shall be provided to the member for this purpose.

f. The member shall be provided a Privacy Act statement in accordance with section 2-H and enclosure (8). A format to document the hearing is contained in enclosure (7-C).

3. Action by Officer Exercising Final Action Authority. Unless the convening authority is empowered to exercise final authority, the investigative report shall be forwarded to an officer so empowered by paragraph 1-K-1. This officer may take any action on the report that could have been taken by the convening authority. With respect to conclusions concerning misconduct and line of duty, this officer shall indicate approval, disapproval, or modification of such conclusions unless the record is returned for further investigation. See paragraph 1-J-2 of this manual. A copy of this action shall be forwarded as set forth in section 5-N below.

N. Review and Approval of Misconduct and Line of Duty Findings; Recording of Findings.

1. Final Action. Misconduct and line of duty determinations shall be reviewed and finally acted upon by officers in command as set forth in paragraph 1-K-1. In cases where determinations are adverse to the member, such final action shall only be taken after the case has been examined by a law specialist who renders a written opinion concerning the legal sufficiency of any prior findings and recommendations of the investigation and convening authority.

2. Adverse Determinations: Right to Appeal. In any case where the final action is adverse to the member, the findings of "misconduct" and/or "not in the line of duty" are subject to appeal to Commandant (G-L). The member shall be provided a copy of the Final Action, and shall have 10 working days in which to file an appeal. In the absence of good cause shown, the member's right to appeal is waived if a written appeal is not delivered by the member to the member's commanding officer or officer-in-charge by the end of the tenth working day. Such appeals must be in writing, and shall be forwarded via the chain of command. The officer taking final action shall ensure that the complete record accompanies the appeal. Commandant actions on appeal shall be edited to remove any personal references, indexed, and published for the guidance of final action authorities.

3. Favorable Determinations: Entry in Service Record. Entries in the appropriate service records pursuant to paragraph 5-E-4 are made by the local command without referral to higher authority.

4. Favorable Determinations: Use of Forms or Letter Incident Reports.

   a. An Injury Report (CG-382), a Report of Illness of Reservist (CG-4614), or a letter incident report with such a form as an enclosure, may be used in any case in which "line of duty" and "misconduct" findings are required by paragraph 1-G-4.f (see also paragraph 5-E-1), and in which:

      (1) in the opinion of a medical officer (or appropriate, competent medical personnel) as concurred in by the commanding officer, the injury was incurred "in line of duty" and "not as a result of the member's own misconduct"; and

      (2) the reporting requirements are not fully satisfied by a service record entry under paragraph 5-E-4. For example, a service record entry will not suffice where a permanent disability or other entitlement to disability benefits may be involved.

   b. Once approved by the final reviewing authority, the report will be forwarded to the member's command, with copy to the servicing personnel office, for filing in the member's service record, and with a copy to Commandant, G-PE, G-PO, or G-RSA as appropriate. See paragraph 1-L-3.a.

5. Example of Forms. Enclosure (7) contains copies of forms used in making the required determinations.

O. Check List for Administrative Investigations. The following is provided as a list of matters which should be included (as applicable) in any investigative report concerning misconduct and line of duty. The same information presented in a somewhat different format in enclosures (11) and (12) or (13).

1. The complete name, grade or title, service number, social security number, service or occupation, station or residence of the member.

2. All facts leading up to and connected with an injury disease, or death.

3. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroner's inquest or medical examiner's reports, and pathological, histological and toxicological studies.

4. Complete information concerning the site and terrain at which the incident in question occurred, and photographs, maps, charts, diagrams, or other exhibits which may be deemed helpful to a complete understanding of the incident.

5. All pertinent facts with respect to the duty, leave, liberty or unauthorized absence status of an individual at the time of the incident resulting in injury or death.

6. When the person involved is a member of the Coast Guard Reserve, complete information as to the member's status on active duty for training or inactive duty etc, (or travel to and from such duty) at the time of the incident.

7. Complete information as to the nature and extent of all injuries to Coast Guard personnel and the place and extent of any hospitalization resulting therefrom. Include costs when civilian facilities are used.

8. When relevant, evidence regarding the state of alcohol, drug, fumes, gas, or vapor intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Efforts shall be made to determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue tests for the intoxicating agent should be obtained and submitted as exhibits.

9. When material, evidence regarding the mental competence or impairment of the injured person. In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence as to social background, actions, and moods immediately prior to the suicide or the suicide attempt, any troubles which might have motivated the incident, and pertinent examination or counseling by specially experienced persons.

10. Documentation that statements solicited from an injured service member respecting the incurrence or aggravation of the disease or injury are in compliance with sections 2-F.

11. Documentation of any mechanical failures or failure of or lack of safety equipment which may have contributed to the injury, disease, or death.

12. The evidence should be sufficient to support each and every element forming the basis for any determination of not in the line of duty or due to own misconduct.

CHAPTER 6. GUIDELINES FOR PREPARING REPORTS OF ADMINISTRATIVE INVESTIGATIONS

A. Data Required in Each Investigation.

1. General.

   a. By whatever method evidence is obtained, an administrative investigation is required to ascertain dates, places, persons, and events definitely and accurately. The day, month, year, and when pertinent, the time, of the incident or circumstances in question should be designated with particularity. The place or places involved should be specifically reported, and all persons involved should be properly identified by full name, title, business or profession, and residence, if a civilian; or full name, grade/rank, service, duty station, and service number, if a member of the Armed Forces.

   b. Where relevant, the administrative investigation should identify directives promulgating standards applicable to the circumstances, and ascertain whether such standards were complied with. Such standards include qualification standards, standard doctrine, approved procedures, laws or regulations, and safety standards.

   c. The provisions of this chapter, and of the related enclosures, apply, as appropriate, to investigations into incidents involving Coast Guard Auxiliary personnel and facilities when operating under orders.

2. Omissions. Failure to observe these rules often results in the submission of an incomplete description of the transaction or event being investigated and frequently necessitates return of the report for further investigation.

3. Visual Aids. Diagrams, charts, and maps should be included in the investigative record when such presentations are necessary to provide the reviewing authorities with an accurate understanding of the incident or transaction being investigated. Photographs should be taken for inclusion in those cases in which words alone are considered insufficient to illuminate the circumstances and/or the damage attending the event in question. Illustrations depicting the nature of the roadway or other site of an incident may be helpful to an understanding of the case.

4. Factual Basis. All findings of fact should be supported by evidentiary enclosures. Written statements by the investigating officer describing matters personally observed and learned by the investigating officer are convenient means to document facts and, when appropriate, shall be made enclosures. Where findings are made with reference to other regulations (see, e.g., paragraph 6-A-1.b), and those regulations are promulgated by the Commandant, it is generally not necessary to include the referenced regulation as an enclosure.

5. Privacy Act Compliance. The investigation must be conducted in compliance with the Privacy Act of 1974. See section 2-H.

6. Relationship to Mishap Investigations.

a. While mishap investigations conducted pursuant to the Safety and Occupational Health Manual, COMDTINST M5100.29 (series), and administrative investigations must be conducted separately and independently, each shall have access to all real and documentary evidence and shall have separate opportunities to question and to obtain statements from all witnesses. Generally, statements of witnesses obtained with a promise of confidentiality, and matters which would reveal the mishap board's deliberative processes, will be unavailable to the administrative investigation. The Safety and Occupational Health Manual sets forth the materials which may be shared with the administrative investigation. See COMDTINST M5100.29, paragraphs 2-J-5.b and 2-J-3.

b. In conducting the administrative investigation, care shall be exercised to respect the privileged character of the mishap investigation. No witness shall be questioned as to whether the witness has participated in, or testified before, any mishap investigation.

c. In any case in which there is a possibility that the witness will be called upon to testify before both types of investigation bodies it is imperative that an explanation be made to the witness with respect to the apparent duplication. This is particularly important with respect to the nonmilitary witnesses. The explanation should include:

(1) the differing objectives of the two investigations;

(2) why the procedures vary;

(3) the necessity for preserving the privileged character of the mishap investigation; and

(4) that since neither command nor administrative action may alter the privileged character of statements given to the mishap investigation, such statements will not be available to the administrative investigation from any official source.

d. In circumstances where a mishap investigation is also being conducted, the scope and details of the fact-finding function to be performed by the administrative investigation will vary according to the nature and circumstances of the particular incident in question, and the limitations on the scope of the investigation imposed by the convening authority. See paragraph 1-C-4. It may be assumed that the mishap investigation will adequately address the causes of the incident. In addition to obtaining evidence from the mishap investigation, the administrative investigation may adopt any findings or conclusions of the mishap investigation which are made available to it. Opinions and recommendations of the administrative investigation generally need not address safety concerns and causes of the incident except to the extent necessary and pertinent to the reasons for which the administrative investigation is conducted.

7. General Checkoff List. Enclosure (11) contains a checkoff list applicable generally to all investigations.

8. Minor Cases. See section 1-D and paragraph 1-J-6 with respect to the possible use of a letter incident report rather than a full investigative report in minor cases.

B. Aircraft Accidents.

1. General.

a. Aircraft accidents with varying degrees of severity are investigated by one or more investigating bodies for various purposes:

(1) For the sole purpose of safety and accident prevention, the Safety and Occupational Health Manual, COMDTINST F5100.29 (series), provides for the conduct, analysis and review of investigations of aircraft mishaps.

(2) In instances in which an aircraft mishap results in death or serious injury, extensive damage to government property other than the specific aircraft involved, or in which there is a possibility of a claim, either by or against the Government, an appropriate administrative investigation should be ordered to determine the cause and responsibility for the mishap, the nature and extent of any injuries, a description of all damage to property, and all other attendant circumstances. If the sole reason for investigating is for claims purposes, then only a claims investigation should be conducted. See the Claims and Litigation Manual, COMDTINST M5890.9 (series). Such an administrative investigation may also be convened to inquire into and report on any other mishap, near mishap, or other circumstance at the discretion of the commanding officer or superior authority.

b. An investigation is not required for aircraft accidents or other aircraft mishaps incident to direct enemy action. An aircraft accident or aircraft mishap is incident to direct enemy action when it is due to hostile action or to a cause unknown in a hostile area. The mere fact, however, that an aircraft accident or mishap occurs in the course of a combat operation does not preclude an investigation when such is warranted for other purposes.

2. Specific Facts. See paragraph 6-A-6. The investigative report should include data on the following matters, but only insofar as the items are pertinent to the reasons for conducting the administrative investigation into the occurrence under investigation:

a. The background, history, training, and experience of the pilot, as well as the degree of familiarity with the type of aircraft involved.

b. The sociological, psychological, and human factors related to the accident.

c. The type, duration, and purpose of the flight; the authorization for the flight; the briefing of the pilot; and any other pertinent information in regard to the particular flight.

d. The prevailing weather conditions which might have affected the flight.

e. The maintenance history of the aircraft; compliance or noncompliance with pertinent technical directives, including flight hours since the last overhaul; and flight hours since the last intermediate check.

f. Type, model, and number of aircraft involved.

g. A description of the flight path and maneuvers of the aircraft during flight, including manner of descent and impact.

h. The positions of external control surfaces, landing gear, canopy, etc., during the flight.

i. The presence, condition, and use of safety, communication, escape, and survival equipment.

j. A post-accident examination of the aircraft and a detailed description of all damage to the aircraft, including wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.

k. An examination of the scene of the accident with complete information as to its precise location and a detailed description of the extent of any damage to Government or private property.

l. A description of rescue operations employed.

m. Instructions in effect at the time of the accident concerning procedures relating to the particular flight (including applicable local and regional flight rules governing the flight).

n. The status of all personnel aboard, i.e., whether pilot, co-pilot, member of the crew, or passenger.

o. Performance data on aircraft in question under prevailing wind, weather, and temperature conditions.

p. All deaths resulting from the accident and the precise medical cause thereof (substantiated by medical records, autopsy, and death certificate).

q. The cause, nature, and extent of any injuries suffered as a result of the accident (substantiated by medical records), including misconduct and line of duty determinations in the case of injuries to personnel, if directed.

r. The role of other aircraft in the occurrence.

s. The roles of supervisory, support, and controlling personnel.

C. Explosions.

1. General. The investigative report should cover the cause and responsibility for the explosion, the extent of injuries to personnel, the damage to property and probable monetary amount thereof, and all other relevant circumstances.

2. Specific Facts. The following information, which is set forth in a different format in enclosures (11) and (14), should be included in the record, if applicable:

a. Date, time of day, place, and probable causes of explosion.

b. Kind of explosives or ammunition and the quantity involved.

c. Time intervals, if measurable, between explosions.

d. Existence of barricades and effect upon them; the existence of any hill, forest, or other object intervening between the site of the explosion and the areas affected.

e. Weather and atmospheric conditions and their effect on shock waves.

f. Range and extent of damage. Where feasible, maps or photographs should be included, upon which all or most of the following data may be shown:

(1) Radius of complete destruction.

(2) Radius of structural damage beyond economical repair.

(3) Radius of repairable structural damage.

(4) Radius of general glass breakage.

(5) Distances to which significant missiles were projected (include kind and weight).

(6) Distance between locations, if explosions occurred at more than one location.

(7) Distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected.

g. Approximate shape and dimensions of crater.

h. Personnel involved and the extent of their involvement.

D. Loss or Stranding (Grounding) of a Coast Guard Vessel.

1. General. The evidence from which the findings of fact are derived should include all pertinent logs, charts, orders, and regulations. The condition of the sea and weather, the rate and direction of the tidal stream, the time of the tide, and other factors involving natural elements

(cont'd) should be stated. When it is pertinent (usually if not covered by the mishap investigation), the investigation should compare the environmental conditions experienced by the vessel with the limiting conditions upon which its design is predicated and any operating limits contained in competent directives. Similarly, any mechanical, electrical, or electronic deficiency or failure in the ship pertinent to the loss or stranding should be investigated and reported. The primary object of the investigation should be to ascertain the cause and individual responsibility for the loss or stranding and the damage resulting therefrom. See paragraph 6-F-2 concerning loss or stranding as a result of enemy action.

2. Determination of Ship's Position. Investigation should be made as to whether the proper chart was used, whether the position of the ship at the last favorable opportunity was accurately determined and, if not, when it was last accurately ascertained. In appropriate cases, a competent officer, not attached to the ship involved and not a member of the administrative investigation, should be directed to work up the reckoning of the ship from the data available to enable the investigative body to fix the true position of the ship at the time of taking the ground. The officer appointed to perform this duty should be called as a witness, and the written work offered into evidence. The officer should then be subject to cross-examination as to the accuracy thereof. The track of the ship so determined, as well as the position when aground, as determined by cross-bearings taken from the log book or by other means, should be laid off on the chart by which the vessel was navigated.

3. Navigation in Pilot Waters. If land was sighted and the distance estimated before the ship struck, it should be ascertained what steps were taken during the time land was in sight to correct the ship's course and speed. The extent to which applicable instructions (e.g., those contained in Coast Pilot or Sailing Directions) were observed should be particularly noted.

4. Procedure in Case of Loss of a Ship. Whenever investigation is made into the loss of a ship, the investigative body should call for the official report of the commanding officer of such ship containing the narrative of the disaster. This report should be read to the investigating body in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled and should be appended to the record of investigation.

5. Specific Facts. See enclosures (11), (15) and (17) for a listing in different format of the above information. They should also be consulted for information to be included in the record, if applicable.

E. Collisions.

1. General. In the event of a collision involving a Coast Guard vessel, or damage caused by a Coast Guard vessel to any shore structure, fish net or trap, buoy, or similar foreign object which warrants investigation, the investigation should ensure that proper identification is made as to the the name, grade, class of service, permanent home address, length of service, and marine experience of each material witness to the incident.

2. Collision with Vessels or Damage Caused by Coast Guard Vessels to Property Other Than That of the U.S. Coast Guard. No officer, pilot or agent of a non-Coast Guard vessel involved in a collision with a Coast Guard vessel shall be designated a party or accorded the rights of a party. Such person may be afforded an opportunity to appear and give evidence as a witness, and while testifying may be represented by counsel. The witness or the witness' counsel may, upon request, be furnished with a copy of that portion of the record containing the witness' testimony. In cases under this paragraph, reference should be made to paragraphs 1-C-2.c, and 4-A-3.d of this manual, and paragraph 2-D-4 of the Claims and Litigation Manual, COMDTINST M5890.9. See also paragraph 1-C-4.f of this manual.

3. Damage to Coast Guard Vessels or Property Caused by Non-Coast Guard Vessels. Incidents involving damage to Coast Guard vessels or property caused by Non-Coast Guard vessels or floating objects should be investigated in accordance with paragraphs 6-E-1 and 6-E-2 above.

4. Other Sources of Guidance. See Coast Guard Claims and Litigation Manual, COMDTINST M5890.9 (series).

5. Specific Facts. See enclosures (11), (15) and (17) for a listing in different format of the above information. They should also be consulted for information to be included in the record, if applicable.

F. Accidental or Intentional Flooding of a Ship.

1. Specific Facts. In cases of grounding, collision, structural or material failure which involve accidental or intentional flooding of parts of a Coast Guard vessel, the following information, which is set forth in a different format in enclosures (11), (15) and (17); should be included in the record, if applicable:

   a. Draft forward and aft, and list of ship before and after damage. These drafts may have to be estimated from drafts recorded on departure from last port and on arrival in port after damage.

   b. General distribution and amounts of variable weights, particularly fuel and water, before damage.

   c. Compartments flooded and the rapidity of flooding of individual compartments, if available.

   d. Cause of flooding of each compartment; that is whether the flooding was due directly to damage to structure or due to deficiencies of structure or closures such as doors, hatches, valves, vent closures, etc.

   e. The material condition of readiness in effect at the time of the casualty.

   f. Summary of steps taken to control damage and to correct list or trim.

   g. Performance of installations, such as flood control, automatic door and hatch closures, etc.

h. Extent of damage (hull, machinery, electronics supplies, cargo, etc.) including description and value thereof.

2. Enemy Action. An investigation is not required for loss, damage, or flooding of a Coast Guard vessel or craft which is a direct result of enemy action. The loss, damage, or flooding of a Coast Guard vessel or craft is a direct result of enemy action when it is due to hostile action or to an unknown cause in a hostile area. However, the foregoing does not dispense with the requirement of an investigation solely because the loss, damage, or flooding occurs in the course of combat operations. For example, a collision when leaving port not caused by hostile forces would not fall within this exemption. Further, an investigation is not precluded when deemed appropriate by operational or administrative commanders.

G. Pretrial Investigation.

1. Investigating of Charges. If practicable, when a court of inquiry or administrative investigation required to conduct a hearing is convened to investigate an incident which is likely to result in general court-martial charges, it should be provided with sworn charges and directed to investigate the charges in accordance with article 32, UCMJ, R.C.M. 405, MCM. (If this cannot be accomplished, it will usually be wiser to conduct an appropriate administrative investigation, and to address the article 32 investigation issue subsequently.)

2. Investigation Prior to Charges. If an investigation of the subject matter of an offense was conducted before the accused was charged with the offense, the investigation may be used in lieu of an investigation of the charges under article 32, UCMJ, providing the provisions of R.C.H. 405(b) are met. In summary these require that:

a. the accused was present at such investigation and was:

(1) advised of the offense of which suspected and of the right to be represented by counsel at the investigation;

(2) informed of the rights under article 31, UCMJ;

(3) given full opportunity to cross-examine witnesses against the accused if they were available; and

(4) given full opportunity to present anything desired in the accused's own behalf, either in defense or mitigation;

b. all statements of witnesses were given under oath or affirmation unless such requirement was waived by the accused; and

c. the accused, after being informed of the formal charges did not demand further investigation of the charges. In the event of such demand, opportunity shall be given to the accused to recall witnesses for further cross-examination and to offer any other evidence desired. RCM 405(b). This may be done by additional proceedings of the court of inquiry or formal investigation, either a board or a single

(cont'd) investigating officer, to hear and record such additional evidence, except that a member of a court of inquiry, a board, or a single investigating officer who previously recommended disciplinary action or who has become an accuser may not conduct the additional proceedings. The proceedings of such further investigation shall be appended to, and made a part of the original record of the initial court of inquiry or investigation.

H. GSA Accident Investigation.

1. General. Subpart 101-39.4 of Title 41, Code of Federal Regulations, sets forth procedures for reporting and investigating accidents involving GSA motor pool vehicles. Where any provision of this manual is inconsistent with the regulations specifically applicable to such accidents, those regulations shall govern.

2. Reporting of Accidents. The operator of a GSA motor pool vehicle is responsible for notifying the following persons immediately, either in person, by telephone, or by telegram of any accident in which the vehicle has been involved:

   a. The chief of the motor pool assigning the vehicle;

   b. The employee's official supervisor (employee as used here includes members of the Coast Guard as well as civilian employees); and

   c. State, county, or municipal authorities as required by law.

3. Recording Information. The operator of the vehicle shall obtain and record all information pertaining to the accident on Standard Form 91, Operator's Report of Motor Vehicle Accident. Only one copy of this report is required. The operator shall obtain the names, addresses, and telephone numbers of any witnesses and, wherever possible, have the witness complete Standard Form 94, Statement of Witness. The warning required by section 2-F shall be given where required. These forms shall be submitted to the vehicle operator's supervisor.

4. Injury to Driver. Whenever the vehicle operator is injured, and cannot comply with the above requirements, it shall be the responsibility of the driver's supervisor to see that the required reports are completed.

5. When to Investigate. Every accident involving a GSA vehicle shall be investigated and a report furnished the chief of the motor pool which assigned the vehicle and the convening authority. The extent of the report required varies, as follows:

   a. Where property damage is less than $500 and there is no bodily injury, a copy of SF-91 and any other available supporting data is all that need be submitted.

   b. Where property damage exceeds $500.00 or bodily injury is involved, the accident must be investigated within 48 hours of the occurrence. The report shall be as detailed as is warranted by the circumstances.

