

U.S. Department of  
Homeland Security

United States  
Coast Guard



---

# ADMINISTRATIVE INVESTIGATIONS MANUAL

COMDTINST M5830.1A  
September 2007



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Room 1410  
Staff Symbol: CG-0944  
Phone: (202) 372-3762  
Fax: (202) 372-3969

COMDTINST M5830.1A  
SEPT 7 2007

COMMANDANT INSTRUCTION M5830.1A

Subj: ADMINISTRATIVE INVESTIGATIONS MANUAL

1. PURPOSE. This manual establishes procedures for the appointment, conduct and review of Administrative Investigations.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Judge Advocate General, and chiefs of special staff offices at Headquarters shall ensure compliance with the provisions of this manual.
3. DIRECTIVE AFFECTED. Administrative Investigations Manual, COMDTINST M5380.1 is cancelled.
4. DISCUSSION.
  - a. Administrative Investigations are fact-finding bodies that are necessary or desirable in administering the Coast Guard, but are not specifically authorized or required by law or other regulations, such as the Uniform Code of Military Justice, the Code of Federal Regulations, or other Commandant instructions. This manual may be used as a general guide for investigations authorized by other regulations, but in the case of conflict, the other regulation will govern. Users should carefully review the entire manual to become familiar with its structure and contents. A detailed table of contents is included to assist a user in locating specific procedures.

DISTRIBUTION – SDL No. 145

	a	b	c	d	e	f	g	h	I	i	k	l	m	n	o	P	q	r	s	T	u	v	w	x	y	z
A	3	3	3		3	3	1	3	1	1		1	1	1	1	1	1	1	1	1						
B		5	20	1	20	10	10	10	3	6	4	4	2	20	2	2	20	1	2	1	1	2	1	1	1	1
C	2	1	1	3	2	2	1	1	1		2	1	1	6	1		1	1	1	1	1	1	1	1	1	1
D	1	1	1	1	1			1	1	1		1	1	1	1				1		1	1	1	1		
E	1	1		1				1						1												
F																	1									
G																										
H																										

NON-STANDARD DISTRIBUTION:

5. MAJOR CHANGES. Major changes to this manual are summarized below:

- (1) The contents of the manual have been substantially rearranged so that it flows in a more logical manner.
- (2) Updated information is provided on disclosure of information from Administrative Investigations. *See* Article 1.H.
- (3) The term “informal investigation” has been changed to “standard investigation.” *See* Article 1.D.
- (4) Provisions have been added for a preliminary inquiry prior to the convening of an investigation to determine whether sufficient information exists to make informed decisions about the type of investigation necessary for a particular incident; to identify the specific matters that need to be investigated; or to preserve evidence.
- (5) The designations for “law specialist” and “Chief Counsel” have been changed to “Judge Advocate” and “Judge Advocate General” respectively.
- (6) New guidance has been provided regarding investigations of possible environmental law violations. *See* Article 11.O.
- (7) Line of Duty/Misconduct determinations are now required in death cases. *See* Chapter 7.
- (8) A procedural guide has been provided for one-officer formal investigations. *See* exhibit 8-A.
- (9) The provisions on administrative discharge boards have been deleted, since that topic is now covered by a separate instruction (Administrative Separation Board Manual, COMDTINST M1910.2 (series)).
- (10) A sample final action letter as been included as guidance for use by final action authority. *See* Exhibit 6-B.
- (11) Clear guidance is provided throughout the manual regarding the interaction and coordination of investigations conducted pursuant to the AIM with those conducted pursuant to Claims & Litigation Manual, COMDTINST 5890.9.
- (12) Guidance has been added regarding the Health Insurance Portability and Accountability Act (HIPAA) and how protected personal health information can be used in the administrative investigation process.

6. REQUESTS FOR CHANGES. Units and individuals may recommend changes by writing via the chain of command to Commandant (CG-0944), U.S. Coast Guard Headquarters, 2100 2<sup>nd</sup> Street S.W., Washington, DC 20593-0001.

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATION. Environmental considerations were examined in the development of this Manual and have been determined not to be applicable.

8. FORMS AVAILABILITY. The forms required by this manual are available in Adobe Acrobat Portable Document Format (PDF) on SWIII or the Coast Guard Electronic Forms web site; Intranet: <http://cgweb.uscg.mil/g-c/g-ccs/g-cit/g-cim/forms2/welcome.htm> or Internet: <http://www.uscg.mil/ccs/cit/cim/forms1/welcome.htm>

W. D. BAUMGARTNER /s/  
Rear Admiral, U.S. Coast Guard  
Judge Advocate General

# TABLE OF CONTENTS

## CHAPTER 1 GENERAL POLICIES FOR ADMINISTRATIVE INVESTIGATIONS

A.	<i>Purpose and Scope</i> .....	1-1
B.	<i>Authorities for Administrative Investigations</i> .....	1-1
C.	<i>Purposes of Administrative Investigations</i> .....	1-2
1.	<i>Decision-Making</i> .....	1-2
2.	<i>Documentation</i> .....	1-2
3.	<i>Due Process</i> .....	1-2
4.	<i>Not Binding On Judicial Proceedings</i> .....	1-2
D.	<i>Definitions</i> .....	1-2
1.	<i>Administrative Investigation</i> .....	1-2
2.	<i>Claims Investigation</i> .....	1-3
3.	<i>Convening Authority</i> .....	1-3
4.	<i>Convening Orders</i> .....	1-3
5.	<i>Board of Investigation and Investigating Officer</i> .....	1-4
6.	<i>Mishap Analysis Board</i> .....	1-4
7.	<i>Investigative Report</i> .....	1-4
8.	<i>Party</i> .....	1-4
9.	<i>Regulations</i> .....	1-4
10.	<i>Review of Investigations</i> .....	1-4
11.	<i>Servicing Legal Office</i> .....	1-5
E.	<i>Abbreviations</i> .....	1-5
F.	<i>Initial Command Actions</i> .....	1-6
1.	<i>Report Incident</i> .....	1-6
2.	<i>Coordinate as Necessary with Other Involved Commands and Organizations</i> .....	1-6
3.	<i>Preserve Evidence</i> .....	1-6
4.	<i>Conduct a Preliminary Inquiry, If Necessary</i> .....	1-6
5.	<i>Determine the Necessity, Type and Scope of Investigation</i> .....	1-7
G.	<i>Coordination with Other Agencies and Information Sharing</i> .....	1-7
1.	<i>Combined and Coordinating Investigations</i> .....	1-7
2.	<i>Coordination with Specific Types of Investigations</i> .....	1-8
3.	<i>Avoiding and Resolving Conflicts</i> .....	1-10
H.	<i>Sharing Information Outside the Coast Guard</i> .....	1-11

<b>CHAPTER 2</b>	<b>WHEN INVESTIGATIONS ARE REQUIRED.....</b>	<b>2-1</b>
A.	<i>General Requirement to Conduct Investigations.....</i>	2-1
B.	<i>Incidents Requiring Investigation Under This Manual.....</i>	2-1
1.	<i>Fires, Explosions, Material Deficiencies, Ship Collisions, and Groundings .....</i>	2-1
2.	<i>Class A and B Mishaps.....</i>	2-2
3.	<i>Environmental Violations on or by Coast Guard Units or Employees.....</i>	2-2
4.	<i>Death or Injury.....</i>	2-2
5.	<i>Other Circumstances.....</i>	2-3
C.	<i>When an Investigation Is Not Required.....</i>	2-3
D.	<i>Investigations Required by Other Directives.....</i>	2-4
1.	<i>Claims By or Against the Government.....</i>	2-4
2.	<i>Government Vehicles.....</i>	2-4
3.	<i>Disciplinary Action.....</i>	2-4
4.	<i>Use of Force.....</i>	2-4
5.	<i>Marine Casualty.....</i>	2-4
6.	<i>Firearms.....</i>	2-4
7.	<i>Classified Material.....</i>	2-4
8.	<i>Rescue Operations.....</i>	2-5
9.	<i>Criminal Violations.....</i>	2-5
E.	<i>Other Incidents that Usually Merit Investigation.....</i>	2-5
1.	<i>Public Interest.....</i>	2-5
2.	<i>Personnel Matters.....</i>	2-5
Exhibit 2-A-1	Flowchart for Initiation of Administrative Investigations.....	2-6
Exhibit 2-A-2	Flowchart for Initiation of Administrative Investigations .....	2-7
<b>CHAPTER 3</b>	<b>CONVENING ADMINISTRATIVE INVESTIGATIONS...</b>	<b>3-1</b>
A.	<i>Selecting the Type of Investigation.....</i>	3-1
B.	<i>Purpose of Convening Orders.....</i>	3-3
1.	<i>Form of Convening Orders.....</i>	3-3
2.	<i>Contents of Convening Orders.....</i>	3-3
3.	<i>Detailed Guidance for Convening an Investigation.....</i>	3-5
4.	<i>Amending Convening Orders.....</i>	3-7
5.	<i>Terminating the Investigation Without Report or</i>	

	<i>Holding It in Abeyance</i> .....	3-7
Exhibit 3-A	Comparison of Administrative Fact Finding Bodies.....	3-9
Exhibit 3-B	Sample Convening Order for A Standard Investigation - Letter Incident Report.....	3-10
Exhibit 3-C	Sample Convening Order for A Standard Investigation - Standard Report Format.....	3-13
Exhibit 3-D	Sample Convening Order for A Formal Investigation.....	3-16
Exhibit 3-E	Sample Convening Order for A Court of Inquiry.....	3-19
<b>CHAPTER 4</b>	<b>CONDUCTING STANDARD INVESTIGATIONS</b> .....	4-1
A.	<i>Purpose</i> .....	4-1
B.	<i>Authority to Administer Oaths</i> .....	4-1
C.	<i>Standard Investigation Procedures</i> .....	4-1
	1. <i>Duties of an Investigating Officer</i> .....	4-1
	2. <i>Parties</i> .....	4-1
	3. <i>Oaths</i> .....	4-1
	4. <i>Procedures</i> .....	4-2
	5. <i>Communications</i> .....	4-2
	6. <i>Comparison to other Administrative Investigations</i> .....	4-2
D.	<i>Preliminary Matters</i> .....	4-3
	1. <i>Convening Authority</i> .....	4-3
	2. <i>Convening Procedures</i> .....	4-3
	3. <i>Obtaining Legal Advice</i> .....	4-3
	4. <i>Administrative Matters</i> .....	4-3
	5. <i>Concurrent Investigations</i> .....	4-4
E.	<i>Managing the Standard Investigation</i> .....	4-4
	1. <i>Developing an Investigative Plan</i> .....	4-4
	2. <i>Obtaining Documentary and Physical Evidence</i> .....	4-4
	3. <i>Documenting Evidence from Witness</i> .....	4-5
	4. <i>Rights Advisement for Witnesses</i> .....	4-6
	5. <i>Scheduling Witness Interviews</i> .....	4-7
	6. <i>Conducting Witness Interviews</i> .....	4-8
	7. <i>Rules of Evidence</i> .....	4-9
	8. <i>Standard of Proof</i> .....	4-10
F.	<i>Concluding the Investigation</i> .....	4-10

1.	<i>Preparing the Findings of Facts, Opinions, and Recommendations.....</i>	4-10
2.	<i>Preparing the Submission to the Convening Authority.....</i>	4-11
3.	<i>Legal Review.....</i>	4-11
G.	<i>Checklist for Investigating Officers.....</i>	4-12
1.	<i>Preliminary Matters.....</i>	4-12
2.	<i>Investigation Plan.....</i>	4-12
3.	<i>Conducting the Investigation.....</i>	4-12
4.	<i>Preparing Findings of Fact, Opinions and Recommendations.....</i>	4-12
5.	<i>Final Action.....</i>	4-13
6.	<i>Checklists.....</i>	4-13
Exhibit 4-A	<i>Guide for Obtaining a Complete Witness Statement.....</i>	4-14
Exhibit 4-B	<i>Miranda/Tempia and Article 31 Rights.....</i>	4-17
Exhibit 4-C	<i>Privacy Act Statement Format.....</i>	4-20
<b>CHAPTER 5</b>	<b>PREPARING INVESTIGATIVE REPORTS (IR).....</b>	<b>5-1</b>
A.	<i>Basic Requirements.....</i>	5-1
1.	<i>Organization and Scope .....</i>	5-1
2.	<i>Claims Investigations .....</i>	5-1
3.	<i>Security of Classified Information.....</i>	5-1
4.	<i>Privacy Compliance .....</i>	5-2
5.	<i>Health Insurance Portability &amp; Accountability Act (HIPAA)</i>	5-2
6.	<i>Comments on Administrative or Disciplinary .....</i>	5-3
	<i>Personnel Actions.....</i>	5-3
B.	<i>Investigative Report Format.....</i>	5-3
1.	<i>Subject Line.....</i>	5-4
2.	<i>Preliminary Statement.....</i>	5-4
3.	<i>Findings of Fact.....</i>	5-4
4.	<i>Opinions.....</i>	5-5
5.	<i>Recommendations.....</i>	5-6
6.	<i>Exhibits.....</i>	5-6
7.	<i>Visual Aids .....</i>	5-6
8.	<i>Enclosures.....</i>	5-7
9.	<i>Signature.....</i>	5-7
10.	<i>Sample Reports.....</i>	5-7
C.	<i>Letter Incident Report Format.....</i>	5-7



Exhibit 5-A	Sample Investigative Report (IR).....	5-8
Exhibit 5-B	Sample Letter Incident Report (LIR).....	5-11
<b>CHAPTER 6</b>	<b>FORWARDING, REVIEW, AND ACTION ON INVESTIGATIVE REPORTS .....</b>	<b>6-1</b>
A.	<i>Generally</i> .....	6-1
B.	<i>Designation of Final Reviewing Authorities</i> .....	6-1
	1. <i>Commandant</i> .....	6-1
	2. <i>Other Authorities</i> .....	6-2
C.	<i>Responsibilities of the Convening Authority</i> .....	6-2
D.	<i>Responsibilities of Reviewers</i> .....	6-3
	1. <i>Review the Report</i> .....	6-3
	2. <i>Contents of Intermediate Reviewers' Endorsements</i> .....	6-3
E.	<i>Action of the Final Action Authority (Final Review)</i> .....	6-4
F.	<i>Commandant as the Final Action Authority</i> .....	6-5
	1. <i>Procedure</i> .....	6-5
	2. <i>Context</i> .....	6-6
	3. <i>Signature</i> .....	6-6
	4. <i>Tracking Corrective Measures</i> .....	6-6
G.	<i>Follow-Up Action and Distribution</i> .....	6-7
	1. <i>Corrective Measures and Lessons Learned</i> .....	6-7
	2. <i>Investigations Involving Parties</i> <i>(Formal &amp; Courts of Inquiry)</i> .....	6-7
	3. <i>Other Specific Types of Investigations</i> .....	6-7
	4. <i>Filing of Reports</i> .....	6-7
Exhibit 6-A	Flowchart for Review of Administrative Investigations.....	6-9
Exhibit 6-B	Sample Final Action Letter.....	6-10
<b>CHAPTER 7</b>	<b>INVESTIGATION OF DISEASE, INJURY, OR DEATH ...</b>	<b>7-1</b>
A.	<i>Personnel Status</i> .....	7-1
	1. <i>Active Duty and Reserve Members</i> .....	7-1
	2. <i>Temporary Reserve Members</i> .....	7-1
	3. <i>Coast Guard Auxiliary Members</i> .....	7-1
	4. <i>Civilian Employees</i> .....	7-1

B.	<i>Uses of the Line of Duty (LOD) Determination.....</i>	7-1
1.	<i>Eligibility for Physical Disability Retirement or Separation..</i>	7-1
2.	<i>Reserve Medical Care/Pay and Allowances.....</i>	7-2
3.	<i>Lost Time.....</i>	7-2
4.	<i>The Department of Veterans Affairs (VA).....</i>	7-2
5.	<i>Payment of Survivor Benefit Plan Annuities to Surviving Spouses.....</i>	7-2
C.	<i>Who Needs a LOD/Misconduct Determination?.....</i>	7-2
1.	<i>Members of the Coast Guard.....</i>	7-2
2.	<i>Members of the Coast Guard Reserve.....</i>	7-2
3.	<i>Inapplicable to Temporary Members of the Coast Guard Reserve, Coast Guard Auxiliary Members, or to Civilian Employees.....</i>	7-2
D.	<i>When a LOD/Misconduct Determination is Required.....</i>	7-3
E.	<i>How Death Impacts LOD/Misconduct Determinations.....</i>	7-3
F.	<i>The LOD Determination.....</i>	7-3
1.	<i>General Rule.....</i>	7-3
2.	<i>Definitions.....</i>	7-3
3.	<i>Possible LOD Determinations.....</i>	7-4
G.	<i>Responsibility to Convene a Preliminary Inquiry/Investigation.....</i>	7-5
1.	<i>For Members of the Coast Guard.....</i>	7-5
2.	<i>For Members of Other Services.....</i>	7-6
H.	<i>Type of Investigation Required.....</i>	7-6
1.	<i>Preliminary Inquiry.....</i>	7-6
2.	<i>Circumstances Under Which No Further Investigation is Required.....</i>	7-6
3.	<i>Use of Injury Forms or Letter Incident Reports (LIR).....</i>	7-7
4.	<i>Investigative Report.....</i>	7-7
I.	<i>Convening Authority's Action on the Investigation.....</i>	7-8
1.	<i>Action by Convening Authority.....</i>	7-8
2.	<i>LOD and Misconduct Informal Hearings.....</i>	7-9
J.	<i>Review, Approval, and Recording of LOD/Misconduct Findings....</i>	7-11
1.	<i>Action by Officer Exercising Final Action Authority.....</i>	7-11
2.	<i>Legal Review of Adverse Determinations for Legal Sufficiency.....</i>	7-11
3.	<i>Adverse Determinations and Right to Appeal.....</i>	7-11
4.	<i>Documentation of Determination.....</i>	7-12

K.	<i>Relationship to Disciplinary Action.....</i>	7-12
L.	<i>When Claims Are Involved.....</i>	7-12
	1. <i>Examination of Reports.....</i>	7-12
	2. <i>Combining Investigations.....</i>	7-13
	3. <i>Forwarding Copies of Reports in Particular Cases.....</i>	7-13
M.	<i>LOD/Misconduct Determinations for Various Situations.....</i>	7-13
	1. <i>Mental Responsibility.....</i>	7-13
	2. <i>Intoxication and Drug Abuse.....</i>	7-15
	3. <i>Medical and Dental Treatment.....</i>	7-16
N.	<i>Dangerous Materials and Aggressive Conduct.....</i>	7-17
	1. <i>Explosives, Firearms, and Dangerous Substances.....</i>	7-17
	2. <i>Fights.....</i>	7-17
	3. <i>Motor Vehicle Accidents.....</i>	7-17
	4. <i>Participation in Inherently Hazardous Off-Duty Activities....</i>	7-18
O.	<i>Injuries, Disease or Death of Members of the Temporary Reserve, Coast Guard Auxiliary, and Civilian Employees... ..</i>	7-19
	1. <i>Temporary Members of the Reserve.....</i>	7-19
	2. <i>Members of the Auxiliary.....</i>	7-19
	3. <i>Civilian Employees.....</i>	7-20
	4. <i>Injury.....</i>	7-20
	5. <i>Misconduct/Intoxication.....</i>	7-20
P.	<i>Specific Considerations in Death Cases.....</i>	7-21
	1. <i>When Investigations of Death Cases are Required.....</i>	7-21
	2. <i>CGIS Investigations.....</i>	7-22
	3. <i>Independent Review.....</i>	7-23
	4. <i>Standard of Proof .....</i>	7-23
	5. <i>Report Contents.....</i>	7-23
	6. <i>Timely Submission of Reports.....</i>	7-24
Exhibit 7-A-1	Member Notification Letter of Investigation re: Medical Condition / Benefits.....	7-25
Exhibit 7-A-2	Spouse Notification Letter of Investigation re: Survival Benefit Plan Annuity .....	7-29
Exhibit 7-B	Guide for Line of Duty (LOD)/ Misconduct Investigations	7-32
Exhibit 7-C-1	Member Sample Privacy Act Statement for LOD/ Misconduct .....	7-37
Exhibit 7-C-2	Surviving Spouse Sample Privacy Act Statement for	

LOD/Misconduct .....	7-39
Exhibit 7-D-1 Flowchart for Line of Duty /Misconduct .....	7-41
Exhibit 7-D-2 Flowchart if Initial Determination is Misconduct / Not LOD	7-42
Exhibit 7-E Checklist for Death or Injury to a Coast Guard Member.....	7-43
Exhibit 7-F Checklist for Disability of a Reservist Due to Injury or Illness.....	7-45
Exhibit 7-G Coast Guard Injury Report Form, CG-3822.....	7-46
Exhibit 7-H Coast Guard Report of Reserve Injury or Illness Form, CG-4614.....	7-48
<b>CHAPTER 8 CONDUCTING A FORMAL INVESTIGATION.....</b>	<b>8-1</b>
A. <i>Procedures for a Formal Board.....</i>	8-1
1. <i>Scope.....</i>	8-1
2. <i>Duties of the Board.....</i>	8-1
3. <i>Legal Counsel.....</i>	8-2
4. <i>Recorder.....</i>	8-2
5. <i>Applicable Court of Inquiry Provisions.....</i>	8-2
6. <i>Oaths.....</i>	8-4
7. <i>Challenges.....</i>	8-4
8. <i>Attendance of Witnesses.....</i>	8-4
9. <i>Arguments.....</i>	8-4
10. <i>Sample Record.....</i>	8-4
B. <i>Procedures for a One-Officer Formal Investigation.....</i>	8-5
1. <i>Scope.....</i>	8-5
2. <i>Duties of Formal Investigating Officer.....</i>	8-5
3. <i>Procedure.....</i>	8-5
4. <i>Challenge.....</i>	8-5
5. <i>Procedural Guide.....</i>	8-5
Exhibit 8-A Procedure Guide for One-Officer Formal Investigation.....	8-6
Exhibit 8-B Privacy Act Statement .....	8-13
<b>CHAPTER 9 COURTS OF INQUIRY .....</b>	<b>9-1</b>
A. <i>Overview.....</i>	9-1
1. <i>Generally.....</i>	9-1
2. <i>Characteristics of Courts of Inquiry.....</i>	9-1

B.	<i>Members of a Court of Inquiry</i> .....	9-1
1.	<i>Seniority of Members</i> .....	9-1
2.	<i>Duties of the President of a Court of Inquiry</i> .....	9-2
3.	<i>Duties of Members of a Court of Inquiry</i> .....	9-2
4.	<i>Challenges to members of a Court of Inquiry</i> .....	9-2
C.	<i>Counsel for a Court of Inquiry</i> .....	9-3
1.	<i>Appointment</i> .....	9-3
2.	<i>Duties of Counsel to the Court of Inquiry</i> .....	9-3
D.	<i>Court Reporter and Interpreters</i> .....	9-4
1.	<i>Court Reporters</i> .....	9-4
2.	<i>Interpreters</i> .....	9-4
E.	<i>Counsel for Parties</i> .....	9-4
F.	<i>Convening a Court of Inquiry</i> .....	9-4
1.	<i>The Form of the Convening Order</i> .....	9-4
2.	<i>Contents of the Convening Order</i> .....	9-5
3.	<i>Amendments</i> .....	9-5
4.	<i>Advance Copies</i> .....	9-5
G.	<i>Procedure</i> .....	9-5
1.	<i>General Procedure</i> .....	9-5
2.	<i>Sessions</i> .....	9-6
3.	<i>Clearing the Court</i> .....	9-6
4.	<i>Spectators and Publicity</i> .....	9-6
5.	<i>Recess and Adjournment</i> .....	9-6
6.	<i>Rules of Evidence</i> .....	9-6
7.	<i>Resolution of Disputed Issues</i> .....	9-7
8.	<i>Oaths</i> .....	9-7
9.	<i>Communication with the Convening Authority</i> .....	9-8
10.	<i>Opening and Closing Argument</i> .....	9-8
11.	<i>Closing the Inquiry</i> .....	9-8
H.	<i>Witnesses</i> .....	9-8
1.	<i>Order of Presentation</i> .....	9-8
2.	<i>Attendance by Witnesses</i> .....	9-9
3.	<i>Interviewing Witnesses</i> .....	9-9
4.	<i>Exclusion of Witnesses</i> .....	9-9
5.	<i>Examination of Witnesses</i> .....	9-9
I.	<i>Affidavits and Depositions</i> .....	9-9
1.	<i>Conditions for Use of Affidavits</i> .....	9-9
2.	<i>Situations in which Depositions are Desired</i> .....	9-10

J.	<i>Real Evidence</i> .....	9-10
1.	<i>Documents</i> .....	9-10
2.	<i>Exhibits</i> .....	9-10
3.	<i>Visiting the Scene of the Incident</i> .....	9-11
4.	<i>Statements of Parties</i> .....	9-11
K.	<i>Deliberations and the Report of the Court of Inquiry</i> .....	9-11
1.	<i>Closing the Inquiry</i> .....	9-11
2.	<i>Finding of Facts</i> .....	9-11
3.	<i>Opinions</i> .....	9-12
4.	<i>Recommendations</i> .....	9-12
5.	<i>Disagreement Among Members</i> .....	9-12
6.	<i>Obligation of Secrecy</i> .....	9-12
L.	<i>Preparation and Submission of the Record</i> .....	9-12
1.	<i>Composition</i> .....	9-12
2.	<i>Signing and Authenticating</i> .....	9-13
3.	<i>Forwarding</i> .....	9-13
	Exhibit 9-A Sample Report of a Court of Inquiry .....	9-14
<b>CHAPTER 10 PARTIES AND WITNESSES</b> .....		10-1
A.	<i>Definitions</i> .....	10-1
1.	<i>Party</i> .....	10-1
2.	<i>Rights of a Party</i> .....	10-1
3.	<i>Subject to Inquiry</i> .....	10-1
4.	<i>Direct Interest</i> .....	10-2
B.	<i>Designation of Parties</i> .....	10-2
1.	<i>Effect of Designation</i> .....	10-2
2.	<i>Who May Be Designated a Party at a Court of Inquiry</i> .....	10-2
3.	<i>Who May Be Designated a Party at a Formal Investigation</i> .....	10-3
4.	<i>Who May Designate a Party</i> .....	10-3
C.	<i>Changes in Status of a Party</i> .....	10-3
D.	<i>Right to Counsel</i> .....	10-3
1.	<i>Military Member Designated as a Party</i> .....	10-3
2.	<i>A Civilian Designated as a Party</i> .....	10-4
E.	<i>Qualifications and Duties of Counsel</i> .....	10-4
1.	<i>Qualifications of Appointed Military Counsel</i> .....	10-4
2.	<i>Qualifications of Civilian Counsel</i> .....	10-4
3.	<i>Qualifications of Military or Civilian Counsel in Investigations Pursuant to Article 32, UCMJ.</i> .....	10-4

4.	<i>Duties of Counsel</i> .....	10-5
5.	<i>Special Duties of Counsel for Incompetent Party</i> .....	10-5
F.	<i>Rights of a Party</i> .....	10-5
1.	<i>Explanation of Rights</i> .....	10-5
2.	<i>Examination of Previous Record by a Party Designated During Proceedings; Recall of Witnesses</i> .....	10-5
3.	<i>Previous Testimony of Witness Thereafter Designated as a Party</i> .....	10-6
4.	<i>Individual on Witness Stand When Designated as a Party</i> .....	10-6
5.	<i>Failure to Afford Rights</i> .....	10-6
6.	<i>Waiver of Rights of a Party</i> .....	10-6
7.	<i>Rights to a Copy of the Record</i> .....	10-7
G.	<i>Witnesses</i> .....	10-7
1.	<i>Calling of Witnesses</i> .....	10-7
2.	<i>Competency of Witnesses</i> .....	10-7
3.	<i>Warning Required Before Requesting Statement Regarding Disease or Injury</i> .....	10-7
4.	<i>Warning Witnesses Not to Discuss Testimony</i> .....	10-7
H.	<i>Advice Required by the Privacy Act of 1974</i> .....	10-8
1.	<i>Advice Required</i> .....	10-8
2.	<i>Protected Personal Information Defined</i> .....	10-8
3.	<i>Practical Application</i> .....	10-8
4.	<i>Privacy Act Statement Contents</i> .....	10-8
<b>CHAPTER 11 REQUIREMENTS FOR SPECIFIC INVESTIGATIONS...</b>		11-1
A.	<i>Aircraft Investigations</i> .....	11-1
1.	<i>General</i> .....	11-1
2.	<i>Enemy Action</i> .....	11-1
3.	<i>Specific Facts</i> .....	11-1
B.	<i>Explosions</i> .....	11-2
1.	<i>General</i> .....	11-2
2.	<i>Specific Facts</i> .....	11-2
C.	<i>Loss or Stranding (Grounding) of a Coast Guard Vessel</i> .....	11-3
1.	<i>General</i> .....	11-3
2.	<i>Determination of Vessel's Position</i> .....	11-3
3.	<i>Navigation in Pilot Waters</i> .....	11-4
4.	<i>Procedure in Case of Loss of Ship</i> .....	11-4
5.	<i>Specific Facts</i> .....	11-4

D.	<i>Collisions and Allisions.....</i>	11-4
1.	<i>General.....</i>	11-4
2.	<i>Damage to Vessels and Property Caused by Coast Guard Vessels.....</i>	11-4
3.	<i>Damage to CG Vessels Caused by Non-Coast Guard Vessels.....</i>	11-4
4.	<i>Other Sources of Guidance.....</i>	11-4
5.	<i>Specific Facts.....</i>	11-4
E.	<i>Accidental or Intentional Flooding of a Ship.....</i>	11-5
F.	<i>Pretrial Investigation.....</i>	11-5
1.	<i>Investigation of Charges.....</i>	11-5
2.	<i>Investigation Prior to Charges.....</i>	11-6
G.	<i>GSA Accident Investigation.....</i>	11-6
H.	<i>Loss, Destruction, or Damage to Government-Owned Property.....</i>	11-6
1.	<i>General.....</i>	11-6
2.	<i>Specific Facts.....</i>	11-7
3.	<i>Guidelines for Determining Fault or Negligence.....</i>	11-7
I.	<i>Claims By or Against the Government.....</i>	11-8
1.	<i>General.....</i>	11-8
2.	<i>Forwarding Reports.....</i>	11-8
J.	<i>Willful Damage or Wrongful Taking of Property.....</i>	11-8
K.	<i>Misconduct and Line of Duty (LOD) Investigations.....</i>	11-8
L.	<i>Retention Hearing – Administrative Discharge Boards.....</i>	11-8
M.	<i>Reduction in Grade Due to Incompetency.....</i>	11-9
1.	<i>General.....</i>	11-9
2.	<i>Procedure.....</i>	11-9
N.	<i>Violations of Environmental Law.....</i>	11-9
1.	<i>Background.....</i>	11-9
2.	<i>Internal Reporting.....</i>	11-10
3.	<i>Issues for Investigation.....</i>	11-10
	Exhibit 11-A Loss or Damage to a Coast Guard Vessel.....	11-12
	Exhibit 11-B Factors to be Considered in Coast Guard Surface Vessel Incident.....	11-14



## **CHAPTER 1 . GENERAL POLICIES FOR ADMINISTRATIVE INVESTIGATIONS**

### **A. PURPOSE AND SCOPE**

This manual provides a standard procedure for investigating incidents in the Coast Guard. The primary purpose of all administrative investigations is to provide the convening and reviewing authorities with information upon which to base decisions and take actions about matters investigated. Such decisions may include changes in policy or standards to improve Coast Guard operations, to ensure accountability of Coast Guard actions, and/or to promote the efficiency of the Service. This manual requires investigation of certain incidents, and its provisions are mandatory for these required investigations, unless otherwise directed or authorized by the Final Action Authority. However, the guidance in this manual may be followed when a commander wishes to investigate and document an incident, even where no investigation is otherwise required, but where inquiry into a matter may serve the purposes identified above.