(cont'd) Letter Incident Reports with copies of the SF-91 attached will suffice in most cases. A "standard" format report (see enclosure (5)) should be reserved for more serious accidents.

6. Specific Facts. The following information, which is set forth in a different format in enclosures (11) and (14), should be included in the record, if applicable:

   a. Authority and purpose for which the Government vehicle was being used and the relationship of the scene of the accident to any designated or authorized route.

   b. A complete description of the accident including all related circumstances with reference to pertinent physical facts observed and any material statements, admissions, or declarations made by the persons involved.

   c. Circumstances leading to the accident such as disregarding instructions, failing to heed warnings, fatigue, intoxication, the influence of drugs, failure to wear contact or other prescription lenses, poor physical condition, etc.

   d. Any actual facts noted concerning weather conditions or visibility, obstructions to view such as buildings, hedges, other vehicles, or curves, and the respective distances and relationship to the scene.

   e. Speed of vehicle or vehicles as evidenced by testimony of witnesses, length of skid marks or tread imprints, and the condition and character of road.

   f. Absence or presence and location of all traffic signals, signs, pavement markings, through streets, and angles of intersection.

   g. Traffic conditions.

   h. Nature and extent of damage to vehicles and property.

   i. Traffic laws and regulations in force pertinent to the accident, when violation of same was a factor in the accident.

   j. Any available photographs of the scene or of resulting property damage.

   k. Copies of any pertinent maintenance, inspection, or repair records relating to the GSA motor vehicle involved.

   l. Whether the operator of any private vehicle involved was authorized by the owner of the vehicle to so operate the vehicle, and if authorized the relationship which existed between the owner and the operator (e.g., employer/employee, father/daughter, etc.).

   m. Whether a claim has been or will be filed against the Government.

   n. Conduct of passengers and the effect on the driver.

o. Prior relationship of passengers and driver while is relevant to knowledge by any passenger of any impairment of the driver (which may have caused the accident) at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

p. Safety devices installed, and whether they were being used at the time of the accident.

7. Submission of the Report. Two copies of the complete investigative report shall be furnished to the chief of the motor pool assigning the vehicle, by the convening authority.

8. Claims in Favor of the Government. Whenever there is any indication that a person other than the operator of the GSA vehicle is at fault, the final reviewing authority shall submit all original documents and data pertaining to the accident and its investigation to the CSA regional counsel of the region that issued the vehicle. The regional counsel will take the necessary action to initiate the claim. The final reviewing authority shall request that the GSA regional counsel notify the Coast Guard of the introduction of the government claim and provide pertinent information about the claim's progress and final settlements. See also paragraph 4-A-3.d.

9. Claims Against The Government. When a party asserts a claim against the Government based on the alleged negligence of a vehicle operator acting within the scope of the operator's duties, the Coast Guard shall make every effort to settle the claim administratively as per 28 U.S.C. 2672, 33 CFR Part 25, and the Claims and Litigation Manual, COMDTINST M5890.9 (series). When an administrative settlement of the claim cannot be effected, the Coast Guard is responsible to completely prepare, from an administrative standpoint, the defense of the claim and to transmit the whole case to the Department of Justice. See also paragraph 4-A-3.d of this manual.

I. Loss and Destruction of and Damage to Government Owned Property.

1. General. Part IX, Chapter 4 of Volume 3 of the Comptroller Manual, COMDTINST M4400.13, establishes the administrative action necessary where Government property is lost, damaged, or destroyed. Also, COMDTINST 5520.5C (series) on Investigative Assistance sets forth the requirement for investigations where the loss of funds or property was caused by theft or fraud on the part of any person. When the loss, damage, or destruction of Government funds or property is discovered, both those manuals should be consulted to make a determination as to how the matter will be investigated, if at all. When it is determined that an investigation under this manual should be convened, the factors specified in section 1-E of this manual should be carefully considered in the light of possible adverse financial and career impacts on individuals who may be affected. Coordination with concurrent investigations by other Federal or Departmental agencies is required.

2. Specific Facts. In addition to any other relevant findings, opinions, and recommendations as may be directed by the order appointing the administrative investigation, the investigative report should include the following information, which is set forth in a different format in enclosures (11) and (18), if applicable:

   a. A determination of the exact amount of the loss and its precise nature (i.e., whether it was a physical loss or deficiency of government fund, vouchers, records, checks, securities, or papers; an illegal, improper, or incorrect payment; or a loss of property, funds derived from the sale of property, or shortage of inventory).

   b. The identity and position of the accountable officer (e.g., disbursing, supply, ship's store, food services, or commissary store officer), and the identity and position of any other person who had custody of the missing funds, records, or property in question.

   c. The general reputation of the individuals identified in paragraph 6-I-2.b above for the handling and safeguarding of the funds, records, or property entrusted to them.

   d. Any local condition which was unusual, which required special care, or which involved an exceptional hazard in handling funds or property.

   e. The physical conditions under which the accountable officer operated, including the allocation and condition of space and equipment, as well as the storage and security facilities and services available.

   f. Whether or not pertinent regulations and instructions were followed.

   g. An opinion as to whether or not the loss or deficiency was proximately caused by the individual's fault or negligence.

3. Guidelines for Determining Fault or Negligence. In formulating an opinion on whether a loss of funds or property was "proximately caused" by "fault or negligence" on the part of an accountable individual, the following guidelines should be observed:

   a. The individual is free from fault or negligence if:

      (1) there is no direct evidence that the individual's fault or negligence was the proximate cause of the loss; and

      (2) there is no circumstantial evidence (such as an established pattern of carelessness in dealing with entrusted funds) which raises a strong inference that the individual's fault or negligence was the proximate cause of the loss.

   b. "Fault" is defined as conduct or behavior evidencing bad faith, mismanagement, or neglect of care, or as performance resulting from inattention, dereliction, or perversity.

c. "Negligence" is defined as conduct which fails to conform to the standard of care which a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Acts or omissions which, without good justification, deviate materially from duties imposed by regulations or from customary and normal disbursing, collection, or safeguarding procedures or standards would ordinarily constitute negligence for the purpose of the statute, regulation, procedure or standard involved.

d. Proximate cause" is defined as an act or omission which has the direct and foreseeable consequence of producing the loss or creating conditions in which the loss could occur, and without which the loss would not have occurred.

J. Claims for or against the Government.

1. General. An administrative investigation ordered to inquire into a certain incident should, if a claim or possible claim for or against the Government is involved in the same incident, be guided by the provisions of paragraphs 1-B-3 and 1-C-2.c of this manual, and chapter 2 of the Claims and Litigation Manual, COMDTINST M5890.9. See also, e.g., paragraph 2-C-2.d of this manual.

2. Forwarding Reports. If the exclusive purpose for convening the investigation was the handling of a claims matter, the investigative report shall be forwarded in accordance with the provisions of the appropriate claims regulations. However, if the investigation was not ordered solely to inquire into a claims matter, a copy of the investigative report should be forwarded according to the procedures. outlined in section 1-L with the original of the claims provided to the legal office that will handle any claims aspects as soon as received. The copy of the record forwarded for claims adjudication purposes should contain the originals of all claims forms filed, supporting evidence, and any other items dealing exclusively with, and required for, the adjudication of the claims. The forwarding endorsement should contain a notation indicating that the original claims material was forwarded in that manner. Both the convening order and the preliminary statement of the report shall contain the prescriptive language of paragraph 4-A-3.d

K. Misconduct and Line of Duty Investigations. Chapter 5 contains detailed information relevant to investigations involving line of duty and misconduct findings. See section 5-0 for a checklist of specific facts required for line of duty and misconduct investigative reports.

L. Desirability of Retention in the Coast Guard - Administrative Discharge Board.

1. General. For the most part, enlisted personnel of the Coast Guard may not be separated from the service with an other than honorable discharge unless they have been provided the opportunity to appear before an administrative discharge board. Similarly (with a few exceptions), enlisted personnel of the Coast Guard with more than 8 years total service may not be denied reenlistment, or be separated prior to the end of an enlistment, unless they have been provided the opportunity to appear before an administrative discharge board. Boards for this purpose are conducted largely in accordance with the rules for formal boards of

(cont'd) investigation convened pursuant to this manual as modified by this section and article 12-B of the Personnel Manual, COMDTINST M1000.6, particularly articles 12-B-5, 12-B-31, and 12-B-32. This section sets forth certain provisions unique to these boards.

2. Definitions. For purposes of this section, the definitions of terms set forth in article 12-B-2 of the Personnel Manual apply.

3. Composition. Administrative discharge boards shall consist of a minimum of three experienced commissioned officers. The senior member shall be at least a lieutenant commander. Other provisions as to membership in specific instances are contained in the Personnel Manual, article 12-B-31. A separate recorder shall normally be detailed. Such recorder need not be qualified pursuant to Article 27(b), UCMJ, but shall be deemed qualified for this duty by the cognizant Coast Guard legal officer/SJA.

4. Procedures. The procedures for a formal board of investigation (see section 4-D) shall be followed except as modified in this section and article 12-B of the Personnel Manual. After the closed session, the board shall open and announce its recommendation, which should include one of the following dispositions:

   a. Retention (with or without conditions).

   b. Discharge for a specified reason and the appropriate type of discharge certificate, pursuant to the Personnel Manual.

5. The board need not announce findings of fact or opinions at this time, but shall forthwith prepare written findings of fact, opinions and recommendations for inclusion in the record. The proceedings need not be reported verbatim, unless so directed by the convening authority. When not reported verbatim, the record shall be summarized and shall include a list of witnesses and brief summary of their testimony.

6. Rights of a Respondent to an Administrative Discharge Board. The rights of respondent are the same as the rights of a party to a formal investigation plus the two additional rights granted a party to a court of inquiry. See paragraph 2-D-1. The respondent may or may not submit to examination by the board. The respondent may at any time before the board concludes submit any answer, deposition, sworn or unsworn statement, affidavit, certificate or stipulation. This includes, but is not limited to, those affidavits and depositions allowed by paragraph 4-D-5.k.

7. Scope of Inquiry. An administrative discharge board shall endeavor to develop fully the respondent's conduct, competency, background, character and attitudes, in order that the Commandant may make a fair determination as to retention or discharge. All pertinent testimony from superiors and shipmates, and all pertinent records bearing upon his desirability of retention shall be introduced. A respondent who chooses to testify shall be subject to full interrogation on all aspects bearing on the desirability of retention, subject only to paragraph 2-D-1.h.

M. Reduction in Grade Due to Incompetency.

1. General. Article 5-C-38.c(2)(a) of the Personnel Manual, COMDTINST M1000.6, requires a board of investigation prior to reducing a chief petty officer by reason of incompetency. Such boards shall follow

(cont'd) the procedures, composition, and rights of a party as set forth boards considering the desirability of retention, section 6-L with the following modifications.

2. Procedure. The board shall, after its closed session, open and announce its finding that:

   a. the member is unqualified by reason of incompetency, or

   b. the member is not unqualified by reason of incompetency.

   If found unqualified, the board shall announce its recommendation as to the rate to which the member should be reduced. The board need not announce other findings of fact, opinions or recommendations at this time, but shall forthwith prepare written findings of fact, opinions and recommendations for inclusion in the record.

INVESTIGATIONS OPTIONS CHART

	COURT OF INQUIRY	BOARD OF INVESTIGATION (FORMAL)	ONE-OFFICER INVESTIGATION (FORMAL)	BOARD OF INVESTIGATION (INFORMAL)	ONE-OFFICER INVESTIGATION (INFORMAL)	LETTER INCIDENT REPORT
CONVENING AUTHORITY	GCMCA	GCMCA or Chief of Staff	SPCMCA (consultation with legal off. required)	SPCMCA	SPCMCA	Any CO or OIC
APPOINTING ORDER	Written (may be preceded by oral or msg orders	Same	Same	Written, msg, or oral	Same	Same
HEARING PROCEDURE	Yes	Yes	Yes	No	No	No
PARTIES	Permitted	Same	Same	Not permitted	Same	Same
MEMBERS						
NUMBER	At least three	At least two	One	At least two	One	One
SENIORITY	Senior to all parties	Same	Same	N/A	N/A	N/A
RANK	Pres.- LCDR or higher	Senior Mem.- LCDR or higher	LCDR or higher	Senior Mem.- LT or higher	CO, CWO, or CPO	N/A
COUNSEL FOR THE COURT	Required. Must be law spec. Should be MJ	N/A	N/A	N/A	N/A	N/A
RECORDER	N/A	If separate, must be law specialist; may be junior member	N/A	N/A	N/A	N/A
COUNSEL FOR PARTIES	Art. 27(b) qualified, unless waived	Same	Same	N/A	N/A	N/A
SUBPOENA	Yes	No	No	No	No	No
REPORT						
FORMAT	Written	Written	Written	Written	Written	Written
OPIN. & RECOM.	Only if directed	Required	Required	Required	Required	Permitted
MINORITY REPORT	Permitted	Permitted	N/A	Permitted	N/A	N/A
SIGNING	By all members	Same	By IO	By all members	By IO	By CA or IO
LINE OF DUTY/ MISCONDUCT	Addressed, if Opin. & Rec. directed	Addressed	Same	Addressed, recommendation for hearing, if appropriate	Same	Same

INVESTIGATIONS AND REPORTS REQUIRED BY OTHER DIRECTIVES

PROGRAM	INCIDENT REQUIRING INVESTIGATION OR REPORT	GOVERNING DIRECTIVE	REQUIRED FORM FOR REPORT	NEED ADMIN INV?
G-CPM	Covenant Against Contingent Fees - Violations	CI M4200.19, 1203.409	Memorandum	No
G-CPM	Subcontractor Kickbacks	CI M4200.19, 1203.502	Memorandum	No
G-CPM	Suspected Antitrust Violations	CI M4200.19, 1203.303	Memorandum	No
G-CRC	Anti-Deficiency Act Violation	31 USC1351	Report	Maybe
G-CRC	Anti-Deficiency Act Violation	DOT Order 2700.7B	Report	Maybe
G-CRC	Anti-Deficiency Act Violation	CI M7100.3 Para 2-A-6	Report	Maybe
G-CSP	Firearms Mishaps	CI M5100.29, Ch 2	(Investigation)	Maybe
G-CSP	Minor Mishaps (Class C and D)	CI M5100.29	Verbal/Computer	Maybe
G-CSP	Serious Mishaps (Class A and B)	CI M5100.29	(Investigation)	Maybe
G-ECV	Fire Casualty Reports	CI M11000.1, II-13-B		Maybe
G-ECV	Hazardous Waste Spills	CI M16475.1A	Notification	Maybe
G-ECV	Motor Vehicle Accidents	CI M11240.9, 11-C, M5100.29	As Specified	Maybe
G-ECV	Tower Collapse	CI M11000.4, 3-7-2		Maybe
G-ELM	Negligence or Misuse of Government Property	CI M4400.13, Pt IX, Ch 4	(Investigation)	Yes
G-MCE	Discrimination Complaints - Civilian	CI M12713.7, Ch 4	(Investigation)	No
G-MME	Discrimination Complaints - Military	CI M5350.11, Ch 5	(Investigation)	No
G-KMA	Disease Alert Report	CI M6000.1	Msg or R/D Ltr	No
G-LMJ	Complaints of wrongs	Art. 136, UCMJ, MJM, Pt VII	(Investigation)	No
G-LMJ	Professional Misconduct by Military Judge, etc.	MJM, Part VI	(Investigation)	Maybe
G-LMJ	Violatons of the UCMJ	MCM, MJM	Prelim. Inquiry	No
G-MER	Barrel Fee Revenues	33 CFR 135, Sub B		No
G-MER	Deepwater Port Civil Penalties	33 USC 1514	(Investigation)	No
G-MER	Deepwater Port Fund Revenues	33 CFR 137, Sub C		No
G-MER	Deepwater Port Oil Discharge Penalty Assessment	33 USC 1517(a)	(Investigation)	No
G-MER	Deepwater Port Oil Pollution Claims	33 CFR 137, Sub F		No
G-MER	Deepwater Port Vessel Financial Responsibility	33 CFR 137, Sub D		No
G-MER	Financial Responsibility Certification	33 CFR 135, Sub C	(Investigation)	No
G-MER	OCS Pollution - Notification, Designation, etc.	33 CFR 135, Sub E	(Investigation)	No
G-MER	OCS Vessel Certificate - Access, Denial etc.	33 CFR 135, Sub E		No
G-MER	Ocs Pollution Claims	33 CFR 136		No
G-MER	Penalty Assessments	43 USC 1822		No
G-MER	Revocation/Denial of Cert. of Financial Resp.	33 CFR 135.223	(Investigation)	No
G-MMI	Civil Penalty	CI M16200.1	(Investigation)	No
G-MMI	Major/Significant Marine Casualty	MSM, 72-2-1, 72-2-5	Notification	No
G-MMI	Marine Casualty	MSM, Ch 72	(Investigation)	Maybe
G-MMI	Marine Casualty (MC) Fragment - MSIS	CI M5320.17		No
G-MMI	Marine Casualty - NTSB	46 CFR 4.40		Yes
G-MMI	Marine Violation (MV) Fragment - MSIS	CI M5320.17		No
G-MMI	Report of Merchant Marine Invest. & Hearings	MSM, 71-10-45	CG-2802	No
G-MMI	Suspension and Revocation	MSM, Ch 71	(Investigation)	No
G-MVP	Loss of Blank Merchant Mariners Document	MSM, V III, 14.A		No
G-MVP	Loss of License and Certificate Examinations	MSM, V III, 1.G.16.a		No
G-MVP	Loss of Merchant Mariners Document	46 CFR 10.02-23(b)		No
G-NAB	Auxiliary Facility Damage Claims	CI M16798.3, M5890.9	(Investigation)	*1
G-NAB	Boating Accidents Involving Fatalities	MSM, Vol V	(Investigation)	Maybe
G-NAB	Factory Visits/Investigative Audits	CI M16761.1, Ch 11	(Investigation)	No
G-NAB	Reported Defects In Boats	CI M16761.2, Ch 9	(Investigation)	No
G-NAB	Third Party Claims For Damage By Auxiliary Fac.	CI M16798.3, M5890.9	(Investigation)	*1
G-OAV	Aircraft Mishaps	CI M3710.1, M5100.29	(Investigation)	Maybe

INVESTIGATIONS AND REPORTS REQUIRED BY OTHER DIRECTIVES

PROGRAM	INCIDENT REQUIRING INVESTIGATION OR REPORT	GOVERNING DIRECTIVE	REQUIRED FORM FOR REPORT	NEED ADMIN INV?
G-OAV	Flight Regulations Violations	CI M3710.1	Letter	Maybe
G-OCU	Vessel Mishaps	CI M5100.29	(Investigation)	Maybe
G-OIS	(Attempt) Suicide if Access to Classified Info.	CI M5500.11	None	Maybe
G-OIS	(Possible) Compromise of Classified Information	CI M5500.11	Msg or letter	Maybe
G-OIS	Compromise Through Public Media	CI M5500.11	None	Maybe
G-OIS	Discharge of a Weapon Under Operational Cond.	CI M5527.1, Ch 2	(Investigation)	Yes
G-OIS	Drawing a Firearm Under Operational Conditions	CI M5527.1, Ch 2	Spot Report	Maybe
G-OIS	Espionage and Deliberate Compromise	CI M5500.11	None	Maybe
G-OIS	Finding of Classified Material Reported Lost	CI M5500.11	None	No
G-OIS	Loss of Personally Owned Firearm By S/A	CI M5527.1, Ch 2	(Investigation)	Yes
G-OIS	U/A if Access to Classified Info.	CI M5500.11	None	Maybe
G-OIS	Violation of Security Directive	CI M5500.11	CG 4764	No
G-OLE	Discharge of a Weapon	CI M16247.1	Letter	Maybe
G-OLE	Small Arms, Munitions - Loss and Recovery	CI M5000.2	(Investigation)	Yes
G-P	Injury to Active Duty Member	CI M5530.1, M5100.29	CG 3822	Maybe
G-PDE	Medical Disability	CI M1550.2	Medical Board	No
G-PS	Loss of Cash from Imprest Funds	CI M7210.1, Ch 2, Sec U		Maybe
G-PS	Negligent or Pilferege of Subsistence Items	CI M4001.3, Ch 6, Sec G	Survey, CG 5269	Maybe
G-PXM	NAFA Third Party Liability Claims	CI M7010.5	(Investigation)	Maybe
G-RER	Casualty Report	CI M3501.3	Notification	No
G-RSA	Injury or Illness of Reservist	CI M1001.27, M5100.29	CG 4614	Maybe

General Note on Enclosure (2): This enclosure provides a list of many of the reporting or investigation requirements imposed by the Coast Guard which are, for the most part, independent of the requirements of this manual. Some of these incidents or requirements may also need to be considered for administrative investigation and report pursuant to this manual. This concern is addressed in Column 5: "Need Admin Inv?". Whether or not a separate administrative investigation is required in any given situation must be independently determined following the guidelines of Chapter 1. However, in most instances the following interpretations apply:

"No" indicates that such an investigation would normally never be required.

"Yes" indicates that the governing directive specifies that the procedures and report format of this manual should be used in doing the required investigation.

"Maybe" indicates that the type incident is one where procedures and report form of this manual may or may not be appropriate or necessary, either in conjunction with or separate from the other investigation or report, depending on the circumstances. In ascertaining the answer to this question, the following references will be particularly helpful:

Section 1-C	Investigations Under Other Regulations
Section 1-G	Convening Authority - Responsibility to Order
¶ 1-G-4	Specific Incidents or Circumstances Which Ordinarily Require Investigation

Note 1. Boating Accident Report, CG 3865, is usually required.