1. Other Directives. Other directives may require investigation of a specific type of incident and refer to this manual for procedures. Where this manual does not require the investigation, the provisions of the directive or order requiring the investigation take precedence over this manual. This manual is equally applicable to both civilian and military personnel, and members of the Coast Guard Auxiliary, to the extent authorized by law, except as specifically indicated otherwise.
2. No External Rights or Obligations Created. This manual is intended solely for the internal administration of the Coast Guard. It does not create rights or obligations in favor of any individual. However, failure to comply with the procedures required by this manual may limit the usefulness of the resulting investigation. For example, failure to accord a member the rights of a Party may preclude the use of the investigation in lieu of a nonjudicial punishment procedure or pretrial investigation under Article 32, Uniform Code of Military Justice (UCMJ). More commonly, failure to collect sufficient evidence or to resolve conflicting evidence negatively impacts the value of the investigation. Consequently, failure to comply with this manual may result in return of the investigation for further action, impairing the Coast Guard's ability to take timely corrective action and resulting in increased costs.

### **B. AUTHORITIES FOR ADMINISTRATIVE INVESTIGATIONS**

Administrative Investigations may be undertaken under a variety of authorities, some of which are dependent on the type of incident involved. The Commandant is authorized to "conduct any investigations or studies that may be of assistance to the Coast Guard in the performance of any of its powers, duties, or functions," 14 U.S.C. § 93(a)(5). In addition, military commanders, and civilian directors of Coast Guard units and headquarters directorates have inherent authority to inquire into matters affecting unit or directorate functions.

### C. PURPOSES OF ADMINISTRATIVE INVESTIGATIONS

1. Decision-making. The Investigative Report gives the Convening and Reviewing Authorities, and others who receive the report, information upon which to make decisions about the matters investigated. Such decisions include changes in policy or standards to improve the Coast Guard and protect its members, and administrative or disciplinary action as necessary to correct or discourage poor performance or to recognize exemplary performance.
2. Documentation. Administrative investigations collect, assemble, analyze, and record available evidence about a particular incident or other matter. The Investigative Report serves as an evidentiary record of the incident and corrective actions taken. Such records are used to inform interested persons within and outside the Coast Guard and to support follow-on action regarding the matter. In addition, if claims are made for or against the Coast Guard or its members, the evidence in the Investigative Report may serve as a basis for settlement or for asserting rights before courts and other external decision-makers. However, the Coast Guard is not bound by the findings of fact, opinions, recommendations, or Final Action taken on an Administrative Investigation. The Coast Guard retains discretion with respect to any and every aspect of Administrative Investigations.
3. Due Process. Some investigations provide individuals designated as Parties with an opportunity to be heard, to challenge evidence, and to present their own evidence regarding determinations that may have a substantial effect on them. These investigations may then be usable in lieu of other procedures, such as a nonjudicial punishment hearing or pretrial investigation convened under Article 32, UCMJ. *See* Manual for Courts Martial, R.C.M. 405, and Part V; Military Justice Manual, COMDTINST M5810.1 (series).
4. Not Binding On Judicial Proceedings. Administrative Investigations are not judicial proceedings and are not designed to determine civil liability or criminal responsibility by the standards of a court. The findings of an Administrative Investigation may be based on information that may be inadmissible in judicial proceedings. Findings and other matter in Investigative Reports and actions thereon represent the views of the individuals involved, and are not necessarily those of the Coast Guard. They should not be relied upon in judicial proceedings. Opinions, recommendations, and even Final Actions (decisions) based on Administrative Investigations are not dispositive evidence in judicial proceedings and may be inadmissible by statute or by regulation. However, a properly conducted Formal Investigation or Court of Inquiry may substitute for an Article 32 Investigation, as discussed in Chapters 2 and 9 of this manual.

### D. DEFINITIONS

For purposes of this manual, the following terminology applies:

1. Administrative Investigation. A standardized procedure for collecting and assembling evidence, and finding facts, to aid Coast Guard officials in determining the causes of and appropriate responses to specific incidents. This manual provides for three types of Administrative Investigations:

- a. Standard Investigations. Formerly referred to as “Informal Investigations,” Standard Investigations are convened to investigate the vast majority of minor and major incidents requiring an Administrative Investigation. These investigations are normally conducted by a single individual known as the Investigating Officer (I.O.). A Standard Investigation uses informal evidence-gathering procedures, and usually does not conduct hearings. It does not have authority to designate Parties or to subpoena witnesses. (*See* Chapter 4).
  - b. Formal Investigations. Formal Investigations are convened to accord the rights of a Party to an individual, or when the Convening Authority otherwise determines that a formal evidentiary hearing process is appropriate. Formal Investigations involve a hearing at which a Party or Parties are accorded their rights to be present and challenge evidence. The Convening Authority, or the Board of Investigation if so authorized, determines who will be designated a Party. A Formal Investigation has no subpoena power, but is designed to be used in lieu of a nonjudicial punishment proceeding or a Pretrial Investigation under Article 32, UCMJ (a prerequisite to General Courts-Martial). (*See* Chapter 8).
  - c. Courts of Inquiry. Courts of Inquiry are convened pursuant to Article 135, UCMJ, when the Convening Authority determines that subpoena authority is required, or that the formalities of a Court of Inquiry are otherwise appropriate. They are the most formal type of Administrative Investigation, and the only type of investigation that includes subpoena power. Military members whose conduct is subject to the inquiry have a right under Article 135, UCMJ to be designated a Party to such an investigation on request. (*See* Chapter 9).
2. Claims Investigation. Any investigation in which there is a potential claim for or against the government. The purpose of a Claims Investigation is to ascertain the facts needed to properly settle a claim or defend or prosecute a lawsuit. The term Claims Investigation includes Administrative Investigations convened for other purposes, but do include the potential for claims or litigation. A large number of investigations are both Administrative and Claims Investigations.
  3. Convening Authority. This is the authority, usually a unit commander, who orders an investigation to be conducted.
  4. Convening Orders. A “Convening Order” is the order that initiates an investigation by designating a person or persons to conduct or assist in the investigation and provides instructions as to the nature of the investigation to be conducted. Because it effects the appointment of people to positions in the investigation, a Convening Order is also a type of “appointing order.” The Convening Order vests those appointed to the investigation with authority to investigate the matter on behalf of the Convening Authority. A Convening Order may be amended at any time during the conduct of the investigation, in the discretion of the Convening Authority.

5. Board of Investigation and Investigating Officer. Either refers to the person or persons appointed by the Convening Authority to assemble evidence and to render findings in an investigation.
6. Mishap Analysis Board. A board appointed under the Safety and Environmental Health Manual, COMDTINST M5100.47 (series) to inquire into an incident for safety and mishap prevention purposes only.
7. Investigative Report. The written report produced at the conclusion of an Administrative Investigation. The actions of the Convening and Reviewing Authorities, which may modify the findings of the report, are endorsements to the Investigative Report. The report is “final” when approved by the Final Action Authority. This manual provides two formats for Investigative Reports.
  - a. Investigative Report (IR) Format. An IR consists of a preliminary statement, findings of fact, opinions, recommendations, and evidentiary exhibits. For some types of investigations, exhibits include verbatim transcripts or summaries of witness testimony. Other documents that are not probative, that do not tend to prove or disprove a fact, may be appended to the report as enclosures. Every investigation should have, as an enclosure, the Convening Order; some investigations will have an enclosure with a log showing effort expended and delays encountered in completing the investigation. The standard IR Format is designed to aid reviewers in locating and determining sufficiency of the bases for findings, opinions, and recommendations.
  - b. Letter Incident Report (LIR) Format. A LIR is a less structured form of report that is used primarily to meet the immediate needs of the Convening Authority and preserve the evidence collected. It is used when review and action on the report is not required above the level of the Convening Authority, is written in Coast Guard standard letter or memorandum format, and may be signed by the investigator or Convening Authority. It must include evidence obtained that is relevant to the matters investigated. In sum, the investigation documented by a LIR must be as thorough as an investigation documented by an IR; it is only the report of the investigation that is shortened. The only effort curtailed is in the preparation of the report.
8. Party. A person who is required to be accorded specific rights in connection with a Formal Investigation or Court of Inquiry. A Party is usually designated because their conduct is subject to investigation. A Party must be accorded the opportunity to participate in the investigation as described in Chapter 10 of this manual.
9. Regulations. “Regulations,” in the context of this COMDTINST, is a general term that includes internal Coast Guard directives and those of other agencies, as well as regulations published in the Federal Register or Code of Federal Regulations.
10. Review of Investigations. The process of determining whether an investigation, including the Investigative Report, is correct and meets the needs of the Coast Guard. *See generally* Chapter 6 of this manual.

- a. Reviewer. The Convening Authority, the Final Action Authority, and each intermediate commander in the chain of command responsible for reviewing the report.
  - b. Final Action Authority. The most appropriate official in the chain of command ultimately responsible for ensuring that the Investigative Report is correct, and for implementing the administrative, policy, or other corrective action indicated by the facts and circumstances documented in the investigation report.
  - c. Action. The administrative, legal, policy resource or other corrective measures taken in response to the facts and recommendations contained in the investigation report. Action on an investigation report may range from approval, disapproval, or modification of the findings of fact to sweeping command or service-wide resource or policy changes indicated by the investigation report. An action document may include the reviewer's opinions, recommendations, corrective and other measures taken, and actions ordered.
11. Servicing Legal Office. This office is primarily responsible for providing legal advice to the command or Convening Authority under current policy. Generally, this is the command's Judge Advocate if one is assigned, the District legal office for District units, and the MLC legal office for Area and MLC units and Headquarters units within its area of responsibility. Commandant (CG-0944) is the servicing legal office for Coast Guard Headquarters Directorates, with respect to Administrative Investigations.

## E. ABBREVIATIONS

AIM	Administrative Investigations Manual, COMDTINST M5830.1
C.F.R.	Code of Federal Regulations
CGIS	Coast Guard Investigative Service
CO	Commanding Officer
DHS OIG	Department of Homeland Security Office of the Inspector General
E-FOIA	Electronic Freedom of Information Act ( <i>see</i> "FOIA," below)
FOIA	Freedom of Information Act, 5 U.S.C. § 552
GCMCA	General Court-Martial Convening Authority
IR	Investigative Report
LIR	Letter Incident Report
LOD	Line of Duty
MAB	MISHAP Analysis Board
MAR	MISHAP Analysis Report
MCM	Manual for Courts-Martial
MJM	Military Justice Manual, COMDTINST M5810.1 (Series)
MRE	Military Rules of Evidence, contained in the MCM
NJP	Non-judicial Punishment, pursuant to Article 15, UCMJ
NTSB	National Transportation Safety Board
RCM	Rules for Courts-Martial, contained in the MCM
ROI	Report of Investigation (prepared by Coast Guard Investigative Service)
SJA	Staff Judge Advocate
SPCMCA	Special Court-Martial Convening Authority

UCMJ	Uniform Code of Military Justice, 10 U.S.C. §§ 801 - 936, also in the MCM
U.S.C.	United States Code
VA	The Department of Veterans Affairs

## F. INITIAL COMMAND ACTIONS

1. Report Incident. Although many incident reporting requirements are outside the scope of this manual, commands generally are required to keep their chain of command informed by promptly reporting significant incidents within their areas of responsibility. Numerous directives establish specific incident report requirements. Examples include reports of serious offenses to CGIS, which may investigate or may report the matter to the FBI or others; oil and hazardous chemical spill reports to the National Response Center, which may lead to investigation by the local Marine Safety Office; reports of security violations and possible compromise in accordance with the Coast Guard's information security program; and certain types of casualties that must be reported through the MISHAP Reporting System.
2. Coordinate As Necessary With Other Involved Commands And Organizations. *See* Combined Investigations, Article 1.G.1. of this Manual. Determine which command or organization will have responsibility as "primary investigator" of the matter.
3. Preserve Evidence. Upon notice of an incident that requires investigation by any organization of the Coast Guard, Commanding Officers shall take appropriate measures within their existing authority to preserve the evidence of the incidents to be investigated, in close coordination with other involved commands and investigators, including the Coast Guard Investigative Service and Mishap Analysis Board (if appointed). The following procedures should be used as appropriate, in coordination with the primary investigator, to preserve evidence:
  - a. Freeze the scene of the incident. Secure the scene until evidence is obtained, to prevent tampering, destruction, or inadvertent loss of evidence;
  - b. Obtain and secure physical evidence;
  - c. Take photographs of the scene and of any other relevant items or personnel;
  - d. Secure all logs and other relevant documents; and
  - e. If necessary, obtain statements from available witnesses while their recollections are fresh. These statements may be taken in conjunction with a preliminary inquiry as discussed below. If applicable, statements from military members should be taken in accord with Article 31, UCMJ and MRE 301.
4. Conduct a Preliminary Inquiry, If Necessary. In many cases, a command does not initially have sufficient information to make informed decisions about whether to investigate, what

type of investigation is necessary for a particular incident, or the specific matters that need to be investigated. A Commanding Officer may direct a preliminary inquiry to answer these initial matters. However, the initiation or conduct of a preliminary inquiry is prohibited in matters related to actual, suspected, or alleged incidents of rape or sexual assault in accordance with Mandatory Reporting Incidents to Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series) and Reporting and Responding to Rape and Sexual Assault Allegation, COMDTINST 1754.10 (series). There is no mandatory procedure, or form of report required to initiate or report the results of this inquiry. For example, a quick Standard Investigation with a Letter Incident Report may function as the preliminary inquiry for a Formal Investigation. This preliminary inquiry may be conducted as part of the command's actions to preserve evidence discussed above. The results of such an inquiry, including the evidence obtained, will normally be made available for use in any subsequent investigations. The person conducting a preliminary inquiry may serve as an investigator, Recorder, or in other capacities in a subsequent investigation. A CO or other person administering NJP, or convening a Court-Martial shall not be an Investigating Officer in that matter.

5. Determine the Necessity, Type and Scope of Investigation. Chapters 2, 3, 7, and 11 of this manual provide more detailed guidance for determining whether an investigation is necessary, identifying the Final Action Authority for the investigation, the issues that should be addressed, and any incident-specific procedures to be followed. Chapters 4, and 8-9 describe the three types of Administrative Investigations (Standard, Formal, or Court of Inquiry) that may be convened. Reports are discussed in Chapter 5. Review of investigations is addressed in Chapter 6.

## **G. COORDINATION WITH OTHER ORGANIZATIONS AND INFORMATION SHARING**

1. Combined and Coordinated Investigations.
  - a. Priority of Investigations. Several commands, and other organizations, may have interests or obligations regarding investigations of the same or closely related incidents. For example, investigation of a collision between a Coast Guard vessel and a commercial vessel could involve not only the vessel's command, but also the District, Area, and MLC Commanders, CGIS (particularly if criminal activity were possible), a Mishap Analysis Board convened by Coast Guard Headquarters, a Marine Safety Investigation, and/or an investigation by the NTSB, as well as other Federal or state agencies. In general, the organizations concerned should agree on a relative priority of investigative responsibilities. Some requirements are set by law or regulation (as may be the case when the NTSB is involved), while others may be set by mutual agreement. Lower priority investigations should be conducted on a not-to-interfere basis with higher priority investigations.
  - b. Preference for Combined Investigations. This manual permits and encourages combining Administrative Investigations with other investigations whenever such combined investigations are permitted by governing directives and appear to be in the

best interests of the Coast Guard. When investigation of an incident is required by more than one regulation, or more than one command or authority is responsible for investigating an incident, investigations or investigative efforts should normally be combined or coordinated to the extent permitted by governing regulations. In some situations, another investigation may require close coordination with or eliminate the need for other investigations. For example, the Claims and Litigation Manual, COMDTINST M5890.9 requires that incidents that result, or may be likely to result in claims by or against the U.S. government (or matters relating to civil litigation), arising from Coast Guard activities, should be investigated. Incidents that implicate claims issues often raise other issues important to the command and an Administrative Investigation provides the means to serve both purposes, and no separate claims investigation need occur. The servicing legal office will provide guidance about specific actions that should be taken to serve claims needs.

All information and evidence collected in an Administrative Investigation may generally be shared with other U.S. Coast Guard investigations. The servicing legal office should be consulted for requests for Administrative Investigations by other agencies or entities.

- c. Limits on Combined Investigations. A combined investigation is sometimes impossible or impracticable. Nevertheless, even in these circumstances, cooperation in evidence gathering and analysis may be permissible and appropriate. The directives governing the following types of investigations generally preclude them from being combined with an Administrative Investigation and information and evidence collected by those investigations might not be available to the Administrative Investigation officer:

- (1) Investigations conducted by Federal law enforcement agencies and CGIS, including CGIS investigations of deaths that are reported to CGIS.
- (2) Investigations conducted by the Department of Homeland Security Inspector General (DHS OIG).
- (3) Mishap investigations conducted pursuant to the Safety and Environmental Health Manual, COMDTINST M5100.47 (series).
- (4) NTSB Investigations of incidents involving the Coast Guard. *See* 46 C.F.R. § 4.40.
- (5) Marine casualty investigations conducted pursuant to Title 46. *See* 46 U.S.C. § 6308.

2. Coordination with Specific Types of Investigations.

- a. CGIS Investigations. The circumstances that prompt a CGIS investigation may warrant an Administrative Investigation unrelated to the investigation of criminal conduct. An Administrative Investigation should not interfere with the CGIS investigation. A complex Administrative Investigation may, however, include CGIS agents as assistants to the investigators or as Members of a Board of Investigation, and the evidence obtained may be used for both the CGIS investigation and the Administrative Investigation.



b. Mishap Analysis Boards.

- (1) Mishap Analysis Boards (MABs) are investigations conducted pursuant to the Safety and Environmental Health Manual, COMDTINST M5100.47 (series). An Administrative Investigation may be conducted separately and independently (e.g., where a Line of Duty (LOD)/Misconduct determination is necessary; there is the possibility of future disciplinary action). The Safety and Environmental Health Manual sets forth the materials that may be shared with the Administrative Investigation.
- (2) Of particular note are blood and urine samples, or the results of tests thereon. Such blood and urine samples and test results are routinely obtained by the MAB. Even when obtained by a Limited Use MAB, they are not obtained under a pledge of confidentiality, and because they are not “testimonial” in nature, the MAB need not advise the source of the samples of Article 31(b)/Miranda warnings. It is preferable, however, for the administrative investigator to obtain consent, from a source to either use of the results of the tests on previously provided samples, or to obtain new samples for new testing. Enclosure 23(d) of the Military Justice Manual, COMDTINST M5810.1 (series), urinalysis consent form, should be used when obtaining consent. In this way, subsequent evidentiary challenges can be avoided, should the matter be referred to court-martial. Of course, if the source refuses consent, the administrative investigator may obtain a search authorization, following procedures outlined in the Military Justice Manual, COMDTINST M5810.1 (series). Finally, if unable to secure consent or a search warrant in order to obtain timely testing of blood and urine samples, the administrative investigator may request such information from the MAB.
- (3) Under the Safety and Environmental Health Manual, COMDTINST M5100.47 statements of witnesses obtained by the MAB pursuant to a promise of confidentiality and matters that reveal the deliberative processes of the Mishap Board are not available to the Administrative Investigation. Each investigation shall have access to all other evidence, and shall have separate opportunities to question and to obtain statements from all witnesses, even those who have provided privileged safety information pursuant to a pledge of confidentiality. Of course, if the MAB has not extended an assurance of confidentiality to a witness, at the discretion of the MAB, a combined interview may be arranged for both the MAB and the administrative investigating officer.
- (4) Persons conducting Administrative Investigations shall exercise due care with respect to certain privileged safety information gathered by the Mishap Analysis Board. They shall not question any witness with respect to that witness’s participation in, or testimony before the MAB. Of course, the Administrative Investigation may ask the witness questions about the incident; it is only precluded about inquiring about what the witness was asked by or relayed to the MAB. In any investigation where there is the possibility that witnesses will be called to testify before both types of investigative bodies, witnesses should be told the

reason for the apparent duplication. The explanation should cover:

- (a) The different objectives of the two investigations;
  - (b) The protection afforded certain statements provided to a MISHAP investigation under a pledge of confidentiality; and
  - (c) The fact that the statements made under a pledge of confidentiality will not be made available to the Administrative Investigation unless provided voluntarily by the witness; and that any statements given to the administrative investigating officer will be turned over to the MAB.
- (5) In those circumstances where both a Mishap Investigation and an Administrative Investigation have been convened, 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 under investigation, and the limitations on the scope of the investigation imposed by the Convening Authority. Generally, the Mishap Investigation will adequately address the causes of the mishap for safety purposes. In addition to obtaining evidence from the Mishap Investigation, the Administrative Investigation may adopt findings of facts or conclusions of the Mishap Investigation that are made available to it. The opinions and recommendations of the Administrative Investigation generally need not address safety concerns and causes of the mishap, except to the extent necessary and pertinent to the reasons for which the Administrative Investigation is convened, such as for LOD/Misconduct determinations.
- c. NTSB and DHS OIG.
- (1) Under 49 USC § 1131(a)(2), DHS Management Directive 0810.1, and the Inspector General Act of 1978 Administrative Investigations generally must be conducted on a not-to-interfere basis with a concurrent NTSB or DHS OIG investigations.
  - (2) Issues concerning coordination with these investigations should be referred to the servicing legal office.

3. Avoiding and Resolving Conflicts.

- a. Administrative investigations must be coordinated with other investigations so as not to interfere unnecessarily with other investigations of the same or closely related incidents. Ensuring that investigations are properly coordinated is a fundamental responsibility of the investigator and the Convening Authority, who should work with other investigators, legal counsel, and their organizations to determine the relative priority of the investigations being conducted. The report of an Administrative Investigation shall identify any other investigations known to have been conducted into the same or closely related incidents.
- b. Any conflict among Federal, state, and local agencies that is not resolved promptly to the mutual satisfaction of the involved agencies shall be forwarded for resolution to the appropriate level of the chain of command. The servicing legal office shall be consulted. A senior officer may be designated to coordinate multiple Coast Guard

investigations. A Convening Authority, or a superior authority in the chain of command, may order an Administrative Investigation to be terminated or held in abeyance (placed on hold) pending the completion of another investigation.

## H. SHARING INFORMATION OUTSIDE THE COAST GUARD

1. The Final Action document on an Investigative Report is generally subject to mandatory release under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, although specific FOIA exemptions may apply to material included in an IR, such as deliberative materials, personal privacy information, or protected law enforcement information based on how the Final Action document is crafted. For example, an IR will likely contain opinions and recommendations and may include information protected by the Privacy Act. Although IR's are not generally part of a "system of records" because they are not maintained or filed as a record of personal information retrievable by the person's name, social security number, or other personal identifier, they may include information derived from such systems. In addition, some investigations may include law enforcement information or other information protected by specific FOIA provisions. Specific guidance on these matters is included in The Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3 (series) at Articles 5.G and 5.I.3.
2. Insofar as material is releasable and is frequently requested, it should be made available via the Internet. Pursuant to the Electronic Freedom of Information Act (E-FOIA) Amendments of 1997, codified at 5 U.S.C. § 552(a)(2)(D), agencies are required to place frequently requested records in their electronic reading rooms. Records are "frequently requested" if they have been released pursuant to FOIA requests three or more times. The following basic principles should be considered; however, because every IR is likely to contain information subject to withholding, the servicing legal office shall be consulted for every external request for Administrative Investigation Reports.
  - a. Release Factual Information Promptly and Publicly. The Coast Guard policy favoring prompt public release of factual information, as set out in the Public Affairs Manual, COMDTINST M5728.2 (series), applies equally to the information obtained in an Administrative Investigation. The Convening Authority, Reviewers, or the Final Action Authority may release *factual* information to the public in the form of press releases or other documents. Factual information includes observations of events or incidents, such as witness statement transcripts, but would not include a summary of interview of a witness (which reflects the thought process and opinion as to what the Investigating Officer found important). However, where an element of choice is involved, as in determining which set of facts or which evidence is most credible, an investigating officer's "finding of fact" may be withheld as deliberative material. For these reasons, as well as potential applicability of the Privacy Act and FOIA/E-FOIA, it is critical to involve the servicing legal office in review of information before it is released.
  - b. Favor Release of Evidence to other Government Agencies Upon Request. Evidence from an Administrative Investigation should be shared with other Federal and State agencies in accordance with applicable law and regulations to the maximum extent possible, consistent with the interests of the United States. Release of such information to Federal agencies, outside of the FOIA, is not equivalent to a public release. However, release to state and local governmental entities is subject to the requirements

of a FOIA request. Commands should weigh the government agency's need for such information (such as for ongoing law enforcement, safety, or other urgent governmental needs) against any considerations favoring non-release (typically, the Privacy Act, HIPAA, or sensitive, premature, deliberative material), and should generally provide such material *unless the need to withhold it is compelling*. Compelling reasons to withhold such information include legal and policy restrictions, *e.g.*, if disclosure is prohibited by the Privacy Act, the laws governing classified information, or other law, by an obligation of the Coast Guard, or by any specific regulation or directive precluding its release. Material released to a government agency but not to the general public under this policy should be treated as sensitive investigative material, and should be prominently marked to indicate that it is provided on the condition that it will not be further disseminated without express permission from the Coast Guard. The servicing legal office may recommend the establishment of a Memorandum of Agreement between the Coast Guard and the outside entity governing releases of investigatory materials, in order to clarify how such information may be used, and the required safeguards. In the absence of an MOA or other agreement, certain information could be released to non-Federal agencies under the FOIA. However, a release under FOIA must, by law, be made available to other requesters, under the FOIA. In sum, while discretionary disclosure to government agencies external to the FOIA is not a FOIA release, a FOIA release to one is a FOIA release to all. As above, advice of the servicing legal office before disclosure or release of information is crucial.

- c. Generally Withhold Deliberative Material Until Final Review is Completed. In contrast to the evidence, any summaries of interviews, the findings of fact, opinions, recommendations, and other matters expressed in non-final IRs generally constitute privileged, pre-decisional matters. In addition, as the "findings of an official investigation" they could be inappropriately attributed as the official views of the Coast Guard. Release of such information, particularly premature release (that is, before a final decision is rendered) can hinder candid analysis within the Coast Guard, confuse the public, and jeopardize other important interests of the United States. Thus, the non-final IR itself should not be released, even to other agencies, except in the rare case, with consultation with the servicing legal office, where there are compelling reasons to do so, and where there are strong guarantees that the report will not be further disseminated. If an IR is disclosed or released prior to final action, it must be marked, as above, to indicate that it is pre-decisional, that it does not represent the views of the Coast Guard, and that it may not be further disseminated without express permission from the Coast Guard. It must be noted that even Final Action on an Administrative Investigation does not change the deliberative character of a summary of interview, the findings of fact, opinions, and recommendations unless those findings, opinions, and recommendations have been expressly adopted. As above, it is crucial to obtain the advice of the servicing legal office before disclosing or releasing any deliberative material from an IR, whether Final Action has been taken, or whether review is ongoing. Unless otherwise directed, Convening Authorities and Reviewers should advise the Final Action Authority when deliberative material will be or has been released prior to Final Action.

3. HIPAA. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191) was enacted to promote improved medical care for individuals and to protect the security and confidentiality of the health care information of individuals receiving care from health care providers. The Department of Health and Human Services (HHS) promulgated regulations in title 45 Part 164 of the Code of Federal Regulations implementing HIPAA which provide patients rights and protections against the misuse or disclosure of their health records, and also allow patients greater access to their health records.

The general privacy principle expressed in HIPAA is that use and disclosure of an individual's protected health information is prohibited without that individual's written consent. Express exceptions to this rule exist which allow use and disclosure of an individual's private health information in order to accomplish the mission of the health organization, particularly in the military context as it relates to fitness for duty.

Additionally, an express exception exists that allows the Coast Guard to use and disclose health information "to carry out any other activity necessary to the proper execution of the mission of the Armed Forces." The Coast Guard is subject to HIPAA regulations only in its capacity as a health care provider. Thus only "covered entities", or health care facilities and providers are subject to the use and disclosure limitations of HIPAA. Although use and disclosure by an Administrative Investigation is outside the scope of HIPAA, investigating officers must protect the privacy interests of individuals' to the maximum extent possible by using and disclosing only that health information which is necessary to adequately conduct the investigation. IO's should also seek to obtain the written consent of the named individual to use and disclose their private health information whenever possible. Disclosure of a military individual's health information by health care facilities and providers to an investigating officer in the course of an investigation is allowed pursuant to the above-mentioned military fitness exception. It is recommended that the Medical Manual COMDINST M6000.1B, and the servicing legal office be consulted for further guidance regarding HIPAA.

## **CHAPTER 2 WHEN INVESTIGATIONS ARE REQUIRED**

### **A. GENERAL REQUIREMENT TO CONDUCT INVESTIGATIONS**

Coast Guard Regulations, COMDTINST M5000.3 (series), Article 4-1-8 provides: “Fires, explosions, material deficiencies, ship collisions, groundings, incidents involving Coast Guard personnel, and other unusual incidents or circumstances requiring a determination of facts [except Marine Safety incidents covered by 46 C.F.R. Part 4] shall be the subject of an inquiry or investigation in accordance with the provisions of the Administrative Investigations Manual. When a fact finding body is necessary, the commanding officer of a unit shall, except when the immediate superior in command has ordered a Court of Inquiry or an investigation, request that a Court of Inquiry be ordered or order an investigation.”

Determining the cause and corrective action for a significant incident occurring at a Coast Guard unit or as a result of its actions, keeping the chain of command properly informed of significant incidents and lessons learned, and maintaining public confidence in the Coast Guard are inherent to the duty of every command. Even when this chapter or another directive does not specifically require an investigation, commands must ensure proper investigation of incidents as necessary to promote the good order, discipline, welfare, public perceptions, and mission readiness of the unit or the Coast Guard generally.

Commands must ensure that an appropriate investigation is conducted of any incident as required by this manual, by other applicable regulations (many of which are identified below), or by other specific directives of higher authority. If in doubt as to the need for an investigation, or the appropriate scope or type of investigation, the commanding officer should consult his or her chain of command or servicing legal office.

### **B. INCIDENTS REQUIRING INVESTIGATION UNDER THIS MANUAL**

The following types of incidents frequently affect interests of the Coast Guard far beyond the unit where they occur. Therefore, whenever these types of incidents occur on a Coast Guard unit or involving the activities of the unit or its personnel, the unit commander shall ensure that the matter is sufficiently investigated to ascertain the causes of the incident and appropriate corrective measures to prevent recurrence (the programs with primary cognizance over these incidents are indicated in parentheses). Except as otherwise provided under Article 2.C, an investigation meeting the requirements of this manual and other applicable regulations shall be conducted and the report forwarded via the chain of command to the Final Action Authority as discussed in the preceding chapter.

#### **1. Fires, Explosions, Material Deficiencies, Ship Collisions, and Groundings.**

Investigation is required whenever necessary to determine the causes of the incident and to prevent recurrence.

2. Class A and B Mishaps. An Administrative Investigation of any incident qualifying as a Class A or Class B Mishap under the Safety and Environmental Health Manual, COMDTINST M5100.47, shall be conducted, in addition to any Mishap Analysis Board (MAB), unless the MAB is unrestricted (multi-purpose) in nature, or misconduct, negligence, and inadequate command oversight are ruled out as causal factors in the incident.
3. Environmental Violations on or by Coast Guard Units or Employees. Investigation is required whenever a unit receives a Notice of Violation (NOV), warning letter, inquiry letter, proposed consent order, or any other form of notice from an environmental regulatory agency that a violation of an environmental requirement has occurred at the unit. Commanding officers shall ensure that an Administrative Investigation pursuant to this manual is conducted whenever it appears that a potentially significant violation of environmental law was caused by the action or inaction of a person assigned to that command, or involved in a release of oil or hazardous substances originating from that command. Any civil penalty for an environmental violation shall also be considered a potential claim against the Government. In determining whether an incident constitutes a “potentially significant violation,” the command shall consult with the servicing legal office and shall consider the following factors:
  - a. The degree of actual or potential environmental damage or safety hazard caused;
  - b. Whether the violation was intentional;
  - c. The potential for adverse enforcement action by Federal or state enforcement agencies;
  - d. Potential for adverse public affairs consequences;
  - e. Existence of systematic problems indicating a need for corrective action by higher levels of command;
  - f. Needs of good order, discipline, personnel administration and training, and personal accountability for a potential violation or offense; and
  - g. Other factors deemed significant by the affected command.
4. Death or Injury. Due to the complexity and sensitivity of death investigations, such matters shall be referred to CGIS prior to initiation of an Administrative Investigation. CGIS shall determine, in accordance with Mandatory Reporting of Incidents to the Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST M5520.5 (series), whether to pursue the investigation alone, in conjunction with an Administrative Investigation, or to refrain from investigating the matter, resulting in an Administrative Investigation alone. Whether conducted by CGIS, with CGIS, or by an administrative investigating body alone, the following types of cases shall be investigated:
  - a. Death of a member of the Coast Guard on active duty or inactive duty for training, even if apparently from natural causes. All apparent suicides and attempted suicides shall be investigated. *See Article 7.M.1.*
  - b. Any case in which a civilian (whether a Coast Guard employee, dependent, or not) is found dead on a Coast Guard installation and the death was from other than natural causes, or the presence of the body is not readily explained, or if the death appears related to Coast Guard activities.