SAMPLE CONVENING ORDERS

A. Letter Incident Report

From: Commanding Officer, USCGC:_____(WMEC_____)
To: CDR_____000 00 0000, USCG

Subj: INVESTIGATION OF (describe the incident) THAT OCCURRED AT (location) ON (date)

Ref: (a) CG Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Reserve Administration and Training Manual, COMDTINST M1000.26, Part 9-7-0 (in reserve disability cases)

1. You shall conduct a single individual investigation under chapter 4 of reference (a) into all the circumstances surrounding the (describe incident) that occurred at (location of incident) on (date). You are not required to conduct a hearing.

2. You shall prepare a letter report in a format for my signature to the District (Area) Commander. Summarize in a brief narrative what occurred and the command action that was taken to resolve the matter.

3. (When there is a potential claim against the United States either in admiralty or under the Federal Tort Claims Act, or if there is potential litigation against the United States, paragraphs 1-C-2.c and 4-A-3.d of reference (a) shall be complied with, and the following language applies, and shall be included in the investigative report:

> This investigation is appointed in contemplation of litigation
> and to assist attorneys acting on behalf of the Chief Counsel,
> and representing interests of the United States in this matter.)

4. The findings shall contain facts necessary to determine whether any disability resulted from a disease, illness, or injury and whether the disability was incurred while on (active duty for more than 30 days) [in reserve disability cases - (active duty for training for more than 30 days), (active duty for training under "compliance orders"), or (inactive duty training)].

5. The investigation should be initiated on_____June 19____, or as soon thereafter as practicable, at_____.

6. If you are unable to complete this investigation by (date 21 days after appointment), you shall state the reasons to me and include an explanation of the delay in the initial paragraph.

7. (Name) shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a) and by reference (b).

8. (You shall comply with the Privacy Act of 1974 (see section 2-H of reference (a).) (You shall comply with article 31, UCMJ, with regard to_____who is suspected of the offense of committing_____(e.g. absence without leave). See paragraphs 4-A-3.c and 4-B-2.d(2) of reference (a).) (Comply with paragraph 4-B-2.d of reference (a).)

B. Informal Investigation (one or more members)
(NO HEARING)

From: Commanding Officer, USCGC_____(WMEC_____)
To: CDR_____000 00 0000, USCG

Subj: INVESTIGATION OF (describe the incident) THAT OCCURRED AT (location) ON (date)

Ref: (a) CG Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Reserve Administration and Training Manual, COMDTINST M1000.26, Part 9-7-0 (in reserve disability cases)

1. You shall conduct a single individual investigation under chapter 4 of reference (a) into all the circumstances surrounding the (describe incident) that occurred at (location of incident) on (date). You are not required to conduct a hearing.

(OR)

1. You are hereby designated senior member of a Board of Investigation under chapter 4 of reference (a). Other members of the Board are:

CDR_____ _____USCG
LT_____ _____USCGR

You are not required to conduct a hearing. You are not required to take testimony under oath. You shall inquire into all the circumstances surrounding the (describe incident) that occurred at (location of incident) on (date).

2. You must investigate the cause of (describe incident), resulting injuries and damages, and any fault or responsibility. See chapter 6 of reference (a) as to specific facts that must be determined. You must express an opinion as to the line of duty and misconduct status of any injured Coast Guard member, but no opinion shall be expressed concerning deceased members. The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and whether the disability was incurred while on (active duty for more than 30 days) [in reserve disability cases - (active duty for training for more than 30 days), (active duty for training under "compliance orders"), or (inactive duty training)]. You may recommend appropriate administrative or disciplinary action. No opinion shall be expressed concerning the liability for any claims or potential claims. See paragraph 4-C-7.d of reference (a).

3. (When there is a potential claim against the United States either in admiralty or under the Federal Tort Claims Act, or if there is potential litigation against the United States, paragraphs 1-C-2.c and 4-A-3.d of reference (a) shall be complied with, and the following language applies, and shall be included in the investigative report:

> This investigation is appointed in contemplation of litigation and to assist attorneys acting on behalf of the Chief Counsel, and representing interests of the United States in this matter.)

4. The investigation should be initiated on_____June 19___, or as soon thereafter as practicable, at_____.

5. If you are unable to complete this investigation by (date 21 days after appointment), you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

6. (You shall submit an investigative report following the format of enclosure (5) of reference (a).) (Should you believe that a modification of this format, or a letter incident report, is appropriate, communicate that fact to me for my decision on the ultimate report format.)

7. (You shall cooperate with the MISHAP board investigating this same incident. To the extent feasible, coordinate the collection of evidence, except witness statements which are taken by the MISHAP board under the premise of confidentiality. To the extent that they are relevant, you may adopt any findings of that board. You should refrain from addressing issues which are addressed by the MISHAP board (generally all safety concerns) unless they are relevant to the purpose for which this investigation is convened.)

8. (Name) shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a), and by reference (b).

9. (You shall comply with the Privacy Act of 1974 (see section 2-H of reference (a).) (You shall comply with article 31, UCMJ, with regard to_____who is suspected of the offense of committing_____(e.g. absence without leave). See paragraphs 4-A-3.c and 4-B-Z.d(2) of reference (a).) (Comply with paragraph 4-B-2.d of reference (a).)

C. Formal Investigation (one or more members)
(Hearing required)

From: Commanding Officer, USCGC_____(WMEC_____)
TO: CDR_____000 00 0000, USCG

Subj: INVESTIGATION OF (describe the incident) THAT OCCURRED AT (location) ON (date)

Ref: (a) CG Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Reserve Administration and Training Manual, COMDTINST M1000.25, Part 9-7-0 (in reserve disability cases)

1. You shall conduct a single individual investigation under chapter 4 of reference (a) into all the circumstances surrounding the (describe incident) that occurred at (location of incident) on (date). You are required to conduct a hearing. You are directed to take the testimony of witnesses under oath. A verbatim record shall (not) be kept.

(OR)

1. You are hereby designated senior member of a Board of Investigation under chapter 4 of reference (a). Other members of the Board are

CDR_____ _____USCG
LT_____ _____USCGR

The Board is required to conduct a hearing. (CDR_____ _____, USCG, a law specialist certified pursuant to article 27(b), UCMJ, is designated recorder.) (The junior member shall act as recorder.) Testimony of witnesses shall be under oath. A verbatim record shall (not) be kept.

2. (Commander_____, USCG, is designated a party to this investigation. You shall notify (him)(her) of the time and place of the hearing, and accord (him)(her) the rights of a party under section 2-D.) (You may (not) designate parties to the investigation during the proceedings.) (If parties are designated, comply with paragraph 2-B-3 of reference (a) and report the designation to me.) (If you determine a party should be designated, communicate that fact to me.)

3. You must investigate the cause of (describe incident), resulting injuries and damages, and any fault, neglect or responsibility. See chapter 6 of reference (a) as to specific facts that should be determined. You must express an opinion as to the line of duty and misconduct status of any injured Coast Guard member, but no opinion shall be expressed concerning deceased members. The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and whether the disability was incurred while on (active duty for more than 30 days) [in reserve disability cases - (active duty for training for more than 30 days), (active duty for training under "compliance orders"), or (inactive duty training).] You may recommend appropriate administration or disciplinary action. No opinion shall be expressed concerning the liability for any claims or potential claims. See paragraph 4-C-7.d of reference (a).

4. (When there is a potential claim against the United States either in admiralty or under the Federal Tort Claims Act, or if there is potential litigation against the United States, paragraphs 1-C-2.c and 4-A-3.d of reference (a) shall be complied with, and the following language applies, and shall be included in the investigative report:

> This investigation is appointed in contemplation of litigation
> and to assist attorneys acting on behalf of the Chief Counsel,
> and representing interests of the United States in this matter.)

5. The investigation should be initiated on_____June 19 , or as soon thereafter as practicable, at_____.

6. If you are unable to complete this investigation by (date 21 days after appointment), you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

7. (You shall submit an investigative report following the format of enclosure (5) of reference (a).) (Attach the verbatim transcript as an enclosure to your report.)

8. (You shall cooperate with the MISHAP board investigating this same incident. To the extent feasible, coordinate the collection of evidence, except witness statements which are taken by the MISHAP board under the promise of confidentiality. To the extent that they are relevant, you may adopt any findings of that board. You should refrain from addressing issues which are addressed by the MISHAP board (generally all safety concerns) unless they are relevant to the purpose for which this investigation is convened.)

9. (Name) shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a), and by reference (b).

10. (You shall comply with the Privacy Act of 1974 (see section 2-H of reference (a).) (You shall comply with article 31, UCMJ, with regard to_____who is suspected of the offense of committing_____(e.g. absence without leave). See paragraphs 4-A-3.c and 4-B-2.d(2) of reference (a).) (Comply with paragraph 4-B-2.d of reference (a).)

RECORD OF PROCEEDINGS
OF A
COURT OF INQUIRY

convened on board

USCG_____(_____)
by order of
Commander, First Coast Guard District

To inquire into an explosion in
USCGC_____(_____) which occurred on
_____February 19
Ordered on_____February 19____1/-5/

Note:

1/ This is the date of the appointing order.

2/ A copy of the findings of fact, opinions and recommendations will be prefixed to the record.

3/ The record of proceedings shall be prepared on standard (8 1/2 X 11) size paper.

4/ Index in lengthy cases: An index is required whenever a record exceeds 20 pages. The index shall list the witnesses, a descriptive title of their duties in relation to the incident (e.g., Officer-of-the-Day, Engineer Officer, Navigator), whether called by the "Court" or "Party", and the page numbers on which their testimony appears. Exhibits, briefly described, offered or admitted in evidence, shall be listed in chronological order showing the page at which each was admitted in evidence.

5/ Appointing Order: The original appointing order follows the cover page and is lettered "A". Amendments or modifications thereto are lettered "B", "C", et cetera. When an index is required, it precedes the appointing order. Written communications with the convening authority will follow the appointing order and any amendments or modifications thereto.

Court meets:

-FIRST DAY-

On board
USCGC_____(_____)
U.S. Coast Guard Base
Boston, MA
Wednesday_____Feb 19___

The court met at_____. (Insert time, e.g., 0830)

Present:

Rear Admiral J_____B. T_____, USCG
Captain S_____T. U_____, USCG; and
Captain G_____H. I_____, USCGR., members.
Commander J_____K. L_____, USCG, Counsel for the court.

The court was cleared and the counsel for the court read the appointing order, original prefixed, marked "A", and an amendment thereto, original prefixed marked "B".

All matters preliminary to the inquiry having been determined, and the court having decided to sit with open doors, the court was opened.

Party and counsel enter.

Commander M_____N. O_____, USCG, entered as a party to the inquiry and introduced Lieutenant P_____A. R_____, USCGR, as counsel (qualified in accordance with article 27(b) of the Uniform Code of Military Justice). Lieutenant R_____took a seat as counsel.

Note: If a party enters and waives the right to be present or to be represented by counsel, this shall be reported verbatim. If any designated party (or counsel) is absent, the record shall indicate the absence, the reason therefor if known, and whether or not the party had been notified of the designation as a party and of the time and place of the meeting of the court.

Swearing the reporter, members and counsel for the court.

The appointed reporter, W_____E. D_____, yeoman first class, USCG the members of the court, and counsel for the court were sworn.

Note: Interpreters and assistant counsel, if any also shall be sworn at this time.

Note: Informing the party or parties of their rights is accomplished at this time. The counsel informs the interested party or parties of their rights in accordance with paragraph 2-D-3; and this is reported verbatim. The record will clearly show that each has been designated as a party, Several parties may be informed of their rights at the same times. See section_____for additional rights of a person who has been injured.

Right to challenge accorded.

The party objected to Captain G_____H. I_____, USCGR, as a member because Captain I_____had formed an opinion that the party was guilty of culpable conduct with regard to the question of the responsibility for the explosion.

The other members of the court withdrew at_____,_____February 19____.

The challenged member replied as follows:

* * * * * * *

Upon request of the party, the challenged member took the stand, was duly sworn and was examined as follows:

VOIR DIRE EXAMINATION

Questions by counsel for Commander O_____, party:

Q._____?
A._____.

Questions by counsel for the court.

Q._____?
A._____.

Neither counsel for the court, nor the party desired to examine the witness (member) further. The witness resumed sitting as a member of the court.

Ensign A_____I. K_____, USCG, was called as a witness by the counsel for the court, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by the counsel for the court:

Q. State your name, grade, organization and present station.
A._____.
Q._____?
A._____.

CROSS EXAMINATION

Questions by (counsel for) Commander O_____, party:

Q._____?
A._____.

Neither the counsel for the court, the court, nor the party desired to examine the witness further. The witness was duly warned and withdrew.

The court closed at (Indicate time), February 19___. The challenged member withdrew from the courtroom.

Challenged sustained.

The court opened at_____,_____February 19___.

All persons connected with the inquiry who were present when the inquiry close were again present.

The president announced that the challenge of the party was sustained and that Captain I_____was relieved as a member and excused.

Captain I withdrew from his seat as a member.

Note:

1/ If the challenge reduced the number of members to less than three, the court would proceed as follows:

The number of members being reduced to less than three, the court directed the counsel for the court to inform the covening authority of this fact.

2/ If the court, after the challenge had three or more members remaining, it could proceed; however, the convening authority should be informed of the excusing by the court of the challenged member and the court would then proceed as follows:

The number of members remaining after excusing the challenged member being not less than three, court determined to proceed. The counsel for the court was instructed to inform the convening that Captain I_____, USCGR, was challenged by an interested party and excused by court.

3/ All communications with the convening authority will be in writing and will be made part of the record.

Adjournment.

The court adjourned at_____,___February 19___(to await the appointment of a new member).

-SECOND DAY-

On board
USCGC_____(_____)
U.S. Coast Guard Base
Boston, MA
Thursday,____Feb 19___

The court met at_____.

All persons connected with the court who were present when the court adjourned were again present.

Counsel for the party absent.

Continue the above entry by stating "except Lieutenant R_____, counsel for the party who was called as a witness in a general court-martial." Commander O_____, the party stated: "I waive my right to have counsel present during this session of the court."

Note: When the party is represented by counsel and the counsel is not present, the record shall show verbatim accused's waiver of his right to have counsel present, if such be the case.

Communication from convening authority read.

Counsel for the court read a communication from the convening authority, original prefixed, marked "C", appointing Captain V_____W. Z._____, USCG a member of the court. A copy of the amendatory order was given to the party.

The party indicated no objection to the new member or to any other member.

New member sworn.

The new member of the court was duly sworn and was afforded an opportunity to examine the record of proceedings of the court as far as it had progressed.

Note: If deemed advisable, the court will be recessed or adjourned for this purpose.

Witness separated.

No witnesses not otherwise connected with the inquiry were present.

Lieutenant_____, USCG, took the stand as a witness, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by the counsel for the court:

Q. State your name, grade, organization and present duty station.
A. _____.

Witness introduces documentary evidence.

Q. Are you the custodian of the official log of USCGC_____(____)? If so, produce it.
A. I am, here it is.

Exhibits.

Note: Introducing documentary evidence or other material things, the following procedure should be followed by counsel:

Recorder: Request that the reporter mark this exhibit.

Note: The reporter is responsible for keeping a list of exhibits marked and also as finally accepted into evidence. The reporter will mark on the exhibit (or tag affixed thereto) the appropriate number and state:

Reporter: This will be exhibit 1.

The log (Exhibit 1) was submitted to the party and to the court, and was offered in evidence by the counsel for the court for the purpose of reading into the record such extracts therefrom as pertained to the explosion which occurred in USCG_____(____) on___February 19___.

Note: There being no objection, it was received in evidence.

Note: All objections to evidence and questions of procedure shall be decided by the president, subject to the objection of any member.

Q. Refer to the log and read such portions thereof as pertain to_____.

The witness read from the said log extracts, copy appended, marked "Exhibit 1."

Neither the counsel for the court, the court, nor the party desired further to examine this witness. The witness was duly warned and withdrew from the courtroom.

Examination of a witness called by the recorder.

P_____S. L_____, fireman, USCG, was called as a witness, was duly sworn, informed of the subject matter of the inquiry and examined as follows:

Note: To the extent feasible, the procedures for preparing verbatim records of courts-martial shall be followed in courts of inquiry. All questions and answers (except statements or extracts from documents subsequently admitted as exhibits) as well as all objections, arguments and discussions thereto and rulings thereon shall be recorded verbatim. In all other instances entries may be summarized as outlined above and below unless verbatim proceedings are required for clarity.

Note: The examination of witnesses shall be captioned as below. Whenever possible, the side interrogating a witness shall be given the opportunity to complete such interrogation of that witness before further questions are propounded by everyone else.

DIRECT EXAMINATION

Questions by the counsel for the court:

Q. State your name, rate, organization and present duty station.
A._____.
Q._____?
A._____.

CROSS EXAMINATION

Questions by counsel for CDR_____, party:

Q._____?
A._____.

REDIRECT EXAMINATION

Questions by the counsel for the court:

Q._____?
A._____.

RECROSS EXAMINATION

Questions by counsel for CDR_____, party:

Q._____?
A._____.

EXAMINATION BY THE COURT

Questions by a court member (president) (CAPT_____):

Q._____?
A._____.

Neither counsel for the court, the court, nor the party desired to examine this witness further.

The president of the court informed the witness of the privilege to make any further statement covering anything related to the subject matter of the inquiry that the witness thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement:

Witness:_____.

Note: If a witness brings up any new matter, each counsel will be afforded the opportunity of further examination before the witness is excused.

Warning the witness. (See section_____)

Note: A witness who by assignment or otherwise is subject to Coast Guard authority is cautioned in the following tenor: "You are instructed not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You will not allow any witness in this case to talk to you about the testimony the witness has given or intends to give. If anyone, other than counsel or the parties thereto, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness."

Note: A witness who is not subject to Coast Guard authority by assignment or otherwise is cautioned in the following tenor: "You are requested not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You should not allow any witness in this case to talk to you about the testimony the witness has given or intends to give. If anyone, other than counsel or the parties, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness. Your cooperation is requested so that the evidence to be received is not influenced by any discussion of that nature."

The witness was duly cautioned concerning his testimony and withdrew from the courtroom.

At this stage of the proceedings it appeared to the court that the conduct of Lieutenant D_____F_____, USCG was subject to inquiry, and that he should properly be designated party to the inquiry. Accordingly, the president of the court instructed the counsel for the to summon Lieutenant F_____to appear.

Time of session.

The court (adjourned) (recessed) at_____,_____February 19____.

The court (closed) (opened) at_____,_____February 19____.

All persons connected with the inquiry who were present when the court (adjourned) (recessed) are again present in court (except_____).

J_____A. H_____, Chief Yeoman, USCG was introduced as reporter and was duly sworn.

No witness not otherwise connected with the inquiry were present.

Designation of a party.

Lieutenant D_____F._____, USCG, entered, was designated a party by the president of the court and advised of the conduct which appeared to be subject to inquiry and the reasons therefor. (See NOTE first day as to informing parties of their rights.)

Lieutenant F_____requested and was granted a delay in the proceedings until he could obtain counsel.

Adjournment.

The court adjourned at_____,____February 19____.

-THIRD DAY-

On board
USCGC_____(_____)
U. S. Coast Guard Base
Boston, MA
Friday,_____Feb 19____

The court met at_____.

All persons connected with the court were present when the court adjourned were again present in court.

Lieutenant F_____introduced Captain B_____O. J_____, USCG (qualified in accordance with article 27(b) of the Uniform Code of Military Justice), as his counsel. Captain J_____took a seat as such.

According rights to new party.

Lieutenant F_____examined the appointing order and modification(s) and indicated no objection to any member of the court.

Note: An opportunity to examine the record of proceedings thus far conducted will be afforded Lieutenant F_____and Lieutenant F's_____counsel. If deemed advisable the court will be recessed (or adjourned) for this purpose.

Lieutenant F_____stated that he did not desire to recall any of the previous party, such witnesses will be recalled, if practicable.

No witnesses not otherwise connected with the inquiry were present.

View By the Court.

The president announced that the court would adjourn to the scene of the explosion in USCGC_____(_____).

The court adjourned at_____,_____February 19_____.

The court met at_____,_____February 19____, in compartment A-106 USCGC_____(_____) to inspect the damaged area.

After completing inspection of the scene of the explosion, all personnel present returned to the regular place of meeting where the court was reassembled.

The court opened at_____,_____February 19____.

All the members, counsel for the court, the parties-and their respective counsel and the reporter were present.

No witnesses not otherwise connected with the inquiry were present. Person requests destination as a party.

Ensign J_____D_____, USCG entered, informed the court of a direct interest in the subject matter of the inquiry and requested designation as a party and according of the rights of a party.

Ensign D_____was directed to state the nature of his interest and replied as follows (Report the reply verbatim):

* * * * * * *

Designation as party and according of rights.

The court, having decided that Ensign D_____had a direct interest in the subject of the inquiry, made the designation as a party. (See Note first day as to informing parties of their rights).

Ensign D_____stated: "I waive my right to be represented by counsel and to examine the record of proceedings thus far conducted." Ensign D_____read the appointing order and modification(s) and indicated no objection to any member of the court; or

The court recessed at_____,_____February 19____, to provide Ensign D_____with an opportunity to examine all the evidence of record.

The court opened at_____,_____February 19____.

All persons connected with the inquiry who were present when the inquiry recessed were again present in court.

No witness not otherwise connected with the inquiry were present.

Ensign D_____stated: "I have examined all the evidence of record and do not desire to recall any of the previous witnesses for further cross-examination."

Party called as a witness.