- c. Injury to a member of the Coast Guard that will likely result in entitlement to disability benefits, or likely result in lost time in excess of 24 hours, and in which the circumstances suggest a finding of “misconduct” or “not in the LOD” might be made. *See generally* Chapter 7 of this manual.
  - d. When a civilian employee of the Coast Guard, apparently acting within the scope of employment, dies or is seriously injured.
  - e. Any case involving a death or serious injury where the adequacy of government furnished medical care is at issue.
5. Other Circumstances Requiring Investigation.
- a. Whenever significant damage or loss occurs to housing for which the Coast Guard appears responsible.
  - b. When a complaint is made either that members of the Coast Guard have done willful damage to the property of any person, or members of the Coast Guard have wrongfully taken such property.
  - c. Whenever there is a credible report or apparent violation of the Anti-Deficiency Act. *See* 31 U.S.C. § 1341. However, when the matter is under the authority of a contracting officer, the initial review under the FAR would normally determine whether there is a credible report

### **C. WHEN AN INVESTIGATION IS NOT REQUIRED**

Notwithstanding the provisions of 2.B, Administrative Investigations are not required by this manual, if:

1. A senior in the chain of command prohibits the command from conducting the investigation; or convenes an investigation under this manual into substantially the same matters;
2. The command determines that an investigation under this manual is unwarranted, when the circumstances of the incident dictate and the following conditions are satisfied:
  - a. Other investigation(s) of the matter are either anticipated or are in progress, and the other investigation(s) will essentially cover the facts of the incident that are in question;
  - b. The purposes for investigations described in Article 1.C of this manual regarding decision-making, documentation, and due process will be met through other means; and
  - c. The command submits a letter explaining why investigation is unwarranted, sending such letter via the reviewing chain to the authority who, otherwise, would have taken Final Action on the investigation under Article 6.E. of this manual.
3. The Final Action Authority for investigation of the incident, or his or her designee, otherwise determines that the investigation is not necessary; or
4. Loss, damage, or flooding of a Coast Guard vessel or craft 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, en route to, but yet outside a hostile area, and not caused by hostile forces would not fall within this exemption. Further, an investigation should be conducted when deemed appropriate by operational or administrative commanders.

#### **D. INVESTIGATIONS REQUIRED BY OTHER DIRECTIVES**

The following discussion provides the general criteria for investigations, but the directives listed should be consulted for specific guidance regarding the requirement for investigation, issues to be investigated, and the procedures to be followed. The procedures set forth in this manual may be helpful as guidance for the investigation, but the other directives shall control.

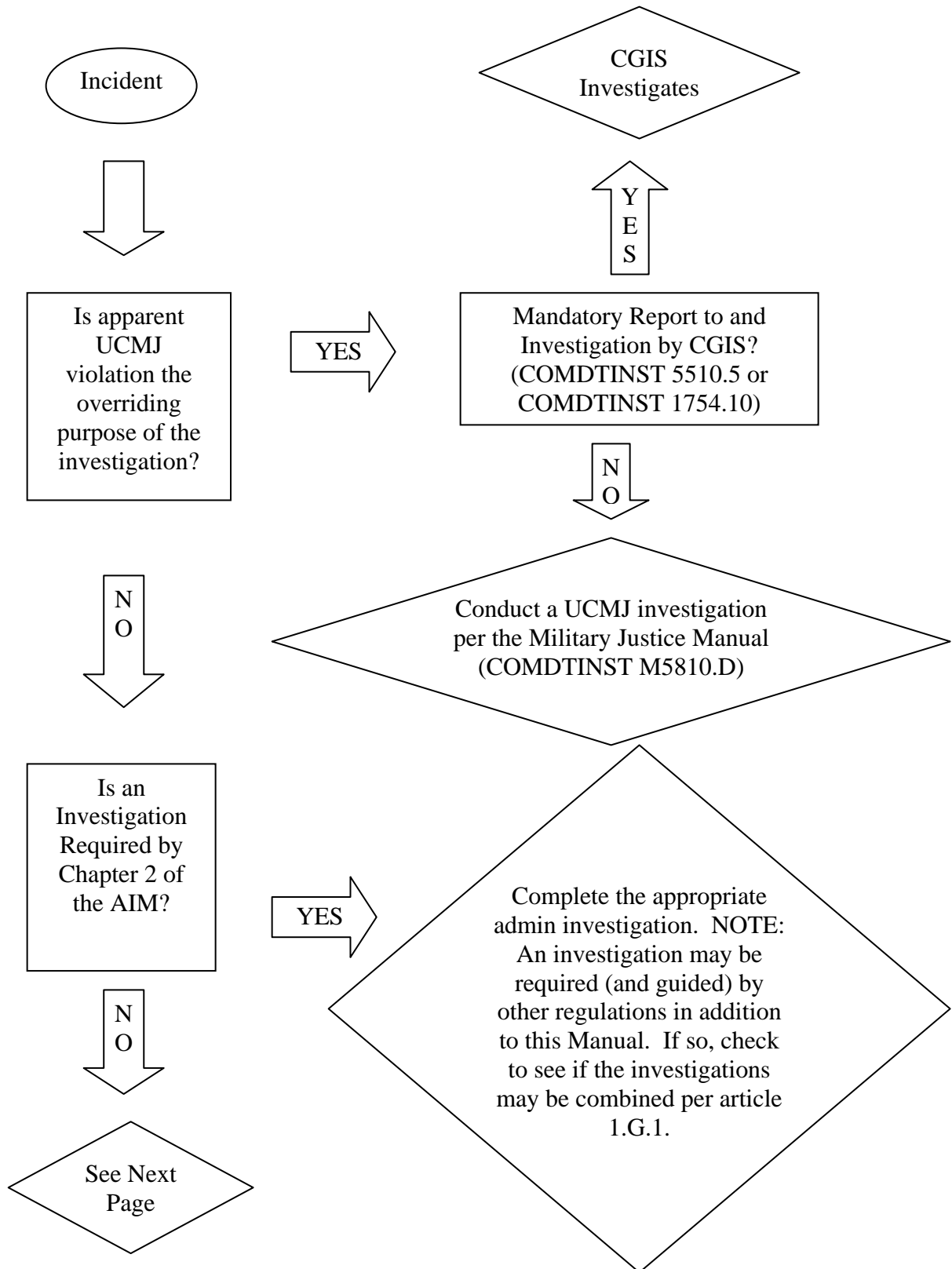
1. Claims By or Against the Government. Incidents involving actual or potential claims against the government as required by the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9.
  - a. Claims in favor of the government, including circumstances where a member or dependent is injured and is furnished hospital, medical, surgical, or dental care at government expense, or when government property is damaged, lost or destroyed 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. *See* Coast Guard Claims and Litigation Manual, COMDTINST M5890.9.
  - b. Claims arising under the Federal Acquisition Regulation.
2. Government Vehicles. Accidents involving GSA vehicles. *See* Motor Vehicle Manual, COMDTINST M11240.9 (series).
3. Disciplinary Action. Preliminary inquiries into reported offenses under the Rules for Courts Martial (RCM) 303, Manual for Courts Martial (MCM), or pretrial investigation under Article 32, UCMJ and RCM 405, MCM. *See* Military Justice Manual, COMDTINST M5810.1 (series).
4. Use of Force. *See* U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series).
5. Marine Casualty. *See* Marine Safety Manual, COMDTINST M16000.10.
6. Firearms. When government firearms are lost, and in some cases of discharge. *See* Ordnance Manual, COMDTINST M8000.2 (series).
7. Classified Material. Whenever classified material is lost, destroyed, or disclosed without authority, or otherwise compromised. *See* Classified Information Management Program, COMDTINST M5510.23 (series). Administrative Investigation under this manual may be directed if the report procedures under COMDTINST M5510.23 (series) are insufficient to effectively assess a possible compromise.

8. Rescue Operations. When a marine casualty involves loss of life or serious injury during response operations by Coast Guard personnel. *See* Marine Safety Manual, COMDTINST M16000.10.
9. Criminal Violations. Alleged, suspected or felony violations of the UCMJ, to include, but not limited to rape and sexual assault and violations of federal law by Coast Guard members or civilian employees, must be reported to CGIS for criminal investigative determination. *See* Mandatory Reporting of Incidents to Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series) and Reporting and Responding to Rape and Sexual Assault Allegations. COMDTINST 1754.10 (series).

## **E. OTHER INCIDENTS THAT USUALLY MERIT INVESTIGATION**

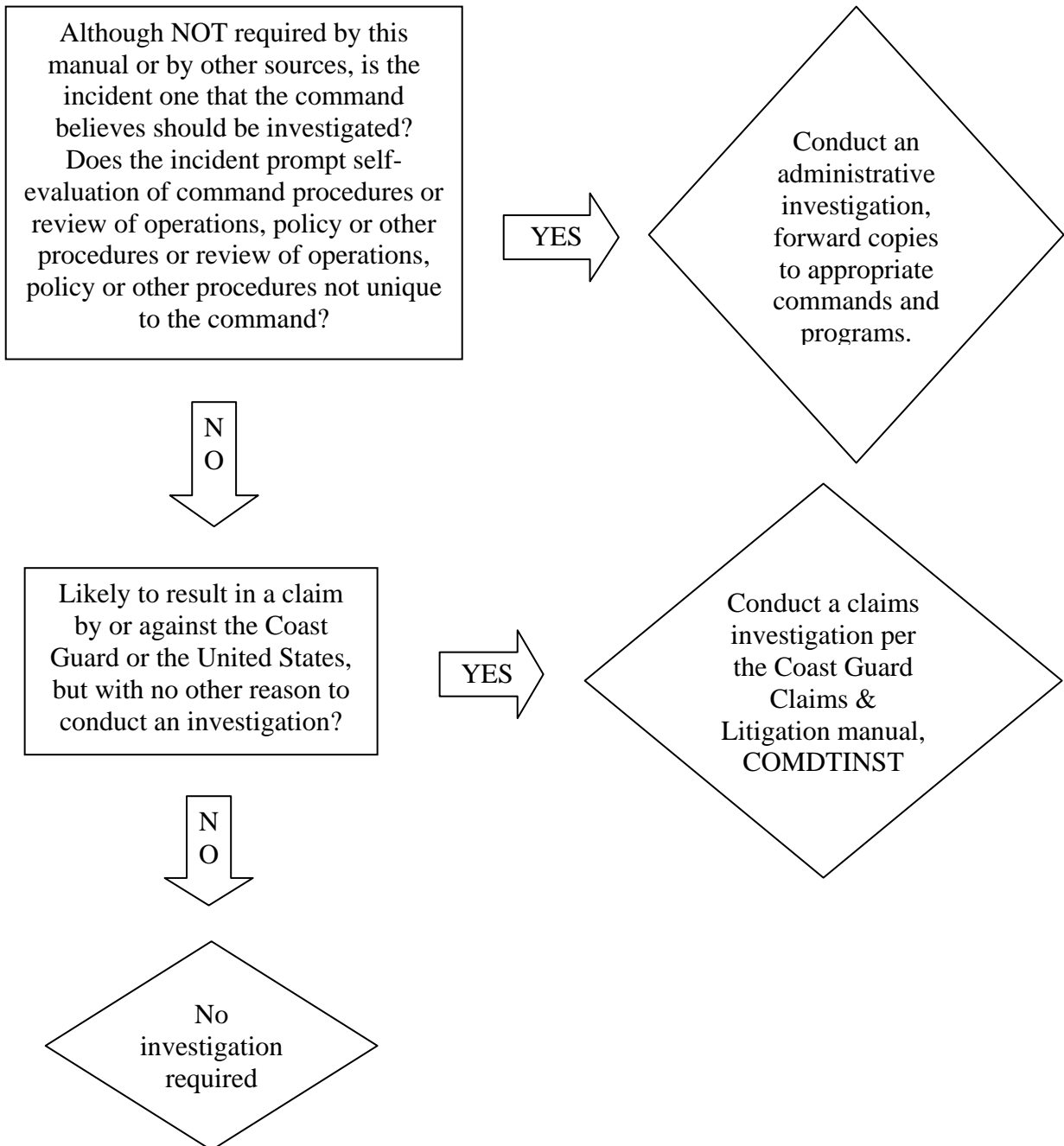
1. Public Interest. Any incidents involving unusually high levels of public, media or governmental interest in, or criticism of, the Coast Guard's actions, should be appropriately investigated.
2. Personnel Matters.
  - a. Misconduct. An Administrative Investigation may be conducted to investigate allegations of military or civilian personnel misconduct in those matters not required to be reported to or investigated by CGIS or DHS OIG. Investigating officers should consult with the servicing Command Staff Advisor or Human Resources Specialist prior to interviewing a civilian employee suspected of misconduct or interviewing other CG employees regarding possible misconduct of others.
  - b. Commendatory Action. Appropriate investigations should be initiated as necessary to determine the need for substantial commendatory or adverse action respecting Coast Guard personnel (i.e. employee or member). For enlisted personnel, such determinations include desirability of retention in the service, and consideration for reduction for incompetence, pursuant to section 12.B of the Personnel Manual (PERSMAN), COMDTINST M1000.6 (series). Officer separation proceedings, where an officer is provided a hearing to "show cause" for retention, are administrative hearings conducted pursuant to 14 U.S.C. §§ 321-327, and Article 12.A.15 of the PERSMAN.
  - c. Accountable Officials. Other examples of personnel matters requiring Administrative Investigations include: Whether personnel accountable for funds or property may be eligible for relief from personal liability for losses, based on 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. Whether personnel may be eligible for Civil Service preference. *See* 5 U.S.C. §§ 2108 and 3309 – 3315.

**EXHIBIT (2-A-1)**  
**WHEN IS AN ADMINISTRATIVE INVESTIGATION REQUIRED?**



**EXHIBIT (2-A-2)**  
**WHEN IS AN ADMINISTRATIVE INVESTIGATION REQUIRED?**

Follow this procedure if the analysis on the previous page indicates that there is no investigation required



## CHAPTER 3 CONVENING ADMINISTRATIVE INVESTIGATIONS

### A. SELECTING THE TYPE OF INVESTIGATION

1. Types of Investigations. The basic decision variables for the three types of investigations are listed below. The vast majority of Administrative Investigations in the Coast Guard, even those involving loss of vessels or aircraft and extensive loss of life, are conducted as Standard Investigations. Questions concerning the necessity or propriety of convening any investigation, or which type of investigation, particularly when incidents being investigated may give rise to claims or litigation, must be addressed to the servicing legal office. Many difficulties can be avoided through early coordination with servicing legal office.
2. Whether to Formalize the Investigation. Standard investigations are appropriate in most circumstances. Consult with legal counsel to determine when a Formal Investigation is appropriate.
  - a. Formal Investigation. Formal Investigations should be conducted for significant incidents for which a Court of Inquiry is unnecessary, but are nonetheless of such importance that a formal hearing procedure with documentation is required; are incidents for which the designation of parties is required, and/or are incidents of which the complexity or seriousness requires a formal investigation. *See* Chapter 8 for additional guidance about conducting a formal investigation.
  - b. Courts of Inquiry. Courts of inquiry use a hearing procedure and should be reserved for the investigation of major incidents (as that term is defined in Article 1.D.6) or serious or significant events. Courts of Inquiry are the only type of administrative investigation with the authority to subpoena witnesses. (Article 135, UCMJ). *See* Chapter 9 for additional guidance about conducting a court of inquiry.
3. Convening Authority. Pursuant to Coast Guard Regulations, the following individuals may appoint Investigating Officers to a Standard Investigation:
  - a. Any General Court-Martial Convening Authority (GCMCA).
  - b. Any Special Court-Martial Convening Authority (SCMCA), which includes commanding officers of all Coast Guard units. This authority may be delegated by the SCMCA to investigate minor matters that result in a LIR (e.g., with properly delegated authority, Officers in Charge (OIC) may order individuals to prepare Letter Incident Reports for the OIC's signature; an OIC may also request his or her Commanding Officer to convene an investigation).
  - c. Assistant Commandants, heads of Directorates, and the Judge Advocate General at Coast Guard Headquarters.
4. The investigation report is prepared to assist decision-makers in evaluating all of the circumstances that are the subject of the investigation. Accordingly, the convening order must direct that the investigation report 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 determined accurately. The place or places involved should be specifically reported, and all persons involved should be properly identified by full name, title, business or profession, as well as mailing address and telephone number and email address, if a civilian; or full name, grade/rank, service, duty station, and service number, telephone number and email address if a member of the Armed Forces. Where relevant, the Administrative Investigation should identify directives applicable to the circumstances, and ascertain whether such standards were complied with. Such standards include qualification standards, doctrine, approved procedures, laws or regulations, and safety standards.

TYPE	AUTHORITY TO CONVENE	COMPOSITION	CONSIDERATIONS	REPORT OPTIONS
STANDARD	Any CO, Headquarters Office Chiefs and above, & their delegates.	One or more individuals of appropriate grade	<b>Not</b> requiring a hearing procedure. <b>Not</b> permitted to accord Party rights. <b>No</b> Parties may be designated. <b>No</b> subpoena authority.	IR or LIR
FORMAL	Any GCMCA, Directors of HQ Directorates and above, & their delegates.	One or more officers, senior should be O-4 or above.	<b>Hearing</b> procedure. Capable of according <b>Party rights</b> . Testimony taken under <b>oath</b> . May substitute for Art 32 Investigation or may substitute for NJP hearing. <b>No</b> subpoena authority.	IR only, no LIR. Hearing <b>reported verbatim</b> or via a summary.
CONFIDENTIAL	Any GCMCA or others designated by the Secretary. <i>See</i> UCMJ Article 135	3 or more commissioned officers	<b>Hearing</b> Procedure per UCMJ Art 135 See Chapters 9-10 of this Manual for specific requirements. Certain persons <i>must</i> be accorded rights of a <b>Party</b> . Testimony taken under <b>oath</b> . May substitute for Art 32 Investigation or may substitute for NJP hearing. <b>Has</b> subpoena authority. Designated Counsel for the Court.	IR only, no LIR. Hearing must be <b>reported verbatim</b> , not by a summary

## B. PURPOSE OF CONVENING ORDERS

A Convening Order is the means by which a Convening Authority formally appoints, tasks, and empowers the Members of the fact-finding body to conduct the investigation. It also documents the authority of the investigators to conduct the investigation on behalf of the Convening Authority. While defects in the Convening Order normally do not invalidate an investigation, a properly written Convening Order will reduce or eliminate potential for confusion and error in the subsequent investigation and review.

1. Form of Convening Orders. A written Convening Order is required for all investigations, except that oral Convening Orders are authorized for Standard Investigations where the Convening Authority is also the Final Action Authority. Written Convening Orders may be in letter or message form and addressed to the Senior Member of a Board of Investigation, or to the President of a Court of Inquiry. When circumstances warrant, investigations requiring a written Convening Order may be convened by verbal order, but should be followed promptly with a written order. It may be advisable to forward an advance copy of a Convening Order to interested commands to inform them that an investigation is underway and to document the authority of those involved in the investigation. Sample Convening Orders are provided in Exhibit 3-B (Standard, LIR); 3-C (Standard, IR); 3-D (Formal), and 3-E (Court of Inquiry).
2. Contents of Convening Orders. Because information developed by an Administrative Investigation is used not only by the Convening Authority, but also by authorities remote from the command, a Convening Order must be sufficiently specific to accomplish the purposes of the investigation.
  - a. All Convening Orders shall:
    - (1) State the type of investigation to be conducted;
    - (2) Identify any governing or particularly relevant regulations or directives;
    - (3) Identify the Members appointed to the Board of Investigation and any designated assistants;
    - (4) Identify by name legal counsel for the investigation, and that the investigating officer must contact legal counsel prior to commencing the investigation, and throughout it as necessary.
    - (5) State the matter to be investigated and any restrictions on the scope of the investigation;
    - (6) Refer to this manual for policy and guidance and identify any authorized deviations from the requirements of this manual;
    - (7) State the type of report required;
    - (8) State any particular limitations on the scope of the report, the evidence to be considered, or the contents of the report;

- (9) Remind the Members of their duties to comply with the Privacy Act of 1974, The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Article 31 of the Uniform Code of Military Justice, or other applicable legal authority;
  - (10) State whether witness testimony must be taken under oath or affirmation;
  - (11) Provide any additional information required by other directives; and
  - (12) If it is contemplated that the investigation will require inquiry into the medical records or other protected health information of any military member of the Coast Guard, include the following language in the Convening Order:

*“You are authorized to receive and appropriately use the medical records or other protected health information of any Coast Guard military personnel, including [describe the persons or class of persons about whom the medical records may be necessary], as necessary to achieve the purposes of this investigation. This authorization is pursuant to 45 C.F.R. § 164.512(k)(1), as implemented by Coast Guard Notice USCG-2003-15026 (See 68 Fed. Reg. 81, 22408 (April 28, 2003)).”*
  - (13) If it is contemplated that the investigation is being conducted in anticipation of litigation involving the U.S. government, the convening order must direct the Investigating Officer to include the following language in the IR or LIR, so as to note that the report is attorney work product prepared at the direction of an attorney (even though it may not actually be prepared by an attorney):

*“This report is being prepared in contemplation of litigation and to assist attorneys, acting on behalf of the Judge Advocate General, representing interests of the United States in this matter.”*
  - (14) Be forwarded to the servicing legal office for review prior to being issued and commencing the investigation, except where circumstances make it impracticable. However, all convening orders that could lead to claim or litigation must be forwarded to the cognizant Staff Judge Advocate office, acting on behalf of the Judge Advocate General, to determine what extent the investigation is for the purpose of settling an anticipated claim or for potential litigation.
  - (15) Indicate that the investigating officer(s) must seek guidance from legal counsel as to whether they should or should not obtain written and/or sworn statements from witnesses that are interviewed.
- b. Formal Investigations and Court of Inquiry Convening Orders should also:
- (1) Specify the time and place for the initial hearing, or authorize the Board to do so;
  - (2) Identify any Parties designated by the Convening Authority;
  - (3) State the scope of the Board’s authority to designate Parties;
  - (4) State whether a verbatim transcript of the proceedings must be prepared, and if so, either identify a military Court-Reporter or provide funding data for hiring a civilian Court-Reporter;
  - (5) State whether services of interpreters or technical experts are anticipated, and if so, either identify a military interpreters or technical experts or provide funding data



for hiring interpreters or technical experts;

- (6) Identify the Recorder;
- (7) Identify Legal Counsel/Counsel for the Court, as applicable;
- (8) Identify sources of administrative or clerical assistance; and
- (9) Specify the due date for the final report, and procedures for obtaining an extension of the deadline, if permitted.

### 3. Detailed Guidance for Convening an Investigation.

a. Investigation Members. The Investigating Officer, or the Senior Member of any Board of Investigation, should be of at least equivalent rank (or civilian pay grade), and preferably senior to, any persons whose conduct is subject to inquiry. The remainder of the membership should be of appropriate seniority and experience to deal effectively with the subject of the investigation, including the personnel involved, and should be free of actual or apparent bias.

- (1) For a Standard Investigation, the investigating officer and members, in most circumstances, should be commissioned officers. In the discretion of the Convening Authority, enlisted personnel or civilian employees may serve as an investigating officer or members of a Standard Investigation.
- (2) For a Formal Investigation or a Court of Inquiry all members must be commissioned officers.
- (3) Civilian employees may be appointed as assistants to any type of investigation.
- (4) A Convening Authority may appoint Members made available from other commands or from other services to serve on the Board of Investigation after appropriate consultation with the cognizant command.
- (5) In any case in which there is doubt as to the seniority of the personnel available to serve as Investigating Officer or members, the Convening Authority should consult the servicing legal office, or refer the matter to the next senior command for resolution.

#### b. Designation of Parties.

- (1) Convening Orders for Standard Investigations should specifically state that no Parties may be designated. For other types of investigations, a Convening Authority should designate known Parties in the Convening Order, and may authorize the Board of Investigation to designate additional Parties during the proceedings, or may direct that requests or recommendations for such designation be forwarded to the Convening Authority. Any designation of Parties should be coordinated with the servicing legal office to ensure that adequate representation is provided.
- (2) For Formal Investigations, any person whose conduct or performance of duty is subject to inquiry may be designated as a Party. The decision to designate any Party is a matter at the sole discretion of the Convening Authority, or higher levels in the chain of command, and is not subject to review. A key consideration in this

decision is whether the Convening Authority anticipates that the investigation may be used in lieu of a proceeding such as a pretrial investigation under Article 32, UCMJ, or an NJP (“mast”) proceeding with respect to that person. The Convening Authority may delegate responsibility to a Formal Investigation whether to designate Parties. If the Convening Authority does delegate that authority, the Convening Authority retains authority to review (and rescind) Party designations.

- (3) Designation of Parties for Courts of Inquiry is governed by Article 135, UCMJ; certain persons have a right to be designated a Party (See Art. 135, UCMJ, and Chapters 9-10 of this manual).
- c. Use of Hearing Procedure. A Formal Investigation or Court of Inquiry must use the hearing procedures described in this manual whenever Parties have been designated. A Standard Investigation is not precluded from using a hearing procedure, but generally does not include a hearing. “Due Process” means giving persons all the procedural protections necessary; therefore, unless a hearing procedure is required (either by this manual or by the UCMJ or other legal authority), then a Convening Authority need not require the Investigating Officer to employ a hearing format.
  - d. Verbatim Transcripts. When convening a Formal Investigation, a Convening Authority may require a verbatim transcript of all or specified parts of the hearing. Alternatively, a summarized record must be produced. Only Courts of Inquiry must be reported and transcribed verbatim.
  - e. Testimony Under Oath. When convening any Administrative Investigation, a Convening Authority may direct taking all witness testimony under oath. Testimony given before a Formal Board of Investigation or Court of Inquiry must be under oath. Whether oaths are required for a Standard Investigation must be determined by the investigating officer in consultation of the convening order and/or legal counsel. Any member giving a false statement to an official investigation is generally subject to available legal sanctions for providing a false official statement, regardless of whether the statement is taken under oath. However, if the statement was under oath and material to the investigation and was known to be false, perjury sanctions could also be applied.
  - f. Legal Counsel to the Investigation and Counsel for the Court.
    - (1) The Convening Authority should consult with the servicing Coast Guard legal office and identify an attorney who will serve as legal counsel for the duration of the investigation. The investigating officer or board of investigation should consult with legal counsel prior to commencing the investigation, if operationally feasible. The Convening Authority’s servicing legal office is also responsible for providing legal counsel to all Formal Investigations and Courts of Inquiry, as well as for arranging counsel for military Parties as requested and as appropriate.
    - (2) The nature and extent of the Legal Counsel’s involvement during and Administrative Investigation may range from initial oral consultation at the

beginning of most routine investigations to extensive involvement throughout more complex cases.

- (3) Legal counsel, acting on behalf of the Judge Advocate General must make a determination as to whether, and to what extent, one of the purposes of the investigation may be to settle an anticipated claim or for litigation.
  - (4) When it is apparent that the investigation is for the purpose of settling an anticipated claim or for potential litigation, legal counsel will provide guidance to the investigation about what distinct actions should be taken to serve those needs. Legal counsel must be sure to advise the final approving authority about what contents should be included in the final action document to serve the purposes of the administrative investigation, and what may be more appropriately disposed of through the claims process.
- g. Recorder. A Recorder is required for all Formal Boards of Investigation. The junior Member of the Board serves as Recorder unless the Convening Authority appoints a separate Recorder. The duties of the Recorder are discussed in Article 8.A.4. of this manual.
  - h. Form of Investigative Report. A Standard Investigative Report (IR) format that includes findings of fact, opinions, and recommendations, is required unless the Convening Authority specifically authorizes use of a Letter Incident Report (LIR). The LIR format is only authorized for a Standard Investigation, never for a Formal Investigation or Court of Inquiry.
  - i. Administrative Support. A Convening Authority may authorize Court-Reporters and interpreters and designate technical experts, assistants, and others to participate as directed in the investigation. Such authorization should be included in the Convening Order, along with necessary funding data, if required.
  - j. Additional Information. Refer to applicable directives to determine if other information should be included in the Convening order. Chapter 11 lists several kinds of Administrative Investigations required by other manuals. This manual instructs how to convene, conduct, report, and review an Administrative Investigation; it does not attempt to list every reference that may require an Administrative Investigation. Subject matter experts and the servicing legal offices shall be consulted when questions arise whether an investigation is required by another manual, regulation or authority.
4. Amending Convening Orders. A Convening Authority may amend the Convening Order at any time during the conduct of the investigation and for any reason; for example, to change membership, to limit or increase the scope of the investigation, to name Parties, to provide additional instructions, or to terminate the Administrative Investigation prior to the report.
  5. Terminating the Investigation Without Report or Holding It In Abeyance. If it appears that the reasons prompting an investigation no longer exist, the Convening Authority may order the investigation terminated. If it appears appropriate to stop the investigation for a time, but that it may be resumed in the future, the Convening Authority may order the investigation held in abeyance (that is, placed on hold) until a particular date or event, or

until further notice. If the Convening Order was in writing, the order terminating the investigation or holding it in abeyance should also be in writing; should state the reasons for the action and disposition of evidence obtained; and should be distributed in the same manner as the Convening Order.

**Exhibit (3-A) COMPARISON OF ADMINISTRATIVE FACT FINDING BODIES**

<b>TYPE OF FACT FINDING BODY</b>	<b>AUTHORITY</b>	<b>CONVENED</b>	<b>SUBPOENA/ PARTIES</b>	<b>CONSTITUTED</b>	<b>INVESTIGATION FORMAT</b>	<b>REPORT</b>	<b>USE LIMITATIONS</b>
<b>COURT OF INQUIRY</b> <b>a. Court Only</b>	Art. 32, UCMJ.  Satisfies Art. 32 <sup>1</sup> , UCMJ investigation for parties.	In Writing.  By: Secretarial Designation; GCMCA <sup>2</sup>	Subpoena Power. <sup>3</sup>  Party required.	a. ≥ 3 officers ≥ LCDR, & senior to any party; b. Counsel <sup>4</sup> for Court; c. Parties <sup>5</sup> ; and d. Counsel <sup>6</sup> for Party	Formal. Testimony taken under oath. Verbatim transcript required.	Verbatim hearing transcript and Court of Inquiry final report	NJP & adverse M/LOD <sup>7</sup> determinations authorized for parties w/o further hearing.
<b>FORMAL</b> <b>a. Board; or</b> <b>b. Single Officer</b>	AIM  <u>May</u> satisfy Art. 32, UCMJ investigation for parties.	In Writing.  By: GCMCA; SpCMCA; Directors of HQ Directorates	No subpoena authority.  Party optional.	a. 1 Officer(s); should be LCDR & should be senior to any party; b. Party <sup>8</sup> ; and, c. Counsel for Party.  <u>Note:</u> No Counsel for Investigation	Hearing required, degree of formality is discretionary:  Verbatim Transcript or Summarized Record; <u>May</u> take sworn Testimony.	Verbatim hearing transcript and Investigation report; or Summarized record and Investigation report.	NJP & adverse M/LOD determinations authorized for parties w/o further hearing.
<b>STANDARD</b> <b>a. Board; or</b> <b>b. Single Officer/ Civilian/ PO</b>	AIM  Will not satisfy Art. 32, UCMJ investigation requirement.	Orally or in Writing  By: CGMCA, SpCMCA, HQ Office Chiefs; & OinC (LIR only).	No subpoena authority.  No party.	a. ≥ 1 Officer, Civilian, or PO For boards; senior member <u>should</u> be ≥ LT or Civilian equivalent.  <u>Note:</u> No Counsel for Investigation.	Uses informal methods for gathering evidence.  No hearing, oaths, verbatim transcripts, etc.	Summarized report; either:  1. Standard Format; or 2. LIR.	No NJP or adverse M/LOD determinations w/o a hearing.