Lieutenant F_____, USCG a party to the inquiry (but not formally charged with an offense), was called as a witness by the court and duly sworn. The witness was informed by the court of the suspected offense, to wit:* * * * * *, was advised of the rights not to testify or make any statement regarding the offense of which suspected, was informed that any statement or testimony made could be used as evidence against the witness in any subsequent trial, and was reminded of the rights of a party (and as a person injured in the events under inquiry).

Lieutenant F_____stated: "I understand my rights."

DIRECT EXAMINATION

Questions by the counsel for the court:

Q._____?
A._____.
Q._____?

Objection by witness.

The witness declined to answer the question on the ground that it concerned the offense of which suspected and might tend to be self-incriminating.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that subject to objection by any member of the court, the witness' objection was overruled since the question was directed toward the same matter as the prior question which the witness had answered and the witness had waived any right to decline to answer that question.

The witness was directed to answer the question.

A._____.
Q._____?
A._____.

Commander O_____, party, moved to strike out this answer on the ground that it was an opinion of the witness.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that subject to objection by any member of the court, the motion of the party was granted, and the answer would be stricken.

Court overrules president's ruling.

A member objected to the ruling of the president.

The court closed at_____,_____February 19___.

The court opened at_____,_____February 19___.

All persons connected with the inquiry who were present when the inquiry closed were again present in court.

The president announced that his previous ruling was withdrawn and that the motion to strike was denied.

CROSS EXAMINATION

Questions by a party, Commander O_____:

Note: Questions may be by either a party or the party's counsel.

Q._____?
A._____.

Objection by witness to question.

The witness declined to answer the question on the ground that it concerned a separate offense of which the witness was suspected and concerning which the witness had not testified.

The counsel for the court replied. (This reply is to be recorded verbatim.)

Commander O_____replied. (This reply is to be recorded verbatim.)

The president announced that subject to objection by any member of the court, the witness' claim of privilege was sustained.

Questions by Ensign D_____, party:

Q._____?
A._____.

Party examines himself.

Stammer by Lieutenant F_____, party: (A party may present relevant evidence on his own behalf by making a statement either in a narrative or in a question and answer format.)

Q._____?
A._____.

REDIRECT EXAMINATION

Questions by the counsel for the court:

Q._____?
A._____.

EXAMINATION BY THE COURT

Questions by the (president) (CAPT_____):

Q._____?
A._____.

Neither the counsel for the court, the court, nor the parties desired further examination of this witness. The witness resumed a chair as a party.

The counsel for the court has no further evidence to present.

The counsel for the court stated that he had completed the presentation of the evidence.

Parties informed of right to call witnesses.

The president of the court informed the parties that they would now call witnesses and present any evidence in their own behalf. Evaluation of witness called by party.

O_____P. J_____, Engineman, third class, USCG, was called as a witness by Commander O_____, party, duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _____.

Questions by counsel for Commander O_____, party:

Q._____?
A._____.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness of the privilege to make any further statement covering anything relating to the subject matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness declined to make a further statement.

The witness was duly warned and withdrew from the courtroom.

Party calls self as witness.

Ensign D_____, a party, took the stand, and was informed by the court that the court suspected the witness of an offense, to wit:* * * *. The witness was advised of the right not to testify or make any statement regarding the offenses of which suspected, was informed that any testimony or statement made might be used as evidence against the witness in any subsequent trail, and was reminded of the rights of a party.

Ensign D_____indicated understanding of these rights and the choice to testify relative to the offense of which suspected.

(Ensign D_____, a party, indicated the withdrawal of the request to testify.)

Ensign D , a party, took the stand to testify, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by the counsel for the court:

Q. State your name, grade, organization and present duty station.

Q. Are you a party to this proceeding?
A. I am.

Questions by Ensign D_____, party:

Note: Question of a party may be by the party's counsel.

Q._____?
A._____.

Questions by counsel for Commander O_____, party:
Q._____?
A._____.

CROSS EXAMINATION

Questions by the recorder:

Q._____?
A._____.

Neither the counsel for the court, the counsel for the court, the court, nor the parties desired to examine this witness further. The witness resumed a chair as a party.

Parties rest.

None of the parties desired to present additional evidence.

Witness for the court.

The court announced that it desired further testimony and directed that R_____O. J_____, chief gunner's mate, USCG, be called as a witness for the court.

R_____O. J_____, chief gunner's mate, USCG, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry, and was examined as follows:

EXAMINATION BY THE COURT

Questions by the counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _____.

Questions by the (president) (CAPT_____):

Q._____?
A._____.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness of the privilege to make any further statement covering anything relating to the subject matter of the inquiry that the witness thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness had nothing further to say.

The witness was duly warned and withdrew from the courtroom.

Statements of parties.

Commander O_____and Ensign D_____, parties, each submitted a signed written statement, which statements were read and are appended as exhibits (numbered____and____, respectively).

Lieutenant F_____, party, made an oral statement as follows:

* * * * * * *

Arguments.

The counsel for the court read a written opening argument, which is appended, marked_____.

Note: The counsel for the court may waive opening argument, or may also make an oral argument in lieu of a written one, in which event it will be recorded in the record as given.

Commander O_____, party, read a written argument, which is appended, marked .

Lieutenant F_____, party, made the following oral argument:

* * * * * * *

Note: Argument may be made by either the party or his counsel.

Ensign D, party, desired to make no argument.

The counsel for the court made the following closing argument:_____.

Inquiry completed.

President: The counsel for the court and the party (parties) having no further evidence or argument to present to this court of inquiry, the court is now adjourned to consider all the evidence and to submit to the convening authority its findings of fact, opinions, and recommendations. The court will be closed.

The court closed at_____,_____February 19____.

Findings of fact, opinions, and recommendations.

The court, after inquiring into all the facts and circumstances connected with the incident which occasioned the inquiry, and having considered the evidence, finds as follows [end submits the following opinions and recommendations]:

FINDINGS OF FACT (See paragraph 3-0-2.)

1. That a violent explosion occurred at 0939,_____February 19____, in USCGC_____(_____).

2. **********

OPINIONS (See paragraph 3-0-3.)

1. That the cause of the explosion was **********.

2. That Commander O_____was derelict in his duties in that he**********.

3. That the injuries to ********** which were caused by the explosion occurred in the line of duty and were not the result of their misconduct.

4. **********

RECOMMENDATIONS (See paragraph 3-0-4.)

1. That Commander M_____N. O_____, USCG, be brought to trial by general court-martial on the charge of violation of article ******, Uniform Code of Military Justice. The appropriate charge sheet, signed by the president of this court as accuser, is forwarded herewith.

2. The Lieutenant D_____F_____, USCG, be addressed a letter of reprimand for his failure to **********. A draft of such a letter is forwarded herewith.

2. That, in order to prevent a recurrence of this type of explosion, the following action be taken: **********.

J_____B. T_____
Rear Admiral, USCGC
President
J_____B. T_____
Captain, USCGC
Member

Note: If there is no minority report, the member signs as shown above. If there is a minority report, the member who disagrees with the majority does not sign. Instead the member submits a minority report and signs as set forth below (see paragraph 3-0-5.)

Minority report. I concur with the majority report except as follows:

I disagree with the court's finding number 3 for the reason that_____.

I disagree with the court's opinion number 2 for the reason that_____.

I disagree with the court's recommendation number 1 for the reason that__.

The following additional (findings of fact) (opinions) (and recommendations) are submitted:_____. (See paragraph 3-0-5)

S_____T.
U_____
Captain, USCG Member

After the court has reached the conclusion of its deliberations, it may call the counsel for the court into its closed session to assist it in putting its findings of fact, opinions, and recommendations in proper form.

Final entry. (See paragraph 3-P-2.)

Note: The record must be authenticated by the president and the counsel for the court.

J_____B. T_____
Rear Admiral, USCG
President
J_____B. T_____
Commander, USCG
Counsel of the court

Note: If either the president or the counsel for the court cannot authenticate the record, a member shall sign in lieu thereof. (See paragraph 3-P-2.) Members authenticating the record sign as follows:

_____
Captain, USCG, a member in lieu of
the (president)(counsel) because of his
(death)(disability)(absence)

Documents appended.

Note: Here all exhibits received in evidence are appended in the order in which they were marked during the inquiry. See paragraph 3-J-2,c with respect to substituting a description, photograph, or copy of any exhibit. Paragraph 3-0-4 requires that, when a letter of censure is recommended, a draft of the letter be prepared and forwarded with the record.

SAMPLE REPORT OF INVESTIGATION

From: LT A_____B. C_____000 00 0000, USCGC - USCGC INGHAM (WHEC 35)

To: Commanding Officer, USCGC INGHAM (WHEC 35)

Subj: (Same as subject of appointing order)

Preliminary Statement

1. The first section of the investigative report shall contain information in the form of a "preliminary statement." Its length may make it necessary to have one or more paragraphs, depending upon the circumstances. See paragraph 4-C-7.b of this manual. The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of evidence, or the directives of the convening authority have been met. After setting forth the nature of the investigation briefly, it shall set forth in detail difficulties encountered in the investigation, if any, limited participation in the investigation by a member, or any other information necessary for a complete understanding of the investigation. A report of the investigating officer's itinerary is not necessary. However, any delays in submitting the report must be explained. If the report is of an investigation required to conduct a hearing, the according of rights of parties should be set forth.

Findings of Fact

1. _____(Enclosure (____)).

2. _____(Enclosure (____)).

3. _____(Enclosure (____)).

(Note: See paragraph 4-C-7.c of this manual. The findings of fact constitute the investigating officer's description of the details of the events as derived from the investigating officer's evaluation of the evidence. The findings must be as specific as possible as to times, places, persons, and events. It is for the investigating officer to determine the most effective presentation for a particular case. The facts may be set forth in a narrative format, or in a series of short paragraphs which narrate the facts. Alternatively, each fact may be made a separate finding. Reference should in any case be made to the enclosure(s) supporting each finding of fact. Each fact set forth must be supported by either the testimony of a witness, documentary evidence, real evidence, or the personal observations of the investigating officer, and this evidence should be appended to the investigative report as enclosures thereto. When a substantial portion of the facts are based on personal observations, the investigating officer must prepare a statement, similar to that of a witness, setting forth the observations.)

Opinions

1. _____(Finding (____)).

2. _____(Finding (____)).

3. _____(Finding (____)).

(Note: See paragraph 4-C-7-d of this manual. An opinion is a logical inference or conjecture drawn from findings of fact. For guidance as to what opinions are required or are not appropriate in specific situations, see enclosures (12) to (18). Each opinion set forth shall be supported by the findings of fact. Determinations of line of duty and misconduct are stated as opinions. An opinion may not be given as to Coast Guard liability; opinions as to negligence are not helpful and are to be avoided when claims or potential claims are involved, except in cases where relevant to specific recommendation for disciplinary or other administrative action regarding specifically named individuals.

Recommendations

1. _____(Opinion (____)).

2. _____(Opinion (____)).

3. _____(Opinion (____)).

(Note: See paragraph 4-C-7-e of this manual. Recommendations should be supported by facts, and will normally be based on opinion as well. Recommendations should be made in all investigations. If the investigating officer recommends trial by court-martial, a charge sheet, signed and sworn to by the investigating officer shall be prepared and submitted to the convening authority with the investigative report. If a punitive letter of reprimand is recommended, a draft of the recommended letter shall accompany the investigative report.

SAMPLE LETTER INCIDENT REPORT

From: Commanding Officer, USCGC UNDERWAY (WMEC 111)
To: Commander, Atlantic Area (o)

Subj: LETTER INCIDENT REPORT; INVESTIGATION OF COLLISION INVOLVING GSA VEHICLE NO. 2345 ON 1 SEPTEMBER 1987

Ref: (a) COMDTINST M5830.1

1. In accordance with reference (a), an investigation was conducted to determine the cause of the collision between GSA vehicle no. 2345 and a blue Plymouth station wagon, license plate number NY, MLC 123, on 1 September 1987 at Brooklyn, New York. Enclosure (1) is a copy of the police accident report. Enclosure (2) is the SF-91a completed for the accident. Enclosure (3) is the injury report for the driver of the GSA vehicle, QM3 Will B. Quick, 113-22-3333, USCG.

2. At approximately 1100, on 1 September 1987, QM3 Quick was driving GSA vehicle no. 2345 southbound on Flatbush Ave., Brooklyn, New York. QM3 Quick at the time was on a supply run for USCGC UNDERWAY. QM3 Quick's vehicle was in the left lane while a blue Plymouth station wagon, owned and operated by Mr. John Smith, was in the right lane. The collision occurred when Mr. Smith, apparently, without checking for vehicles in the left lane, attempted to change lanes from the right to left lane. QM3 Quick noticed the change as the Plymouth station wagon began moving to the left lane, and applied the brakes. Because Mr. Smith's vehicle was only 10 feet in front of the GSA vehicle, the GSA vehicle did not stop in time, the right front bumper of the GSA vehicle hit the left rear panel on the station wagon.

3. Mr. Smith sustained no injuries as a result of the collision. QM3 Quick, as rejected in the injury report, sprained his left knee, and missed one day of duty. QM3 Quick was wearing a seat belt at the time of the accident. QM3 Quick's injury was in the line of duty and not the result of misconduct.

4. The Plymouth station wagon's rear quarter panel was damaged. The right headlight, and front grill on the GSA vehicle will have to be replaced. Any authorization needed for the repairs will be handled separately. The cause of the accident was the improper lane change by Mr. Smith. QM3 Quick has attended a defensive driving course, and defensive driving will again be stressed to the crew.

5. A statement was obtained from Mr. Smith in which he declined to admit any responsibility for the accident. A statement was obtained from each of two witnesses who observed the accident. Both statements are consistent with the conclusions of the report. Any claim received from Mr. Smith will be forwarded. A copy of this report, with enclosures, should be sent to the GSA motor pool.

I. M. Wright

Encl: (1) Police Accident Report
(2) SF-91a
(3) Injury Report
(4) Statement from QM3 Quick
(5) Statement from Mr. John Smith
(6) Statement from Ms. Emily Jones (witness)
(7) Statement from Mr. Eugene Strong (witness)

Copy: Commander, Maintenance & Logistics Command Atlantic (ML)

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-3822 (Rev. 8-72)

INJURY REPORT

FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATION

Submit typewritten original to the COMMANDANT (GLGL)

FROM *(Name of reporting Command)*

TO: COMMANDANT (GLGL), Washington, D.C. 20590

VIA: Commander, _____ Coast Guard District(dl)

COPY TO *(Individual's own command if report is made by another activity)*

1. NAME *(Last, first, middle initial)*	2. SERVICE NUMBER	3. GRADE	4. ☐ USCG ☐ USCGR

5. FIRST SEEN BY MEDICAL OFFICER	DATE	TIME	PLACE

6. DIAGNOSIS

7. CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION

A. UNDER INFLUENCE OF
☐ ALCOHOL ☐ BARBITURATES
☐ NARCOTICS ☐ OTHER *(specify)*

B. ☐ NOT UNDER THE INFLUENCE OF ANY LISTED IN ITEM 7A

C. ☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION

8. BASIS FOR OPINION IN 7A OR 7B ABOVE

A. CLINICAL FINDINGS *(specify)*

B. BLOOD SPECIMEN FOR ALCOHOL DETERMINATION ☐ WAS TAKEN ☐ WAS NOT TAKEN	TYPE OF TEST	HOUR TAKEN	RESULT

C. ANY OTHER TESTS *(specify)*

9. ALLEGED CIRCUMSTANCES INITIALLY REPORTED

10. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT
☐ TEMPORARY ☐ PERMANENT PARTIAL ☐ PERMANENT TOTAL

11. ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY

12. AT THE TIME OF THIS OCCURRENCE THE INDIVIDUAL CONCERNED WAS
☐ PRESENT FOR DUTY ☐ LEAVE OR LIBERTY ☐ ABSENT WITHOUT AUTHORITY *(complete A & B)*

A. INDIVIDUAL WAS ABSENT WITHOUT AUTHORITY FROM	PERIOD OF ABSENCE	B. ABSENCE MATERIALLY INTERFERED WITH MILITARY DUTY
☐ PLACE OF DUTY ☐ RESTRICTION ☐ ARREST	FROM *(Hour & date)*: TO *(Hour & date)*:	☐ YES ☐ NO

13. THE PERSON CONCERNED WAS
☐ PERFORMING MILITARY DUTY
☐ PARTICIPATING IN SERVICE PLANNED RECREATION
☐ IN A MILITARY VEHICLE
☐ IN A MILITARY AIRCRAFT
☐ IN A CIVILIAN VEHICLE
☐ AS OPERATOR
☐ AS CREW MEMBER
☐ AS PASSENGER
☐ OTHER *(Specify)*

PREVIOUS EDITION MAY BE USED

GPO 951-927

CG-3822 (Reverse)

14. AS A RESULT OF MY INVESTIGATION, I HAVE DETERMINED THE CIRCUMSTANCES TO BE: *(Include time, date, and place, and if injured person is member of reserve component attach copy of orders).*

15. SOURCES OF INFORMATION *(List names and addresses of witnesses; identify documents or other evidence)*

16. REMARKS

It is the opinion of the undersigned that the injury in question was incurred in the line of duty, and not as the result of subject man's own misconduct.

GPO 951-927

SIGNATURE OF INDIVIDUAL MAKING THE INQUIRY	SIGNATURE AND RANK OF COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION)

FORWARDED APPROVED		APPROVED
CG DISTRICT	SIGNATURE OF DISTRICT COMMANDER	SIGNATURE OF CHIEF COUNSEL, U. S. COAST GUARD BY DIRECTION

DEPARTMENT OF TRANSPORTATION U. S. COAST GUARD CG-4614 (Rev. 8-70)	REPORT OF ILLNESS OF RESERVIST

For NOT MISCONDUCT and IN LINE OF DUTY determination in accordance with Chapter IV, Coast Guard Supplement, MCM (CG-241). Use this form ONLY for ACDU where orders are not in excess of 30 days, ACDUTRA or INACDUTRA. Submit original and 4 copies to Commandant (LGL) via the district commander where the reservist's records are maintained.

From: Commanding Officer,
To: Commandant (LGL)
Via: Commander, Coast Guard District

1. NAME (Last, first, middle initial)	2. SERIAL NO.	3. RANK/RATE USCGR-
4A. DATE ILLNESS FIRST NOTED, IF KNOWN	4B. DATE ILLNESS FIRST TREATED	
5. NAME OF DOCTOR (If military, include rank and service)	ADDRESS OF DOCTOR (Include Zip Code)	
6A. DIAGNOSIS	6B. PROGNOSIS	

7. THE ILLNESS WAS/WILL BE: ☐ TEMPORARY ☐ CHRONIC, BUT NOT COMPLETELY DISABLING ☐ PERMANENTLY DISABLING

8. ESTIMATED LOSS OF TIME FROM DUTY OR DATE FIT FOR FULL DUTY _____.

9. HOSPITALIZATION AND/OR TREATMENT WILL/WILL NOT BE COMPLETED PRIOR TO TERMINATION OF TRAINING DUTY.
ESTIMATED DATE RESERVIST WILL BE RELEASED FROM INPATIENT TREATMENT 19___ AND
FIT FOR DUTY 19___.

10. MEMBER WAS: AND

☐ PERFORMING MILITARY DUTY
☐ PRESENT FOR DUTY
☐ PARTICIPATING IN SERVICE-PLANNED RECREATION
☐ ON AUTHORIZED LEAVE OR LIBERTY

☐ ON 45 DAY COMPLIANCE MEASURE ORDERS
☐ ON ACDUTRA OR ACDU ORDERS FOR 30 DAYS OR LESS
☐ ON ACDUTRA ORDERS FOR MORE THAN 30 DAYS
☐ ON INACTIVE TRAINING DUTY REQUIRING ORDERS

11. ATTACH CERTIFIED COPY OF ORDERS TO ACTIVE OR INACTIVE TRAINING DUTY, AS APPLICABLE

	DATE	TIME	PLACE
REPORTED FOR DUTY			
RELEASED FROM DUTY			

12. As a result of my investigation, I have determined the circumstances to be:
(Include all pertinent details of symptoms and medically accepted estimated incubation period of disease.)

13. Sources of information *(list and identify documents, doctor's statements and Reservist's statement, if any; attach certified copies of each.)*

14. RECOMMENDATION(S):

☐ Notice of Eligibility for Disability Benefits, including pay and allowances, be issued.

☐ Notice of Eligibility for Disability Benefits *(medical treatment only)* be issued.

☐ Other:

15. It is the opinion of the undersigned that the illness in question was incurred IN LINE OF DUTY and WAS NOT DUE TO MISCONDUCT.

_____ 19_____ _____
Signature

16. ACTION OF THE DISTRICT COMMANDER OR COMMANDING OFFICER TRAINING CENTER

16. _____ 19_____

1. FORWARDED, approved/disapproved for the following reasons:

2. (If on ACDUTRA orders stipulating more than 30 days, and not on compliance orders under 10 USC 270(b)). A Notice of Eligibility for Disability Benefits, including entitlement to pay and allowances, has/has not been issued.

OR

2. (If on ACDU or ACDUTRA orders for 30 days or less, on compliance orders under 10 USC 270(b) or on INACDUTRA). A Notice of Eligibility for Disability Benefits entitling the member to medical treatment only, has/has not been issued.

(DELETE THE INAPPLICABLE STATEMENT ABOVE)

_____
Signature

17. ACTION OF COMMANDANT

17. _____ 19_____

APPROVED.

DISAPPROVED for the following reasons:

RETURNED for the following action:

_____
Signature

REPORT OF PROCEEDINGS UNDER SECTION 5-M OF THE ADMINISTRATIVE INVESTIGATIONS MANUAL

I,_____, have been afforded a hearing which included the following advice. By initialing opposite each item, I confirm that it was explained to me and that I fully understand the contents of each one:

_____ 1. That questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____ 198__ , was incurred in the line of duty or as a result of my own misconduct.