<sup>1</sup> An article 32, UCMJ investigation is required for each accused prior to referring charges to a General Courts-Martial.

<sup>2</sup> General Courts-Martial Convening Authority is a CG Flag Officer in command; e.g., COMDT; CCS, Area, MLC, District Commanders; Superintendent USCGA.

<sup>3</sup> Required to compel civilian attendance, testimony and production of other evidence. Not needed for CG/DOD witnesses since they can be ordered to appear and testify/provide evidence and refusal to appear is itself punishable under UCMJ. Presence of DOD personnel is requested through their commander.

<sup>4</sup> Counsel refers to an attorney qualified under Article 27b, UCMJ (Judge Advocate). Counsel for the court performs an impartial preliminary inquiry to initially gather evidence and identify witnesses for the later hearing before the Court of Inquiry. Counsel impartially "presents" the case to the Court of Inquiry at a hearing. Counsel for the Court also advises the court on evidentiary and legal matters.

<sup>5</sup> The Convening Authority or Court of Inquiry may designate parties.

<sup>6</sup> Counsel refers to an attorney qualified under Article 27b, UCMJ (Judge Advocate), or an attorney/advisory obtained by the party at no cost to the government.

<sup>7</sup> Misconduct & Line of Duty determinations. *See*, Chapter 7, AIM.

<sup>8</sup> Designation of parties is discretionary with the Convening Authority. The CA, and the Formal Board, if authorized by the CA, may designate parties. Designated parties are entitled to Counsel.

**Exhibit (3-B)**

**SAMPLE CONVENING ORDER (Letter Incident Report)**

**U.S. Department of  
Homeland Security**

**United States  
Coast Guard**



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

**MEMORANDUM**

From: Commanding Officer, USCGC \_\_\_\_\_ (W \_\_\_\_\_)

To: CDR \_\_\_\_\_, USCG

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

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1A  
(b) (other applicable reference as known)

1. You shall conduct a single-officer standard investigation under reference (a) into all the circumstances surrounding the (incident) that occurred at (location) on (date). You are neither required to nor authorized to conduct a hearing.
2. You must consult with legal counsel before the commencement of the investigation. Your legal counsel is \_\_\_\_\_, and is located at your servicing legal office \_\_\_\_\_. Legal counsel has been appointed to this investigation until it is completed, and you must consult with him/her about any matters with which you need assistance.
3. You shall prepare a Letter Incident Report format letter, 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. *See*, Enclosure (5-C) to 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, Articles 5-B-1, 5-B-4, and 11-J of reference (a) shall be complied with, and the following language shall be included in the investigative report:

*This investigation is appointed in contemplation of litigation and to assist attorneys acting on behalf of the Judge Advocate General, and representing interests of the United States in this matter.*

No opinion shall be expressed concerning the liability for any claims or potential claims. *See* Article 5-B-4 of reference (a).

5. *When a Coast Guard member, civilian employee, or USCG Auxiliary member has been injured or killed, include one of the following paragraphs, as appropriate:*

*[CG Member]* The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and to determine what the duty status of the member was at the time the disability was incurred (i.e. active duty, or for members of reserve: active duty for training, extended active duty, etc.). You must express an opinion as to whether (victim) was in the line of duty and whether (his or her) injury, disease or death was due to misconduct. *See* Chapter 7 of reference (a). You may recommend appropriate administrative or disciplinary action.

*[Civilian Employee]* You should express an opinion as to whether the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty. *See* Chapter 7 of reference (a).

*[Auxiliary Member]* You should express an opinion as to whether the death or injury of a Coast Guard Auxiliary member was incurred while performing a duty to which he or she had been assigned by competent Coast Guard authority. *See* Chapter 7 of reference (a).

6. The investigation should be initiated on (date), or as soon thereafter as practicable, at (command or location).

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

8. (Name) of (command / unit) shall furnish the necessary clerical assistance. In preparing and submitting your report, you shall be guided by the provisions of Chapters 4 and 5 of reference (a) and by reference (b), generally.

9. *It is required in each investigation that a determination is made as to whether written and/or sworn statements should be obtained by the investigating officer. See Article 3.B.2.a (14):* You shall consult with your legal counsel to determine whether you shall obtain written and/or sworn statements from the witnesses that you interview during the course of the investigation.

10. You shall also comply with the Privacy Act of 1974 (See, Articles 1-H and 10-H and Exhibit 4-C of reference (a)). You shall comply with Article 31, UCMJ, with regard to (suspect) who is suspected of violation of Article \_\_\_\_\_, UCMJ (common name). *See* Article 4-E-4 and use Exhibit (4-B) of reference (a).

11. You shall consult the (servicing legal office) with regard to any questions that you may have. After consulting with the servicing legal office, you may contact me, in writing, with unresolved issues or recommendations that you may have.

#

COMDTINST M5830.1A

Copy: (Servicing Legal Office)  
(Relevant Program Managers)



**Exhibit (3-C)****SAMPLE CONVENING ORDER (Standard Investigation)**

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

**MEMORANDUM**

From: Commanding Officer, USCGC \_\_\_\_\_ (W \_\_\_\_\_)

To: CDR \_\_\_\_\_, USCG

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

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1A  
(b) (other applicable reference as known)

1. You shall conduct a single-officer standard investigation under reference (a) into all the circumstances surrounding the (incident) that occurred at (location) on (date). You are neither required to nor authorized to conduct a hearing. *OR* You are hereby designated senior member of a Standard Board of Investigation under reference (a). Other members of the Board are:

LCDR \_\_\_\_\_ USCG

LT \_\_\_\_\_ USCGR

You are neither required to nor authorized to conduct a hearing. You are not required to take testimony under oath. You shall inquire into all the circumstances surrounding the (incident) that occurred at (location) on (date).

2. You must consult with legal counsel before the commencement of the investigation. Your legal counsel is \_\_\_\_\_, Judge Advocate, and is located at your servicing legal office \_\_\_\_\_. Legal counsel has been appointed to this investigation until it is completed, and you must consult with him/her about any matters with which you need assistance.

3. You must investigate the cause of the (incident), resulting injuries and damages, and any fault or responsibility for the incident. See Chapter 11 of reference (a) as to specific facts that must be determined. You may recommend appropriate administrative or disciplinary action.

4. *When a Coast Guard member, civilian employee, or USCG Auxiliary member has been injured or killed, include one of the following paragraphs, as appropriate:*

*[CG Member]* The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and to determine what the duty status of the member was

at the time the disability was incurred (i.e. active duty, or for members of reserve: active duty for training, extended active duty, etc.). You must express an opinion as to whether (victim) was in the line of duty and whether (his or her) injury, disease or death was due to misconduct. *See* Chapter 7 of reference (a).

*[Civilian Employee]* You should express an opinion as to whether the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty. *See* Chapter 7 of reference (a).

*[Auxiliary Member]* You should express an opinion as to whether the death or injury of a Coast Guard Auxiliary member was incurred while performing a duty to which he or she had been assigned by competent Coast Guard authority. *See* Chapter 7 of reference (a).

5. 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, Articles 5-B-1, 5-B-4, and 11-J of reference (a) shall be complied with, and the following language shall be included in the investigative report:

*This investigation is appointed in contemplation of litigation and to assist attorneys acting on behalf of the Judge Advocate General, and representing interests of the United States in this matter.*

No opinion shall be expressed concerning the liability for any claims or potential claims. *See* Article 5-B-4 of reference (a).

6. The investigation should be initiated on (date), or as soon thereafter as practicable, at (command or location).

7. If you are unable to complete this investigation by (date 21 days after date of Convening Order), you shall state the reasons to me and include an explanation of the delay in the Preliminary Statement.

8. You shall submit an investigative report format per Article 5-B of reference (a). *See* also, Exhibit (5-A) to reference (a). If you believe that a modification of this format, or a letter incident report, is more appropriate, explain that to me for my decision on the ultimate format of the investigative report.

9. *It is required in each investigation that a determination is made as to whether written and/or sworn statements should be obtained by the investigating officer. See Article 3.B.2.a (14):* You shall consult with your legal counsel to determine whether you shall obtain written and/or sworn statements from the witnesses that you interview during the course of the investigation.

10. *Add if appropriate:* You shall cooperate with the MISHAP board investigating this same incident. To the extent feasible, coordinate the collection of evidence, except witness statements that are taken by the MISHAP board under the promise of confidentiality. To the extent that they are relevant, you may incorporate non-privileged factual findings of the safety board. You should

refrain from addressing safety issues that are or will be addressed by the MISHAP board (generally all safety concerns) unless they are relevant to other purposes for which *this* investigation is convened).

11. (Name) of (command or unit) shall furnish the necessary clerical assistance.

12. You shall also comply with the Privacy Act of 1974 (See, Articles 1-H and 10-H and Exhibit 4-C of reference (a)). You shall comply with Article 31, UCMJ, with regard to (suspect) who is suspected of violation of Article \_\_\_\_\_, UCMJ (common name). See Article 4-E-4 and use Exhibit (4-B) of reference (a).

13. After consulting with the servicing legal office, you may contact me, in writing, with unresolved issues or recommendations that you may have.

#

Copy: (Servicing Legal Office)  
(Relevant Program Managers)

**Exhibit (3-D)**

**SAMPLE CONVENING ORDER (Formal Investigation)**

**U.S. Department of  
Homeland Security**

**United States  
Coast Guard**



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

**MEMORANDUM**

From: Commanding Officer, USCGC \_\_\_\_\_ (W \_\_\_\_\_)

To: CDR \_\_\_\_\_, USCG

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

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1A  
(b) (other applicable references as known)

1. You shall conduct a single-officer formal investigation under Chapter 8 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* You are hereby designated senior member of a Board of Investigation under Article 8-A and Chapter 10 of reference (a).

Other members of the Board are

LCDR \_\_\_\_\_ USCG  
LT \_\_\_\_\_ USCGR

The Board is required to conduct a hearing. (LT \_\_\_\_\_, USCG, a Judge Advocate certified pursuant to article 27(b), UCMJ, is designated as the Recorder. *OR* The junior member shall act as recorder. Testimony of witnesses shall be under oath. A verbatim record shall (shall not) be kept. YN Type Really-fast of command or unit shall provide Court-Reporter *OR* Contact my Administrative Officer for accounting data to use to hire a civilian Court-Reporter.

2. (Lieutenant \_\_\_\_\_, 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 Article 8-A and Chapter 10 of reference (a). You may (*OR* may not) designate parties to the investigation during the proceedings. If additional parties are designated, comply with Articles 10-B and 10-F of reference (a) and report the designation to me. If you determine a party should be

designated, explain your rationale to me. If you determine that a designated party should no longer be a party to the investigation, explain your reasoning to me.

3. You must consult with legal counsel before the commencement of the investigation. Your legal counsel is \_\_\_\_\_, Judge Advocate, and is located at your servicing legal office \_\_\_\_\_. Legal counsel has been appointed to this investigation until it is completed, and you must consult with him/her about any matters with which you need assistance.

4. You must investigate the cause of the (incident), resulting injuries and damages, and any fault or responsibility for the incident. See Chapter 11 of reference (a) as to specific facts that must be determined. You may recommend appropriate administrative or disciplinary action.

5. *When a Coast Guard member, civilian employee, or USCG Auxiliary member has been injured or killed, include one of the following paragraphs, as appropriate:*

*[CG Member]* The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and to determine what the duty status of the member was at the time the disability was incurred (i.e. active duty, or for members of reserve: active duty for training, extended active duty, etc.). You must express an opinion as to whether (victim) was in the line of duty and whether (his or her) injury, disease or death was due to misconduct. See Chapter 7 of reference (a).

*[Civilian Employee]* You should express an opinion as to whether the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty. See Chapter 7 of reference (a).

*[Auxiliary Member]* You should express an opinion as to whether the death or injury of a Coast Guard Auxiliary member was incurred while performing a duty to which he or she had been assigned by competent Coast Guard authority. See Chapter 7 of reference (a).

6. 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, Articles 5-B-1, 5-B-4, and 11-J of reference (a) shall be complied with, and the following language shall be included in the investigative report:

*This investigation is appointed in contemplation of litigation and to assist attorneys acting on behalf of the Judge Advocate General, and representing interests of the United States in this matter.*

No opinion shall be expressed concerning the liability for any claims or potential claims. See Article 5-B-4 of reference (a).

7. The investigation should be initiated on (date), or as soon thereafter as practicable, at (command or location).

8. If you are unable to complete this investigation by (date 21 days after date of Convening Order), you shall state the reasons to me and include an explanation of the delay in the Preliminary Statement.

9. *It is required in each investigation that a determination is made as to whether written and/or sworn statements should be obtained by the investigating officer. See Article 3.B.2.a (14):*

You shall consult with your legal counsel to determine whether you shall obtain written and/or sworn statements from the witnesses that you interview during the course of the investigation.

10. You shall submit an investigative report format per Article 5-B of reference (a). See also, Enclosure (5-A) to reference (a). If you believe that a modification of this format, or a letter incident report, is more appropriate, explain that to me for my decision on the ultimate format of the investigative report. (Attach a verbatim transcript of the hearing as an enclosure to the investigation.)

11. *Add if appropriate:* You shall cooperate with the MISHAP board investigating this same incident. To the extent feasible, coordinate the collection of evidence, except witness statements that are taken by the MISHAP board under the promise of confidentiality. To the extent that they are relevant, you may incorporate non-privileged factual findings of the safety board. You should refrain from addressing safety issues that are or will be addressed by the MISHAP board (generally all safety concerns) unless they are relevant to other purposes for which this investigation is convened.

12. (Name) of (command or unit) shall furnish the necessary clerical assistance.

13. You shall also comply with the Privacy Act of 1974 (See, Articles 1-H and 10-H and Exhibit 4-C of reference (a)). You shall comply with Article 31, UCMJ, with regard to (suspect) who is suspected of violation of Article \_\_\_\_\_, UCMJ (common name). See Article 4-E-4 and use Exhibit (4-B) of reference (a).

14. After consulting with the servicing legal office, you may contact me, in writing, with unresolved issues or recommendations that you may have.

#

Copy: (Servicing Legal Office)  
(Relevant Program Managers)  
(Designated Party or their Counsel)

Exhibit (3-E)

SAMPLE CONVENING ORDER (Court of Inquiry)

U.S. Department of Homeland Security

United States Coast Guard



Commandant United States Coast Guard

2100 Second Street, S.W. Washington, DC 20593-0001 Staff Symbol: Phone: Fax: Email:

5800

MEMORANDUM

From: Commanding Officer, USCGC \_\_\_\_\_ (W \_\_\_\_\_)

To: CAPT \_\_\_\_\_, USCG

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

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1A (b) (other applicable reference as known)

1. You shall conduct a Court of Inquiry under Chapter 9 of reference (a) into all the circumstances surrounding the (describe incident) that occurred at (location of incident) on (date). A verbatim record must be kept. You are hereby designated President of the Court. Other members of the Court are

- CDR \_\_\_\_\_ EMPLID, USCG
CDR \_\_\_\_\_ EMPLID, USCG
LCDR \_\_\_\_\_ EMPLID, USCG

\_\_\_\_\_, USCG, a Judge Advocate certified pursuant to article 27(b), UCMJ, is designated as the Counsel to the Court. \_\_\_\_\_ of (command or unit) shall serve as Court-Reporter. OR Contact my Administrative Officer for accounting data to use to hire a civilian Court-Reporter (and interpreter, if needed). You must consult with legal counsel before the commencement of the investigation. Legal counsel has been appointed to this investigation until it is completed, and you must consult with him/her about any matters with which you need assistance.

2. If applicable: Lieutenant \_\_\_\_\_, 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 Chapter 11 of reference (a). You may (OR may not) designate parties to the investigation during the proceedings. If additional parties are designated, comply with Articles 10-B and 10-F of reference (a) and report the designation to me. OR If you determine a party should be designated, explain your rationale to me. If you determine that a designated party should no longer be a party to the investigation, explain your reasoning to me.

3. You must investigate the cause of the (incident), resulting injuries and damages, and any fault or responsibility for the incident. *See* Chapter 11 of reference (a) as to specific facts that must be determined. No opinion shall be expressed concerning the liability for any claims or potential claims. *See* Article 5-B-4 of reference (a).

4. *When a Coast Guard member, civilian employee, or USCG Auxiliary member has been injured or killed, include one of the following paragraphs, as appropriate:*

*[CG Member]* The findings shall contain facts necessary to determine whether the disability resulted from a disease, illness, or injury and to determine what the duty status of the member was at the time the disability was incurred (i.e. active duty, or for members of reserve: active duty for training, extended active duty, etc.). You must express an opinion as to whether (victim) was in the line of duty and whether (his or her) injury, disease or death was due to misconduct. *See* Chapter 7 of reference (a).

*[Civilian Employee]* You should express an opinion as to whether the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty. *See* Chapter 7 of reference (a).

*[Auxiliary Member]* You should express an opinion as to whether the death or injury of a Coast Guard Auxiliary member was incurred while performing a duty to which he or she had been assigned by competent Coast Guard authority. *See* Chapter 7 of reference (a).

5. You shall determine the date, time and place for the Court of Inquiry. The date of commencement should be by (date), or as soon thereafter as practicable.

6. *It is required in each investigation that a determination is made as to whether written and/or sworn statements should be obtained by the investigating officer. See Article 3.B.2.a (14):* You shall consult with your legal counsel to determine whether you shall obtain written and/or sworn statements from the witnesses that you interview during the course of the investigation.

7. You shall prepare findings of fact, opinions, and recommendations, and submit them with the Record of Proceedings prepared in accordance with exhibit (5-B) of reference (a).

8. If you are unable to complete this investigation by (date), you shall state the reasons to me and include an explanation of the delay in the Preliminary Statement.

9. You shall also comply with the Privacy Act of 1974 (See, Articles 1-H and 10-H and Exhibit 4-C of reference (a)). You shall comply with Article 31, UCMJ, with regard to (suspect) who is suspected of violation of Article \_\_\_\_\_, UCMJ (common name). *See* Article 4-E-4 and use Exhibit (4-B) of reference (a).

10. You may contact me, in writing, with any unresolved issues or recommendations that you may have.



#

Copy: (Servicing Legal Office)  
(Relevant Program Managers)  
(Designated Party or their Counsel)

## CHAPTER 4 CONDUCTING STANDARD INVESTIGATIONS

### A. PURPOSE

The purpose of this chapter is to provide a guide to assist Administrative Investigating Officers who have been appointed pursuant to the provisions of this manual in conducting timely, thorough, and legally sufficient investigations. While this Chapter is intended specifically for Standard Investigations, some provisions are also applicable to Formal Investigations. A brief checklist is included at the end of the Chapter. The checklist is designed as a quick reference to be consulted during each stage of the investigation. Questions in the checklist will ensure that the Investigating Officer has covered all the basic elements necessary for a sound and sufficient investigation.

### B. AUTHORITY TO ADMINISTER OATHS

Active duty personnel, or personnel performing inactive duty training, appointed to serve as a one-officer investigator, or as a Member of a Board of Investigation, or to serve as President or Counsel for a Court of Inquiry, are empowered under Article 136(b), UCMJ, to administer oaths as necessary in the performance of these duties. In addition, any person on active duty, or performing inactive duty training, appointed to serve as Recorder for an Administrative Investigation is hereby empowered to administer oaths as necessary in the performance of these duties. *See* Article 136(b), UCMJ; 14 U.S.C. § 636 (Coast Guard statute empowering officers to give oaths); and 5 U.S.C. § 303 (provides this authority for civilian employees). Statements taken out of the presence of the Investigating Officer need not be, but may be, sworn before an official authorized to administer oaths at the witness's location. Forms of various oaths are contained in article 9.G.8. Obtaining statements under oath may or may not be necessary. The Investigating Officer shall first consult the convening order and the servicing legal office to determine the necessity of obtaining a sworn statement.

### C. STANDARD INVESTIGATION PROCEDURES

1. Duties of an Investigating Officer. The primary duties of an Investigating Officer are: to ascertain and consider the evidence on all sides of an issue; to be thorough and impartial; to make findings of fact; to offer opinions and recommendations by the facts; and to comply with the instructions of the Convening Authority. In addition to those general duties, Investigating Officers may participate as experts in a Board of Investigation. The (single officer) Investigating Officer or the Senior Member of a Board also determines the time, place, and manner in which the investigation is conducted.
2. Parties. A Standard Investigation is a non-Party investigation. Parties must not be designated by a Convening Authority or by an Administrative Investigation in an investigation convened under this section.
3. Oaths. A one-officer investigator and Members of a Board need not be sworn. Testimony or statements of witnesses to Administrative Investigations under this section may be made under oath.

4. Procedures.

- a. General. Since a Standard 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 multi-investigator Standard Investigation (a Board) may assign certain issues, witnesses, or specific evidentiary matters to individual Members for investigation, holding later meetings to review information collected for completeness. A Standard Investigation may schedule witnesses to make statements before assembled Members or it may obtain relevant information from witnesses by personal interview, correspondence, telephone inquiry, or other means. A Standard Investigation convened under this section may employ any lawful method it finds most effective in performing its investigative function of compiling reliable evidence concerning the incident under investigation.
- b. Rules of Evidence. A Standard Investigation is not bound by formal rules of evidence applicable to courts-martial, and may collect, consider, and include in the record any credible (reasonably believable) evidence that is relevant to the matter under investigation. Care should be taken to authenticate - that is, verify the genuineness of - tangible and documentary evidence, or reproductions thereof. A witness statement may be signed by the witness, but may also be certified by an investigator to be either an accurate summary of, or a verbatim transcript of, an oral statement made by the witness. True copies of original documents should be certified as such by the custodian of the record on the copy or on an attached cover document. If that is not possible, a statement as to the authenticity should be included in the report.

5. Communications with Convening Authority. If, at any time during the investigation, it appears to the Investigating Officer that a Convening Authority should consider enlarging, restricting, or modifying the scope of an investigation, or changing in any material respect any instruction provided in the Convening 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 the typical Investigative Report, that request should similarly be made to the Convening Authority. If the Convening Authority concurs, a Letter Incident Report may be prepared in lieu of a typical Investigative Report. *See* Chapter 5, generally, regarding reports.

6. Comparison to Other Administrative Investigations.

- a. Standard Investigations usually have a single Investigating Officer who conducts interviews and collects evidence. There is no authority to designate Parties in a Standard Investigation. In contrast, Formal Investigations normally involve a hearing and a designated Party. Formal Investigation procedures are mandated whenever a Party is designated.
- b. Since no Parties are designated in the Standard Investigation, no one is entitled to the rights of a Party, such as notice of the proceedings, an opportunity to participate, representation by counsel, or the right to call and cross-examine witnesses. The

Investigating Officer in a Standard Investigation may, however, make relevant findings of fact, opinions and/or recommendations concerning individuals, even where those findings of fact, opinions and/or recommendations are adverse to the individual or individuals concerned.

- c. The Convening Authority should select the Investigating Officer on the basis of education, training, experience, length of service, absence of conflicts and temperament. A one-officer Standard Investigation should consist of one commissioned officer or civilian employee, but may consist of an enlisted member with the requisite qualifications when the Convening Authority deems it appropriate. If the investigation is convened under Article 139, UCMJ (dealing with redress of damage to property), only commissioned officers may be assigned.
- d. The Standard Investigation does not have the authority to subpoena witnesses or evidence.
- e. The Standard Investigation may report its findings of fact, opinions and recommendations in the typical Investigative Report (IR) format or, if so directed, in the form of a Letter Incident Report (LIR).

#### **D. PRELIMINARY MATTERS**

1. Convening Authority. See article 3.A.3 for guidance regarding the authority necessary to convene an administrative investigation
2. Convening Procedures. The Standard Investigation may be convened by written message or oral orders, although Standard Investigations convened by oral orders must be confirmed by a written Convening Order (either letter or message) at the earliest opportunity. The Convening Authority maintains discretion as to the format of the report required. The written Convening Order should be in official memo form and addressed to the Senior Member of a Board of Investigation or to the individual Investigating Officer of a one-officer investigation.
3. Obtaining Legal Advice. Legal counsel should be sought by, and the servicing legal office shall provide assistance to an Investigating Officer. See article 3.B.3.f for certain specific duties required of legal counsel. Obtaining legal advice early in the investigative process will likely prevent problems that are normally discovered during the legal review of the Investigative Reports. The servicing legal office can assist the Investigating Officer in framing the issues, identifying the information required, planning the investigation and interpreting and analyzing the information obtained. The servicing legal office shall neither conduct the investigation nor substitute its judgment for that of the Investigating Officer. The Investigating Officer must seek the assistance of the servicing legal office for complex and serious investigations, particularly those involving a death or serious bodily injury, as well as investigations in which findings of fact, opinions and recommendations may result in adverse administrative action (i.e. a determination of not in the line of duty), and investigations that will likely be relied on in final actions by commands superior to the Convening Authority.
4. Administrative Matters. As soon as the Investigating Officer receives the Convening Order, he or she should begin a log showing the date, time, and a short description of everything

done in connection with the investigation. Investigating Officers should log the reason(s) for any delay in the progress of the investigation, such as the absence of witnesses due to unit deployment. This log should be made part of the record of the investigation if the delay is significant.

5. Concurrent Investigations. A Standard Investigation may be conducted either before, concurrently with, or after an investigation of the same or related matters by another command or agency. Convening Authorities and Investigating Officers must ensure that investigations do not hinder or interfere with criminal investigations or investigations directed by a superior authority. Also, if an Investigating Officer discovers evidence of serious criminal misconduct, he or she should immediately coordinate with the servicing legal office and CGIS regarding referral of the matter for prosecution, and must promptly inform the Convening Authority as well. In the case of concurrent investigations, the Investigating Officer should also coordinate with the other command or agency to avoid duplication of effort whenever possible. If available, the results of another investigation may be incorporated into the investigation convened pursuant to the provisions of this manual. Exception: A Limited Use Mishap Investigation runs parallel with and independently of an Administrative Investigation and while that Limited Use safety investigation may use any information gathered by an Administrative Investigating Officer, the Investigating Officer may not use privileged information collected or maintained by the safety board.

## **E. MANAGING THE STANDARD INVESTIGATION**

1. Developing an Investigative Plan.
  - a. The Investigating Officer's primary duty is to gather and assess evidence, express opinions, and make appropriate recommendations to the Convening Authority. Before obtaining information, however, the Investigating Officer should develop an investigative plan that consists of an understanding of the facts required to reach a conclusion, and a strategy for obtaining evidence.
  - b. The investigative plan should include a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important. An effective, efficient method is to interview principal witnesses last. This best prepares the investigating officer to ask all relevant questions and minimize the need to re-interview these critical witnesses. As the investigation proceeds, it may be necessary to review and modify the investigative plan.
  - c. The Investigating Officer should begin the investigation by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the Convening Authority. An important part of this is establishing the appropriate standards, rules, or procedures that govern those circumstances under investigation. The servicing legal office can assist the Investigating Officer in determining the information that will be required.
2. Obtaining Documentary and Physical Evidence.
  - a. The Investigating Officer may need to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, and photographs. Obtaining such information early in the investigation can save valuable

time and effort. In some cases, however, the information will not be readily available or may require significant lead-time to develop. In that case, requests should be made early so the Investigating Officer may continue to work on other aspects of the investigation while those requests are being processed.

- b. If the investigative plan contemplates the acquisition or review of medical records of any person, the investigating officer must consider the applicability of the Privacy Act and HIPAA. *See* Article 1.H for general guidance regarding the Privacy Act and HIPAA. The investigating officer should ensure that the convening order contains the authorization discussed in Article 3.B.2.a (11). In addition, Article 5.A. contains guidance regarding the authorized receipt and use of protected health information of Coast Guard military members. Investigating officers should be aware that individual States may have health information privacy laws that are more stringent than HIPAA. Consult appointed legal counsel for assistance with obtaining necessary medical information.
  - c. The Investigating Officer should, if practicable under the circumstances, personally inspect the location of the incident or events being investigated.
3. Documenting Evidence from Witnesses.
- a. Interview Summary. In most cases witness statements will be required. In-person interviews are the most effective means to obtain witness statements. However, when circumstances dictate, the Investigating Officer may interview witnesses using alternate means (e.g., telephone interview). An effective tool available to an Investigating Officer is a written summary of a witness interview prepared and signed by the Investigating Officer and attached as an evidentiary exhibit. This is a convenient and effective method to document facts because witnesses frequently provide more information in verbal interviews than is in the written statements. Investigating officers should generally presume that interview summaries may be needed even if witnesses provide written statements.
  - b. Non-Coast Guard Civilian Witnesses. Investigating Officers do not have the authority to subpoena (i.e., compel the appearance or cooperation of) non-Coast Guard civilian witnesses. Civilian witnesses who are not Federal employees may agree to appear, and, if necessary, can even be issued invitational travel orders. This authority should be used only if the information cannot be obtained otherwise, and only after coordinating with the servicing legal office and the Convening Authority.
  - c. Coast Guard Civilian Personnel. Commanding Officers and supervisors have the authority to order federal civilian employees to cooperate with an interview request. However, some Coast Guard civilian employees are members of unions, and may be subject to collective bargaining agreements that may impose conditions or limits on interviews of collective bargaining unit members. Prior to interviewing civilian employees, the Investigating Officer should discuss these potential limitations with the Command Staff Advisor and the servicing legal office.
  - d. Investigations with Potential Claims or Litigation Concerns. In the context of an investigation involving potential claims or litigation, exhibits containing an officer's summary of a witness interview may be protected from release outside the Coast Guard

pursuant to a FOIA request as either attorney “work product”, even though the Investigating Officer may not be an attorney (because he or she is acting at the direction of the Judge Advocate General when conducting an investigation involving a known or likely claim), material prepared in anticipation of litigation, and/or material that is pre-decisional in nature. Consistent with the Claims and Litigation Manual, COMDTINST M 5890.9, *when the investigation involves a known or potential claim against the United States* the following witness interview procedures apply:

- (1) Coast Guard Witnesses. When interviewing a witness who is a Coast Guard member, employee, Auxiliarist, contractor, or agent, the Investigating Officer shall not ask for a written statement from such witness, but shall only prepare a summary of interview.
- (2) Non-Coast Guard Witnesses. Because the Coast Guard does not have an interest in preventing the release of non-Coast Guard witness statements, and because the witness availability for follow-up interviews may be limited, Investigating Officers should seek written, signed witness statements when interviewing non-Coast Guard witnesses. In addition, these witness statements should be supplemented by a detailed summary of interview prepared by the Investigating Officer.

For additional guidance about interviewing witnesses in investigations where potential claims may be involved, the investigating officer should consult with servicing legal office.

- e. Witness Interviews. For detailed procedures for conducting witness interviews for investigations other than those involving claims, see Article 4.E.6 below.
  - f. Sworn Statements. The investigating officer may use sworn statements as a method of obtaining witness statements subject to consultation with legal counsel appointed to the investigation. The Convening Order, or other applicable authority, may require sworn statements.
4. Rights Advisement for Witnesses.
- a. All military personnel suspected of criminal misconduct must first be advised of their rights. *See* Article 31, UCMJ and Exhibit (4-B) to this manual (which is a copy of Enclosure (5) to the Military Justice Manual, COMDTINST M5810.1 (series)). It may be necessary to provide the rights warnings at the outset of the interview. In some cases, however, an Investigating Officer will become aware of a witness’s involvement in criminal activity only after the interview has started and the incriminating evidence is uncovered. In such cases, rights warnings must be provided as soon as the Investigating Officer suspects the witness may have been involved in criminal activity. If a witness elects to assert his or her rights and requests an attorney, all questioning must cease immediately. Questioning may only resume in the presence of the (suspect) witness’s attorney, if the witness consents to being interviewed.

- b. Note that these rights apply only to information that might be used to incriminate the witness; they cannot be invoked to avoid questioning on matters that do not involve violations of criminal law or do not incriminate that particular witness.

Example: A witness who is suspected of stealing government property must be advised of his or her rights prior to being interviewed. However, if a witness merely is being interviewed concerning lost or destroyed government property in connection with a survey of property, a rights warning would not be necessary unless evidence is developed that leads the Investigating Officer to believe that the individual has committed a criminal offense. If it is clear that the witness did not steal the property but has information about who did, the witness may not assert Article 31 rights on behalf of that other individual.

- c. A member of the Armed Forces cannot be required to make or sign a statement regarding the origin, occurrence, or aggravation of a disease or injury that the member has. *See* 10 U.S.C. § 1219.

#### 5. Scheduling Witness Interviews.

- a. The Investigating Officer needs to determine which witnesses should be interviewed and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and efforts that might otherwise be spent “backtracking” to re-interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following guidance suggests an approach to organizing witness interviews; it is not mandatory.
- b. When planning whom to interview, work from the center of the issue outward. Identify the people who are likely to provide the best information. When conducting the interviews, start with witnesses that will provide all relevant background information and frame the issues. This will allow the interviews of key witnesses to be as complete as possible, avoiding the “backtracking” described above.
- c. Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the inquiry.
- d. Any information that is relevant should be collected regardless of the source; however, Investigating Officers should collect the best information available from the most direct source. It is appropriate for Investigating Officers to comment on the credibility of witnesses and relative strengths of evidence in the opinions section of the investigation report, particularly where statements or other evidence appears to conflict. It may also



be necessary or advisable to interview experts specialized in the subject matter of the investigation.

- e. At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of a unit, for example, if only a few people have information relevant to the inquiry. Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and not in dispute. However, the Investigating Officer must be careful not to prematurely terminate an investigation because a few witnesses give consistent statements, particularly if there are indications of rehearsed statements.
6. Conducting Witness Interviews. Before conducting witness interviews, Investigating Officers may consult all available resources, including the local field office of the CGIS for guidance on interview techniques. The following may also be helpful:
- a. Prepare for the interview. While there is no need to develop scripts for witness interviews, Investigating Officers may wish to review the information required and prepare a list of questions or key issues to be covered. This will prevent the Investigating Officer from missing issues and maximize the use of the Investigating Officer's and witness's time. Generally, it is helpful to begin with open-ended questions such as "can you tell me what happened?" After a general outline of events is developed, follow up with narrow, probing questions, such as "Did you see Petty Officer X leave the bar before Chief Petty Officer Y left?" Both corroboration and weaknesses or inconsistencies in statements generally are better explored after the witness has established the general sequence of events.
  - b. Ensure the witness's privacy. Investigating Officers should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs.
  - c. Focus on relevant information. Unless precluded for some reason, the Investigating Officer should begin the interview by generally telling the witness about the subject matter of the investigation, without "seeding" anticipated statements by revealing detail unnecessarily. Generally, any evidence that is relevant and useful to the investigation is permissible. The Investigating Officer should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness. Information should be material and relevant to the matter being investigated. Relevancy depends on the circumstances in each case. Compare the following examples:
    - (1) Example: In an investigation of a loss of government property, the witness's opinions concerning the unit commander's general leadership style normally would not be relevant, unless the opinion deals specifically with the unit commander's leadership with respect to accountability and property control, based on specific observations of the same.

- (2) Example: In an investigation of alleged sexual harassment in the unit, information on the commanding officer's leadership style might be relevant, depending on the aspect of leadership and the observations upon which the opinion is based.
- (3) Example: In an investigation of allegations that a commanding officer has abused command authority, the witness's observation of the commanding officer's leadership style would be highly relevant, assuming the observations pertain to the type of abuses alleged and that were under investigation.
- d. Let the witness testify in his or her words. Investigating Officers must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the statement is completed, the Investigating Officer should assist the witness in preparing a written statement that includes all relevant information, and presents the statement in a clear and logical fashion. An Investigating Officer's summary of interview or the witness' written statement also should reflect the witness's own words and be natural. Stilted "police blotter" language is not helpful and detracts from the substance of the testimony. If the witness statement involves technical terms that are not generally known outside of the witness's field of expertise, the witness should be asked to define the technical terms in plain terms the first time they are used.
- e. Recording Devices. Recordings of the witness's statement (whether on paper or electronically) shall only be made after first consulting with servicing legal office. If used, such a tape must be carefully safeguarded, even after the investigation is completed.
- f. Witness Summary. Summaries of witness statements compiled by the investigating officer, or board of investigation is advisable in all situations where it is not possible or advisable to obtain a witness statement or when witness provided more information in verbal interview than in the written statement. This information can include the personal observations of the Investigating Officer. Investigating officers must consult with appointed legal counsel to determine which method of obtaining a witness statement is required.
- g. Protect the interview process. In appropriate cases, an Investigating Officer may direct witnesses not to discuss their statement with other witnesses or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is used and recommended to eliminate possible collusion of statements of witnesses still to be heard. Witnesses, however, are not precluded from discussing matters with counsel.
7. Rules of Evidence. Because a Standard Investigation is an administrative and not a judicial proceeding, the rules of evidence normally used in court proceedings do not apply. Therefore, the evidence that may be used is limited by only a few rules. Investigating Officers or reviewing officials with questions regarding these rules should consult their servicing legal office.
- a. The information must be relevant and material to the matter or matters under investigation.

- b. Information obtained in violation of an individual's Article 31, UCMJ, or 5<sup>th</sup> Amendment rights may be used in administrative proceedings unless obtained by unlawful coercion or inducement likely to affect the truthfulness of the statement. However, the information may not be used in judicial proceedings, such as courts-martial or civil actions.
  - c. The result of polygraph examinations may be used only with the subject's permission.
  - d. Privileged communications may not be considered (*i.e.* between husband and wife, priest (clergy) and penitent, attorney and client, and the limited psychiatric privilege between a psychotherapist and a patient). If the issue of privilege is raised, the Investigating Officer must suspend investigation until that issue is resolved with advice of appointed legal counsel.
  - e. "Off-the-record" statements are discouraged. However, documented statements, even summaries of witness interviews, may be relied on in administrative proceedings.
  - f. An involuntary statement by a member of the Armed Forces regarding the origin, incurrence or aggravation of a disease or injury may neither be collected for nor included in an Administrative Investigation. 10 U.S.C. § 1219
8. Standard of Proof. Since a Standard Investigation is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt. Instead, unless another specific directive states otherwise, in a Standard Investigation the findings of fact need only be supported by a preponderance of the evidence. That is, findings of fact should be based on evidence that, after considering all evidence presented, points to a particular conclusion that is more likely than not the correct conclusion.

## F. CONCLUDING THE INVESTIGATION

1. Preparing the Finding of Facts, Opinions and Recommendations. After all the evidence is collected, the Investigating Officer must review it and make findings of fact. The Investigating Officer should consider the evidence thoroughly and impartially, and make factual findings, opinions, and recommendations that are supported by the facts and comply with the particular instructions of the Convening Authority. Every factual finding must be supported by statements or documentary or physical evidence attached as an exhibit to the Investigative Report.
  - a. Findings of Fact. To the extent possible, the Investigating Officer should fix dates, places, persons, and events, definitely and accurately. The Investigating Officer should be able to answer questions such as: What occurred? When did it occur? How did it occur? Who was involved, and to what extent? Exact descriptions and values of any property at issue in the investigation should be documented.
  - b. Opinions. Opinions are clear and concise statements that can be deduced from the *evidence* in the record, and not merely the "finding of fact" which the Investigating Officer deduced from the evidence. In developing opinions, Investigating Officers must rely on the facts and may rely on any reasonable inferences that may be drawn from those facts. In stating opinions, Investigating Officers shall refer to the exhibit or

exhibits relied upon in forming each opinion. Opinions (including opinions of no fault, no loss, or no wrongdoing) must be supported by the documented evidence that is part of the report. The Investigating Officer should comment on factual disputes among witnesses and on witness credibility, but should support those opinions with specific references to facts in evidence. An Investigating Officer's "hunch," supported by evidence may be useful to the Convening Authority, whereas an Investigating Officer's pure speculation or unsupported "gut feeling" should be omitted from a report of investigation.

- c. Recommendations. Recommendations should take the form of proposed courses of action consistent with the findings of facts and opinion, which flow logically from the *evidence* in the record. Recommendations may include disciplinary action, imposition of financial liability, or other administrative corrective action. Each recommendation shall cite at least to the specific findings of fact that support the recommendation, and preferably to the exhibit providing evidentiary foundation for the recommendation. To the extent that any recommendations flow from opinions, the related opinions shall be referenced as well.
2. Preparing the Submission to the Convening Authority. After developing the findings of fact, opinions, and recommendations, the Investigating Officer should prepare an Investigative Report using the format discussed in Chapter 5 of this manual and assemble the packet in the following order: the Convening Order and endorsements, if any; initial information collected; rights warning statements and Privacy Act statements, if any; the investigator's chronology or other suitable summary; and the exhibits (with an index). If, however, the Convening Order or subsequent communication from the Convening Authority authorizes a Letter Incident Report, the Investigating Officer may follow the Letter Incident Report format discussed in Chapter 5.
  3. Legal Review Prior to Convening Authority Action.
    - a. The Convening Authority shall seek a legal review of all investigations of serious or complex matters, such as when the incident being investigated resulted in death or serious injury. Legal review should be obtained in other investigations where the findings of fact, opinions and recommendations may result in adverse administrative action, or will likely be relied on in actions by superior authorities. Other manuals may also require a legal review following a specific type of Administrative Investigation. Generally, a legal review will determine: whether the investigation complies with the requirements of the Convening Order and other regulations; the effects of any apparent defects in the investigations; whether the findings of fact, opinions and recommendations are supported by sufficient credible evidence; and whether the recommendations are consistent with the findings of fact and opinions.
    - b. Legal review should be conducted before the Convening Authority approves the findings of fact, opinions and recommendations. After receiving a completed investigation, the Convening Authority may approve, disapprove, or modify the findings of fact, opinions and recommendations, or may direct further action, such as the taking of additional evidence, or making additional findings. Thus it is logical to seek legal review before the Convening Authority acts on the investigation.

## **G. CHECKLIST FOR INVESTIGATING OFFICERS**

### 1. Preliminary Matters.

- a. Did the investigating officer, or board of investigation, consult with the appointed legal counsel before commencing the investigation and prior to concluding the investigation?
- b. Is the Investigating Officer an appropriate choice based on seniority, availability, experience, and expertise? Do the Investigating Officer's professional or personal obligations interfere with performance of duty? Are there professional or personal conflicts of interest that would impact performance of duty or possibly call into question impartiality?
- c. Does the Convening Order or message clearly state the purpose and scope of the investigation, the points of contact for assistance (if appropriate), and the focus of the opinions and recommendations required? Has the initial legal briefing been accomplished?
- d. Have background materials been produced or requested or identified?

### 2. Investigative Plan.

- a. Does the investigative plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and schedule interviews in the most effective manner?
- b. Does the plan identify the witnesses not locally available and address alternative ways of interviewing them?
- c. Does the plan identify information not immediately available and outline steps to quickly obtain the information?

### 3. Conducting the Investigation.

- a. Is the investigator's chronology being maintained in sufficient detail to identify causes for unusual delays?
- b. Is the information (witness statements, telephone messages, tape recordings, etc.) collected being retained and organized?
- c. Is coordination with the servicing legal office being accomplished for matters such as potential claims, sworn statements, witness statements, or written summaries of interviews?
- d. Are communications with the Convening Authority being conducted in writing, and preserved as enclosures to the Investigative Report?

### 4. Preparing Findings of Fact, Opinions and Recommendations.

- a. Is the evidence sufficient and assembled in a logical and coherent fashion?
- b. Are the opinions supported by credible evidence?
- c. Does each opinion cite the exhibit(s) that supports it?

- d. Are the recommendations supported directly by the facts – not simply by the opinions concerning those facts?
  - e. Does each recommendation cite the fact(s) – and preferably the evidence itself – that supports it?
  - f. Does each recommendation reference corresponding opinions?
  - g. Are the opinions and recommendations *responsive* to the tasking in the Convening Order or message?
  - h. Did the investigation address all the issues raised, expressly or impliedly, in or by the Convening Order or message?
5. Final Action. Because any Administrative Investigation may be returned by reviewing officials, it is in the Investigating Officer's interest to be aware of the status of the investigation even after it is submitted, and to be available to answer any follow-up questions in an efficient manner, so as to preclude an otherwise unnecessary return of the investigation. From an institutional standpoint, it is also beneficial to have both top-down and bottom-up tracking of the investigation, to ensure that the Final Action Authority receives it in an expeditious manner. To this end, an Investigating Officer should be aware of the following events:
- a. Was an appropriate legal review conducted?
  - b. Did the Convening Authority approve the findings of fact, opinions and recommendations? If not, have appropriate amendments been made and approved?
  - c. Have the necessary taskers been prepared to implement the recommendations ordered by the Final Action Authority? For example, an Investigating Officer may be tasked to draft charges or to draft letters of counseling or reprimand.
6. Checklists. Due to the wide variety of circumstances leading to Administrative Investigations, no one generic checklist adequately applies; one size does not fit all. However, the common requirements of Administrative Investigations are addressed in this Chapter and throughout this manual. Moreover, tailored checklists are provided as Enclosures 11-A (Loss or Damage to a Coast Guard Cutter) and 11-B (Factors Involving a Coast Guard Cutter Incident); 7-E (Death or Injury to a Coast Guard Member) and 7-F (Disability of a Reservist Due to Injury or Illness); as well as 4-A (Guide for Obtaining Complete Witness Statement).

**Exhibit (4-A)**

**GUIDE FOR OBTAINING A COMPLETE WITNESS STATEMENT OR SUMMARY**

The following checklist is intended as a guide to assist Investigating Officers in obtaining complete statements or summaries from witnesses. It is not intended to rigidly structure an interview, but is intended to ensure completeness and to jog the witness's memory, as needed.

\_\_\_\_\_ Date statement given.

\_\_\_\_\_ Witness' name, age, occupation, name and business address and phone, facsimile, and email address. If the witness is a civilian and either may be switching or in between jobs, or prefers not to be contacted at work, obtain the home contact information as well.

\_\_\_\_\_ 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 or vessel was involved -

\_\_\_\_\_ a. Speed of vehicle or vessel (how determined or estimated).

\_\_\_\_\_ b. Direction of vehicle or vessel.

\_\_\_\_\_ c. Obstructions to vision, if any.

\_\_\_\_\_ d. Nature of traffic.

\_\_\_\_\_ e. Controls and equipment (traffic lights, stop signs, brakes, blinkers, windshield wipers; or radar and radio, etc

\_\_\_\_\_ f. Description of the point of impact, skid marks, damage to vehicles, and place of rest.

\_\_\_\_\_ g. Mechanical condition of vehicles or vessels

- \_\_\_\_\_ h. Disposition of vehicles or vessels.
- \_\_\_\_\_ Action by witness after knowledge of incident.
- \_\_\_\_\_ Actions of others in response to the 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.
- \_\_\_\_\_ Contact to, by, or with those involved in incident.
  - \_\_\_\_\_ Contact to, by, or with witnesses to the incident.
  - \_\_\_\_\_ Contact to, by, or with any other person, Command, insurance agent, attorney, media representative, concerned family member or citizen.
  - \_\_\_\_\_ Identification of all those with whom the incident was discussed, date and scope and substance of discussions; actions taken since.
- \_\_\_\_\_ Witness's physical limitations regarding ability to perceive and remember information (glasses or contacts, hearing aid, medication, intoxication).
- \_\_\_\_\_ Witness's knowledge of others' physical limitations regarding ability to perceive and remember information (glasses or contacts, hearing aid, medication, intoxication).
- \_\_\_\_\_ Witness's history, if any, with respect to persons / units involved in the incident (close friends, business associates, "bad blood").



\_\_\_\_\_ Witness's knowledge of others' history, if any, with respect to persons / units involved in the incident (close friends, business associates, "bad blood").

\_\_\_\_\_ Whether witness has ever been brought to Mast or Court-Martial or had adverse personnel actions against them for false or misleading statements (irregardless of whether under oath) or for incidents impugning either honesty or judgment or responsibility.

\_\_\_\_\_ Witness's knowledge whether others associated with the incident or witnesses to the incident have ever been brought to Mast or Court-Martial or had adverse personnel actions against them for false or misleading statements (irregardless of whether under oath) or for incidents impugning either honesty or judgment or responsibility.

\_\_\_\_\_ Affirmation that the facts are true and correct to the best of the knowledge of the witness.

\_\_\_\_\_ Whether consultation with Legal Counsel occurred for any necessary matters such as sworn or written witness statements, written summaries, or claims and/or litigation matters.

NOTE: In cases where it is likely that claims will be filed by or against the Government, witnesses should NOT sign statements unless specifically directed by the Department of Justice or by the servicing legal office.

**Exhibit (4-B)**

**ARTICLE 31(B), UCMJ, AND *MIRANDA/TEMPIA* RIGHTS**

**Instructions to the Interviewer...**

This form shall be completed when anyone investigating an alleged offense(s) considers it desirable or necessary to **interview an individual** subject to the Uniform Code of Military Justice **who is:**

- a. **Suspected of an offense** under the Uniform Code of Military Justice, state, or other federal law; **or,**
- b. **In custody** (freedom of movement is limited in some significant way).

This warning is more extensive than the individual warnings required under either Article 31(b), UCMJ or the *Miranda* and *Tempia* line of court decisions. In a case in which both rights apply (a. & b. above), however, this form should be given to a military member by a military investigator or anyone acting on behalf of the military. This warning should be used at the preliminary investigation stage because no determination has been made as to the appropriate disposition of the alleged offense(s). This form may also be used in interviewing civilian suspects even though the warnings are more extensive than are required.

**Other Warnings That May Be Required...**

- 1. Under 10 U.S.C. § 1219, a military member must be advised that he or she is not required to make any statement relating to the origin, incurrence, or aggravation of a disease or injury. *See*, section 2-F, Administrative Investigations Manual, COMDTINST M5830.1 (series).
- 2. Under the Privacy Act, 5 U.S.C. § 552a, the subject of an investigation must be advised of his or her rights under the Privacy Act if required to provide protected personal information (such as social security number, home address, etc.). *See*, section 2-H, Administrative Investigations Manual, COMDTINST M5830.1 (series).

*Suspect's Rate/Rank Name:* \_\_\_\_\_ *SSN or Military ID* \_\_\_\_\_ *Unit* \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_,

*Interviewer's Rate/Rank Name:* \_\_\_\_\_

have been advised by: \_\_\_\_\_ ;

*State briefly the matters/incidents being investigated:*

that he/she is investigating: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

I am suspected of committing the following offense(s):

*Plain language description of suspected offense(s):* \_\_\_\_\_

---

---

---

---

---

**I understand that:** [*Suspect should initial each paragraph*]

*Suspect's  
Initials*

*Suspect's Rights*

- \_\_\_\_\_ 1. I have the right to remain silent. I do not have to answer questions or make any statement.
- \_\_\_\_\_ 2. Before I decide whether I want to answer questions or make a statement, I may consult with a lawyer. If I decide to consult with a lawyer, the interviewer will stop the questioning. I may consult with a military lawyer provided without cost to me, or a civilian lawyer obtained at no expense to the government, if the government intends to continue questioning me. If I decide to consult with a lawyer, I have the right to have an appointed military lawyer, a civilian lawyer obtained at no expense to the government, or both, present during any further questioning.
- \_\_\_\_\_ 3. If I decide to answer questions or make a statement, anything I say may be used as evidence against me in any court-martial, nonjudicial proceeding, administrative proceeding, or civilian court.
- \_\_\_\_\_ 4. Even if I decide to answer questions or make a statement, I may at any time stop answering questions, refuse to make any further statements, or request to consult with a lawyer.
- \_\_\_\_\_ 5. **I have carefully read the above. I understand my rights.** Any questions I have asked concerning my rights have been answered to my satisfaction.

**With full knowledge of my rights and the information contained on both pages of this form, I voluntarily make the following elections:**

- |   |  |
|---|--|
| <input type="checkbox"/> a. <b>I do not desire</b> to consult a lawyer. <sup>2</sup>                      | <input type="checkbox"/> c. <b>I desire</b> to consult a lawyer. <sup>1</sup>                                |
| <input type="checkbox"/> b. <b>I desire</b> to make a statement and/or answer any questions. <sup>2</sup> | <input type="checkbox"/> d. <b>I do not desire</b> to make a statement or answer any questions. <sup>1</sup> |

\_\_\_\_\_  
[Time and Date]

\_\_\_\_\_  
[Signature of Suspect]

\_\_\_\_\_  
[Signature of Witness]

**Interview Instructions:**

1. If the suspect elects **either** that he or she **desires to consult with a lawyer** **or** that he or she **does not desire to make a statement or answer questions, stop questioning.** Consult the servicing legal office before reinitiating further questioning of this suspect concerning these suspected offenses.
2. If the suspect elects **both** a desire not to consult with a lawyer **and** a desire to make a statement, the interviewer **may continue questioning.**
3. Any **written statements** by the suspect should be **prefaced with** the following statement: *“With full understanding of my rights, I make the following statement freely, voluntarily, and without any promises or threats made to me.”* The statement should be **signed and dated by the suspect and a witness.**

**Exhibit (4-C)****PRIVACY ACT STATEMENT FORMAT—ADMINISTRATIVE INVESTIGATIONS**

NOTE: This information is provided to address the most frequently encountered Privacy Act situations. It should be inserted into a Privacy Act Statement that is tailored to the circumstances of the investigation. For any instances not addressed here, consult the Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series), or consult the servicing legal office. Investigating officers and their legal servicing offices may contact (CG-61) for Privacy Act procedural questions; legal servicing offices may consult with CG-0944 for legal questions on behalf of investigating officers. Investigating officers (except in situations where CG-0944 is the servicing legal office) should not directly contact CG-0944 but must consult with their legal servicing office.

1. **AUTHORITY:** "44 U.S.C. § 3101; 14 U.S.C. § 632, and 5 U.S.C. § 301."

[Specify, in addition, any other statutory authorities that are applicable to the particular matter under investigation. Some common examples are provided:

- (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) Auxiliarist's 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) Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. §§ 2651-2653.
- (j) Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 801, *et seq.*]

2. **PRINCIPAL PURPOSE(S):** "The information which will be solicited is intended principally for the following purpose(s):"

[In every investigation, the statutory "agency need to know" rule, codified as exemption (b)(1) of the Privacy Act of 1974, 5 U.S.C. § 552a, should apply. If the Investigating Officer cannot articulate an official need to know the information, then the Investigating Officer must not seek information protected by the Privacy Act. In addition to the "agency need to know" justification, specify each purpose listed below for which the record of the particular investigation will or could reasonably be used. Some common examples are provided:

- (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 and 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 and court authorities for use in connection with civilian criminal and 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 and 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."

#### 4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

[Note: Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:

(a) Where an individual is the subject of the investigation that may impact benefits or result in disciplinary action, *see* Purposes, paragraph 2, above:

(1) "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have [either the pay and/or benefits personnel determinations - or - disciplinary determinations] [*see* purposes 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 that presumption in your favor. But if the completed record contains sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from reaching a favorable determination. Therefore, it may be in your interest to provide additional information."

(2) (Where an individual is a subject of an investigation for purposes in paragraph 2(c), above: "Disclosure is voluntary, but if you do not provide the requested information, the determination as to whether you should be held pecuniarily liable for repayment of the Government's loss will be based on the other evidence in the investigative record, which possibly might not support a favorable determination. Therefore, it may be in your interest to provide additional information support a determination in your favor.")

(3) (Where the individual is a claimant or potential claimant in an investigation for purposes in 2(d), 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. Therefore, it may be in your interest to provide additional information to support a determination in your favor.")

(4) (Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purposes in paragraph 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. Therefore, it may be in your interest to provide additional information.")

(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 must be made on the basis of the other evidence that is contained in the investigative record. Therefore, it may be in your interest to provide additional information.")]

(b) [In the unusual situation where a specific statute, regulation, or lawful order of competent authority requires an individual to disclose particular personal 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) - and perhaps -- ) but election not to disclose such other information could. . .)." If information is to be obtained from a witness under a grant of immunity, the servicing legal office must be consulted and the servicing legal office should coordinate with the prosecutor and Convening Authority before any questioning/interview is conducted."]

## CHAPTER 5 PREPARING INVESTIGATIVE REPORTS (IR)

### A. BASIC REQUIREMENTS

1. Organization and Scope. The Investigative Report (IR) must support all the purposes of an administrative investigation identified in Article 1.C. Accordingly, the IR must objectively determine and thoroughly document the facts and circumstances surrounding the matters investigated. The report must answer fundamental questions concerning the matter under investigation, such as: who?; what?; when?; where?; how?; and why? The investigating officer must 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 determined accurately. The place or places involved should be specifically reported, and all persons involved should be properly identified by full name, title, business or profession, as well as mailing address and telephone number and email address, if a civilian; or full name, grade/rank, service, duty station, and service number, telephone number and email address if a member of the Armed Forces. Where relevant, the IR should identify directives applicable to the circumstances, and determine whether such directives were complied with. Typical references include laws or regulations, policy, doctrine, qualification standards, standard operating procedures, and safety standards. Subchapter 5.B describes the standard IR format.
2. Claims Investigations. Any administrative investigation that has, as one of its purposes, a requirement to document the circumstances relating to any potential claim for or against the United States, must be appropriately labeled and its contents protected as a Claims Investigation pursuant to the Claims and Litigation Manual, COMDTINST M5890.9. This may be reflected in the Convening Order for incidents that result in, or may be likely to result in, claims by or against the U.S. government (or matters relating to civil litigation) that arise from Coast Guard activities. Where an investigation was not previously identified as a Claims Investigation, but circumstances indicate that claims for or against the United States are likely, the investigating officer shall clearly mark the investigative report as a Claims Investigation and must consult with appointed legal counsel. Any investigation report that contains a claims component shall be marked with the statement below to note that the report is attorney work-product prepared at the direction of an attorney (even though it may not actually be prepared by an attorney).

*“This report is being prepared in contemplation of litigation and to assist attorneys, acting on behalf of the Judge Advocate General, representing interests of the United States in this matter.”*

3. Security of Classified Information. Because of the wide distribution in the Coast Guard of Investigative Reports (IR), classified material should be omitted, unless its inclusion is essential. If it is useful to quote, reference, or paraphrase portions of unclassified information from a classified message, do not identify the classified message by date-time group or include the encrypted version of the classified message in any form. Consideration should be given to conducting a separate classified investigation when the IR contains either classified material or any unclassified material that may assist in the



prosecution of a claim against the United States, so that national security and other interests of the Government are not compromised through required disclosure of the record to designated Parties. (*See generally*, “Rights of a Party,” Article 10.F. of this manual). When classified material is included in an IR, that report shall be handled strictly in accordance with the Classified Information Management Program, COMDTINST 5510.23 (series) and other applicable directives.

4. Privacy Compliance. All investigations must be conducted in compliance with the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA). *See* Article 1.H. This requirement applies both to Investigating Officers/Boards in the collection of personal information and to the release of Investigative Reports. The “need to know” exception under the Privacy Act permits the fact-finding body to obtain necessary information from Coast Guard records and authorizes disclosure of that information to those with a need to know within the Coast Guard. For additional guidance regarding the Privacy Act and HIPAA, the servicing legal office should be consulted.
5. Health Insurance Portability and Accountability Act (HIPAA). The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191; codified at 42 U.S.C. §§ 1320d – 1320d-8) was enacted to promote improved medical care for individuals and to protect the security and confidentiality of the health care information of individuals receiving care from health care providers. The Department of Health and Human Services (HHS) promulgated regulations in Title 45 Part 164 of the Code of Federal Regulations implementing HIPAA which provide patients rights and protections against the misuse or disclosure of their health records, and also allow patients greater access to their health records.
  - a. Protected Health Information. The general privacy principle expressed in HIPAA is that use and disclosure of an individual’s protected health information, by a covered entity, is prohibited without that individual’s written authorization. Protected health information is defined at 45 C.F.R. § 160.103. Covered entity is defined at 45 C.F.R. § 160.103, and includes a health plan (including the health care program for active military personnel and the federal employees health benefits program) and a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. Coast Guard policy concerning HIPAA is contained in the Medical Manual, COMDTINST M6000.1 (series), principally in Articles 2.A.11, and 4.A.3.
  - b. Military Exception. The HHS regulations implementing HIPAA provide an exception that allows the Coast Guard to use and disclose health information “*for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.*” (*See* 45 C.F.R. § 164.512(k)) The Coast Guard has published an appropriate notice in the Federal Register to properly implement this exception. (*See* Health Information Privacy Program, 68 Fed. Reg.

- 81, 22408 (April 28, 2003)). Disclosure of the protected health information of a member of the armed forces by health care facilities and providers to an investigating officer in the course of an investigation is authorized pursuant to this military exception. However, Investigating Officers must safeguard the protected health information of Coast Guard personnel to the maximum extent possible by only using and disclosing that health information which is necessary to adequately conduct the investigation. Consult appointed legal counsel and the Medical Manual, COMDINST M6000.1 (series), Article 2.A.11, for further guidance regarding HIPAA.
- c. Authorization. HHS regulations implementing HIPAA also provide that a written authorization may be obtained from the named individual to use and disclose their protected health information. *See* 45 C.F.R. § 164.508(c). Consult legal counsel prior to executing a written authorization for access to protected health information.
  6. Comments on Administrative or Disciplinary Personnel Actions. While administrative or disciplinary personnel corrective actions are generally processed separately from the Administrative Investigation, it is appropriate to recommend or document corrective personnel actions in IRs or related documents. Punitive letters of censure, copies, or recommended drafts thereof, may be included in an Investigative Report as enclosures. The fact that a member was counseled, or other administrative action recommended or taken as a corrective measure, may also be documented. Note, however, that non-punitive letters of censure are not disciplinary actions, are not entered in personnel records, and are considered private in nature. Thus, while an investigator, reviewer, or Final Action Authority may recommend or document counseling in an IR, non-punitive letters of censure should neither be mentioned in nor transmitted with the IR. However, draft non-punitive letters may be separately forwarded to the appropriate commander for consideration.

## **B. INVESTIGATIVE REPORT FORMAT**

All Coast Guard administrative investigation reports shall be prepared and submitted in the following Investigative Report (IR) format, except in instances where the Convening Authority authorizes a Letter Incident Report (LIR). The IR shall be comprised of the following elements: a preliminary statement, findings of fact, opinions, recommendations, enclosures and exhibits. Procedural materials (*e.g.*, correspondence with the Convening Authority) are attached as *enclosures* and factual matters (*e.g.*, statements) are attached as *exhibits*. *See* Exhibit (5-A) for sample IR format. Deviation from this IR format may be authorized to better manage the evidence in extensive or complex investigations. For example, facts, opinions, or recommendations may be grouped into categories with explanatory headers, or presented as a series of narrative paragraphs, where that format is judged to be more effective. Such alternative format may be employed only after consultation with the servicing legal office and with advance approval of the Convening Authority. Reports that are difficult to review for lack of organization are likely to be returned to the investigating officer for corrective action, causing additional work and undue delay.

1. Subject Line. The subject line should include a concise description of the matter investigated, and will usually be the same as that of the Convening Order. The subject line shall not identify persons whose conduct has been investigated by name, social security number, or other personal identifier, but may identify a subject of the investigation by position.
2. Preliminary Statement. A preliminary statement informs the Convening and Reviewing Authorities of the extent and status of the investigation, including coordination issues, problems encountered that may require their attention, and relevant evidence or reports that could not be obtained by the investigator. It should concisely state whether the requirements of the Convening Order have been met and identify any that have not been met and the reasons. It should describe in detail any difficulties encountered in the investigation, limited participation in the investigation by any member, identification of any other investigations conducted into the matter, and any other information necessary for understanding the nature and limitations of the information presented. The itinerary of an investigator or Board in obtaining information is typically not required. An assertion in the preliminary statement is not a finding of fact. For example, an assertion that the investigation concerns the crash of an airplane and resulting fatal injuries to the pilot, is not a substitute for findings regarding the crash and fatality, or evidence establishing the cause of the crash. *See Generally*, Chapter 11 regarding incident-specific language that may be required in a preliminary statement.
3. Findings of Fact.
  - a. A *Finding of Fact* is a statement of data, based on the evidence examined, that the investigating officer(s) has determined is not subject to reasonable dispute. A matter is not subject to reasonable dispute if there is credible evidence showing it, more likely than not, to be true; and other evidence does not substantially contradict it.
  - b. Each *finding of fact* must cite the evidentiary exhibit(s) that support(s) it. The findings should concisely and accurately specify the details of events relevant to the investigation, including dates, times, places, persons, and conditions. For example, “At 1900 the conning officer, ENS Salty, *ordered* the helmsman to come right to course 082 True. (Exhibit 21)(Navigation log showing the date, time, and ordered course change).” Compare, for example, “ENS I.M. Salty *stated* that at 1900 he ordered the helmsman to come right to course 072 True. (Exhibit 22)(Summary of Interview of ENS Salty).”
  - c. Where a fact is in dispute, the investigating officer should provide rational resolution of the disputed evidence in an *opinion*, rather than in a *finding of fact*. For example, “Because the helmsman answered “course 082 True” back to the ENS Salty, and the helmsman, quartermaster of the watch, boatswains mate of the watch, and Officer of the Deck each stated that they heard ‘082 True,’ which was also recorded on the navigation data sheet for 1900, ENS Salty likely said ‘082 True.’ (Exhibits 21-26) (Navigation log and summaries of interviews of the bridge watch).”