_____ 2. That, in the event such injury/disease is determined to have been incurred not in the of duty or as a result of my own misconduct, will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost.

_____ 3. That lost duty time will not count as credible service for pay entitlement purposes.

_____ 4. That, if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veterans' benefits.

_____ 5. That I have been given the opportunity to inspect the complete investigation report, including all enclosures and endorsements thereto; and to discuss said report with counsel or a disinterested person of my choosing (chaplain, supervisor, or anyone else not acting for the Government in the Investigation). If the injury might result in an entitlement to disability benefits, I have been afforded the right to be represented by counsel.

_____ 6. That I may not be required to give a statement relating to the origin, incurrence, or aggravation of any disease/injury that I may have.

_____ 7. That I have been given full opportunity and a reasonable time to present any evidence, statements, letters, or other matters in explanation, refutation, rebuttal, or otherwise on my behalf respecting my injury/disease.

(If the individual is suspected of an offense which is punishable under the Uniform Code Military Justice, the rights warning form set forth in the Military Justice Manual should be utilized in providing applicable warnings. The fact that the Individual is suspected of having incurred the injury/disease as the result of the individual's own misconduct or not in the line of duty does not necessarily mean that the member is suspected of having committed an offense.)

PRIVACY ACT STATEMENT FORMAT -- ADMINISTRATIVE INVESTIGATION

NOTE: This information is provided to address the most frequently encountered Privacy Act situations. For instances not addressed here, consult the Freedom of Information and Privacy Act Manual, COMDTINST M5260.2 (series), and the servicing Coast Guard legal office.

1. AUTHORITY: "44 U.S.C. 3101; 5 U.S.C. 301;" [Specify, in addition, any other statutory authority listed below which are peculiarly applicable to the matter under investigation.]

(a) Requirement that enlisted personnel make up time lost due to misconduct or abuse of drugs or alcohol. 10 U.S.C. 972(5).

(b) Retirement or separation for physical disability. 10 U.S.C. 1201-1221.

(c) Temporary Reservist Disability and Death Benefits, 14 U.S.C. 707.

(d) Reservist's Disability and Death Benefits, 14 U.S.C. 706(c).

(e) Auxiliaries Disability and Death Benefits, 14 U.S.C. 832.

(f) Financial Liability of Accountable Officers, 31 U.S.C. 82a, 89-92, 95a.

(g) Forfeiture of Pay for Time Lost Due to Incapacitation caused by Alcohol or Drug Use, 37 U.S.C. 802.

(h) Eligibility for certain veterans' benefits, 38 U.S.C. 105.

(i) Medical Care Recovery Act, 42 U.S.C. 2651-2653.

2. PRINCIPAL PURPOSE(S): "The information which will be solicited is intended principally for the following purpose(s):"

[Specify each purpose listed below for which the record of the particular investigation could reasonably be used:]

a. "Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave."

b. "Determinations on disciplinary or punitive action."

c. "Determinations on liability of personnel for losses of, or damage to, public funds or property.

d. "Evaluations of petitions, grievances, and complaints."

e. "Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

f. "Other determinations, as required, in the course of Coast Guard administration."

g. "Public Information releases."

h. "Evaluations of procedures, operations, material, and design by the Coast Guard and contractors, with a view to improving the efficiency and safety of the Coast Guard."

3. ROUTINE USES: "In addition to being used within the Coast Guard for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds end related fiscal matters; and to the Department of Justice for use in litigation involving the Government.

Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement end court authorities for use in connection with civilian criminal end civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in design end evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions."

2. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. [Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:]

(1) (Where an individual is a subject of investigation for purposes 2 a. or b., above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] [in paragraph 2, above], resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.")

(2) (Where an individual is a subject of an investigation for purpose 2. c., above: "Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.")

(3) (Where the individual is a claimant or potential claimant in an investigation for purpose 2 e., above; "Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.")

(4) (Where the individual was treated at Government expense for injures caused by third parties in connection with a matter being investigated for purpose 2 e., above; "Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in Coast Guard medical facilities.")

(5) (In any other case: "Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of this investigation will be made on the basis of the evidence that is contained in the investigative record.")]

b. [In the unusual situation where a specific statute, regulation, or lawful order of competent authority mandatorily directs an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: "Disclosure of (specify the particular relevant information required) is mandatory under (cite the statute, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could. . .)."

PRIVACY ACT STATEMENT FOR THE SUBJECT OF A LINE OF DUTY/MISCONDUCT INVESTIGATION

AUTHORITY: 5 U.S.C. 301, 2108, and 3309-3315; 10 U.S.C. 972, 1201-1221; 14 U.S.C. 705, 832; 37 U.S.C. 310.

PURPOSE: Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave."

ROUTINE USES: Information provided is used by processing activities in determining whether you were or were not acting in line of duty when your disease or injury incurred. The information will be filed in your medical and personnel records, and you will be given a copy as well. Information may be reviewed by the Coast Guard safety officials. In addition to being used within the Coast Guard for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veterans and survivors benefits.

DISCLOSURE IS VOLUNTARY: You are advised that you are initially entitled to have these personnel and/or disciplinary determinations resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination."

QUICK REFERENCE GUIDE FOR INFORMAL INVESTIGATIONS

A. General.

1. Purpose and scope of this Guide.

a. This guide is intended to serve as a "quick reference" for personnel who have been assigned to conduct (or serve on a board conducting) an informal administrative investigation. It is designed primarily for the novice investigating officer, but should also be useful to more experienced investigating officers as a means for quickly reviewing the applicable procedures.

b. The guide provides a brief overview of the procedures for conducting informal investigations. To assist the reader in obtaining further detailed guidance, corresponding sections and paragraphs of the Coast Guard Administrative Investigations Manual, COMDTINST M5830.1 (series) (hereinafter referred to as "the Manual"), are referenced in parentheses.

c. Finally, although this guide is not intended to deal with formal investigations (those involving a formal hearing), much of it is applicable to the preliminary stage of such investigations, since such preliminary investigations are normally conducted informally.

2. Administrative Investigations.

a. Purpose Generally (1-A-3 and 4). The purpose of all administrative investigations is to provide information to assist the convening and other authorities in making administrative decisions. Investigative reports are purely advisory. The opinions of the investigating officer do not constitute final determinations or legal judgments, and any recommendations the investigating officer might make are not binding on convening or reviewing authorities.

b. Specific Purpose(s) (1-B). Although all administrative investigations share the same general purpose, to provide information to assist in administrative decision making, any given investigation will have one or more specific purposes. For example, specific purposes for investigating an accident could include determining the cause, whether negligence or misconduct was involved, whether the accident could result in a legal claim either for or against the government, and the extent of any injuries or disabilities incurred. The specific purpose(s) of an investigation define the "scope" of the investigation.

c. Types (1-D).

(1) There are basically two types of administrative investigations: formal and informal. Since this guide is concerned solely with informal investigations, no further mention will be made of the formal kind.

(2) There are two varieties of informal investigations; one officer investigations; and boards of investigation. Since the two are procedurally identical (differing basically only as to the number of personnel assigned to do the job), this guide is equally applicable to both.

B. Getting Started.

1. The Appointing Order (4-A-3).

a. All administrative investigations begin with an appointing order. For one-officer informal investigations, the appointing order may be either oral or written. Your first step as an investigating officer should be to carefully review the appointing order to ensure you fully understand the nature and scope of the investigation to be conducted.

b. At a minimum, the appointing order should set forth the following:

(1) personnel assigned;

(2) subject matter of the investigation;

(3) scope of the investigation (i.e. the purpose(s) of the investigation;

(4) type of investigation to be conducted (i.e. board or one-officer); and

(5) type of report to be submitted (i.e. standard or letter incident). (The standard and letter incident report formats are discussed in paragraph D-1 below.)

c. The appointing order may also prescribe:

(1) whether witness testimony should be taken under oath (unusual in informal investigations); and

(2) whether and by whom various types of administrative support (e.g. an interpreter, clerical staff, etc.) will be provided.

d. If you have doubts about anything in the appointing order, or questions about matters not dealt with in the order, you should contact the convening authority for clarification.

2. Advance Planning/Preparation.

a. Informal investigations are generally fairly straight forward and require little in the way of advance planning or preparation. However, some degree of advance planning and/or preparation is usually necessary.

b. In order to ensure the investigation proceeds efficiency, you should attempt to learn as much as possible about the subject matter of the investigation, from documents, records, logs, etc., before you begin to interview witnesses. This way you will know who best to interview and what questions to ask.

c. You should also consider whether any logistical arrangements may be necessary (e.g. for transportation, accommodates, etc.).

C. Conducting the Investigation (4-B and C).

1. Gathering evidence Generally (4-B and C).

a. Gathering evidence is, of course, what investigations are all about. You should be interested in any information bearing on the subject matter of the investigation which either falls within the scope of the investigation or could lead to information falling within its scope. Evidence should be gathered as soon as possible. The reasons for this are many. Scenes of accidents or incidents are cleaned up, materials are repaired or disposed of, people are transferred, their memories fade, they compare notes with others and their original impressions are clouded or become confused, or they simply forget, etc.

b. Since this is an informal investigation, you are free to use any means you feel are most efficient for gathering evidence under the circumstances. In an appropriate case, such means could include visiting the scene of the incident, inspecting damaged property or equipment, reviewing pertinent documents or logs, and interviewing witnesses, either in person or by telephone. It is often helpful to photograph (or videotape) the scene or the damage for later reference. Try to avoid reinventing the wheel. Don't overlook evidence already gathered by other investigative personnel, such as local police, fire departments, Coast Guard mishap investigators, etc. Such organizations and personnel are usually most helpful and willing to provide copies of the evidence they have accumulated.

c. Of all the investigative tools available to you, the telephonic interview is probably the most efficient and widely used. Indeed, many informal investigations require little more than contacting the relevant witnesses by telephone. (Where witnesses may be interviewed in person without undue effort or expense, however, such personal interviews are preferred.) d. Since administrative investigations are not judicial in nature, you need not concern yourself with formal rules of evidence. However, in evaluating the evidence, you should bear in mind that certain types of evidence (e.g. hearsay) are not as likely to be reliable as other types (e.g. tangible evidence or statements of a witness with personal knowledge).

d. There are three basic types of evidence:

(1) Tangible Evidence (3-J and 4-B-2-b). Tangible evidence consists of such things as physical objects, finger and foot prints, layouts of rooms etc. If an item of tangible evidence cannot, itself, be collected, photographs, videotapes, or diagrams should be made and attached as enclosures to the investigative report. Such photographs or diagrams should be accompanied by a signed written statement, either by yourself or a witness, verifying that they are accurate depictions.

(2) Documentary Evidence (3-J and 4-B-2-c). Documentary evidence consists of such things as records, reports, letters, logs, etc. Where practical, originals should be collected and attached as enclosures to the report. Otherwise, copies are acceptable. Copies should be accompanied by a signed statement to the effect that the copy is an accurate reflection of the original. This is usually done either by the custodian marking the document "A true copy: attest:" and signing this statement, or by the investigating officer noting its authenticity, as for example, by marking on the document, "Original sighted; this is a true copy" and signing this statement.

(3) Statements of Witnesses. Procedures for interviewing witnesses are discussed in paragraph C-2 below.

2. Interviewing Witnesses (2-E through H, and 4-B-2-d).

a. Obtaining Witness Statements (2-E-1). Although as an investigating officer you have no power to compel witnesses to appear and testify, you may always request statements from civilian witnesses, and may also request that cognizant commanding officers make military witnesses available. There is nothing which prevents you from going to a witness, and this is often the most efficient and effective method of interviewing a witness. This is often unnecessary, however, since most witness either have, or have access to, a telephone. As discussed above in paragraph C-1-c, telephonic interviews are perfectly acceptable in most cases. Be alert, however, for those circumstances where personal interviews are necessary or particularly desirable (e.g. sworn statements are required by the appointing order, a signed statement is called for since there is reason to suspect the witness' story may later change, you may wish to observe the witness in order to better assess his credibility etc.).

b. Questioning Witnesses (4-B-2-d-(1)). In order to ensure that the interview proceeds smoothly, as well as to ensure that nothing gets overlooked, it is usually best to prepare a list of questions in advance. (The checklists described below in paragraphs C-2-f, C-4-a, and C-4-b can help you here.) Such questions normally include the "who", "what", "where", "when", "how" and "why" of the incident under investigation. During questioning, you should be careful to avoid "coaching" (i.e. suggesting the answer) or brow-beating the witness. You should hold witnesses to the questions asked, however, and not allow them to wander off the subject. Specific (as opposed to open-ended or general) questions will help to keep the witness on the subject you want to discuss. Finally, at the end of the interview, it's always a good idea to allow witnesses to make any additional statement they may desire. Take careful notes, and write up a summary of the interview as soon as possible.

c. Warning Witnesses (2-E through H, and 4-B-2-d). Under certain circumstances, it may be necessary to give certain warnings to a witness, or advise the witness of certain matters, prior to beginning questioning.

(1) Witnesses Suspected of an Offense, Misconduct, or Improper Performance of Duty (2-E-3 and 4-B-2-d-(2)). Prior to interviewing members of the armed forces who are suspected of an offense, misconduct, or improper performance of duty, you should advise them generally of the nature of the investigation and the possibility of an adverse determination. If the suspected conduct amounts to an offense under the UCMJ, you should also advise them of their right against self-incrimination and the provisions of article 31, UCMJ. The servicing Coast Guard legal officer should be contacted in any case in which a member requests an opportunity to consult with a lawyer prior to being interviewed.

(2) Witnesses suffering From a Disease or Injury (2-F and 4-B-2-d-(3)). Prior to interviewing a member of the armed forces concerning the origin, incurrence or aggravation of any disease or injury suffered by the member, you must advise the member of the right not to provide such information.

(3) Privacy Act Statements (2-H and 4-B-2-d-(4)). If protected personal information is requested (e.g. information concerning the witness' financial, family or social affairs; medical, educational, employment, or criminal history; or information that identifies, describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs), and such information could be retrieved from a system of records by reference to the witness' name or other personal identifier (e.g. social security number), you must first provide the witness with a Privacy Act statement. Although this sounds complicated, as a practical matter, a Privacy Act statement is usually only necessary where the witness is the subject of the investigation (i.e. the witness' name or other identifier appears in the subject line of the investigative report).

d. Written Statements (4-B-2-d-(1)). You should reduce all witness statements to writing and attach them as enclosures to the investigative report. Such statements are normally in the form of a summary of the interview (as opposed to a verbatim record). It is often desirable to have the witness sign the statement (particularly if there is reason to suspect the witness' story may later change). If this is not practical (e.g. in the case of a telephonic interview), or if the witness refuses, you should sign the statement below a notation to the effect that it is an accurate summary (or verbatim record) of the interview.

e. Sworn Statements (3-G-6 and 4-C-4). If the appointing order so directs, all witness statements should be obtained under oath. (This will rarely be the case in informal investigations.) As an investigating officer, you have authority to administer oaths.

f. Witness Statement checklist. Enclosure (10) to the Manual contains a checklist for obtaining a complete witness statement.

3. Line of Duty and Misconduct Investigations (chapter 5). Investigations of illness or injury of a member are often conducted for the purpose of determining whether such illness or injury was incurred in the line of duty, and/or whether it was the result of the member's own misconduct. Chapter 5 of the Manual provides detailed guidance on conducting this type of investigation, and should be read thoroughly if you have been assigned to conduct such an investigation.

4. Additional Guidance (chapter 6). Additional guidance on conducting administrative investigations in general, as well as with regard to conducting certain specific types of administrative investigations, can be found in chapter 6 of the Manual and enclosures (11) through (18) thereto.

a. General Guidance (G-A). You should consult section 6-A of the manual for additional general guidance on conducting administrative investigations. Also, enclosure (11) to the manual contains a general checklist which should be consulted for all administrative investigations.

b. Specific Guidance (6-B through M). You should consult sections 6-B through M, respectively, of the manual for specific guidance on the following types of administrative investigations:

(1) Aircraft accidents.
(2) Explosions.
(3) Loss or stranding of a Coast Guard vessel.
(4) Collisions.
(5) Accidental or intentional flooding of a Coast Guard vessel.

(6) Incidents likely to result in general court-martial charges.
(7) GSA vehicle accidents.
(8) Loss, destruction or damage to government property.
(9) Incidents which could result in claims for or against the Government.
(10) Misconduct and line of duty investigations.
(11) Investigations inquiring into desirability of retention of a member.
(12) Investigations inquiring into whether reduction in grade due to incompetency is warranted.

In addition, enclosures (12) through (18) to the Manual contain checklists for most of the above listed types of administrative investigations.

D. Preparing and Forwarding the Investigative Report (4-C-7).

1. Report Formats (1-A-1-c and d, and 4-C-7-a). There are two types of investigative reports: the standard investigative report (used for more serious or complex cases); and the letter incident report (used in the vast majority of informal investigations). The appointing order will usually specify which type of report is to be prepared in a particular case. If, during the course of the investigation, it becomes apparent that the type of report called for in the appointing order may be inappropriate under the circumstances (e.g. the matter turns out to be far more serious or complex than anticipated), you should bring this to the attention of the convening authority.

a. Standard Reports (4-C-7-a through f). Standard reports consist of a preliminary statement, findings of fact, opinions, recommendations, and enclosures. A sample standard report is contained in enclosure (5) to the Manual.

(1) Preliminary Statement (4-C-7-b). In the preliminary statement, you should inform the convening and reviewing authorities that all reasonably available evidence has been collected or is forthcoming, and that each directive of the appointing order has been met, or has not been met and the reasons why. You should also describe any difficulties encountered in the investigation, and provide any other information (i.e. not provided elsewhere in the report) necessary for a complete understanding of the case.

(2) Findings of fact (4-C-7-c). The findings of fact section is the heart of the report. It is here that you lay out the facts in the case (i.e. the "who", "what", "where", "when", etc.). All of your subsequent opinions and recommendations will be based on these findings. However, the findings of fact must, themselves, be based on the evidence gathered. Thus, next to each finding of fact, you should reference the item(s) of evidence (e.g. statement, diagram, etc.) supporting it. You should be careful to exclude any matters of opinion from this section. Only matters whose truth is established by a "preponderance of the evidence" (i.e. matters which, in light of the evidence, have at least a 51% probability of being true) should be included. You should list all findings of fact which are relevant to the scope of the investigation.

(3) Opinions (4-C-7-d). Opinions are reasonable evaluations or conclusions, which are based upon the facts found, but which do not meet the degree of certainty required of a "fact". Examples of the types of matters usually included in the opinions section are the apparent cause of an incident, whether an injury was incurred in the line of duty or due to own misconduct, etc. Each opinion should reference the finding(s) of fact supporting it. You should list all opinions which are relevant to the scope of the investigation.

(4) Recommendations (4-C-7-e). Just as each opinion must be based on the facts found, so must each recommendation flow from and be supported by the opinions. Each recommendation should reference the opinion(s) supporting it. You should be sure to include any types of recommendations called for in the appointed order. In any case, all recommendations relevant to the scope of the investigation should be included. Also, you should be aware that there are certain additional requirements for certain types of recommendations (e.g. if a court-martial is recommended, a charge sheet, signed and sworn to by the investigating officer, must be prepared and forwarded as an enclosure to the report).

(5) Enclosures (4-C-7-f). The appointing order (if written) should be the first enclosure. Subsequent enclosures should contain all evidence developed by the investigation (e.g. statements, photographs, diagrams, documents, etc.). Each statement, photograph, document, etc. should be a separate enclosure, and such enclosures are usually numbered in the order received.

b. Letter Incident Reports (1-D-5). Although containing many of the same elements as a standard report, letter incident reports are generally less comprehensive. Rather than setting forth formal findings of fact, letter incident reports present a brief narrative of the circumstances. They also differ from standard reports in that, while standard reports are signed by the investigating officer(s), letter incident reports are prepared for the signature of the convening authority. A sample letter incident report is contained in enclosure (6) to the Manual.

2. Signing the Report (4-C-7-g).

a. Standard reports must be signed by the investigating officer or, in the case of boards of investigation, by all members of the board. If members of a board cannot agree on findings of fact, opinions, or recommendations, the report should be signed by the majority. The dissenting member(s) must, in a signed dissenting report, clearly state the parts of the report with which there is disagreement and the reasons for the disagreement. In the event of disagreement by a two-member board, the senior member should sign the report, and the junior member prepare a dissenting report. As previously indicated, letter incident reports are not signed by the investigating officer(s) but rather are prepared for the signature of the convening authority.

3. Forwarding the Report. The original of the report and enclosures, together with sufficient copies for all reviewing authorities, should be forwarded to the convening authority. You should also be sure to retain at least one copy for yourself.

GUIDE FOR OBTAINING A COMPLETE WITNESS STATEMENT

1. The following checklist is intended as a guide to assist investigating officers in obtaining complete statements from witnesses.

_____ Date statement given.

_____ Witness' name, age, occupation, name and business address and phone.

_____ Date, time and place of the incident.

_____ Where the witness was at the time of the incident.

_____ Who was with the witness (including names and addresses).

_____ How did witness happen to be at the scene.

_____ Exactly what happened (including diagram if possible).

_____ Weather and light conditions (describe).

_____ Were there any physical hazards associated with the incident.

_____ Had anything been done to correct the hazard or to give warning (if so, by whom).

_____ If a vehicle was involved -

_____ a. Speed of vehicle (how determined or estimated).

_____ b. Direction of vehicle.

_____ c. Obstructions to vision, if any.

_____ d. Nature of traffic.

_____ e. Traffic controls (traffic lights, stop signs, etc.; were they working?).

_____ f. Description of the point of impact, skid marks, damage to vehicles, and place of rest.

_____ g. Mechanical condition of vehicles (explain).

_____ h. Disposition of vehicles.

_____ Action by witness after knowledge of incident.

_____ What witness heard said by all parties before, during and after the accident.

_____ Identification of all parties involved.

_____ Description of injuries (or none).

_____ Disposition of injured persons (hospital, treating doctors; nature of treatment).

_____ Who was called: ambulance, firemen, photographer, police (if a traffic accident, were any tickets issued or arrests made?).