- d. Findings that are not based directly on evidence collected, but are conclusions inferred from evidence, such as the cause of an incident that was not directly observed, should be stated as *opinions*, not as *findings of fact*. However, written statements by the investigating officer describing matters personally observed, or heard, and learned by the investigating officer during the course of the investigation are convenient and valid means to document facts and, when appropriate, shall be made exhibits. Findings may be grouped into a narrative or into categories to more clearly present the information, provided that the evidentiary basis of each finding is clearly articulated and each finding can be separately referenced in the opinions.
  - e. Where findings are made with reference to other regulations and those regulations are promulgated by the Commandant (including Directorates), it is not generally necessary to include the referenced regulation as an exhibit. For example, unless otherwise directed by the Convening Authority, there is no requirement to provide copies of the PERSMAN when citing to it in the report.
  - f. Findings of fact should include any corrective action already taken. Once approved by the Final Action Authority, findings of fact are generally releasable to the public pursuant to the FOIA. For frequently requested investigations, finally approved findings of facts should be posted in the Coast Guard's electronic "reading room" in accordance with the E-FOIA. *See* Article 1.H.
4. Opinions.
- a. Opinions are reasonable evaluations, inferences, or conclusions based on the 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. Each opinion should reference the findings of fact supporting it, those which it is based upon.
  - b. Liability. Issues of legal liability and negligence are matters for resolution by settlement authorities and courts, not for Administrative Investigation bodies. Investigative Reports shall not include opinions concerning negligence by any person or legal liability except in cases where such opinions are required by the Convening Authority or relevant to specific recommendations for disciplinary or other administrative action regarding individuals, such as LOD/Misconduct investigations. (*See* Chapter 7 of this manual for additional guidance).
  - c. Favorable Opinions. A recurring problem that must be avoided is lack of documentation in investigations with findings of no fault, no loss, or no wrongdoing. It is just as important to back up these findings with "positive" documentary evidence as it is to document adverse findings. The IR that reaches a conclusion of no fault, no loss, or no wrongdoing must include sufficient documentation to convince the Convening Authority and others who may review the investigation that the evidence supports the finding of no fault, no loss, or no wrongdoing.

5. Recommendations.

- a. An Administrative Investigation must make its recommendations in view of the nature of the facts found and opinions expressed. Recommendations specifically state whom in the reviewing chain for the IR should take any indicated action.
- b. If trial by court-martial is recommended, then draft charges may be prepared and submitted as an enclosure to the Investigative Report. Charges shall not be signed or sworn to, because premature preferral of charges can jeopardize the military justice process.

6. Exhibits.

- a. All relevant evidence obtained in the investigation should be included as exhibits to the report, unless it is redundant with other evidence in the report. Each exhibit should be separately numbered and labeled on the bottom right hand corner of the first page for convenient reference.
- b. Examples of evidence that may be exhibits include: a summary of interview, written statement, affidavit, transcript of testimony, photograph, map, chart, document, or other or other visual aid. Visual aids should be included in the investigative record as exhibits when such presentations are necessary or helpful to provide an accurate understanding of the matters being investigated. *See* article 5.B.7.
- c. One of the most effective tools available to an investigating officer is to prepare a written summary of a witness interview (in person or telephonic), sign it and attach as an evidentiary exhibit. This is a convenient and suitable means to document facts. Written summaries may or may not be appropriate depending on the incident under investigation. In determining whether a witness summary is appropriate, the investigating officer shall consult with legal counsel.
- d. Original documentary evidence is preferred. Where a potential exhibit is an official Coast Guard record, or other business record, an accurate and reliable copy shall be included as an exhibit and clearly marked as a copy. If the record is of vital significance for resolving the matters being investigated, the investigating officer shall also document the location of the original record and explain why substitution of a copy was unavoidable. It should also indicate how its reliability was established.
- e. Where findings are made with reference to other regulations promulgated by the Commandant (including Directorates), it is not generally necessary to include the referenced regulation as an exhibit. For example, unless otherwise directed by the Convening Authority, there is no requirement to provide copies of the Personnel Manual when citing to it in the report. However, where an excerpt from a regulation is pivotal to understanding the IR, consider making the relevant excerpt an evidentiary exhibit.

7. Visual Aids. Diagrams, charts, and maps should be included in the investigative record as exhibits when such presentations are necessary to provide the reviewing authorities with an accurate understanding of the incident or transaction being investigated.

Photographs or illustrations should be included where helpful to an understanding of the case.

8. Enclosures. Information that is not evidence of the matters investigated, but is helpful in understanding or interpreting the report, should be attached as enclosures. For example, the Convening Order should generally be the first enclosure. Other enclosures may include correspondence about the investigation, dissenting opinions, documentation of notices to Parties and objections by Parties, and other procedural matters.
9. Signature. All persons detailed as investigating officers, Members of a Formal Board of Investigation, and Members of a Court of Inquiry shall sign the IR. If it is not possible to timely obtain the signature of any particular Member, a notation should be included in the preliminary statement explaining why a Member did not sign. Signature indicates that each of the officers or Members forming a majority of the investigative body agrees with each individual assertion in the report. Any Member who disagrees with material portions of the report should attach a signed “dissenting opinion” identifying those matters with which he or she disagrees, and the specific reasons therefore, including the specific evidence relied upon. Unless directed by reviewing authorities, no Member of the investigative body shall document reply to, rebut, or comment on the dissent of another Member of that investigative body.
10. Sample Reports. A sample IR format for a Standard Investigation (that is also a suitable format for the IR of a Formal Investigation) is provided in Exhibit 5-A. A sample IR format for a Court of Inquiry is provided in Exhibit 9-A.

### **C. LETTER INCIDENT REPORT FORMAT**

The Convening Authority may authorize Letter Incident Reports (LIR) for any report of a Standard Investigation. For example, in cases where the facts are relatively simple and the Convening Authority is also the Final Action Authority, a Coast Guard memorandum, summarizing the findings of the investigation may be sufficient to meet the Coast Guard’s needs. A Convening Authority that authorizes a LIR format relieves the Investigating Officer of the need to comply with the requirements for a preliminary statement, findings of fact, opinions, and recommendations described above. It does not, in itself, reduce the need for a thorough investigation that is well documented with sufficiently conclusive evidentiary exhibits. For example, facts should not appear in the body of the LIR unless they are documented in an exhibit. A sample LIR format is provided in Exhibit 5-B.

**Exhibit (5-A)**

**SAMPLE INVESTIGATIVE REPORT (IR)**

*This document was prepared for internal government use only. This document is pre-decisional in nature and qualifies as an inter-agency/intra-agency document containing deliberative process material. In accordance with exemption 5 of section (b) of 5 U.S.C. § 552 (Freedom of Information Act), this material is EXEMPT FROM RELEASE TO THE PUBLIC.*

**U.S. Department of  
Homeland Security**



**United States  
Coast Guard**

Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

**MEMORANDUM**

From: J.W. Smith, LT  
Investigating Officer

To: CGC INGHAM (WHEC 35)

Subj: [Same as subject in the Convening Order—Do NOT identify individuals in or as the Subject of the Report]

Ref: (a) (Convening Order)  
(b) Administrative Investigations Manual, COMDTINST M5830.1A

Preliminary Statement

1. Per reference (a), I have conducted a Standard Investigation into the facts and circumstances into the [Incident], in accordance with reference (b). In accordance with reference (a), no persons were designated as Parties to this investigation, and there is no recommendation to designate any Parties at the conclusion of the investigation. Access to witnesses and evidence was complicated by [explain difficulties, resolution, or impasses]. The requirements of the Convening Order have been met [with the exception of . . .]. Due to the length and complexity of the investigation, and substantial delays encountered, the investigation itinerary is attached as enclosure (X). Because Exhibit (Y) is needed at (other location), a copy is forwarded and the original is maintained by [Command or Individual]. Due to the nature of the investigation, several witnesses were given Miranda/Article 31 rights, which are attached as enclosures (##-##). This investigation was conducted in coordination with (other investigation) -- OR—This investigation was limited due to preemption by [other investigation] -- This investigation was conducted in lieu of [another investigation] and a copy of this report, interim review and final action has been requested by [requesting source]. Media interest in this investigation includes [list details], and Freedom of Information Act (FOIA) requests [have been received—OR—are anticipated]. The servicing legal office and public affairs office have provided advice and assistance. Technical advice has been

*This document was prepared for internal government use only. This document is pre-decisional in nature and qualifies as an inter-agency/intra-agency document containing deliberative process material. In accordance with exemption 5 of section (b) of 5 U.S.C. § 552 (Freedom of Information Act), this material is EXEMPT FROM RELEASE TO THE PUBLIC.*

provided by [identify individuals, or commands, as appropriate, and comment on utility as experts]. In summary, the investigation concludes that [provide executive summary] and appropriate recommendations are included.

Findings of Fact

- 1. \_\_\_\_\_ (Exhibit (\_\_\_\_)).
- 2. \_\_\_\_\_ (Exhibit (\_\_\_\_)).
- 3. \_\_\_\_\_ (Exhibit (\_\_\_\_)).
- #. \_\_\_\_\_ (Exhibit (\_\_\_\_)).

[Note: See Article 5.B.3. The facts may be set forth in a narrative format, or in a series of short paragraphs that narrate the facts.]

Opinions

- 1. \_\_\_\_\_ (Finding (\_\_\_\_)).
- 2. \_\_\_\_\_ (Finding (\_\_\_\_))
- 3. \_\_\_\_\_ (Finding (\_\_\_\_)).

[Note: See Article 5.B.4. Determinations of Line of Duty and misconduct are stated as opinions. No opinion shall be given with respect 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 internal, administrative action regarding specifically Coast Guard members or Auxiliarists.]

Recommendations

- 1. \_\_\_\_\_ (Exhibit (\_\_\_\_)); see also Opinion (\_\_\_\_)).
- 2. \_\_\_\_\_ (Exhibit (\_\_\_\_)); see also Opinion (\_\_\_\_)).
- 3. \_\_\_\_\_ (Exhibit (\_\_\_\_)); see also Opinion (\_\_\_\_)).

[Note: See Article 5.B.5. Recommendations must be supported by facts, and may also flow from relevant opinions as well. In every investigation, recommendations should be made, even if "No action" is the ultimate recommendation. If the investigating officer recommends trial by court-martial or disposition by Captain's Mast under Article 15, UCMJ, then a charge sheet shall be prepared by the investigating officer and submitted to the Convening Authority with the report; however the charge sheet should not be signed. (See article 5.B.5.b) If a punitive letter of reprimand is recommended, a draft of the recommended letter must accompany the report.]



*This document was prepared for internal government use only. This document is pre-decisional in nature and qualifies as an inter-agency/intra-agency document containing deliberative process material. In accordance with exemption 5 of section (b) of 5 U.S.C. § 552 (Freedom of Information Act), this material is EXEMPT FROM RELEASE TO THE PUBLIC.*

This investigation [is closed—OR—is held in abeyance due to . . .], unless otherwise ordered. If additional information is required, please contact me at the telephone or facsimile numbers or address above, or via email at: [I.Officer@uscg.mil](mailto:I.Officer@uscg.mil).

#

Exhibits: (1)  
(2) . . .

Enclosures: (1)  
(2) . . .

Copy: Servicing Legal Office

**Exhibit (5-B)**  
**SAMPLE LETTER INCIDENT REPORT**

**U.S. Department of  
Homeland Security**

**United States  
Coast Guard**



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

## MEMORANDUM

From: T.R. Jones, CDR  
CGC UNDERWAY (WMEC 911)

To: CG LANTAREA(o)

Subj: LETTER INCIDENT REPORT; INVESTIGATION OF COLLISION INVOLVING GSA  
VEHICLE NO. 2345 ON 1 SEPTEMBER 2000

Ref: (a) COMDTINST M5830.1A

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 minivan, Connecticut license plate number CGA 82, on 1 September 2000 at New London, CT. Exhibit (1) is a copy of the complete local police accident report. Exhibit (2) is the SF-91a completed for the accident. Exhibit (3) is the injury report for the driver of the GSA vehicle, ENS L. Ed Foot, 0000, USCG.

2. At approximately 1100, on 1 September 2000, ENS Foot was driving GSA vehicle no. 2345 westbound on I-95 in New London, CT. ENS Foot was en route to a meeting in New Haven, CT, in which he was to represent USCGC UNDERWAY. ENS Foot's vehicle was in the left lane while a blue Plymouth minivan, owned and operated by Mr. John Q. Public, was in the right lane. The collision occurred when Mr. Public apparently without signaling or checking for vehicles overtaking in the left lane, attempted to change lanes from the right to left lane. ENS Foot noticed the change as the Plymouth minivan began moving to the left lane, and ENS Foot applied the brakes. Because Mr. Public's vehicle was only 10 feet in front of ENS Foot in the GSA vehicle when Mr. Public began to change lanes, and because ENS Foot was traveling at the posted speed limit (55 mph), ENS Foot could not stop the GSA vehicle in time to avoid collision. The right front bumper of the GSA vehicle hit the left rear quarter panel of Mr. Public's minivan. The police ticketed Mr. Public for failing to signal and for failing to use caution when changing lanes. ENS Foot was not ticketed (or warned) by the police.

3. Mr. Public advised that he sustained no injuries as a result of the collision, at the time of the collision, and has not, to this point reported any injuries. ENS Foot, as reflected in the injury report, sprained his right knee, and missed one day of duty. ENS Foot was wearing a seat belt at the time of the accident. His injury was in the Line of Duty and not the result of misconduct.

4. The Plymouth minivan's left rear quarter panel was damaged. Mr. Public has not submitted a claim for damage and his insurance agent advised that no claim is expected. The right headlight and front grill on the GSA vehicle will have to be replaced. The initial estimate is that repair of the GSA vehicle will cost \$1,982 and that the car will be out of service for about a month. Any authorization needed for the repairs will be handled separately by GSA.

5. The cause of the accident was the improper lane change by Mr. Public. ENS Foot has attended a defensive driving course, and defensive driving will again be stressed to the crew.

#

Enclosures: (1) New London, CT, Police Dept. report of accident 01SEP2000  
(2) SF-91a, Report of Accident in GSA Vehicle, dated 01SEP2000  
(3) Injury Report for ENS Foot, USCGA Clinic, dated 02SEP2000

Copy: Servicing Legal Office  
Motor Pool  
ENS Foot Service Record

## CHAPTER 6 FORWARDING, REVIEW, AND ACTION ON INVESTIGATIVE REPORTS

### A. GENERALLY THE FOLLOWING REVIEW POLICIES PROMOTE:

1. The validity of investigative findings;
2. The efficiency of the review process;
3. The expression of candid professional opinions of value to decision-makers and protection of the deliberative process;
4. Prompt and effective corrective actions and process improvements at appropriate levels of the chain of command; and
5. Clarity in the report and reviewer's actions for the benefit of users of the report and recipients of corrective tasking.

### B. DESIGNATION OF FINAL REVIEWING AUTHORITIES

1. Commandant. The Commandant is the Final Action Authority only for the following types of Administrative Investigations:
  - a. All Courts of Inquiry; and
  - b. All other Administrative Investigation reports involving:
    - (1) Alleged violations of the Anti-Deficiency Act (31 U.S.C. §1341);
    - (2) Possible loss or unauthorized disclosure of classified material;
    - (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, strandings, groundings, explosions, and fires, involving Coast Guard vessels whose length exceeds 65 feet. The term "significant" as it is used here is intended to refer to those cases for which action on a lower level of authority would be inappropriate, including all casualties that meet the requirements to be categorized Class A or Class B mishaps, pursuant to the Safety and Environmental Health Manual, COMDTINST M5100.47;
    - (5) Other significant aviation, cutter, motor vehicle, personnel, or shore activity casualties *where corrective action will most appropriately rest with* a responsible headquarters program manager; or
    - (6) Any matter, having been referred to the Commandant for Final Action by a flag officer that is a reviewing authority, upon which the Commandant elects to take final action, due to its service-wide importance.

Note: The Commandant may, as a matter of discretion, elect not to take Final Action and return the Administrative Investigation to the referring officer or another officer for final action.

2. Other Authorities.

- a. Except as specified in paragraph 1 above, Area Commanders, District Commanders, MLC Commanders, the Commanding Officer of the Deployable Operations Group and Units with a Staff Judge Advocate assigned have authority to take Final Action on all Administrative Investigations that are required by this manual and that were convened by themselves or by subordinate units. *See* Article 2.B, D, and E.
- b. This authority to take Final Action may be delegated to officers or civilian officials equivalent or senior in the command hierarchy to the Convening Authority.
- c. Final Action for investigations that are not required by this manual shall be taken in accordance with the directive requiring the investigation. If this manual or any other directive does not require the investigation, the Convening Authority may take Final Action unless otherwise directed by a superior officer.

**C. RESPONSIBILITIES OF THE CONVENING AUTHORITY**

1. Upon receiving a report of investigation, the Convening Authority shall ensure that it is complete and meets the needs of the Coast Guard using the guidance in this manual and other relevant directives. If Final Action by the Convening Authority is authorized, the Convening Authority may take Final Action as described in Article 6.E. below. If the Convening Authority does not have authority to take Final Action on the investigation, or otherwise determines that action on the investigation at a higher level of command is appropriate, the Convening Authority shall review the investigation as described below, and forward the report via the chain of command to the appropriate level of command for Final Action.
2. The Convening Authority's endorsement shall also include a narrative summary of the significant findings of fact. Because the Final Action determination on an Administrative Investigation is not considered "deliberative," it is generally releasable under the FOIA. For that reason, use of personal information protected by the Privacy Act is discouraged – titles rather than names should be used wherever possible and social security numbers should not be referenced in the Final Action letter.
3. Accordingly, Convening Authorities are required to consult their servicing legal office before signing as final reviewing authorities, or signing an endorsement in preparation for forwarding an IR for further review. The Convening Authority shall forward, with the endorsement, a sufficient number of full copies of the IR, including its exhibits and enclosures and the Action of the Convening Authority, so that each level of review may retain a complete copy. If the original documents cannot be forwarded (for example, because the IR is being used in lieu of a pretrial investigation) a copy may be used and marked to indicate the location of the original record.
4. At any time prior to endorsing the investigative report, in consultation with the servicing legal office, the convening authority may forward the investigation in total or in part in advance to a claims settlement authority as necessary to address claims or litigation matters.
5. A Convening Authority who closes an investigation after receipt of an LIR that does not require Final Action by higher authority will forward a copy of the LIR to the next

commanding officer in the chain of command with a Staff Judge Advocate (and copy the Staff Judge Advocate).

#### **D. RESPONSIBILITIES OF REVIEWERS**

##### **1. Review the Report.**

- a. Upon receipt, each reviewer in the chain of command shall review the report to determine whether it complies with this manual and otherwise adequately addresses the needs of the Coast Guard. If it does not, the Reviewer may either return the report to a subordinate command for further investigation or other corrective action, or may independently gather evidence to ascertain additional relevant facts.
- b. Each Reviewer shall ensure that the report, or applicable portions, has been circulated for comment as appropriate to any commands at the appropriate organizational level that have cognizance over significant matters in the report. For example, the report of an investigation convened by a District unit that suggest faults or corrective action by an MLC command should be provided to the MLC Commander as part of the review by the District Commander or Area Commander. Comments should be enclosed or summarized in the Reviewer's endorsement.
- c. Each Reviewer must also ensure compliance with any other directive applicable to the specific report. For example, for claims investigations or boards of redress of injuries to property, the applicable provisions of the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9 or Article 139, UCMJ, may govern the review. For investigations into the loss, or possible compromise of classified information, the applicable provisions of the Classified Information Management Program COMDTINST 5510.23 (series) will govern the review.
- d. The first Reviewer in the reviewing chain with an assigned Judge Advocate shall also verify that all of the report is "legally sufficient," that is, that the findings are supported by evidence as required by this manual, that all relevant issues have been adequately addressed, and that no inappropriate material or statements have been included. This function may be performed by non-lawyers, but must be done in coordination with, and with advice of, legal counsel appointed to the investigation.

##### **2. Contents of Intermediate Reviewers' Endorsements.**

- a. Each intermediate reviewer (but not the Convening Authority or the Final Action Authority) shall forward the IR with an endorsement in conformity with the Coast Guard Correspondence Manual, COMDTINST M5216.4 (series) that includes:
  - (1) A statement of approval, disapproval, or specific amendments to each finding of fact, opinion, and recommendation, as well as the reasons for any disapproval or amendment. The endorsement may also include supplementary findings of fact and supplementary evidence or materials, including comments received from other affected commands, as enclosures;
  - (2) Any additional comments regarding the matter; and
  - (3) A statement of any corrective actions taken or anticipated but not previously documented ("corrective actions" include recommendations made to authorities by

means other than the endorsement). The intermediate reviewer may issue orders for corrective action by copy of the endorsement or by other means.

- b. A Party to an investigation should be given an opportunity to object to, explain, or request a supplementary hearing to challenge any new *evidence* offered by reviewers that may adversely affect subsequent action with respect to them. An opportunity to review non-evidentiary comments and to respond, in writing, to such comments is sufficient; Parties need not be given opportunity to have a hearing with respect to comments received by the reviewing authority.
- c. Intermediate reviewers' endorsements shall adhere to any restrictions on content applicable to the IR itself, whether such restrictions stem from this manual, the Convening Order, or some other authoritative source. Consistent with Article 6.C., above, the intermediate reviewer shall retain a complete copy of the IR, then forward, with the intermediate reviewer's endorsement, a sufficient number of full copies of the IR so that each level of review may retain complete copy. Any intermediate reviewer forwarding an IR to the Commandant for review shall identify the specific reasons that require or justify action at the Commandant's level. For such reports, the original and one copy of the IR, with, exhibits, enclosures, and endorsements, must be forwarded to Commandant (CG-0944) for staffing and administrative coordination.

#### **E. ACTION OF THE FINAL ACTION AUTHORITY (FINAL REVIEW)**

1. Routine Investigations. The Final Action may be appended to the underlying investigation by the Final Action Authority who shall approve or disapprove the findings or fact, and may make additional findings of fact warranted by evidence contained in the investigation. The investigating officer's opinions and recommendations need not be addressed except to the extent necessary to properly resolve issues and take action. When directing an action, the Final Action Authority shall state that it is based on the approved or additional findings of fact.
2. Other Investigations.
  - a. Format. The Final Action should be a stand-alone document in any case in which the Commandant is the Final Action Authority, in most investigations otherwise, and particularly in investigations in which interest outside the Coast Guard is anticipated, the Final Action will have broad Coast Guard impact, or it will be widely disseminated. The Final Action Authority shall take Final Action in a format similar to that shown in Exhibit 6-B. Final Action determinations are generally releasable under the FOIA and are subject to discovery in litigation. However, unless the Final Action Authority expressly adopts the findings of fact, opinions or recommendations in an IR or LIR, those items remain "deliberative" and are subject to being withheld (redacted) in any subsequent litigation discovery request or FOIA release. For this reason, pertinent facts should be summarized in a "stand-alone" narrative statement, not adopted, by the Final Action Authority. This process will preserve the important distinction, in litigation or FOIA requests, between factual information (exhibits), which generally belongs in the public domain and deliberative input, which is generally privileged.

- b. Restatement of the Investigation. Similarly, to the extent that the Final Action Authority agrees with underlying opinions and recommendations, the Final Action letter should restate opinions and require action on recommendations with which the Final Action Authority agrees. It is neither necessary nor desirable – in the context of the Final Action letter—to reject or downplay any finding of fact, opinion, or recommendation with which the Final Action Authority disagrees. The practice of expressly adopting some, but not all, of the finding of fact, opinions, and recommendations subjects our internal, deliberative process to external disclosure. The practice of expressly rejecting such deliberative input in an unprivileged forum is not appropriate may have a chilling effect on the frank input necessary to sufficiently inform decisions by the Final Action Authority, and only adds delay to the release of the Final Action determination. To the extent that the Final Action Authority finds it desirable to disagree with the finding of fact, opinions, recommendations or comments of the Investigating Officer/Board, Convening Authority, and/or any intermediate Reviewers, the Final Action Authority may do so, but shall do so separately from the Final Action determination/document.
3. Recommendations. Recommendations are inappropriate in a Final Action document because recommendations are addressed to seniors in the reviewing chain and the Final Action Authority *directs* action to be taken by subordinates in the chain of command. To the extent that the Final Action Authority wishes to propose—but not order—certain actions, those suggestions should be addressed separately.
4. Additional Considerations Involving Claims. If a purpose of the investigation is to investigate incidents that result in, or may be likely to result in, claims by or against the U.S. government (or matters relating to civil litigation) that arise from Coast Guard activities, legal counsel will provide guidance to the investigation about the specific actions that should be taken to serve those needs. In particular, it may only be appropriate for the Final Approving Authority to take administrative action to remedy the immediate issues that are the subject of the investigation, and conclude it, while claims issues are forwarded to the claims settlement authority for disposition.
5. These principles discussed in Article 6.E., above, with respect to the context of the Final Action are particularly important where the Commandant is the Final Action Authority because those actions have service-wide interest and application, and there is no higher level review within the Service.

## **F. COMMANDANT AS THE FINAL ACTION AUTHORITY**

1. Procedure.
  - a. Commandant (CG-0944) should assign a control number to the report and forward it to the Headquarters directorate with primary cognizance of the subject matter that requires Commandant Final Action. That office shall solicit comments from other involved directorates and shall prepare the Final Action memorandum.
  - b. The directorate preparing the final action memorandum shall provide a draft



final action for review and comment by (CG-0944) prior to completing and signing the final action.

- c. Commandant (CG-1) shall review all Reports of Investigation for Class A or B Mishaps as defined in Chapter 2 of the Safety and Environmental Health Manual, COMDTINST M5100.47 for which a Mishap Analysis Board (MAB) has been conducted. Any significant differences between the findings of a general use Administrative Investigation report and the findings of a limited use safety investigation shall be reported to the Chief of Staff for resolution.
2. Context. The principles discussed in Article 6.E., above, with respect to the context of the Final Action are particularly important where the Commandant is the Final Action Authority because those actions have service-wide interest and application, and there is no higher level review within the Service.
  3. Signature.
    - a. The Chief of Staff, Assistant Commandants, the Judge Advocate General, and Directors of Headquarters Directorates may take Final Action on reports identified in article 6.B.1. that are within their cognizance, by direction of the Commandant, after obtaining concurrence from other affected directorates and the Judge Advocate General. This authority may be further delegated, as appropriate, to Headquarters flag officers and SES members, but may not be further re-delegated. If the officer exercising Final Action authority disagrees with or contradicts an opinion or action of an intermediate reviewing authority, the final action must be signed by an officer of equivalent or higher rank than the intermediate reviewing authority.
    - b. The Commandant may reserve signature authority on reports identified in article 6.B.1., as for example where a subordinate Commander recommends personal action by the Commandant.
  4. Tracking Corrective Measures.
    - a. For reports for which the Commandant is the Final Action Authority, the IR will be received and coordinated through Commandant (CG-0944), per Article 6.F.1. above. Once the Commandant (or his delegate) has taken Final Action on the IR, the Final Action and IR shall be returned to Commandant (CG-0944) for copying, routing, and filing. Commandant (CG-0944) shall deliver a copy of the complete report (with exhibits, enclosures, and endorsements, comments, and Final Action determination) to the directorate with primary cognizance over the subject matter of the investigation (the action directorate). Commandant (CG-0944) shall also deliver a copy of the report (less exhibits) to Commandant, Office of Quality and Management (CG-0931), which shall be responsible for tracking progress on action items, until completed. This is essential both to help prevent recurrence of problems and to avoid liability should similar problems repeat or occur. The action directorate will distribute action copies of the report or appropriate portions to any office tasked with corrective action by the report, and will keep the Commandant (or his delegate) informed as to progress in

accomplishment of corrective actions. the accomplishment of corrective safety actions that it deems necessary, and keep the Chief of Staff apprised of their status. Cognizant program managers shall notify Commandant (CG-113) when the corrective safety action directed by a Final Action has been completed.

## G. FOLLOW-UP ACTION AND DISTRIBUTION

1. Corrective Measures and Lessons Learned. Taking effective measures to correct deficiencies or problems or to implement work process improvements identified in an Administrative Investigation is an inherent responsibility of leadership, and is the reason why the Coast Guard expends significant effort and resources conducting investigations. For reports for which the Commandant is not the Final Action Authority, the organizational element that prepares the Final Action letter is responsible for tracking corrections, unless otherwise ordered by the Final Action Authority. Reports of Investigation can be extremely useful in identifying potential command or Coast Guard-wide problems, as “lessons learned” for training and professional development, and for other purposes. Final Action Authorities should extract and forward useful information from reports of investigation to other commands, program offices, or organizations within the Coast Guard, along with appropriate recommendations for their use. To protect the privacy of the individuals involved and promote compliance with the Privacy Act and HIPAA, personal identifiers or sensitive information should be redacted prior to distributing material from a report of investigation, unless such information is needed by, and may be disclosed to, the recipient. Servicing legal offices shall be consulted with respect to “sanitizing” sensitive information prior to broad distribution of material gleaned from reports of investigation.
2. Investigations Involving Parties (Formal Investigations and Courts of Inquiry). 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 the investigative body, and to any other material upon which the Convening Authority *action* (as distinguished from Final Action Authority action) is based, provided that such material is unclassified. When an investigation is classified, the Party may be advised through unclassified means of the unclassified portions of the proceedings as they relate to the Party and the actions of the reviewing authorities. The principle at work is that a Party is entitled to see the “record” upon which the contemplated or Final Action is or was based, pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 501, *et seq.* A Party is similarly entitled to copies of any unclassified *actions* taken by subsequent Reviewing Authorities. Such disclosure of records to a Party outside the FOIA process does not change the protected status of these materials under FOIA.
3. Other Specific Types of Investigations. Chapter 11 of this manual lists various types of investigations that may require particular follow-up actions, subsequent to that of the Final Action Authority. Chapter 7 outlines permissible and required follow-up actions with respect to injury reports, reports of illness, and LOD/Misconduct determinations.
4. Filing of Reports.
  - a. The Final Action Authority, or designee, is the custodian for, and shall retain the original of, all reports of investigation required by this manual. Such reports shall not be

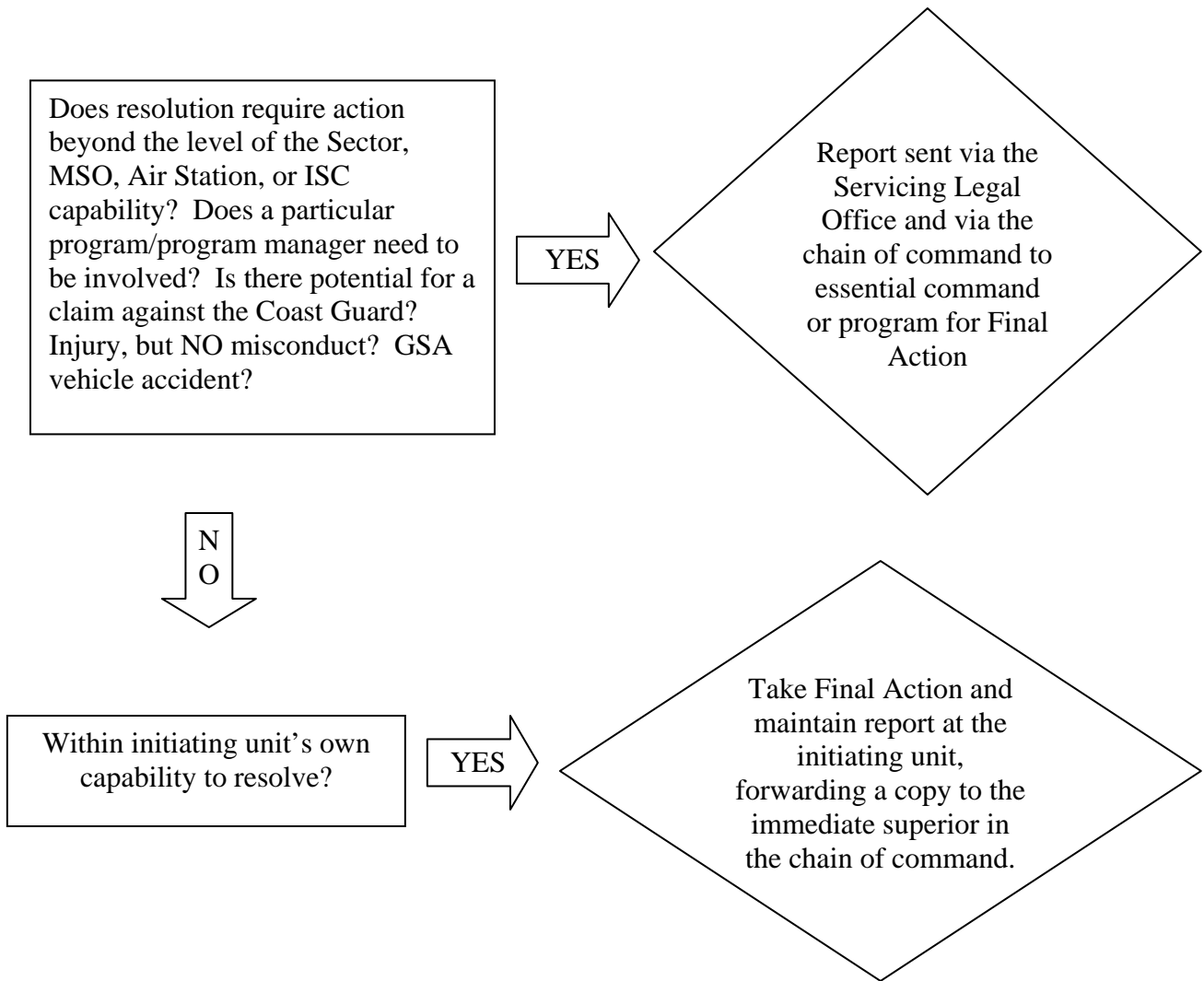
maintained in a system of records that is retrievable by the personal identifiers of subjects of the investigations. These records shall be retained and disposed of in accordance with applicable record retention and disposal regulations.

- b. For reports for which the Commandant is Final Action Authority, the final report, including enclosures, actions and endorsements, will be returned to Commandant (CG-0944) for filing. Commandant (CG-0944) will maintain custody and disposition responsibility for all reports required by this manual for which the Commandant is the Final Action Authority. In the event that the report is needed to respond to a request under the FOIA, the Privacy Act, litigation, or for other reasons, Commandant (CG-0944) will deliver the complete report to the cognizant program office for action. If the report or any part of it is released, every attempt will be made to retain the original, but if necessary to release the original, a full copy shall first be made. Upon completion of the response, the action office will return the complete report to Commandant (CG-0944). A similar procedure shall be employed by other servicing legal offices and by other commands.

**EXHIBIT (6-A)**  
**WHAT LEVEL OF REVIEW IS REQUIRED?**

**LOCAL COMMAND REVIEW**

Follow this procedure if the analysis indicates that there is no requirement for Flag review.



**EXHIBIT 6-B**

**SAMPLE FINAL ACTION MEMORANDUM BY FINAL ACTION AUTHORITY**

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:  
Fax:  
Email:

5800

**MEMORANDUM**

From: I.M. Final Action, CAPT, \_\_\_\_\_  
CG (Unit)

To: Commanding Officer, CDR  
CG (Unit)

Subj: FINAL ACTION ON ADMINISTRATIVE INVESTIGATION OF (incident) THAT  
OCCURRED AT (location) ON (date)

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1  
(b) (other applicable references as known)

1. Having considered reference (a) and other applicable references, appropriate actions are hereby ordered, and this administrative investigation is closed. A summary of the pertinent facts and my opinions based on those facts are herein provided. Progress with respect to the ordered actions shall be reported on a monthly basis to (my deputy) until all ordered actions have been implemented.

2. Factual Summary. Mr. Not Bright, a middle-aged male with a history of heart disease, alcohol abuse, and cigarette use, went fishing off the (favorite spot) in the morning of 04AUG00 in a home-made 12-foot fiberglass and wood skiff, that had a documented history of sinking. The inshore weather forecast was for thunderstorms and half-gale winds, with waves 2-4 feet, with 4-6 feet off shore. Although Not Bright typically launched from (Whatever) boat ramp, he left no float plan with his (reporting source), and is not known to have taken life jacket, radio, cell phone, flares, or emergency gear with him. Not Bright was reported to be a swimmer in his youth and knew the local waters well, after 20 years of local fishing outings. When Not Bright did not return five hours after he said he would, Reporting Source contacted the (local police). The (local police) contacted Station Ubiquitous. Station Ubiquitous initiated an "overdue" worksheet, but was able to get only minimal information from Reporting Source. Station Ubiquitous contacted Sector Oversight, which assumed Search and Rescue (SAR) mission control (SMC) responsibility for the case. Station Ubiquitous small boats were out on other missions, and made Urgent Marine Broadcasts for information regarding any sightings of Not Bright or his 12' skiff, as did Sector Oversight radio operators. PRECOMMS turned up no information. EXCOMMS were underway shortly before

dusk on 04AUG00, when Station Ubiquitous located a car and trailer matching the description of Not Bright's car and trailer, parked at (Wherever) boat ramp. Although Station Ubiquitous reported that fact to Sector Oversight (and logged the report), the Sector incorrectly labored under the mistaken assumption that Not Bright's launch had not yet been confirmed. Nonetheless, Sector Oversight ordered and provided nighttime surface search patterns for Station Ubiquitous small boats capable of operating in the extreme shallows between (Wherever) and (Whatever). One or more Station Ubiquitous small boats searched through the night, despite extremely heavy rain and intermittent thunderstorms. Sector Oversight and Station Ubiquitous SAR controllers contacted local law enforcement authorities to ask if any vessels were either underway or available to search; however, none were available and none were offered. Sector Oversight arranged for and planned for a first-light air search, however, the body of Not Bright was found on shore at (Another) island before the aircraft arrived on scene early on 05AUG00. Local law enforcement authorities took control of the body, the scene, and arranged for an autopsy. The autopsy revealed that Not Bright had drowned, but was unable to determine (or confidently estimate) the time of death. Not Bright was found without a life jacket on, with his shorts unzipped, and with a broken nose and cut face, which the medical examiner opined did not directly cause Not Bright's death, and further opined that the injuries were not likely the result of foul play, but rather an accidental fall in or on the boat. Not Bright was found to have 80% blockage of coronary arteries, and had 0.025 blood alcohol content, 30 hours after (reportedly) shoving off in his skiff.

3. Opinions. It is my opinion that Not Bright died from accidental drowning, and that while it is possible that the Coast Guard may have saved him, the Coast Guard is not responsible for his death, as explained below: (1) Not Bright may have been dead, or unconscious and underwater long before the Coast Guard was notified of his non-return from fishing. (2) Reporting Source was unable to identify where Not Bright had launched, where he was going, or any safety gear that Not Bright may have had available in his open skiff. (3) Not Bright launched his shallow, open water skiff – which had a history of sinking – in extremely threatening weather. (4) The fact that Not Bright was found with a significant blood alcohol content, with his zipper down, and a broken nose, suggests that he may have stood in his vessel to relieve himself, lost his balance and fallen – perhaps rendered unconscious. (5) While we will likely never know for certain when Not Bright actually drowned, it is certain that he would have floated on the surface if wearing a serviceable and properly-fitted life preserver. (6) That Not Bright was not known or believed to have carried any emergency equipment, and that the Coast Guard received no direct or relayed indications of a distress indicate a lack of personal responsibility on the part of Not Bright. (7) While the Coast Guard may have been more proactive in launching a (fading) daylight search, until Not Bright's car and trailer were found, there was no indication that Not Bright was even at sea, yet alone in distress. (8) Even had the Coast Guard launched a daylight search, it is not probable, let alone certain, that such a search would have found Not Bright (and found him alive). (9) Even had the Coast Guard been more aggressive in seeking a "recall" of local law enforcement authority assets to help search through the evening and night of 04AUG00, there is no probability, let alone certainty, that such a search would have found Not Bright (and found him alive). (10) The Coast Guard SAR response functioned less than perfectly, but was neither factually nor legally responsible for Not Bright's death. (11) No disciplinary action shall be taken against any Coast Guard member with respect to this incident. (12) The grit and professionalism of the Station Ubiquitous small boat crews is commendable.

4. Actions. The following actions are ordered to optimize Coast Guard SAR response in future cases, and to attempt to avoid repeat occurrences, and no fault or liability should be assumed by virtue of the fact that these actions have been ordered: (1) Sector Oversight and Station Ubiquitous shall review and comply with reference (c) regarding Urgent Marine Information Broadcasts. (2) Sector Oversight shall ensure that more than one individual is involved in the receipt, recordation and response of SAR information, to ensure that information is not “lost” in the heat of busy watch. For example, if information is received by one watchstander, and that watchstander records it, he or she shall either immediately brief a fellow watchstander on the key points or, at the first opportunity (and within one hour), a fellow watchstander shall review a verbatim audio tape of the subject conversation. (3) Station Ubiquitous Command Duty Officers (CDOs) shall return to the Station to assist Officers of the Day (OODs) whenever any of the following conditions occur (a) the CO requires it, (b) the OOD requests it, or (c) Two or more boat crews are simultaneously deployed for L/E and/or SAR missions during non-working hours. (4) Station Ubiquitous shall review and comply with crew fatigue limits in reference (c). (5) Station Ubiquitous and Sector Oversight shall, within the next three months, arrange and conduct a Commanders’ level meeting with representatives of local law enforcement authorities and fire departments to develop a Memorandum of Understanding with respect to procedures and guidelines for requesting surface and air search platforms for SAR cases. At a minimum, the Coast Guard shall provide sufficient information concerning SAR cases to local law enforcement authorities and fire departments to allow such agencies to determine for themselves whether they wish to recall officers and crews to conduct a search or to joint the Coast Guard in a SAR mission. (6) If the Coast Guard SMC has ordered or is ordering the launch of a Coast Guard air asset, unless the addition of another air asset would likely add more danger than benefit, the SMC shall advise local law enforcement authorities and fire departments and ask if their aircraft are available to assist. (7) Likewise, if the Coast Guard SMC has ordered or is ordering the launch of a Coast Guard surface asset, unless the addition of another vessel would likely add more danger than benefit, the SMC shall advise local law enforcement authorities and fire departments and ask if their vessels are available to assist. (8) The SMC retains complete discretion as to whether to ask such local law enforcement authorities and fire departments to conduct a recall of officers and crews, with recognition that if we cry “wolf” too often, we may not be able to get help when we truly need it. (9) Commanding Officer, Station Ubiquitous, shall prepare for my signature, Commandant Letters of Commendation for the boat crews who searched through the stormy night, in an unsuccessful, but nonetheless commendable effort to locate and save Not Bright from an unfortunate death.

#

Copy: (Servicing Legal Office)  
(Relevant Program Managers)  
(Reviewing Officials)  
(Relevant Units)  
(Any Parties – or their Counsel)

## CHAPTER 7 INVESTIGATION OF DISEASE, INJURY, OR DEATH

### A. PERSONNEL STATUS

1. Active Duty and Reserve Members. When a military member becomes ill or is injured, certain statutory rights or benefits accrue to the member if the disability was attributed to military service, *i.e.*, in the Line of Duty (LOD), and not due to the member's own misconduct. A report of investigation may be necessary to provide the basis for LOD/Misconduct determinations by the Coast Guard, as well as by other agencies. A LOD determination is also necessary for members who died on active duty, since certain dependents' benefits are contingent on a finding that the death occurred in the LOD.
2. Temporary Reserve Members. When a member of the Temporary Reserve is injured or dies as a result of physical injury, certain statutory rights or benefits accrue if the injury is incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty. 14 U.S.C. § 707. Investigations into the injury or death of temporary members of the Reserve shall be conducted in accordance with the provisions of Articles 7.O.1 and 7.P of this manual.
3. Coast Guard Auxiliary Members. When a member of the Coast Guard Auxiliary is injured or dies, certain statutory rights accrue if a determination is made that injury or death occurred while that member was performing any duty to which that member had been assigned by competent Coast Guard authority. See 14 U.S.C. § 832. Investigations into the injury or death of Coast Guard Auxiliary members shall be conducted in accordance with the provisions of Articles 7.O.2 and 7.P of this manual.
4. Civilian Employees. When a civilian employee of the Coast Guard is injured or dies, certain statutory rights accrue if a determination is made that injury or death occurred while that civilian employee was performing work-related duty. Investigations into the injury or death of civilian employees shall be conducted in accordance with the provisions of Articles 7.O.3 and 7.P of this manual, and as directed by Commandant (CG-121), subject to the guidance of the Office of Personnel Management (OPM) and the Department of Labor (DOL).

### B. USES OF THE LOD DETERMINATION

1. Eligibility for Physical Disability Retirement or Separation. Members who sustain disabilities that are or may be permanent may be eligible to receive certain retirement or severance pay benefits. These payments cannot be made if the disability resulted from the member's intentional misconduct or willful neglect or was incurred during a period of unauthorized absence. See 10 U.S.C. § 1207. Under the provisions of the Physical Disability Evaluation System, (COMDTINST M1850.2 (series)), physical evaluation boards are bound by final LOD determinations that are available at the time the physical evaluation board considers the member's case and which, if adverse to the member, were previously presented to the member, along with the right to a hearing and representation by counsel. PDES boards shall direct the command to conduct thorough investigations into the injury or illness of a member if the board is not satisfied that the line of duty determination



has been adequately made.

2. Reserve Medical Care/Pay and Allowances. Determinations are used to determine the eligibility of certain members of the United States Coast Guard Reserve for medical care as well as pay and allowances. *See* 37 U.S.C. §§ 204(g)-(h); and 14 U.S.C. § 705(c).
3. Lost Time. Determinations are used to identify lost time that must be made up by Coast Guard members, if inability to perform duties was because of intemperate use of drugs or alcohol, or because of disease or injury resulting from member's misconduct. *See* 10 U.S.C. § 972.
4. The Department of Veterans Affairs (VA). The VA uses the findings to determine eligibility for disability compensation and hospitalization benefits. *See* 38 U.S.C. §§ 1110, 1131, 1710, and 1712. Under their regulations, a finding by the Coast Guard that injury, disease, or death resulting from an injury or disease occurred in the LOD would be binding on the VA unless it is patently inconsistent with the requirements of laws administered by the VA. *See* 38 C.F.R. 3.1.m.
5. Payment of Survivor Benefit Plan Annuities to Surviving Spouses. A determination of whether the death of a member on active duty was in the LOD is needed in order to calculate and pay survivor benefit plan annuities under the law. *See* 10 U.S.C. § 1448(d). Even if a Commanding Officer or Officer in Charge is confident that a deceased member had no spouse, due to the possibility of such a claim, a LOD determination shall be made for all deceased members who die on active duty. There has been no change to the presumption that members were in the LOD at death. Therefore, unless there is clear and convincing evidence to rebut a LOD presumption, Commanding Officers and Officers in Charge should not make a "Not LOD" recommendation. *See* Articles 7.E, 7.M, and 7.P regarding death investigations.

### **C. WHO NEEDS LOD/MISCONDUCT DETERMINATION?**

1. Members of the Coast Guard (Regular or Reserve). Members who die or incur or aggravate an injury or disease while on active duty or traveling to or from such duty.
2. Members of the Coast Guard Reserve. Members of the Reserve who die on active duty as noted in Article 7.C.1, above, or who incur or aggravate an injury or disease while:
  - a. Performing active duty for training for any period of time, or while on inactive duty training;
  - b. Traveling directly to or from the place the member performs active duty, or inactive duty for training; or
  - c. Remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, if the site is outside reasonable commuting distance from the member's residence.
3. Temporary Members. LOD determinations are inapplicable to Temporary Members of

the Coast Guard Reserve, Coast Guard Auxiliary Members, and Civilian Employees, but rather, a different analysis applies to determine if such personnel are entitled to certain benefits. *See* Article 7-O of this manual for the appropriate standard to use when investigating the death or injury of such personnel.

#### **D. WHEN A LOD/MISCONDUCT DETERMINATION IS REQUIRED**

General findings concerning LOD/Misconduct must be made in each case in which a member of the Coast Guard, whether hospitalized or not, has a disease or injury that results in any of the following:

1. Death of a member on active duty;
2. The member's inability to perform duties for a period in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation);
3. The likelihood of a temporary or permanent disability that may entitle the member to disability benefits; or
4. Medical treatment for Reserve members regardless of the ability to perform military duties.

#### **E. HOW DEATH IMPACTS LOD/MISCONDUCT DETERMINATIONS**

Findings concerning LOD/Misconduct shall be made after the death of a Coast Guard member on active duty. *See* Article 7.P of this chapter regarding general requirements for investigation of death cases. *See* Articles 7.M and 7.N regarding special circumstances impacting death investigations.

#### **F. THE LOD DETERMINATION**

1. General Rule. LOD determination authorities shall presume that a Coast Guard member's death (on active duty), disease or injury was incurred in the LOD and not due to misconduct unless clear and convincing evidence shows otherwise.
2. Definitions.
  - a. Clear and convincing evidence. This term means such evidence as would convince an ordinarily prudent-minded person beyond a well-founded doubt. It is a higher degree than preponderance of the evidence ("more likely than not") standard, but it does not require proof beyond a reasonable doubt as in criminal cases.
  - b. Misconduct. Death, injury or disease is the result of a member's misconduct if it is either intentionally incurred or is the result of willful neglect that demonstrates a reckless disregard for the foreseeable and likely consequences of the conduct involved. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. 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.

- (1) Proximate Cause. A finding of misconduct can not be made unless the misconduct is the proximate cause of the injury or disease. 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,” presuming that the individual’s conduct actually was the cause or a cause of the injury or disease and there was no unforeseeable, superseding cause.
  - (2) Examples. If an individual is injured by an intentionally self-inflicted gunshot wound, (other than in a bona fide suicide attempt, *see* Article M.1.d of this chapter) the injury is presumptively 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 that had gone out of control (unrelated to the presence of the firearm), 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.
- c. Unauthorized Absence. Any injury or disease incurred while the member is absent without authority will be handled as “not in the LOD” unless the member was not mentally responsible at the inception of the unauthorized absence. *See* Article M of this chapter. To establish that a person was absent without authority for LOD purposes, it must be shown that the member was avoiding duty by deserting the service, or was absent without leave, as that term is defined in Article 86 of the Uniform Code of Military Justice. The defenses available under Article 86 shall be taken into consideration when determining whether a member was absent without leave for these purposes.
  - d. Authorized Travel Route. Unless otherwise directed, the route an ordinarily prudent person would take between authorized departure and destination points.
  - e. Materially Deviating. A travel route taken instead of an authorized travel route, either intentionally or due to willful neglect that an objective and prudent person would regard more as a “frolic” than “detour.”
3. Possible LOD Determinations. Two separate determinations are required. They are: (1) whether the member was in the LOD, and (2) whether the member’s death (on active duty) or injury or disease was proximately caused by his or her own misconduct. Death, injury or diseases proximately caused by the member’s own misconduct can never be said to be in the LOD. Misconduct presupposes mental responsibility for one’s actions. Mental responsibility may be absent (as in the case of suicide, *see* Article 7.M.1) or negated by other factors (such as intoxication and drug abuse, *see* Article 7.M.2). Accordingly, there are only three possible findings in a LOD/Misconduct determination, as described below:
    - a. In the LOD and Not Due to Own Misconduct. This conclusion is *presumed* unless rebutted by clear and convincing evidence that establishes the member was absent without authority; or clear and convincing evidence establishes that the injury or disease

was proximately caused by the member's own misconduct. Examples of LOD and Not Due to Own Misconduct include:

- (1) A member becomes a casualty of hostile action.
  - (2) The injury of a member while present for duty and the member's own misconduct did not proximately cause the injury.
  - (3) The injury of a Coast Guard Reserve member while performing inactive duty training or while traveling directly to or from inactive duty training and the member's own misconduct did not proximately cause the injury.
  - (4) A member dies (on active duty) due to own conduct that does not rise to the level of misconduct, either because it was not of a willful or wanton character or because the member lacked mental responsibility for his or her actions at the relevant time.
- b. Not in LOD but Not Due to Own Misconduct. This result is obtained when a member was not in LOD status (because the member was absent without authority or was materially deviating from an authorized travel route) BUT whose misconduct did not proximately cause the injury or disease. Examples of Not LOD but Not Due to own Misconduct include:
- (1) The death of a member while absent without authority in which the member's own conduct did not proximately cause the injury; *e.g.*, the member is struck by a car, or is the victim of a felonious assault.
  - (2) A Coast Guard Reserve member incurs an injury while returning home after performing inactive duty training. The accident occurred at a time and place constituting a material deviation from the member's authorized travel route. However, the member's own conduct did not proximately cause the injury.
- c. Not in LOD because of Own Misconduct. The proximate cause of the injury or disease was the member's own misconduct. It does not matter if the member was absent without authority or otherwise not in a duty status. In this category, the member's misconduct precludes the member from being within the LOD. Examples of Not LOD because of Own Misconduct include:
- (1) The death of a member while present for duty; however, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.
  - (2) The injury of a member while absent without authority, during which, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.
  - (3) The injury of a Coast Guard Reserve member while performing inactive duty training; however, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.

## **G. RESPONSIBILITY TO CONVENE A PRELIMINARY INQUIRY**

1. For Members of the Coast Guard. The commanding officer of the unit of the member who

is the subject of the LOD/Misconduct investigation is responsible to convene a preliminary inquiry or investigation. If the command is unable to conduct such an inquiry or investigation, a request shall be submitted to superior authority to convene the investigation. When Coast Guard personnel from more than one command are injured in an incident that must be investigated under this manual, a single investigation of the matter should be conducted whenever practicable. The commanding officers involved should agree upon which command will take the lead to investigate and process the case. The agreement will be noted in the Investigative Report. Conflicts may be resolved by referring the matter to the least senior common (shared) superior authority.

2. For Members of Other Services. Whenever a member of an armed service other than the Coast Guard is injured or incurs disease under circumstances that warrant investigation under this manual, 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 by the other service, an appropriate investigation under this instruction shall be convened – using this manual for guidance - and the report thereof forwarded in accordance with the request. If the other service desires that its administrative procedures govern the investigation (*i.e.*, conducted under the JAGMAN instead of under the AIM), then the Coast Guard command may decline to investigate but must notify the other service of that decision. No further action need be taken within the Coast Guard after the report has been forwarded to the other service for consideration and action.

## H. TYPE OF INVESTIGATION REQUIRED

1. Preliminary Inquiry. Each death (on active duty), injury or disease requiring LOD/Misconduct determinations, as discussed in Article 7.D, above, will be the subject of a preliminary inquiry, as described in Article 1.F.4, above. The findings of the preliminary inquiry determine the appropriate type of investigation required.
2. Circumstances Under Which No Further Investigation Is Required. If, following a preliminary inquiry, the situations set forth below occur, the member's commanding officer may make an administrative determination that the death, injury or disease was incurred in the LOD and not due to member's own misconduct. In that case, there would be no need to convene a LOD investigation. The commanding officer or officer in charge shall report a death "in LOD" determination to the next superior command via Letter Incident Report (LIR). However an "in LOD" determination in a non-fatality investigation need not be reported further along the chain of command, unless specifically required by a superior command. There is no documentation requirement for an administrative determination in a non-death case made in accordance with this section, except that the finding should be noted in the unit log and in the member's personnel data record (PDR) as an Administrative Remarks (CG -3307).
  - a. Casualties stemming from hostilities with an enemy (but see Article 7.P.1.d(4) of this Chapter for other investigative requirements).
  - b. Member dies on active duty from injury or disease without any indication of unlawful

status (AWOL) or misconduct on the part of the deceased member. Although no investigation is required, a LOD determination pursuant to a preliminary inquiry is still required to be made by the Command in such circumstance.

- c. Injuries or diseases of members, if (1) either the ailment is of natural origin that does not involve misconduct, drug or alcohol abuse, or the injury is a simple injury (i.e., a sprain, contusion, or minor fracture) not likely to result in a permanent disability; and (2) the disease or injury did not happen while the member was absent without authority and was not caused by the member's own misconduct.
- d. Example. An active duty member playing softball at lunch with the unit softball team sprains her ankle after sliding into third base. Due to the nature of the injury, and the nature of the member's duties, the clinic sends her home for two days "sick in quarters." Under Article 7.D, a LOD/Misconduct determination is required, due to the member's inability to perform duties for a period in excess of 24 hours. The member's commanding officer assigns an ensign to do a preliminary inquiry, telling him to give the CO and XO a verbal brief on his findings. The ensign interviews the member, the team captain, and the treating physician. He reports to the CO and XO that the member was on duty, no misconduct was involved, and the physician does not believe that the injury will result in a permanent disability. Based on this report, the CO finds that the injury was incurred "in the LOD," and "not as a result of the member's own misconduct. The XO documents this finding in the unit log, and the member's PDR by preparing an Administrative Remarks (CG-3307). No further action is necessary.

### 3. Use of Injury Reports or Letter Incident Reports (LIR).

- a. An Injury Report (CG-3822), a Report of Illness of Reservist (CG-4614), or a LIR with such an injury report form as an enclosure, may be used in any case in which LOD/Misconduct findings are required by this manual, and in which:
  - (1) The commanding officer, based upon the findings of the preliminary inquiry, finds that the injury or disease was incurred "in the LOD" and "not as a result of the member's own misconduct"; and
  - (2) The likelihood of permanent disability or other entitlement to disability benefits to the member may be involved.
- b. Samples of these forms, and instructions for completing them are provided as Exhibits (7-G) and (7-H) of this manual.
- c. LIRs shall be processed and acted upon in the same manner as Reports of Investigation, per Article 7.J, below. Once approved by the Final Action Authority, a LIR will be forwarded to the member's command, for filing in the member's PDR, with a copy to CGPC-adm-3 for filing in the official PDR.

### 4. Investigative Report.

- a. A commanding officer must convene an investigation, even after a preliminary investigation, to make findings concerning LOD/Misconduct when:

- (1) The death (on active duty), injury or disease was incurred under circumstances that suggest that a finding of misconduct might result;
  - (2) The death (on active duty), injury or disease was incurred under circumstances that suggest that a finding of “not in the LOD” might result;
  - (3) The death (on active duty), injury or disease was incurred under circumstances in which lack of mental responsibility (*see* Article 7.M.1) may be inferred due to apparent likelihood of actual or attempted suicide, intoxication or drug use;
  - (4) There is a likely chance of permanent disability and the commanding officer considers the convening of an investigation necessary to ensure an adequate official record is made concerning the circumstances surrounding the incident; or
  - (5) The injured member is in the Coast Guard Reserve and the commanding officer considers an investigation necessary to ensure an adequate official record is made concerning the circumstances surrounding the incident.
- b. Exhibit (7-B) is a guide for investigating officers conducting a LOD investigation under this manual. Article 7.M of this manual contains guidance on LOD/Misconduct determinations in various situations. Exhibits (7-E) and (7-F) are check-off lists for completing injury or illness investigations for Regular and Reserve members of the Coast Guard, respectively.

## I. CONVENING AUTHORITY’S ACTION ON THE INVESTIGATION

1. Action by Convening Authority. In each case in which a member of the Coast Guard has died on active duty or suffered an injury or contracted a disease, and the circumstances are such that an investigation was required and conducted under the provisions of this manual, 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 the death, injury or disease was incurred “in LOD” 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 occurrence of the death, 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 the LOD” and “not misconduct”).

The Convening Authority may take this action regardless of whether it differs

from or concurs with an opinion expressed by the Investigating Officer or intermediate reviewing official(s) making recommendation(s) to the Convening Authority.

- b. The Convening Authority may express, in acting on the Investigative Report, any of the three permissible findings described in Article 7.F.3, above (LOD and Not Due to Own Misconduct; Not LOD but Not Misconduct; or Not LOD because of Own Misconduct) when:
- (1) The Administrative Investigation was directed to, and did inquire into, the circumstances surrounding the occurrence of the death, 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 or, in the case of a deceased member who died on active duty, a Representative of a surviving spouse was similarly accorded the rights of a Party with respect to notice of and opportunity to participate in a hearing.

The Convening Authority may select one of those three outcomes regardless of whether it differs from or concurs with an opinion expressed by the Investigating Officer or intermediate reviewing official(s) making recommendation(s) to the Convening Authority.

- c. The Convening Authority shall afford the member (or in the case of a member who died on active duty, the Representative of the member's next of kin (NOK) or spouse) a hearing, or shall forward the Investigative Report to the command to which the member is (or was) then attached so that a hearing may be afforded when:
- (1) The member (or in the case of a member who died on active duty, the Representative of the member's surviving spouse) was not designated a Party before the Administrative Investigation, or having been so designated, the member (or the surviving spouse's Representative) was not fully accorded Party rights; and
  - (2) Upon review of the Investigative Report, the Convening (or higher) Authority has substantial *concerns* that the death, injury or disease of the member was incurred not in the LOD or was caused by the member's own *misconduct*.

Convening Authorities should consult with their servicing legal offices prior to taking either course of action described immediately above in Articles 7.I.1.b and c. Note: If there is no evidence to indicate that the deceased member was married, at the time of death, a hearing is not required.

## 2. LOD/Misconduct Informal Hearings.

- a. Elements of Informal Hearing. The hearing required by the above Article is an informal appearance before the commanding officer or Convening Authority, designed to ensure



that the member (or in the case of a member who died, the Representative of the member's surviving spouse) has the opportunity to present any information he or she wishes the commanding officer or Convening Authority to consider on the issue of a potential adverse "not LOD" or "misconduct" finding. An informal LOD/Misconduct hearing shall include the following requirements:

- (1) The member (or in the case of a member who died on active duty, the Representative of the member's surviving spouse) shall be advised that questions have arisen concerning the circumstances under which an injury or disease was incurred and that LOD/Misconduct determinations must be made;
  - (2) In the case of a member who died on active duty, leaving a surviving spouse, the spouse (or spouse's Representative) shall be advised that a determination of not LOD, whether by reason of misconduct or otherwise, will bar payment of all or part of a survivor benefit plan annuity;
  - (3) If a (living) member is suspected of having committed an offense, advice as required by Article 31(b), UCMJ, shall also be given;
  - (4) The member (or spouse's Representative) shall be advised of the right **not** to provide information that the member may have (or may have had) regarding the origin, occurrence, or aggravation of the injury or disease (or death); and
  - (5) The IR, as well as any statement, record, or other evidentiary matter received or considered by the Convening Authority shall be made available for inspection and copying by the member (or spouse's Representative), well in advance of the hearing. This disclosure requirement does not extend to analysis, opinions and recommendations, but is limited to factual matters.
- b. Documentation.
- (1) Exhibit (7-A-1) shall be used to notify the member (or 7-A-2 for a spouse's Representative) of these rights prior to the hearing, and to document his or her elections concerning these rights. A copy of the notification and the signed acknowledgement of rights shall be included in the investigation as enclosures to the commanding officer's endorsement.
  - (2) The member (or surviving spouse, via the spouse's Representative) shall be provided a Privacy Act statement in accordance with the provisions of this manual. *See Exhibits (7-C-1 and 7-C-2).*
- c. Written Materials in Lieu of a Hearing. The member (or spouse's Representative) may elect to provide written materials in lieu of a personal appearance at the hearing before the Convening Authority.
- d. Consultation with Counsel. The member shall in all cases be provided the opportunity to discuss the Report and all other evidentiary materials considered with counsel (or with another person by choice of the member). For members, the servicing legal office will arrange for such advice, if the member desires. In most cases, a telephonic consultation is sufficient; however, where counsel is geographically located in close proximity to the command, personal visits are preferred. The member's command shall provide the attorney assigned (or another individual chosen by the member) the same

package presented to the member. A surviving spouse may consult with the counsel or person of his or her choice (at his or her own expense).