_____ Did the witness observe anyone involved in the incident drinking, using drugs, or having the appearance of being under the influence of either before or during the incident (if so, who, what and how much?).

_____ Describe appearance (i.e., bloodshot eyes, etc.).

_____ Any other unusual circumstances.

_____ A statement that the facts are true and correct to the best of the knowledge of the witness.

_____ Signature of the witness at end of statement. (Do not delay an investigative report merely to obtain signatures).

GENERAL CHECK-OFF LIST - ALL INVESTIGATIONS

YES	NO	AIM REF.	ITEM
_____	_____	1-C-1	1. Has a single report been made of one incident.
_____	_____	1-J-1	2. Is the report properly addressed to the convening authority?
_____	_____	4-C-7.b.	3. Does the report contain a preliminary statement?
_____	_____	4-C-7.b.	4. Are appreciable delays properly explained in the preliminary statement?
_____	_____	4-A-3.e.	5. Is the investigating officer senior to any officer whose conduct is likely to be or was subject to inquiry?
_____	_____	4-B	6. Have all aspects of the incident been thoroughly investigated?
_____	_____	1-E, 4-B-2.d.	7. Have all material witnesses been questioned? If not, has arrangement for securing testimony of absent or unavailable witnesses been made?
_____	_____	1-E-2, 4-A-2	8. Were all persons whose conduct was subject to inquiry designated as parties? (Formal)
_____	_____	2-D, 1-M	9. Does it affirmatively appear in the report that each party was accorded all rights or that rights were specifically waived? (Formal)
_____	_____	5-M-2	10. In misconduct and line of duty cases, if evaluee was unable to attend part or all of sessions, were additional rights accorded? (Formal)
_____	_____	2-E-3, 4-B-2.d(2)	11. Was each witness subject to the UCMJ, and accused or suspected of an offense, reminded or rights under article 31 of the Code?
_____	_____	2-D-1, 2-D-4	12. Has the part been allowed to examine all documents, real evidence, statements, and the like? (Formal)
_____	_____	4-B-2, 6-A-1.a.	13. Are dates, times, places, persons, and events definitely fixed?
_____	_____	4-B-2	14. Is each person identified by name, rank, rate, service number, service and duty station or name, title, occupation, and address?

YES	NO	AIM REF.	ITEM
_____	_____	4-C-7.b.	15. Has all the factual evidence been considered and included in the report and as findings of fact?
_____	_____	4-B-2.b. 4-C-7.c., 6-A-4	16. Is every finding of fact supported by evidence in the record or specifically stated to be based upon personal observation of the investigating officer?
_____	_____	4-C-7.c.	17. Is each fact stated with definiteness and referred specifically to its supporting enclosures?
_____	_____	6-A	18. Is there a finding of fact as to each relevant item on the appropriate check-off list?
_____	_____	5-A-3	19. In a case involving a reservist, have the facts required by the sample appointing order been furnished?
_____	_____	4-C-7.d.	20. Is each opinion logical and based upon findings of fact?
_____	_____	6-I-e, e.g.	21. Included in the opinions are there those opinions required by the appropriate check-off list?
_____	_____	5-E	22. If a misconduct or line of duty determination is required, has one been made?
_____	_____	5-E	23. Is there an opinion as to misconduct and line of duty (if appropriate)?
_____	_____	4-C-7.d.	24. If there is a possible claim against the U.S. or if there is doubt as to a possible claim against the U.S., has any opinion on government liability been kept out of the report?
_____	_____	4-C-7.e.	25. Is each recommendation logical and consistent with the findings of fact and opinions?
_____	_____	4-C-7.e.	26. If trial by court-martial is recommended, has the staff judge advocate been consulted regarding preparation of a draft, charge sheet? (Draft unsworn charges may be attached as an enclosure).
_____	_____	1-I-1	27. Has the report been checked against the specific check-off list in chapter 5 of this manual?
_____	_____	4-A-e	28. Has the written appointing order (when required) been attached to the record?

YES	NO	AIM REF.	ITEM
_____	_____	4-C-7.b.	29. If a written appointing order was not required, does the preliminary statement refer to who gave the oral order and the date?
_____	_____	4-e-2.d.(1)	30. Has the substance of evidence received from witnesses by telephone been reduced to writing by the investigating officer, with the time and date of telephone conversations set forth?
_____	_____	4-C-7.f.	31. Have copies of all necessary documents required as exhibits or enclosures been obtained and attached to the record?
_____	_____	4-C-7.f.	32. Is each statement and every accompanying paper dated?
_____	_____	1-I-2	33. Are all mechanically reproduced copies of documents completely readable?
_____	_____	4-B-2.c.	34. Have originals or other document copies of reports been authenticated as required in paragraph 4-B-2.c.
_____	_____	See, e.g., 1-E-1	35. Has the servicing Coast Guard legal officer been consulted in case of doubt?

DOCUMENT CHECK LIST

_____ 1. Appointing orders (if required).

_____ 2. Acknowledgment/Waiver or Rights forms for each party.

_____ 3. Statement of doctor and/or copies of medical records as to extent of injuries (copies of private medical bills if reimbursement may be claimed).

_____ 4. Report of autopsy in death cases, if any.

_____ 5. Report of coroner's inquest or medical examiner's report in death cases.

_____ 6. Laboratory reports, if any.

_____ 7. Copy of reservist's orders, if applicable.

_____ 8. Statements or affidavits of witnesses or other persons.

_____ 9. Police report, if any.

_____ 10. Photographs and/or diagrams properly identified and labeled.

_____ 11. Copies of local regulations.

_____ 12. Any exhibits material to proper determinations of the investigating officer's findings of fact and opinion.

Death or injury to Coast Guard member.

a. Facts.

_____ (1) Complete description of site or incident given.

_____ (2) Complete description of events leading up to incident given.

_____ (3) Accurate description of incident provided.

_____ (4) Vehicles, equipment, weapons, etc., involved described.

_____ (5) Pertinent regulations and instructions cited.

_____ (6) Parties involved identified.

_____ (7) Any signs of intoxication or drug use noted.

_____ (8) Experience of parties with particular equipment, etc., noted.

_____ (9) Driving experience of parties noted (if appropriate).

_____ (10) Unsafe practices by parties involved noted.

_____ (11) Injuries described.

_____ (12) Cause of death, injury, or illness stated.

_____ (13) Statutes, ordinances, or regulations violated noted.

_____ (14) Any traffic citations listed.

_____ (15) Use of seatbelts and other personal safety equipment discussed.

b. Opinions.

_____ (1) Whether proper degree of care exercised by personnel involved.

_____ (2) Whether equipment, etc., involved properly maintained.

_____ (3) Whether such maintenance contributed to incident.

_____ (4) Whether regulations, instructions regarding equipment, etc., followed.

_____ (5) Cause of incident.

_____ (6) Fault of personnel involved.

_____ (7) LOD/Misconduct determination made (if appropriate).

c. Recommendations.

_____ (1) Regarding personnel training.

_____ (2) Regarding improved maintenance.

_____ (3) Regarding sufficiency of instructions, regulations.

_____ (4) Regarding disciplinary action.

Disability of Reservist Due to Illness or Disease.

a. Facts.

_____ (1) Identified the parties Involved.

_____ (2) Described the events leading up to the diagnosis of illness or disease.

_____ (3) Diagnosis noted.

_____ (4) Prognosis for patient noted.

_____ (5) Stated medically accepted course of illness or disease.

_____ (6) Described actions of parties contributing to illness or disease.

_____ (7) Noted when illness or disease most likely contracted.

_____ (8) Status of party when illness or disease contracted. (Has injury or disease contracted enroute active duty training or inactive duty training? If so, give details of timing, route, etc.)

_____ (9) Physical effects of disease stated.

_____ (10) Likely disability rating due to effect given.

b. Opinions.

_____ (1) Cause of illness or disease.

_____ (2) Whether illness contracted in LOD.

_____ (3) Whether case is proper one for physical disability evaluation system (PDES).

c. Recommendations.

_____ (1) Regarding referral to PDES.

_____ (2) Regarding disciplinary action.

_____ (3) Regarding appropriate administrative actions.

Explosion on Coast Guard Vessel.

a. Facts.

_____ (1) Date and time of explosion stated. Site described.

_____ (2) Site described.

_____ (3) Events leading up to explosion described.

_____ (4) Substances which exploded given.

_____ (5) Equipment involved listed and described.

_____ (6) Pertinent regulations noted.

_____ (7) Drills, checks, tests, etc., required explained.

_____ (8) Actual drills, checks, etc., conducted described.

_____ (9) Personnel thrived identified.

_____ (10) Training or experience of personnel stated.

_____ (11) Damage described.

_____ (12) Personnel casualties noted.

_____ (13) Time interval between explosions noted (if appropriate.)

_____ (14) Map, graph, chart of area or damage included.

b. Opinions.

_____ (1) Cause of explosion.

_____ (2) Adequacy of tests, checks, drills, etc.

_____ (3) Adequacy of current instructions.

_____ (4) Adequacy of personnel training.

_____ (5) Responsible parties.

_____ (6) Any dereliction or misconduct by responsible parties.

c. Recommendations.

_____ (1) Regarding improving unit training or activities.

_____ (2) Regarding improving current regulations.

_____ (3) Regarding any disciplinary action.

Flooding of Coast Guard Vessel.

a. Findings.

_____ (1) Date and time of incident noted.

_____ (2) Drafts of vessel immediately before incident determined.

_____ (3) Distribution of lead before incident described.

_____ (4) Status of watch described.

_____ (5) Cause of flooding determined for each compartment.

_____ (6) Material conditions of vessel at time of incident noted.

_____ (7) Damage control activities taken described.

_____ (8) Failure of any equipment, appurtenances, etc., noted.

_____ (9) Damage to vessel or cargo described.

_____ (10) Personnel involved in incident noted.

b. Opinions.

_____ (1) Whether the cause of the incident was accidental, intentional, or intentional sabotage.

_____ (2) Regarding the value of the damage.

_____ (3) Whether the vessel was materially seaworthy.

_____ (4) Whether personnel were adequately trained.

_____ (5) Whether parties were derelict in their duties.

c. Recommendations.

_____ (1) Regarding appropriate disciplinary action or civil criminal charges.

_____ (2) Regarding personnel training.

_____ (3) Regarding vessel maintenance.

GSA Motor Vehicle Accident.

a. Facts.

_____ (1) Form 91A or 92A included, as appropriate.

_____ (2) Date and time of accident noted.

_____ (3) Scene of accident and weather conditions accurately described.

_____ (4) Vehicle(s) involved noted and accurately described.

_____ (5) Duties for which government vehicles being used were detailed.

_____ (6) Circumstances leading up to the accident accurately described.

_____ (7) All parties involved noted.

_____ (8) Injuries sustained noted.

_____ (9) Any physical factors affecting personnel involved discussed.

_____ (10) Condition of vehicles involved discussed.

_____ (11) Speed of vehicle immediately prior to accident noted.

_____ (12) Nature and extent of damage discussed.

_____ (13) Records of vehicle servicing included.

_____ (14) Citations issued noted.

_____ (15) Use of seatbelts noted.

_____ (16) Any claim against the Government noted.

b. Opinions.

_____ (1) Whether Coast Guard personnel at fault.

_____ (2) Whether vehicle used of official duty.

_____ (3) Whether injuries to Coast Guard personnel were in LOD or due to misconduct.

_____ (4) Whether vehicle maintenance adequate.

c. Recommendations.

_____ (1) Regarding additional driver training for personnel.

_____ (2) Regarding unit vehicle use.

_____ (3) Regarding disciplinary action against Coast Guard personnel.

_____ (4) Regarding maintenance of vehicles.

Stranding, Loss or Collision of Coast Guard Vessel. (See also flooding of vessel.)

a. Facts.

_____ (1) Date and time of incident noted.

_____ (2) Position of vessel at time of incident noted.

_____ (3) Weather and sea conditions at time of incident described.

_____ (4) Status of watch at time of incident described.

_____ (5) Material condition of vessel described.

_____ (6) Personnel involved noted.

_____ (7) Time and position of last accurate fix noted.

_____ (8) Trackline of vessel described.

_____ (9) Methods of navigation noted.

_____ (10) If in pilot waters, time and land sighted noted.

_____ (11) Status of radar and vessel tracking noted.

_____ (12) For grounding or stranding, stage of tides at time of incident noted.

_____ (13) Chart use included.

_____ (14) Maneuvering boards/radar plots used included or described.

_____ (15) Any personnel injuries noted.

_____ (16) Extent of damage described.

b. Opinions.

_____ (1) Whether Coast Guard personnel at fault.

_____ (2) Whether proper navigation procedures were followed.

_____ (3) Whether repairs to vessel economical.

_____ (4) Whether unit procedures were proper.

c. Recommendations.

_____ (1) Regarding disciplinary action.

_____ (2) Regarding improved procedures.

_____ (3) Regarding repair or replacement of vessel.

FACTORS TO BE CONSIDERED IN AN INCIDENT INVOLVING A COAST GUARD SURFACE VESSEL

The following list is a compilation of factors which should be examined when investigating/reviewing a cutter accident. All factors may not be pertinent to each case being investigated, but the effect, if any, each factor had on the case should be addressed in the investigative report. Additional factors may also be considered appropriate.

	FACTORS	REFERENCE
(1)	CHARTS	CI 3530.1, CI M5000.3A

(a) Largest scale practical used
(b) All charts used corrected to date (including inset(s))
(c) Identical charts for CONN, CIC, NAVPLOT
(d) Hazards marked, navigational draft used to
- mark shoalwater
(e) Advance and transfer used in turns
(f) Danger bearings/ranges used
(g) Labeling used:
  turn bearings/ranges
  tracklines
  designated objects for fixing position
(h) Soundings in feet or fathoms

(2)	NAVIGATION RELATED PUBLICATIONS (corrected to date)	CI 3530.1, CI M5000.3A, CN 5600

(a) Coast Pilot
(b) Fleet Guide
(c) Sailing Directions
(d) Light List
(e) Notice to Mariners, Local NTM
(f) Tide Tables
(g) Tidal Current Tables
(h) Navigation Rules, International - Inland
(i) Command Navigation Standards
(J) Commanding Officer's Standing Orders
(k) Night Order Book
(1) Navigator's Standing Orders for the QMOW
(m) Engineer Officer's Standing Orders for EOOW
(n) Ship's Log
(o) Bearing Book:
  3 objects and 1 range used
  depth recorded each fix (beneath keel or waterline)
  depth recorded in feet or fathoms
  ship's head marked
  objects used for fixes

FACTORS	REFERENCE
(3) COMPUTATIONS	CI 3530.1, CI M5000.3A

(a) Sunrise/sunset (correctly computed)
(b) Tides (correctly computed)
(c) Currents (correctly computed)
(d) Compass error:
date checked, method used (range, triangulation)
recorded in bearing book
(e) Radar error:
date checked
used when fixing position
noted in bearing book
(f) Advance and transfer:
tables used

(4) NAVIGATION EQUIPMENT	CI 3530.1, CI M5000.3A

(a) Compasses:
error posted
alignment between repeaters
(b) Fathometer:
set to correct mode
(c) Radar:
range and bearing error posted
(d) Electronic navigation equipment:
corrections to readings posted
(e) Radio equipment:
tuned and set to correct channel(s)
(f) Timepieces
(g) Navigation lights energized
(h) Sound signaling device utilized

(5) ENVIRONMENTAL FACTORS	CI 3530.1, CI M5000.3A

(a) Wind
(b) Sea/swell conditions
(c) Current
(d) Tide
(e) Daytime/Nighttime
(f) Visibility (rain/snow/fog/haze)
(g) Weather warnings/advisories

(6) MATERIAL FAILURE OR INADEQUACY	CI 3530.1, CI M5000.3A

(a) Main propulsion casualty
(b) Steering casualty
(c) Navigation equipment casualty
(d) Radar casualty
(e) Electrical casualty
(f) Gyro casualty
(g) Status of equipment available to OOD
(h) Material condition
(i) Aid to Navigation discrepancy (not reported)

	FACTORS	REFERENCE
(7)	MAINTENANCE PROCEDURES	CI M5000.3A
(8)	EFFECTIVENESS OF SURVIVAL EQUIPMENT AND PROCEDURES	CI M5000.3A, CI M10470.10A
(9)	EFFECTIVENESS OF DAMAGE CONTROL EQUIPMENT AND PROCEDURES	CI M5000.3A, CIM9000.6A NAVSHIP TECH MANUALS 079, VOL II, 9930
(10)	SUPERVISORY ERROR IN CHAIN OF COMMAND	CI M5000.3A

(a) OOD failed to take watch from break-in OOD when warranted
(b) CO failure to properly supervise Deck Watch Officer
(c) OOD failed to properly supervise QMOW
(d) Unauthorized personnel on the bride

(11)	PHYSIOLOGICAL OR PSYCHOLOGICAL CONDITIONS	CI M5000.3A

(a) Fatigue
(b) Job dissatisfaction
(c) Watchstander confusion

(12)	PERSONNEL EXPERIENCE LEVEL	CI M3502.4B, CG PQS CI M5000.3A
(13)	ADEQUACY OF UNIT TRAINING	CI M3502.4B, CIM5000.3A, MASTER TRAINING LISTS (MTL) CG WATCHSTATION PQS, CI M1414.8A

(a) PQS complete
(b) Formal school requirements
(c) Drills and exercises completed
(d) Deck Watch Officer training adequate
  OOD PQS complete
  qualification letter
(e) Engineer Officer of the Watch training adequate
(f) NAV TEAM training adequate
(g) Damage Control training adequate
(h) Overall level of required training adequate
(i) Quota availability for training
(j) Required team training completed

FACTORS	REFERENCE
(14) EFFECT OF PERSONAL FACTORS	
(a) Medical factors: seasickness prescription drugs in use	
(b) Attitude	
(c) Length of U/W period	
(15) PERSONNEL PERFORMANCE/KNOWLEDGE	CI M5000.3A
(a) Inattentiveness	
(b) Indecision	
(c) Knowledge of vessel characteristics: draft, max speed, height of mast, etc.	
(d) Knowledge of vessel handling characteristics: stopping distance, turning radius on one shaft, etc.	
(e) Alternate course of action planned	
(16) MISCELLANEOUS	CI M5000.3A
(a) Marine traffic in area	
(b) Availability of navigational aids	
(c) Restricted waters or open ocean transit	
(d) Nav Team brief conducted	
(e) Evolution vessel thrived in: towing, drills, buoy handling, special sea detail, fog nay, etc.	
(f) Evolution's effect or restriction on mobility to handle the vessel	
(g) DC closure log current	
(h) Lookout alert and stationed in best possible location	
(i) Anchor ready for letting go	
(j) Vessel Traffic System in effect in the area	
(17) ACTION TAKEN	
(a) Action not taken in time	
(b) Action taken was insufficient	
(c) Wrong action	
(d) Action taken to prevent further damage	

Damage to or loss or destruction of Government property.

a. Facts.

_____ (1) Property involved is accurately identified.

_____ (2) Property involved is accurately described.

_____ (3) Value of property is well established.

_____ (4) Amount of damage is established.

_____ (5) Circumstances surrounding damage, loss or destruction noted.

_____ (6) Responsible parties identified.

_____ (7) Pertinent regulations or instructions identified.

_____ (8) Drills, inventories, checks, etc., required are identified.

_____ (9) Actual use, maintenance, etc., accurately described.

b. Opinions.

_____ (1) Whether regulations adhered to.

_____ (2) Whether existing storage, security, work space adequate.

_____ (3) Whether current regulations are adequate.

_____ (4) Whether a claim by the Government is likely.

_____ (5) Whether responsible parties were derelict in their duties.

c. Recommendations.

_____ (1) Regarding instructions or regulations to be changed.

_____ (2) Regarding storage space or security upgrade.

_____ (3) Regarding disciplinary action.

ADMINISTRATIVE DISCHARGE/REENLISTMENT BOARD CHECKLIST

1. Once a command has determined that one of its enlisted members should be recommended for a discharge prior to that member's expiration of enlistment, the command should:

   [ ] Consult Chapter 12-B of the Personnel Manual, COMDTINST M1000.6A (PERSMAN), to determine the correct basis for the proposed recommendation for discharge.

   [ ] If the basis is one which requires an administrative discharge board, appoint a "project officer" to coordinate the entire evolution.

2. The project officer should:

   [ ] Gather all of the information that forms the basis for the proposed recommendation to discharge, referring to the applicable sections of chapter 12-B, PERSMAN.

   [ ] Once all pertinent information has been gathered, contact the cognizant legal officer for advice on sufficiency of the evidence.

   [ ] Draft a Discharge Notification letter to the member for the command's signature (see AIM, Enclosure (20)). Ensure the letter complies with the minimum requirements of the particular discharge. For Administrative Discharge Board actions, under no circumstances should a recommendation as to the type of discharge be included in this letter.

   [ ] If, upon receipt of the Discharge Notification letter, the member has and invokes a right to consult with an attorney, contact MLCLANT (1v) to obtain counsel.

   [ ] If the member decides to unconditionally waive the right to an administrative discharge board, assist the member in preparing the waiver. Use article 12-B-32g., PERSMAN as a guide. If the member decides to conditionally waive the board, use article 12-B-32h., PERSMAN as a guide.

   [ ] If the member invokes the right to appear before an administrative discharge board, call MLCLANT (1v) to have counsel detailed to represent the member (respondent) and, once counsel has been assigned, afford the respondent an opportunity to consult with that counsel.

[ ] Coordinate with other local commands or cognizant (ap) or MLC (p) to obtain board members.

[ ] Coordinate with cognizant legal officer for the detailing of a recorder. The detailing of a recorder is to be approved by the cognizant legal officer. While the recorder may be a law specialist, in most cases a qualified line officer will be "deemed qualified" by the cognizant legal officer. If the project officer is not disqualified (e.g., the unit CO or XO), the project officer may be detailed as recorder. While the junior member of the board may act as recorder, a separate nonvoting recorder is normally used.

[ ] If verbatim record is used, arrange for a qualified court reporter. Either use a qualified yeoman or coordinate contracting for a civilian court reporter with the contracting officer.

[ ] Once the respondent's counsel and the senior member of the board have been identified, contact them and attempt to arrange a mutually agreeable date on which to convene the board.

[ ] Once a proposed date is reached, determine where to conduct the board. Make the necessary arrangements.

[ ] Once a proposed date is reached, contract for the civilian court reporter. Have the reporter provide the original and one copy of the transcript within 21 days.

[ ] Prepare the convening order to the senior member of the board for the CO's signature (see AIM, Enclosures (20)-(24)). The letter sets the day and time of the board, sets the member of the board, identifies the respondent's counsel, instructs the board, and directs the senior member of the board to notify the respondent of the time and location of the board.

[ ] Send the senior member of the board, with copies to the recorder and respondent's counsel, the materials required to be sent by article 12-B-32d., PERSMAN. Make sure only information as authorized by that article is included.

[ ] Ensure that all members of the board and the respondent's counsel have a copy, or access to a copy, of the administrative discharge board guide (see AIM, Enclosure (25)).

[ ] Arrange for the attendance of all witnesses. The senior member of the board decides whether to provide for the live testimony of witnesses for the respondent. All witnesses are normally provided at the convening authority's expense.

[ ] The recorder (whether or not also the project officer) should prepare the case. The recorder and respondent's counsel should freely cooperate with the goal of providing for a smooth hearing. Both sides should freely share information with respect to witnesses and evidence. Remember that an administrative discharge board is a fact-finding body (formal investigation) that is part of the Coast Guard's personnel system. It is not a "legal" proceeding, nor is it an adversary proceeding such as a court-martial or civilian trial.

[ ] As the date of the board approaches, ensure that all logistical details, such as witness orders, a work/deliberation area for the board, the hearing room, and the contract for the court reporter are well in hand.

[ ] Hold the board. During the proceedings, maintain quiet in the vicinity of the hearing room. Avoid piping announcements. Provide a "bailiff" to run administrative errands for the board and to obtain witnesses from the witness room.

3. After the board is closed, the project officer should:

[ ] Follow-up to ensure that the transcript is provided on time and that it is routed to the senior member of the board for examination and authentication. The transcript will become a part of the record of the board.

[ ] After the board's completed report has been received, prepare for the CO's signature the transmittal letter to Commandant (G-PS) via the chain of command in accordance with article 12-B-31b., PERSMAN. Make sufficient copies of the report of the board so that intermediate commands get a copy and Commandant (G-PS) gets the original and one copy. Also make a copy for the respondent.

SAMPLE NOTIFICATION LETTER FROM BOARD

5800

From: [SEN NAME], Senior Member
To: [RESP NAME]

Subj: (ADMINISTRATIVE DISCHARGE) (REENLISTMENT) BOARD

Ref: (a) [CONVENING ORDER]

1. The subject board in your case, reference (a), will meet at [TIME] on [DATE] in [LOCATION].

2. Any requests for delay or for witnesses should be submitted in writing to me or to the Recorder in a timely manner with full justification.

3. Any documentary exhibits should be submitted, whenever practicable, on 8.5" by 11" paper, one side only.

4. Enclosure (1) explains your rights as a respondent (party) before the board and the procedures to be used. Enclosure (2) is the applicable Privacy Act statement. The board will use the enclosed script {Enclosure (3)} as a guide.

/s/
[SEN NAME]
Senior Member

Encl: (1) [USE ENCLOSURE (27) TO AIM]
(2) [USE ENCLOSURE (26) TO AIM]
(3) [USE ENCLOSURE (25) OF AIM]

Copy: [MEM]
[REC]
[R-C]
[C-A]
District (ap)(app)(dl) or MLC (p)(1)

SAMPLE CONVENING ORDER (DRUG BOARD)

5800

From: [C-A]
To: [SEN NAME]

Subj: ADMINISTRATIVE DISCHARGE BOARD; [RESP NAME]

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1
(b) Personnel Manual, COMDTINST M1000.6A, Chapter 20 and Article 12-B-18
(c) Personnel Manual, COMDTINST M1000.6A, Articles 12-B-31 and 12-B-32

1. You are hereby designated senior member of an Administrative Discharge Board under chapter 4 of reference (a). Other members of the Board are:

[MEM NAME]
[MEM NAME]

The Board is required to conduct a hearing. ([REC NAME], is designated recorder) ([REC NAME]), a law specialist certified pursuant to article 27(b), UCMJ, is designated recorder) (The Junior member shall act as recorder.). Testimony of witnesses shall be under oath or affirmation. A verbatim record shall (not) be kept. (A summarized record shall be kept. [See AIM, 6-L-2])

2. [RESP NAME] is designated as respondent to this Board. You shall notify (him) (her) of the time and place of the hearing, and accord (him) (her) the rights of a party under sections 2-D and 6-L of reference (a).

3. The board will be conducted in accordance with references (a) through (c). The board shall make findings and conclusions concerning the validity and reliability of the evidence of the drug incident (i.e., urinalysis test procedures and results as well as other relevant evidence). At a minimum, the board shall make a specific finding as to whether or not the respondent was involved in a drug incident. A recommendation from the board concerning retention or separation is not required and will not be made. However, if the board finds that the respondent was involved in one or more drug incidents, the board will recommend that the respondent receive either a general or under other than honorable conditions discharge.

4. The board should be initiated on [DATE], or as soon thereafter as practicable, at [LOCATION].

5. If you are unable to complete this Board by [DATE], you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

6. You shall submit a report of the Board following the format of enclosure (5) of reference (a). (Attach the verbatim transcript as an enclosure to your report.) (Attach the summarized record as an enclosure to your report.)

7. [NAME] shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a).

/s/
[C-A ONLY]

Copy: [RESP]
[MEM]
[REC]
[R-C]
District (ap)(app)(dl) or MLC (p)(1)

SAMPLE CONVENING ORDER (NON-DRUG BOARD)

5800

From: [C-A]
To: [SEN NAME]

Subj: ADMINISTRATIVE DISCHARGE BOARD; [RESP NAME]

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1
(b) Personnel Manual, COMDTINST M1000.6A, Articles (12-B-9, 12-B-16, or 12-B-18), 12-B-31, and 12-B-32

1. You are hereby designated senior member of an Administrative Discharge Board under chapter 4 of reference (a). Other members of the Board are:

[MEM SAME]
[MEM NAME]

The Board is required to conduct a hearing. ([REC NAME], is designated separate recorder) ([REC NAME], a law specialist certified pursuant to article 27(b), UCMJ, is designated recorder) (The Junior member shall act as recorder.). Testimony of witnesses shall be under oath or affirmation. A verbatim record shall (not) be kept. (A summarized record shall be kept. [See AIM 6-L-4])

2. [RESP NAME] is designated as respondent to this Board. You shall notify (him) (her) of the time and place of the hearing, and accord (him) (her) the rights of a party under sections 2-D and 6-L of reference (a).

3. The Board will be conducted in accordance with references (a) and (b). The Board shall render findings based on the facts obtained and recommend either retention in or discharge from the Coast Guard. If discharge is recommended, the reason for and the type of separation or discharge certificate shall be indicated.

4. The Board should be initiated on [DATE], or as soon thereafter as practicable, at [LOCATION].

5. If you are unable to complete this Board by [DATE], you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

6. You shall submit a report of the Board following the format of enclosure (5) of reference (a). Attach the verbatim transcript as an enclosure to your report. (Attach the summarized record as an enclosure to your report.)

7. [NAME] shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a).

/s/
[C-A ONLY]

Copy: [RESP]
[MEM]
[REC]
[R-C]
District (ap)(app)(dl) or MLC (p)(1)

SAMPLE CONVENING ORDER (REELISTMENT BOARD)

5800

From: [C-A]
To: [SEN NAME]

Subj: REENLISTMENT BOARD; [RESP NAME]

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1
(b) Personnel Manual, COMDTINST M1000.6A, Articles 12-B-5, 12-B-31, and 12-B-32

1. You are hereby designated senior member of a Reenlistment Board under chapter 4 of reference (a). Other members of the Board are:

[MEM NAME]
[MEM NAME]

The Board is required to conduct a hearing. ([REC NAME] is designated separate recorder) ([REC NAME], a law specialist certified pursuant to article 27(b), UCMJ, is designated recorder) (The Junior member shall act as recorder.). Testimony of witnesses shall be under oath or affirmation. A verbatim record shall (not) be kept. (A summarized record shall be kept. [See AIM 6-L-4])

2. [RESP NAME] is designated as respondent to this Board. You shall notify (him) (her) of the time and place of the hearing, and accord (him) (her) the rights of a party under sections 2-D and 6-L of reference (a).

3. The Board will be conducted in accordance with references (a) and (b). The Board will render findings as to the respondent's eligibility for reenlistment, i.e., eligible for reenlistment or probationary extension of enlistment for any period as may be specified not to exceed one year.

4. The Board should be initiated on [DATE], or as soon thereafter as practicable, at [LOCATION].

5. If you are unable to complete this Board by [DATE], you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

6. You shall submit a report of the Board following the format of enclosure (5) of reference (a). Attach the verbatim transcript as an enclosure to your report. (Attach the summarized record as an enclosure to your report.)

7. [NAME] shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a).

/s/
[C-A ONLY]

Copy: [RESP]
[MEM]
[R-C]
District (ap)(app)(dl) or MLC (p)(1)

SAMPLE CONVENING ORDER (INCOMPETENCY REDUCTION BOARD)

5800

From: [C-A]
To: [SEN NAME]

Subj: INCOMPETENCY REDUCTION BOARD; [RESP NAME]

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1
(b) Personnel Manual, COMDTINST M1000.6A, Articles 5-C-38.c., 12-B-31, and 12-B-32

1. You are hereby designated senior member of an Incompetency Reduction Board under chapter 4 of reference (a). Other members of the Board are:

[MEM NAME]
[MEM NAME]

The Board is required to conduct a hearing. ([REC NAME] is designated separate recorder) ([REC NAME], a law specialist certified pursuant to article 27(b), UCMJ, is designated recorder) (The Junior member shall act as recorder.). Testimony of witnesses shall be under oath or affirmation. A verbatim record shall (not) be kept. (A summarized record shall be kept. {See AIM 6-L-4])

2. [RESP NAME] is designated as respondent to this Board. You shall notify (him) (her) of the time and place of the hearing, and accord (him) (her) the rights of a party under sections 2-D, 6-L, and 6-M of reference (a).

3. The Board will be conducted in accordance with references (a) and (b). The Board will make a specific finding as to whether the respondent is or is not unqualified by reason of incompetency and, if unqualified, the rate to which the respondent should be reduced.

4. The Board should be initiated on [DATE], or as soon thereafter as practicable, at [LOCATION].

5. If you are unable to complete this Board by [DATE], you shall state the reasons to me and include an explanation of the delay in the preliminary statement.

6. You shall submit a report of the Board following the format of enclosure (5) of reference (a). Attach the verbatim transcript as an enclosure to your report. (Attach the summarized record as an enclosure to your report.)

7. [NAME] shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of section 1-I of reference (a).

/s/
[C-A ONLY]

Copy: [RESP]
[REC]
[R-C]
District (ap)(app)(dl) or MLC (p)(1)

ADMINISTRATIVE BOARD GUIDE

OPENING THE BOARD

SEN: The board will come to order. Please be seated. The record will show that the board was called to order at [TIME]_____, on [DATE]_____and is being held at [PLACE]_____.

REC: This board is convened by order of the (Commanding Officer) (Commander)_____, dated_____(as amended by_____) copies of which have previously been furnished to the Senior Member of the Board, each member, the respondent, and the Counsel for the Respondent.

REC: This board has been convened for the purpose of considering pertinent facts in the case of [RESP NAME]_____ _____, who is being considered for (eligibility, for reenlistment in) (an administrative discharge from) (reduction for incompetency in) the U.S. Coast Guard by reason of: [GENERAL GROUNDS]_____ _____(due to) [SPECIFIC GROUNDS] _____.

REC: The respondent, [RESP NAME]_____, and the following persons named in the convening order (as amended) are present:
Senior Member: [SEN NAME]_____
Member: [MEM NAME]_____
Member: [MEM NAME]_____
(Government Counsel and) Recorder: [REC NAME]_____
Counsel for the Respondent: [R-C NAME]_____

REC: No person named in the convening order is absent. (following person(s) named in the convening order (is) (are) absent, having been excused by the convening authority:_____.)

REC: I have been detailed as (government counsel and non-voting) recorder to the board. (I am (not) qualified under Article 27(b), UCMJ.)

ADMINISTERING THE OATH

NOTE: If a RPTR and/or INT are detailed to the board, they must make the following oath or affirmation. If it is known in advance that the RPTR or INT will "affirm" rather than "swear," the words "swear" and "so help you God" should be omitted from the oath. If no one is so detailed, skip to RESPONDENT'S RIGHTS.

REC: [RPTR NAME]_____has been named reporter to this proceeding and will now be sworn.

REC: Do you (swear) (affirm) that you will faithfully perform the duties of reporter to this board (so help you God)?

RPTR: I do.

REC: [INT NAME]_____has been named interpreter to this proceeding and will now be sworn.

REC: Do you (swear) (affirm) that you will faithfully perform the duties of interpreter to this board (so help you Cod)?

INT: I do.

RESPONDENT'S RIGHTS

SEN: [RESP NAME]_____, in my letter to you notifying you of the time and place of this board, I also advised you of your rights at the board and of the procedures of the board. That letter, with the attached Privacy Act statement, will be made an exhibit. Do you waive reading these rights and procedures into the record?

RESP: (Yes.) (No.)

NOTE: If the RESP does not waive the reading, or the information was not previously given the RESP, then read the rights and procedures into the record. (see Page 22 of this enclosure.)

SEN: [RESP NAME]_____, do you understand your rights and the procedures before this board

RESP: (Yes.) (No.)_____.)

SEN: By whom will the respondent be represented

R-C: The respondent will be represented by [R-C NAME]_____ _____, who is (not) qualified under Article 27(b), UCMJ.

NOTE: If the RESP does not want a R-C or if the RESP wants non-qualified R-C within the meaning of Article 27 (b) , UCMJ, RESP must consent to those facts and such consent must be noted in the record. For civilian counsel, the SEN should inquire into the counsel's qualifications, e.g., where the counsel is a member of the bar, is the counsel licensed to practice law in the state, and what is the highest court of the state the counsel has been admitted to practice. If appointed military counsel is not qualified under Article 27 (b) , UCMJ, the explanation of the C-A shall be included in the record.

REC: Let the record reflect that this board is properly convened and constituted.

NOTE: Use the appropriate following paragraph for the particular board.

ADMINISTRATIVE DISCHARGE BOARD (NON-DRUG)

SEN: The board shall render findings based on facts obtaining or believed to obtain to your case and shall recommend retention in or discharge from the Coast Guard. If the recommendation is discharge the reason(s) will be specified along with the appropriate type of discharge according to the provisions of the Coast Guard Personnel Manual. [Article 12-B-31a., PERSMAN].

ADMINISTRATIVE DISCHARGE BOARD (DRUG)

SEN: The board shall make findings and conclusions concerning the validity and reliability of the evidence of the drug incident, such as urinalysis test procedures and results as well as other

relevant evidence. At a minimum, the board shall make a specific finding as to whether or not you were involved in a drug incident. A recommendation from the board concerning retention or separation is not required and will not be made. However, if the board finds you were involved in one or more drug incidents, the board will recommend that you receive either a general or under other than honorable conditions discharge. [Article 12-B-31a., PERSMAN].

REENLISTMENT BOARD

SEN: The board shall render findings based on facts obtaining or believed to obtain to your case and shall recommend that you be eligible or ineligible to reenlist in the Coast Guard or that you serve a probationary extension of enlistment for any period as may be specified not to exceed one year. If the recommendation is ineligible for reenlistment or probationary extension of enlistment the reason(s) will be specified according to the provisions of the Coast Guard Personnel Manual. [Articles 12-B-5 and 12-B-31a., PERSMAN].

INCOMPETENCY REDUCTION BOARD

SEN: The board shall render findings based on facts obtaining or believed to obtain to your case and shall recommend that you are unqualified or not unqualified by reason by incompetency. If the recommendation is unqualified by reason of incompetency, the reason(s) will be specified, along with a recommendation as to the rate to which you should be reduced, according to the provisions of the Coast Guard Personnel Manual. [Articles 5-C-38 and 12-B-31a., PERSMAN].

PRE-HEARING MATTERS

NOTE: Pre-hearing matters include challenges, requests for R-C, WIT, or continuances, answers to same, proposed WIT and documentary evidence lists, or any other correspondence or documents concerning the board which is deemed appropriate.

SEN: Does the respondent or counsel for the respondent believe that any member should not sit on this board

R-C: (No.)(Yes._____.)

NOTE: The RESP may present evidence to show why a MEM should not sit on the board. The RESP may examine a MEM about the MEM's fitness, and such examination may be under oath at the RESP's discretion. If requested, the REC shall administer the following oath: "Do you (swear) (affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth. (So help you God.)." Challenges by RESP should be in writing. The board does not decide the issue; instead it reports the facts to the C-A who must determine if the MEM continues to sit. Copies of the communication and reply must be appended to the record. [Paragraphs 4-D-9 and 3-G-6, AIM]

SEN: At this time, the Recorder will state briefly any appropriate pre-hearing matters involving the board which should be preserved on the record, and if applicable, place into evidence any documentary evidence concerning them.

REC: The convening order (as amended) has been marked as Exhibit(s)_____and is made a part of the record at this time.

NOTE: Only one copy of all exhibits submitted need be provided to the board. The RESP should also have a copy.

SEN: Is there any objection to Exhibit(s)_____?

R-C: (No.) (Yes. I object to Exhibit(s)_____ because_____.)

SEN: (Your objection(s) (is) (are) noted for the record.) (Exhibit(s)_____(is) (are) accepted and will be made a part of the record.)

REC: The notification to the respondent that (he) (she) is being processed for (an administrative discharge) (eligibility for reenlistment), a statement of advice as to (his) (her) rights in this regard, and the respondent's acknowledgment of the same has been marked as Exhibit(s)_____, and (is) (are) made a Part of the record at this time.

SEN: Is there any objection to Exhibit(s)_____?

R-C: (No.) (Yes. I object to Exhibit(s)_____ because_____.)

SEN: (Your objection(s) (is) (are) noted for the record.) Exhibit(s)_____(is) (are) accepted and will be made a part of the record.

REC: The Senior Member's notification letter to the Respondent (as amended) has been marked as Exhibit(s)_____and (is) (are) made a part of the record at this time.

SEN: Is there any objection to Exhibit(s),_____

R-C: (No.) (Yes. I object to Exhibit(s)_____ because_____.)

SEN: (Your objection(s) (is) (are) noted for the record.) Exhibit(s)_____(is) (are) accepted and will be made a part of the record.

REC: There are (no) (the following) additional pre-hearing items to be placed before the board (:_____ _____).

(SEN: Is there any objection to Exhibit(s)_____?)

(R-C: (No.) (Yes. I object to Exhibit(s)_____ because_____).

(SEN: (Your objection(s) (is) (are) noted for the record.) (Exhibit(s)_____(is) (are) accepted and will be made a part of the record.) (Exhibit(s)_____(is) (are) excluded as being (totally irrelevant) (_____). (The members should disregard it and not consider it in their deliberations.)

SEN: Does the Respondent have any comments or additions to any of the foregoing pre-hearing matters

R-C: (No.) (Yes._____).

EVIDENTIARY MATTERS

REC: The following witnesses will be called to testify before this board:_____.

NOTE: REC may verbally list the WIT. If the WIT and their order are on a written list, that document may be made an exhibit in lieu of verbally listing WIT here.

SEN: Does the Respondent have any comments, or objections to the witnesses who will testify before this board or their order of presentation

R-C: (No.) (_____).

SEN: Does the Respondent wish to have any other witnesses called to testify before this board?

R-C: (No.) (_____).

SEN: Does the Recorder have any documentary or real evidence relevant to this board's inquiry?

REC: I have the following exhibits ready for presentation to this board for its consideration in these proceedings. Copies of each of these documents have been previously provided to the Respondent. I again show each Exhibit to the Respondent for inspection.

NOTE: REC will specifically identify each exhibit either verbally on the record or through an exhibit list to be placed in the record. The documents will be consecutively numbered as received. The exhibits may be introduced all at one time or individually. [Paragraph 3-J-2.a., AIM].

REC: Exhibit_____is_____consisting of_____pages.

SEN: Is there any objection to Exhibit_____?

R-C: (No.) (Yes. I object to Exhibit because_____.)

SEN: (Your objection(s) (is) (are) noted for the record.) (Exhibit_____(is) (are) accepted and will be made a part of the record.) (Exhibit(s),_____(is) (are) excluded as being (totally irrelevant) (_____ _____). The members should disregard it and not consider it in their deliberations.)

NOTE: The above procedure is repeated for each exhibit if they are to be accepted individually.

REC: There are no further exhibits.

SEN: Does the Respondent have any other real or documentary evidence relevant to the board's inquiry? If so, please hand the documents to the Recorder for examination and identification as exhibits.

R-C: We submit the following exhibit(s) to the board for its consideration in these proceedings.

NOTE: R-C may wait to present any documentary evidence until after the Recorder concludes presenting the case. R-C may then present each exhibit for examination and marking by the REC.

R-C: Exhibit_____is_____consisting of_____pages.

NOTE: Specifically identify each exhibit.

SEN: Is there any objection to Exhibit_____?

REC: (No.) (Yes. I object to Exhibit because_____
_____.)

SEN: (Your objection(s) (is) (are) noted for the record.) Exhibit_____(is) (are) accepted and will be made a part of the record.) (Exhibit(s)_____(is) (are) excluded as being (totally irrelevant) (_____). The members should disregard it and not consider it in their deliberations.)

NOTE: The above procedure is repeated for each exhibit if they are to be accepted individually.

R-C: There are no further exhibits.

SEN: Before proceeding further, does anyone have any other matters to bring to the board's attention?

REC: (No.) (_____).

THE PROCEEDINGS

SEN: All persons expecting to be called as witnesses in this hearing will withdraw from the hearing room.

SEN: The board will now permit opening statements. Does the Recorder wish to make an opening statement?

REC: (No.) (Yes._____).

SEN: Does the Respondent wish to make an opening statement at this time or reserve it until later

R-C: _____.

SEN: The Recorder may call the first witness.

REC: The first witness is [WIT NAME]_____.

NOTE: If it is known in advance that the WIT will "affirm" rather the "swear," the words "swear" and "so help you God" should be omitted from the oath.

REC: Do you (swear) (affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?

WIT: I do.

REC: Please be seated. Would you please state for the record your name (rank, rate, duty station, and branch of the armed forces) (and address).

NOTE: Use "and address" for civilian WIT. The address of the WIT should be omitted in appropriate cases, as where it might endanger the WIT.

WIT: _____.

REC: Do you know [RESP NAME]_____, and would you please point to (him) (her).

WIT: _____.

REC: Let the record reflect that the witness has identified the Respondent.

NOTE: The above identification-of-the-RESP procedures are not necessary where it is clearly inappropriate (e.g., a laboratory technician is the WIT). REC should conduct examination of the WIT at this point. If, before or during the examination, a WIT is suspected of committing an offense under the UCMJ, that WIT should be given the rights warnings in on page by the SEN. The SEN should first consult legal counsel.

REC: _____.

REC: No further questions at this time.

SEN: Does the Respondent have any questions?

R-C: (No.) (_____).

SEN: Does any member of the board have any questions?

MEM: (No.) (_____).

SEN: Does the witness want to make a statement relating to matters pertinent to this investigation not previously brought out in testimony.

WIT: (No.) (Yes._____.)

NOTE: Upon completion of the examination of the WIT, the SEN should give the WIT the following directions.

SEN: [WIT NAME]_____, thank you. You are (temporarily) excused. (Please wait in_____ _____.) (You should return to your normal duties.) (You are free to go.) As long as this hearing continues, do not discuss your testimony or knowledge of it with anyone except the Recorder, the Respondent, or the Counsel for the Respondent. If anyone else tries to talk to you about the case, stop them and report the matter to one of the persons I just mentioned or myself. Do you understand these instructions?

WIT: (Yes.) (_____.)

SEN: You may be excused.

SEN: The Recorder may call the next witness.

NOTE: Repeat the above procedure for each WIT.

REC: I have no further witnesses to present at this time.

NOTE: See Page 22 of this enclosure for script for recess, adjournment, or reconvening.

SEN: [RESP NAME]_____, you have already indicated your understanding of your rights in this proceeding, but I would like to reiterate your right to testify or make a voluntary statement.

SEN: You have the right, at your option, to submit or not to submit to questioning by the board. The provisions of Article 31, Uniform Code of Military Justice will apply. Your decision not to submit to questioning will not be considered in any manner against you and is not relevant to any determination before the board.

SEN: If you do elect to testify, you will be considered to have waived certain protections afforded you and you may be examined by the recorder or this board on any matter considered relevant to these proceedings, regardless of whether or not you testify to these matters when questioned by your counsel. You cannot, however, be compelled to answer questions concerning an offense of which you are suspect or with which you are charged.

SEN: In the alternative, you may make a voluntary unsworn statement, oral or written, to the board, either personally or through counsel. You may or may not submit to questioning on your unsworn statement. In either event, however, evidence may be introduced to rebut anything contained in your statement. Also, you may choose not to give any statement or to testify at all. If you so choose, the board will not consider it against you in any way. Do you understand these rights?

RESP: (Yes.) (No._____.)

PRESENTING RESPONDENT'S CASE

NOTE: R-C may make an opening statement at this point if one was not made previously.

SEN: The Respondent may call the first witness.

R-C: The Respondent calls [WIT NAME]_____.

NOTE: If it is known in advance that the WIT will "affirm" rather the "swear," the words "swear" and "so help you God" should be omitted from the oath.

REC: Do you (swear) (affirm} that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?

WIT: I do.

REC: Please be seated. Would you please state for the record your name (rank, rate, duty station, and branch of the armed forces) (and address).

NOTE: Use "and address" for civilian WIT. The address of the WIT should be omitted in appropriate cases, as where it might endanger the WIT.

WIT: _____.

REC: Do you know [RESP NAME]
and would you please point to (him) (her).

WIT: _____.?

REC: Let the record reflect that the witness has identified the Respondent.

NOTE: The above identification-of-the-RESP procedures are not necessary where it is clearly inappropriate (e.g., a laboratory technician is the WIT). REC should conduct examination of the WIT at this point. If, before or during the examination, a WIT is suspected of committing an offense under the UCMJ, that WIT should be given the rights warnings in on page of this Enclosure by the SEN. The SEN shall first consult legal counsel.

R-C: _____.

R-C: No further questions at this time.

SEN: Does the Recorder have any questions?

R-C: (No.) (_____).

SEN: Does any member of the board have any questions?

MEM: (No.) (_____).

SEN: Does the witness want to make a statement relating to matters pertinent to this investigation not previously brought out in testimony.

WIT: (No.) (Yes._____.)

NOTE: Upon completion of the examination of the WIT, the SEN should give the WIT the following directions.

SEN: [WIT NAME]_____,thank you. You are (temporarily) excused. (Please wait in_____.) (You should return to your normal duties.) (You are free to go.) As long as this hearing continues, do not discuss your testimony or knowledge of it with anyone except the Recorder, the Respondent, or the Counsel for the Respondent. If anyone else tries to talk to you about the case, stop them and report the matter to one of the persons I just mentioned or myself. Do you understand these instructions?

WIT: (Yes.) (_____.)

SEN: You may be excused.

R-C: The Respondent may call the next witness.

NOTE: Repeat the above procedure for each WIT.

R-C: I have no further witnesses to present at this time.

NOTE: See page of this Enclosure for script for recess, adjournment, or reconvening.

SEN: Does the Recorder have any evidence to present in rebuttal?

REC: (No.)(Yes._____.)

NOTE: The REC may introduce evidence to rebut the matters brought out in the RESP case. The R-C may introduce evidence in surrebuttal to the REC rebuttal evidence. If a WIT who has previously testified under oath is recalled, the SEN shall remind the WIT that the WIT is still under oath.

SEN: Does the Respondent or Recorder have anything further to present to this board?

REC: I have (nothing) further.

R-C: I have (nothing) further.

SEN: There being no other evidence to consider, you may make your closing arguments.

NOTE: If the junior board MEM is designated or acts as REC, this MEM may not make an argument. In this event, only the RESP or R-C may make argument. If a separate REC is designated, both counsel may make their closing argument beginning with REC.

(REC: _____.)

R-C: _____.

SEN: Is there any further matters for this board? If not, the Recorder may proceed with the advice to the board.

REC: _____.

SEN: Does the Respondent wish to make a reply to this advice?

R-C: I do (not).

SEN: The board will now be cleared for deliberations. The time is

NOTE: The board will meet in closed session at the direction of the SEN for deliberations. After deliberations, the board shall open and announce its recommendation. [Paragraphs 6-L-4 and 6-M-2, AIM].

SEN: The hearing will come to order. The time is_____.

NOTE: If a different day or place, the date or place where the hearing is being conducted should be noted for the record.

REC: All persons who were present when the hearing (recessed) (adjourned) are again present. No person required to be present is absent.

NOTE: Use the appropriate following paragraph to announce findings.

ADMINISTRATIVE DISCHARGE BOARD (NON-DRUG)

SEN: After due deliberation, the board recommends that [RESP NAME],_____be (retained in the Coast Guard) (with the following conditions:_____ _____) (discharged from the Coast Guard with a [TYPE OF DISCHARGE]_____for [SPECIFIED REASON]_____)
The board is closed at [HOUR AND DATE]_____.

ADMINISTRATIVE DISCHARGE BOARD (DRUG)

SEN: After due deliberation, the board finds that [RESP NAME],_____(was) (was not) involved in a drug incident (and recommends that the respondent receive a (general) (under other than honorable conditions) discharge). The board is closed at [HOUR AND DATE]_____.

REENLISTMENT BOARD

SEN: After due deliberation, the board finds that [RESP NAME] _____is (not) eligible for reenlistment in the Coast Guard (with the following conditions: probationary extension of enlistment for_____.) The board is closed at [HOUR AND DATE]_____.

INCOMPETENCY REDUCTION BOARD

SEN: After due deliberation, the board finds that [RESP NAME]_____is (not) unqualified by reason of incompetency (and that (he) (she) should be reduced to [RATE]_____.) The board is closed at [HOUR AND DATE]_____.

NOTE: This constitutes the termination of the proceedings. The board need not announce other findings of fact, opinions, or recommendations. The board will meet in closed session at the direction of the SEN to prepare written findings of fact, opinions, and recommendations for inclusion in the record.

RIGHTS WARNINGS

SEN: [WIT NAME]_____, you are suspected of committing the following offense(s):_____ _____. I will now advise you of your rights before you answer any (more) questions?

(1) You have the right to remain silent. You do not have to answer questions at all?

(2) Before you decide whether or not to answer questions, you may consult with a lawyer?

(3) If you decide to consult with a lawyer, I will stop this questioning. You may consult with a military lawyer without cost to you if the government intends to continue questioning you. In addition, you may consult with a civilian lawyer at your own expense?

(4) If you decide to answer questions, anything you say may be used as evidence against you in any court-martial, nonjudicial proceeding, administrative proceeding, or civilian court.?

(5) If the questioning continues, you may stop it at any time by refusing to answer further questions or by requesting to consult with a lawyer?

(6) You have the right to have a retained civilian lawyer, an appointed military lawyer, or both present during any further questioning?

Do you understand these rights?

WIT: (Yes.) (No._____.)

SEN: Do you desire to consult with counsel?

WIT: (No.) (Yes).

SEN: Do you want to continue questioning?

WIT: (No.) (Yes).

RECESS, ADJOURNMENT, OR RECONVENING

NOTE: In the event of a recess or adjournment, the PRES should announce a time when the board will reconvene. An adjournment is for a period beyond the same day, a recess is a break in the proceedings not extending beyond the same day.

PRES: The time is_____hours. The board will (recess) (adjourn) until_____hours, (on_____). [If at a different location, add] (in [place/room]_____.)

NOTE: After the hearing has recessed or adjourned, the PRES will call it to order upon reopening the proceedings. The REC should then note the presence or absence of personnel on the record. The following is appropriate.

PRES: The hearing will come to order. The time is_____hours.

NOTE: If a different day or place, the date or place where the hearing is being conducted should be noted for the record.

REC: All persons who were present when the hearing (recessed) (adjourned) are again present. No person required to be present is absent.

NOTE: If any required person is not present, their absence and the reason should be noted. In the absence of a MEM, the board may proceed with the investigation only if authorized and directed to do so by convening authority. Unless a majority of the MEM are present, no business other than an adjournment shall be conducted. If it

appears that a MEM will be absent for more than a short time and the absence reduces the board to less than a majority of the total membership, the convening authority shall be advised. The convening authority shall appoint additional MEM to ensure that at least two MEM will be present. Any substitute or additional MEM appointed shall examine the record of the proceedings conducted prior to sitting as a MEM, and accomplishment of that review shall be noted in the record. After reviewing the record, each substituted MEM shall participate fully in the subsequent proceedings of the board, its deliberations, findings of fact, opinions, and recommendations. [Paragraph 4-D-2.b., AIM].

PRIVACY ACT STATEMENT FOR THE SUBJECT
OF AN ADMINISTRATIVE DISCHARGE BOARD

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1169; 44 U.S.C. 3101;
49 CFR 1.45(a)(1); Art. 12-B, COMDTINST M1000.6A

PURPOSE: The information that will be solicited is intended principally to enable the Coast Guard to determine the desirability of retaining you in service. In the course of the investigation information also may be solicited that could give rise to a determination concerning disciplinary or punitive action.

ROUTINE USES: In addition to being used within the Coast Guard for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government.

DISCLOSURE IS VOLUNTARY: You are advised that you are initially presumed to be entitled to have personnel determinations resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence that may be needed to support a favorable determination.

SAMPLE EXPLANATION OF RIGHTS AND PROCEDURES FOR ADMINISTRATIVE DISCHARGE BOARD

YOUR RIGHTS AS A RESPONDENT

(1) To be given due notice of your designation as a respondent. [Paragraph 2-D-1.a., AIM].

(2) To be present during the proceedings, but not when the board is cleared for deliberations. [Paragraph 2-D-1.b., AIM].

(3) To be represented by counsel. [Paragraph 2-D-1.c., AIM].

(a) You are entitled to be represented during the proceedings of this board by civilian counsel provided by you at no expense to the government or by military counsel provided by the government at no expense to you. [Paragraph 2-D-2.a., AIM; Article 12-B-32a., PERSMAN].

(b) In any case in which you decline to be represented by a qualified appointed counsel, you are not entitled to have a different counsel appointed.

(c) Appointed military counsel shall be qualified under Article 27(b), UCMJ. If it is not practicable to appoint a qualified counsel, the convening authority may appoint counsel qualified under Article 27(b)(1) only, or if that is not practicable a counsel with lesser qualifications, but in either case the convening authority shall provide an explanation for such action in the record. There are no special legal qualifications required of civilian counsel provided by you. [Paragraph 2-D-2.c. AIM].

(4) To examine and to object to the introduction of physical and documentary evidence and written statements. [Paragraph 2-D-1.d. AIM].

(5) To object to the testimony of witnesses and to cross-examine witnesses other than your own. [Paragraph 2-D-1.e., AIM].

(6) To introduce evidence. [Paragraph 2-D-1. f., AIM].

(7) To testify as a witness. [Paragraph 2-D-1.g., AIM],

(8) The right against self-incrimination and, if applicable, the rights set forth in article 31, UCMJ. [Paragraph 2-D-1.h., AIM].

(9) To make a voluntary unsworn statement, oral or written, to be included in the record of proceedings. [Paragraph 2-D-1., AIM].

(10) To make an argument at the conclusion of presentation of evidence. [Paragraph 2-D-1.j., AIM].

(11) To be properly advised concerning the Privacy Act of 1974. [Paragraph 2-D-1.k., AIM].

(12) To submit or not submit to examination by the board. [Paragraph 6-D-5, AIM].

(13) At any time before the board concludes, to submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes, but is not limited to, those affidavits and depositions allowed at a Court of Inquiry. [Paragraph 6-D-5, AIM].

(14) If you believe a member should not sit on the board, to present evidence to show such reason. You may examine a member about the member's fitness, and such examination may be under oath at your discretion. The board does not decide the issue, but reports the facts to the convening authority who must decide if the member continues to sit. [Paragraph 4-D-9, AIM].

(15) To not be subjected to administrative discharge action based upon conduct that has previously been the subject of administrative discharge board proceedings, when the evidence before the subsequent board would be the same as the evidence before the previous board, except in cases:

(a) When the Commandant has set aside the findings and recommendations of the previous board and referred the case to the subsequent board when finding legal prejudice to the substantial rights of the respondent.

(b) Where the findings of the previous board favorable to the respondent are determined to have been obtained by fraud or collusion. [Article 12-B-31a. (3), PERSMAN].

(16) To not be administratively discharged with a discharge under other than honorable conditions if the grounds for such discharge action are based wholly or in part upon acts or omissions for which you have been previously tried by court-martial resulting in acquittal or action having the effect thereof, except when such acquittal or equivalent disposition is based on a legal technicality not going to the merits. [Article 12-B-3 2a.(4), PERSMAN].

(17) If you are an enlisted member of the Reserve, to have the membership of the board include a majority of Reserve officers if reasonably available. Where a Reserve majority is not available, the board shall include at least one Reserve component officer. [Article 12-B-31a.(1), PERSMAN]

(18) If you are an enlisted woman, to have the board, upon your written request, include a female officer as a voting member if such officer is reasonably available. In the event of non-availability, the reason shall be stated in the record of proceedings. [Article 12-B-31a.(2), PERSMAN].

(19) If you are a member of a minority group, to have the board, upon your written request, include as a voting member an officer who is also a minority group member if such officer is reasonably available. When requested, the appointed board member should normally be of the same minority group as you. However, non-availability of an officer of the same minority group shall not preclude the convening of the board. In the event of non-availability, the reason shall be stated in the record of the proceedings. [Article 12-B-31a. (3), PERSMAN].

PROCEDURES OF THE BOARD

(1) This board functions as an administrative rather than a judicial body. The board is primarily a fact-finding agency of the convening authority. Its duty is to ascertain and present the facts impartially. A proceeding before this fact-finding body is not a trial, its opinions are not legal judgments, and the recorder is not a prosecutor. The board will comply with the applicable procedural requirements of Chapters 6, 4, and 3 of the Administrative Investigations Manual.

(2) You will be given an opportunity to testify subject to full interrogation on all aspects bearing on the desirability of retention. You will not, however, be compelled to give up your right against self-incrimination nor your rights under Article 31, UCMJ. [Paragraph 6-L-6, AIM].

(3) The proceedings of this board (will be recorded verbatim) (will be summarized) and the report of the board will include the record of the proceedings and the findings, opinions, and recommendations of the board.

(4) This board shall endeavor to develop fully your conduct, competency, background, character, and attitudes, in order that the Commandant may make a fair determination on your case. All pertinent testimony from superiors and shipmates, and all pertinent records bearing upon your desirability for retention will be introduced. [Paragraph 6-L-6, AIM].

(5) The board is not bound by the Military Rules of Evidence prescribed for trials by court-martial, except that the board shall apply the privileges contained in section V of the Military Rules of Evidence. Admission of reliable

(5) evidence, notwithstanding an exclusionary rule, is a matter of discretion. However, the Senior Member of the Board may impose reasonable restrictions as to relevancy, competency, and. materiality of matters considered. The rights of witnesses and the respondent shall be safeguarded to the fullest extent possible by the board. [Paragraph 3-D-6, AIM].

(6) The board will protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into private affairs. Before being dismissed, a witness will be warned to refrain from discussing their testimony or prospective testimony with other witnesses or any other person not having an official interest in the investigation. [Paragraph 3-H-5, AIM].

(7) The board will consider any matter presented which is relevant to the issue, whether written or oral, sworn or unsworn. Real or documentary evidence, other than testimonial evidence, may be exhibited to the board and shall be accurately described or reproduced for the record. The board may refuse to consider, or to consider further, any oral or written matter if it is irrelevant, immaterial, or unnecessarily repetitive or cumulative. No such matter will be rejected or withheld from consideration on the grounds that it would be incompetent for presentation to a court of law.

(8) If you or your counsel have any objections to any matter introduced or any of the proceedings, you or your counsel may have your objection noted for the record by stating "OBJECTION". You or your counsel may then state your reasons for your objection, if you desire. However, this board will not normally make a formal ruling on any objections, except those dealing with relevancy, competency, and materiality.

(9) The board will rely on its own judgment and experience in determining the weight and credibility to be given material received in evidence.

(10) The board's proceedings will not be in the nature of a judicial trial, but will be formalized to the extent of assuring full opportunity for presentation of your case. This hearing will be conducted in an atmosphere of decorum and dignity.

(11) Regarding the hearing of witnesses, the board will call and question, principally through the Recorder, material witnesses who are reasonably available. Witnesses will usually be examined in the following order: witnesses called by the Recorder; witnesses called by the Respondent or the Counsel

(11) or the Respondent; witnesses called by the Recorder in rebuttal; witnesses called by the Respondent of the Counsel for the Respondent in surrebuttal; and witnesses requested by the board. The order of examining each witness is usually direct examination, cross-examination, redirect examination, recross-examination, and examination by the board. Each witness will be then be permitted to make a statement relating to matters pertinent to the investigation not previously brought out in testimony. Thereafter, the Recorder and the Respondent will be permitted to examine the witness further concerning these matters as well as any matters touched upon in examination by the board. The senior member of the board may permit a deviation from this procedure if the senior member of the board feels it will secure a more effective presentation of the evidence. Although ample leeway will be allowed in questioning, abuses will not be tolerated. [Paragraph 3-H-1, AIM].

(12) The proceedings shall be public unless the convening authority or the board, for security reasons or other good cause (which shall be noted in the record), directs that the entire proceedings or any portion be closed to the public. [Paragraph 3-D-2, AIM].

(13) Documentary evidence submitted to the board (exhibits) should, whenever practicable, be on 8.5" by 11" paper, one side only. Other real evidence (e.g., a urinalysis container) should also be photographed and properly identified for inclusion as an exhibit in the record. Any tape recordings should, whenever possible, be transcribed.

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