- e. Representation at Hearing by Counsel. In all hearings where the injury or disease might result in entitlement to disability benefits, the member shall have the right to be represented by counsel (assigned military counsel, or civilian counsel at the member's expense). In all death cases, the surviving spouse may be represented during the proceedings by civilian counsel, at the spouse's own expense.
- f. Presentation of Information. The member (or spouse's Representative) shall be given full opportunity to present any relevant matter in his or her behalf (or on behalf of a deceased member), either in the form of new information, or as explanation or rebuttal of previously entered evidence. Convening Authorities shall ensure the member (or spouse's Representative) is given a reasonable period of time to prepare for the hearing, and that time should not begin to "run" until the member (or surviving spouse) is able to fully participate (either personally or in conjunction with his or her counsel or Representative) in the process.

## **J. REVIEW, APPROVAL & RECORDING OF LOD/MISCONDUCT FINDINGS**

1. Action by Officer Exercising Final Action Authority. Unless the Convening Authority is empowered to exercise Final Action Authority, the Investigative Report shall be forwarded through the chain of command to an officer so authorized. This officer or official may take any action on the report that could have been taken by the Convening Authority. With respect to conclusions concerning LOD/Misconduct, the Final Action Authority shall indicate approval, disapproval, or modification of investigative report, or else return the record for further investigation. As Final Reviewing Authority, article 6.E of reference (a) requires that a "stand alone" final action memorandum summarizing the facts upon which your final action and is based. The final action memorandum should not expressly incorporate information or simply approve the findings of fact contained in prior endorsements or the investigative report. By ensuring the final action memorandum is complete and stands alone, the law will protect from release those documents reflecting the underlying critical review and deliberative process. Opinions and recommendations should not be addressed in the final action except to the extent necessary to properly resolve issues and to take action.
2. Legal Review of Adverse Determinations for Legal Sufficiency. In cases where determinations are adverse to the member (or surviving spouse), Final Action shall only be taken after a judge advocate renders a written opinion concerning the legal sufficiency: of the prior findings, opinions, recommendations in the investigation; of the recommendations by the Convening Authority and any intermediate reviewing officials; and of the legal support for a proposed Final Action.
3. Adverse Determinations and Right to Appeal.
  - a. In any case where the Final Action is adverse to the member (or surviving spouse), the findings of "not in the LOD" and/or of "misconduct" are subject to written appeal to the Judge Advocate General (Commandant (CG-094)). 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 following receipt of the Final Action.

- b. In the case of a member who died on active duty, the Representative of the member's surviving spouse shall be given 20 working days in which to file an appeal. In the absence of good cause shown, the Representative's right to appeal is waived if a written appeal is not delivered by the Representative to the deceased member's commanding officer or officer-in-charge by the end of the twentieth working day following receipt of the Final Action.
  - c. Such appeals must be in writing, and shall be forwarded via the member's chain of command. The officer who took Final Action on the investigation shall ensure that the complete record accompanies the appeal when it is routed, through the chain of command to Commandant (CG-094). Commandant (CG-094) actions on appeal shall be edited to remove any personal references ("sanitized"), indexed, and published for the future guidance of Convening and Final Action Authorities.
4. Documentation of Determination. In addition to the Final Action (or decision on administrative appeal), the ultimate determination of LOD/Misconduct will be entered into the unit log and into the member's service record.

#### **K. RELATIONSHIP TO DISCIPLINARY ACTION**

An adverse determination as to LOD/Misconduct is not a punitive measure. Disciplinary and other adverse administrative actions, if warranted, must be taken independently of any such determination. However, a single Administrative Investigation may be convened and used to aid decisions on both LOD/Misconduct and disciplinary matters. While an Administrative Investigation may be properly convened to determine issues of LOD/Misconduct in addition to disciplinary and performance of duty issues, a LOD/Misconduct Hearing is distinct and cannot mete out sanction of any kind. Conversely, a favorable determination as to LOD/Misconduct neither precludes disciplinary or adverse administrative action, nor carries any bearing, in and of itself, with respect to issues of guilt or innocence under the UCMJ, or toward the ultimate issue of desirability to retain a member in a separation proceeding. However, the loss of rights or benefits resulting from an adverse LOD/Misconduct determination may be relevant to the punishment awarded in a disciplinary proceeding and, at the request of the member, may be admissible as matters in extenuation and mitigation. Of course, the evidence used to reach a LOD/Misconduct determination is admissible in accordance with the rules of proceedings other than the LOD/Misconduct Hearing.

#### **L. WHEN CLAIMS ARE INVOLVED**

1. Examination of Reports. Careful preparation and examination in consultation with legal counsel must occur in any report involving injury or death in which 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 under the Federal Medical Care Recovery Act. 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 LOD investigations with claims investigations. *See* Article 1.G. Facts elicited in a claims investigation may be sufficient and may be used as a basis for determining “in LOD and Not Due to Misconduct” findings in the unit log and in the member’s service record or completing injury reports or Letter Incident Reports as authorized in Article 7.H, above. However, in certain circumstances, investigations should not be conducted as a LOD investigation, but rather should be conducted solely as a claims investigation pursuant to Coast Guard Claims and Litigation Manual, COMDTINST M5890.9. Convening authorities shall consult with their servicing legal office to determine which type of investigation should be conducted (and as often as necessary thereafter). *See* article 3.B.2.a (13).
3. Forwarding Copies of Reports in Particular Cases. 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 command retaining the original copy shall ensure that a legible copy with all enclosures is forwarded for review. This same practice applies when the original record is forwarded for claims purposes to another command, such as to Commandant (CG-1012) in a Federal Medical Care Recovery Act case.

## **M. LOD/MISCONDUCT DETERMINATIONS FOR VARIOUS SITUATIONS**

### 1. Mental Responsibility.

- a. General Rule. A member may not be held responsible for his or her acts and the foreseeable consequences if, as the result of mental defect, disease or derangement, the member was unable to appreciate the nature of such acts. In addition, a member may not be held responsible for his or her acts or the 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, the member was unable to comprehend the nature of such acts or to control his or her 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.
- b. Certain Induced Impairments. An injury that 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 that impairment was as the result of wrongful (e.g., voluntary and without prescription) ingestion of a hallucinogenic drug or other substances (i.e. controlled substance) that the member knew or should have known or believed or intended would cause an 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 may also support a finding of misconduct.
- c. Presumption. There is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary, in most cases, for an Administrative Investigation to seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that the member

was not mentally responsible at that time. Such evidence regarding the lack of mental responsibility may include the specific 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 that case, lack of mental responsibility must be established by clear and convincing evidence (*See* definition at 7.F.2.a) before the presumptions of “in LOD” and/or “Not Due to Own Misconduct” may be overcome. In such cases, evaluation by a psychiatrist may be required.

d. Suicide and Suicide Attempts.

- (1) In view of the strong human instinct for self-preservation, an apparent suicide or a bona fide suicide attempt (as distinguished from other acts of intentional self-inflicted injury, or suicidal “gestures”) or substantial evidence of such an attempt is sufficient to rebut the presumption of mental responsibility and raise the inference of lack of mental responsibility. In these cases:
  - (a) further evidence must be sought on the question of mental responsibility, including, in most circumstances, expert psychiatric evaluation (or a psychological autopsy); and
  - (b) the determination of whether the death, disease or injury resulting from the suicide or suicide attempt was due to misconduct must necessarily rest upon other evidence (which, in order to establish misconduct, would have to establish mental responsibility by clear and convincing evidence).
- (2) Intentional self-inflicted disease or injury, not prompted by a bona fide suicidal intent, is at most a suicidal gesture. Such disease or injury, unless lack of mental responsibility is otherwise inferred from the facts established to an extent to rebut the presumption of mental responsibility, is deemed to be incurred as the result of the member’s own misconduct.
- (3) Where a suicide, 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 actual time of the suicide attempt. If the member was mentally responsible at the time that the unauthorized absence (“UA”) began, then the member may be found to have been not in LOD at the time of the suicide, suicide attempt, or suicidal gesture. See Article 7.M.1.e.(2), below.

e. Specific Circumstances.

- (1) Except as provided in Article 7.M.1.b (wrongful ingestion of a controlled substance leading to impairment and death or disease or injury), if a qualified medical authority, recognized by the Convening Authority, determines that a member was not mentally responsible at the time death, injury, disease, or incapacity was incurred, a finding of misconduct shall not be made.
- (2) If the death, injury, disease, or incapacity for duty occurred during the member’s

*unauthorized absence*, the member's mental responsibility at the start of the unauthorized absence ("UA") must be considered before a LOD/Misconduct determination is made. Except as provided in Article 7.M.1.b. (wrongful ingestion of a controlled substance leading to impairment and death or disease or injury), a member is not absent without proper authority if, at the inception of such absence, the member was not mentally responsible for going UA, and this lack of mental responsibility continued without interruption until the time of the death, injury or disease. Under such circumstances, the absence should be excused as unavoidable and a finding of not in the LOD should not be made on the basis of the excusable absence.

## 2. Intoxication and Drug Abuse.

### a. Intoxication.

- (1) **General Rule:** When an injury or ailment is incurred as the proximate result of prior and specific voluntary intoxication, the presumption of not misconduct may be rebutted, and the death, disease, or injury may be determined to have been incurred as the result of misconduct. The issue is determined by the degree of impairment, and the nature of the conduct or activity undertaken while in that state of intoxication and the overall circumstances. In order for intoxication to be the basis for a determination of misconduct respecting a related death, disease, or injury, there must be clear and convincing evidence that: (a) the member's physical or mental faculties were impaired due to intoxication at the time of the death, disease, or injury; (b) 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 (c) the impairment was the proximate cause or a proximate cause of the injury.
- (2) In order to be able to conclude that the member's faculties were impaired, the extent of the impairment was grossly negligent, and/or that such impairment was in-fact the proximate cause of the injury, reliance on accepted medical principals or expert evaluation may be necessary.
- (3) **Examples.** A member voluntarily consumes alcohol and becomes intoxicated at a "wetting down" party. With a blood/alcohol level of 0.14, the member is legally intoxicated in the jurisdiction.

Scenario 1: On the walk leading from the party to a waiting taxicab, the member trips on a small crack in the sidewalk and falls, producing a disabling injury. Depending on all of the facts this may not be misconduct, even though, if sober, the member would not have fallen, since the activity – tripping over a crack in the sidewalk while walking on a sidewalk while intoxicated—may not be grossly negligent.

Scenario 2: The member leaves the party and drives home. On the way, the member has a single car accident by failing to negotiate a turn in the road. No mechanical or traffic-related evidence "explains" the accident. These facts support a finding of misconduct since driving under the influence of alcohol

constitutes the kind of activity that 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 that the accident was a result of being drunk. This is a situation where the presumption of not misconduct is rebutted, where proximate causation may be inferred from the circumstances of impairment and conduct, and where a finding of misconduct is based on the degree of impairment coupled with the type activity engaged in.

Scenario 3: In the same fact situation, the member reaches a blood/alcohol level of 0.28. At this level of intoxication, it may be that undertaking virtually any activity constitutes grossly negligent conduct. However, that depends on the member and the specific circumstances. In this case, the fall on the cracked sidewalk might still be not misconduct. Alternately, if the injury occurred while engaging in conduct that may not be unsafe for sober persons, but is obviously hazardous for intoxicated persons a finding of misconduct may be proper. (E.g., a crack in the sidewalk may be readily discerned by a sober person, but not to someone who is “blind drunk”; further, climbing a ladder or going for a midnight swim may not be unsafe for sober persons, but grossly negligent while intoxicated).

Note: The same Administrative Investigation used to determine the LOD/Misconduct issue may also be used for other administrative purposes (*i.e.*, UCMJ prosecution for Disorderly Conduct / Drunkenness or for adverse personnel actions stemming from an alcohol incident). However, as discussed in Article 7.K, above, a LOD/Misconduct Hearing may not be used as a forum to consider adverse disciplinary or personnel actions.

- b. Source of Intoxication. Impairment may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. *See*, Articles 9-2-14 and 9-2-15 of U.S. Coast Guard Regulations, COMDTINST M5000.3 (series), and Chapter 20 of the PERSMAN. Voluntary ingestion of certain substances, in contravention of those regulations, may amount to misconduct.
- c. Alcohol and Drug-Induced Disease.
  - (1) A member may accrue lost time because of inability to do military duties for more than 24 hours as a result of intemperate use of alcohol whether or not there is a resulting disease or injury. *See* 10 U.S.C. § 972. However, simple alcohol abuse - in and of itself - is not a disease (or an injury) for the purpose of requiring a LOD determination. Alcoholism, on the other hand, is a separate matter, and should be addressed pursuant to Chapter 20 of the PERSMAN.
  - (2) A LOD determination shall be made when, as a result of diseases secondary to intemperate use of alcohol (e.g., liver disease), controlled substances, or habit-forming drugs, the member is unable to perform his or her duty for more than 24 hours or there is the likelihood of a permanent disability, or the member dies.

### 3. Medical and Dental Treatment.

- a. Refusal of Treatment. If a medical board convened pursuant to the provisions of the Medical Manual, COMDTINST M6000.1 (series), finds that a member unreasonably refused non life-threatening recommended medical, surgical or dental treatment, any

ensuing death or disability that is caused by that refusal shall be deemed to have been incurred as a result of the member's own misconduct (assuming the presumption of mental responsibility is not rebutted).

- b. Venereal Disease. Any death or disability resulting from venereal disease is not deemed to be due to misconduct, so long as the member has complied with regulations requiring the member to report and receive treatment for such disease.
- c. AIDS. Any death or disability resulting from Acquired Immune Deficiency Syndrome (AIDS) is not deemed to be due to misconduct, if the member has complied with regulations requiring testing, epidemiological assessment, and treatment.

## **N. DANGEROUS MATERIALS AND AGGRESSIVE CONDUCT**

1. Explosives, Firearms, and Dangerous Substances. Unexploded ammunition or other objects, firearms, and highly flammable liquids are inherently dangerous and their handling necessitates a high degree of care. Tampering with, attempting to ignite, or otherwise handling such objects in disregard of inherently dangerous qualities is strong evidence of misconduct.
2. Fights. Wrongful aggression or voluntary participation in a fight or similar encounter, where a member is at least equally at fault with the adversary in starting or continuing the fight, is evidence of misconduct. Additional evidence of misconduct includes provocative actions or language taken or uttered under circumstances where a reasonable person would anticipate retaliation. There is no misconduct if a member is a victim of an unprovoked assault or acts in reasonable defense of self or others. Misconduct may not always be the proximate cause of death, disease, or injury caused by excessive means (e.g., where a fight is underway and an adversary uses excessive means that, under the circumstances, could not reasonably be foreseen; for instance, in an argument amounting to a traffic dispute, a member is shot). However, there can be a causal connection between the misconduct and the injury where a member persists in a fight or other encounter knowing that an adversary has produced a dangerous weapon. The Investigating Officer must determine each case according to its own facts.
3. Motor Vehicle Accidents. Misconduct may occur when a member who knows, or should reasonably know, of his or her unfitness to operate a motor vehicle is injured or dies as the result of driving a motor vehicle. The test for misconduct with respect to a decision to drive is whether a reasonable person, under the circumstances and conditions similar to those under which the member is driving, would or would not have undertaken to drive and whether, having elected to drive, the member's decision amounts to intentional misconduct or willful neglect.
  - a. It may also be misconduct when a member, who is otherwise fit to drive, operates a motor vehicle in an intentionally wrongful or wanton manner.
  - b. Injury incurred while not wearing safety devices such as seat belts or safety helmets is one factor to consider, among many, for misconduct. Notwithstanding regulatory mandates to wear safety device the failure to do so does not automatically result in a determination of misconduct. For example, the investigator should consider whether the lack of the safety device was the proximate cause of the incident or just aggravated injuries.



- c. Other factors to consider in determining if misconduct occurred include:
    - (1) Speed of vehicle involved, as evidenced by testimony of witnesses, skid marks, conditions of roads, and the damage to the vehicle.
    - (2) Road factors, including all road characteristics, natural obstructions to the driver's vision, and traffic signs.
    - (3) Other vehicles, including any part played by them in creating the conditions that resulted in the accident.
    - (4) Traffic conditions at the scene of the accident and their effect on the accident.
    - (5) Traffic laws and regulations in force pertinent to the accident, including speed limits and required safety devices.
    - (6) Light and weather conditions and their effect on driving conditions.
    - (7) Mechanical condition of the vehicles involved.
    - (8) Physical condition of the driver or drivers, including sobriety, fatigue, and exhaustion, and the effect of their physical condition on the accident.
    - (9) Mental condition of the drivers and effect of the mental condition of the drivers on the accident.
    - (10) Driving experience of the driver or drivers.
    - (11) Safety devices installed and whether they were being used at the time of the accident.
    - (12) The following information should be provided with respect to passengers:
      - (a) Conduct of passengers and its effect on the driver.
      - (b) Prior relationship of passengers and driver that 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.
      - (c) Safety devices installed and whether they were being used at the time of the accident.
4. Participation in Inherently Hazardous Off-Duty Activities. LOD determinations for members participating in inherently hazardous off-duty activities are treated the same way

as any other case. The nature of the activity, its inherent hazards, and the prior training and experience of the member must be considered when determining whether an injury is due to wanton carelessness, willful or gross negligence, and whether it was the proximate cause of the injuries or illness. For example, hang-gliding is dangerous, but not necessarily reckless; whereas, hang-gliding at night in an active storm may well constitute misconduct.

#### **O. INJURIES OR DISEASE OR DEATH OF MEMBERS OF THE TEMPORARY RESERVE, COAST GUARD AUXILIARY, AND CIVILIAN EMPLOYEES**

In cases relating to temporary members of the Reserve or members of the Auxiliary, and civilian employees of the U.S. Coast Guard, a LOD/Misconduct determination will not be made. Instead, the investigation shall focus on whether the underlying conduct was incident to service (Reserve) or while under orders of competent military authority (Auxiliary). Similarly, for civilian employees' personal injuries where the Federal Employee Compensation Act (FECA) compensation claims are anticipated, an Administrative Investigation should focus on whether the underlying activity was within the scope of employment.

1. Temporary Members of the Reserve. Under the authority of 14 U.S.C. § 706, the Commandant may enroll as a temporary member of the Reserve a member of the Auxiliary, an officer or member of the crew of a motorboat or yacht placed at the disposal of the Coast Guard, or a person who - by reason of special training and experience -is considered by the Commandant to be qualified for duty. In practice, this authority is *seldom* exercised. One of the most recent and well-known examples of Temporary Reserve status was the appointment of football legend Otto Graham to Captain, USCGR, to fill the position of Athletic Director at the U.S. Coast Guard Academy. In the event, however, that a member of the Temporary Reserve suffers injury or illness, the following information or procedure applies.
  - a. Compensation. If a temporary member of the Reserve is physically injured, or dies as a result of physical injury, and the injury was incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty, the law authorizing compensation for such employees of the United States suffering injuries while in the performance of their duties, applies. *See* 14 U.S.C. § 707.
  - b. Incidental to Service. This term means that the injury arose from the member's relationship with the government. This may be determined by examining the duty status of the member, where and when the injury occurred, and the nature of the activity being performed.
  - c. Standard. The investigation shall focus on whether the injury or death was incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty.
2. Members of the Auxiliary.
  - a. Status. When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any duty to which he has been assigned by competent Coast Guard authority, such member or his 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. *See* 14 U.S.C. § 832.

- b. Performance of duty. As the term is used in 14 U.S.C. § 832, it may include time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a member of the Auxiliary.
- c. Standard. The investigation shall focus on whether the Coast Guard Auxiliary member incurred his or her injury while performing a duty to which he or she had been assigned by competent Coast Guard authority. *See* the Coast Guard Auxiliary Manual, COMDTINST M16790.1(series), concerning assignment to duty. There must be a causal connection between the Auxiliarist's injury or death and the duty being performed by the Auxiliarist. This determination is particularly important in situations involving pre-existing medical conditions, such as heart problems.
  - (1) For example, an Auxiliary pilot, who is injured when he crashes his aircraft while under orders for a Search and Rescue (SAR) mission is performing a duty under competent orders at the time of the injury and the causal connection is obvious.
  - (2) On the other hand, an Auxiliary boating instructor who has a heart attack while reading an e-mail from a fellow Flotilla member may not be able to demonstrate a causal connection between the activity and the injury.
  - (3) "Injuries" are defined, below, at Article 7.O.4.
3. Civilian Employees. When any civilian employee is physically injured or dies as a result of physical injury incurred while in a work setting the local command shall contact Commandant (CG-121) and the servicing civilian personnel office for additional instructions, beyond the general guidance contained in this manual. The United States Department of Labor (DOL) administers the Federal Employee Compensation Act (FECA) and has promulgated its own regulations, policies, forms, and manuals, which are beyond the scope of this manual.
4. Injury. For any investigation convened under Article 7.O of this manual, the term "injury" includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services. *See* 5 U.S.C. § 8101.
5. Misconduct/Intoxication.
  - a. Under the provisions of 5 U.S.C. § 8102, compensation shall not be paid to the member of the Temporary Reserve or the Coast Guard Auxiliary, or to civilian employees if the

injury or death sustained is:

- (1) Caused by his or her willful misconduct;
  - (2) Caused by the his or her intention to bring about the injury or death of himself/herself or of another; or
  - (3) Proximately caused by his or her intoxication.
- b. Any pertinent information concerning such potentially claim-barring causes shall be included in the investigation. The DOL is the final decision-making authority on Auxiliarist's injury or death claims and on all claims by civilian employees under the FECA. The Coast Guard's Final Action Authority shall forward a copy of such investigations to DOL with the Coast Guard's recommendations for resolving the claim.

## **P. SPECIFIC CONSIDERATIONS IN DEATH CASES**

### **1. When Investigations of Death Cases are Required.**

- a. Preliminary Inquiry. A preliminary inquiry should, as in any other circumstance potentially warranting an investigation, be conducted into the death of a member of the Coast Guard or into the death of a civilian aboard a place under Coast Guard control. At the conclusion of the preliminary inquiry, the Convening Authority must determine what type of investigation, if any, is required. Normally, a Standard Investigation will be appropriate to inquire into a death case that warrants investigation.
- b. LOD Determinations. As noted throughout this Chapter, LOD determinations are required in cases where members die on active duty. Such LOD determinations typically require an Administrative Investigation. As a result of such investigation, misconduct may be attributed to a deceased member as with living members, and the Convening Authority or reviewing authorities may enter any such opinions regarding deceased members. The Final Action Authority shall reach and document one of the three conclusions enumerated in Article 7.F.3 (LOD and Not Misconduct; Not LOD but Not Due to Misconduct; or Not LOD Due to Misconduct). If such an opinion was recorded inadvertently prior to decision by the Final Action Authority, or prematurely recorded after the injury but before death occurred, the investigation need not be returned for correction. The Convening Authority or reviewing authorities need only to note the error and its lack of utility in the forwarding endorsement or Final Action, as appropriate.
- c. No Further Investigation Required. As noted in Article 7.H.2, an investigation under this manual will normally not be conducted if the preliminary inquiry shows that the death was: (1) the result of enemy action; (2) unquestionably in the LOD, without any evidence of potential misconduct; or (3) a previously known medical condition and the adequacy of military medical care is not reasonably in issue. *But see* Article 7.P.1.d.(4), below.
- d. Investigation Required. Due to the complexity and sensitivity of death investigations, such matters shall be referred to CGIS prior to initiation of any "in-house" Administrative Investigation. *See* Article 7.P.2 below. CGIS shall determine whether to pursue the investigation alone, in conjunction with an Administrative Investigation,

or to refrain from investigating the matter, resulting in an Administrative Investigation alone. Whether conducted *by* CGIS, *with* CGIS, or by an administrative investigating body *alone*, the following types of cases shall be investigated, when:

- (1) A person (whether a Coast Guard employee, dependent, or not) is found dead on a Coast Guard installation and the death was from other than natural causes, or the presence of the body is not readily explained, or if the death appears related to Coast Guard activities (including medical treatment);
  - (2) A probable nexus exists between the USCG, and the circumstances of the death of a person;
  - (3) The circumstances surrounding the death place the adequacy of military medical care reasonably at issue; or
  - (4) There are peculiar circumstances surrounding a casualty from a hostile action, such as when it is unclear if enemy action actually caused the death. 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.
- e. Limited Investigation. If the preliminary inquiry shows that the death of a Coast Guard member occurred at a location in the United States but not under military control, while the member was off-duty, and the circumstances of the death had no discernable nexus to the member's Coast Guard service, the command shall obtain the results of the investigation of the incident by civilian authorities. The results of this limited (Coast Guard) investigation may be transmitted in an abbreviated report. The command conducting the limited investigation shall maintain the results obtained from the civilian authorities as internal reports of those authorities while needed, referring external requests for such information to the furnishing agency. The command will return the record to the furnishing agency when it is no longer needed, summarizing the key information and keeping careful record of file numbers and point of contact information of the furnishing agency. Restrictions and prohibitions of the furnishing agency, with respect to photocopying and redistribution of such materials shall be strictly followed.
2. CGIS Reporting Requirement. Per Mandatory Reporting of Incidents to the Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series), CGIS must be notified upon the reported death of a "covered person" or any person under the command, control or custody of the Coast Guard at the time of death. A "covered person" is defined as active duty Coast Guard personnel, Reserve Coast Guard personnel on active duty, Civilian Coast Guard employees, Public Health Service personnel assigned to the Coast Guard, and DoD personnel assigned to the Coast Guard. The exception to this notification requirement are deaths in a hospital setting due to known natural causes, such as terminal illness, and those deaths that occur in the performance of official duties for which a Mishap Analysis Board is convened under the Safety and Environmental Health Manual, COMDTINST M5100.47.

### 3. Independent Review.

- a. Purpose. To enhance the Administrative Investigation review process, prior to taking action on an Investigative Report which calls into question the propriety of a deceased individual's conduct (including all apparent suicide cases), the Convening Authority may ask an individual not previously connected with the investigation process and outside the Convening Authority's immediate chain-of-command to review the report and its endorsements.
- b. Qualifications of Independent Reviewer. The individual selected pursuant to this section to review the preliminary report should, to the extent feasible, possess such training, experience, and background that he or she can critically analyze the salient circumstances surrounding the death as documented in the report. For example, if a pilot's death occurred as the result of an aircraft accident, then the individual selected should be a pilot.
- c. Duties of Independent Reviewer. The individual selected to review the Investigative Report shall not act as the deceased's Representative, but should critically analyze the Investigative Report from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. The review shall be completed within ten working days of delivery of the report to the reviewer. If, after conducting the review, the reviewer believes comment on the thoroughness of the investigation or the accuracy of its findings is warranted, then such comments shall be provided in writing to the Convening Authority.
- d. Action. The Convening Authority shall consider such comments as the reviewer may make and take such actions as the Convening Authority deems warranted. The reviewer's comments, if any, shall be appended to the Investigative Report.

### 4. Standard of Proof. To sustain a conclusion that the intentional and improper acts of a deceased Coast Guard member may have caused harm or loss of life, including the member's own, that conclusion must be established by clear and convincing evidence. Otherwise, the presumption that a deceased Coast Guard member acted properly (in the LOD without Misconduct) will not be disturbed.

### 5. Report Contents.

- a. The circumstances surrounding the death of Coast Guard members, or of civilian personnel at places under Coast Guard control, are likely to be recorded in a variety of ways, such as autopsy reports or battlefield reports, and medical reports. Investigations conducted pursuant to this manual that also focus on such deaths may incorporate other such official reports as exhibits, as needed.
- b. Pursuant to 10 U.S.C. § 113 note (Pub. L. 102-484, Div. A, Title X, § 1072, October 23, 1992; 106 Stat. 2508), fatality reports and records pertaining to any member of the Armed Forces who dies in the LOD shall, generally, be made available to family members of the service member. For this reason, discretion must be exercised in enclosing graphic photographs since doing so has significant potential for shocking the sensitivities of relatives and others to whom the investigation may ultimately be released. Such materials should be separately enclosed in an envelope marked:

“CAUTION. THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED.”

- c. Law enforcement and medical examiner records obtained from other agencies are typically “close hold” documents that may neither be permanently retained nor even copied or disseminated (even to immediate family of the deceased). *See* Article 7.P.1.e. In such cases the Coast Guard legal servicing office or CGIS, in consultation with the legal servicing office, shall maintain the records obtained from the civilian law enforcement authorities as internal reports of those authorities while needed, referring external requests for such information to the furnishing agency. The Coast Guard will return such record to the furnishing agency as soon as it is no longer needed, rather than retaining the record (or copies thereof) in the permanent files of the Coast Guard.
6. Timely Submission of Reports. Completion of a death investigation and its forwarding shall not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely essential to resolving issues central to the Investigative Report. The unavailability of such documents should be noted in the preliminary statement, along with an estimate of anticipated delivery. Documents subsequently obtained shall be forwarded by separate correspondence via the review chain, with appropriate reference to the initial submission of the Investigative Report.

**Exhibit (7-A-1)**

5830 (page 1 of 4)

From: Commanding Officer, [Unit]  
To: [Name], USCG  
Subj: NOTIFICATION OF RIGHT TO LINE OF DUTY / MISCONDUCT INFORMAL  
HEARING - **MEMBER**

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1(series),  
Chapter 7  
(b) Factual excerpts from Administrative Investigation Report dtd

1. This is to inform you that questions have arisen concerning the circumstances in which you [describe injury/disease, date and location incurred] and I will make a line of duty and misconduct determination concerning the injury pursuant to reference (a).
2. Before I make that determination, I will afford you an informal hearing to present any information you wish me to consider on the issue of a potential adverse not in the line of duty or misconduct finding. In lieu of an in-person hearing, you may present any written materials you would like for me to consider. In either case, you may examine reference (b) and any other materials that I may consider in reaching my finding. During the hearing you may introduce any other evidentiary matter before me as well as present any relevant matter in refutation, explanation, or rebuttal regarding the incurrence of the injury/disease.
3. This informal hearing is *administrative* rather than disciplinary in nature and is not non-judicial punishment under Article 15, Uniform Code of Military Justice (UCMJ). However, the results of this hearing do not preclude me from separately taking disciplinary action against you, if warranted. [When member is suspected of an offense, include the following:] Based on reference (b), you are suspected of committing an offense connected with sustaining the injury on [date], specifically violation of Article ##, UCMJ, in that you [describe alleged offense]. Accordingly, you have the following rights under Article 31(b), UCMJ:
  - a. You have the right to remain silent and not make any statement at all.
  - b. Before you decide whether or not you want to make a statement, you may consult with a lawyer.
  - c. If you decide to consult with a lawyer, the government will not question you. You may consult with a civilian lawyer, at your own expense, or a military lawyer without cost to you if the government intends to continue questioning you.
  - d. If you decide to make a statement, anything you say may be used as evidence against you in any court-martial, non-judicial proceeding, administrative proceeding or civilian court.



- e. If the questioning continues you may stop it at any time by refusing to make further statements or by requesting to consult with a lawyer.
  - f. You have the right to have a retained civilian lawyer, an appointed military lawyer, or both present during any questioning. However, the Government is not required to question you, simply because you have counsel, or wish to be questioned.
4. Pursuant to 10 U.S.C. § 1219, you have the right not to sign any statements relating to the origin, incurrence, or aggravation of a disease or injury that you may have.
  5. [If applicable] Based on a review of reference (b), I find that your injury might result in entitlement to disability benefits. Therefore, you have the right to be represented during the proceedings by civilian counsel, at your own expense, or by military counsel provided by the government at no expense to you.
  6. You must acknowledge receipt of this notification within ten calendar days, indicating whether you desire an informal hearing [if applicable, add following] and, if so, whether you desire to be represented by military counsel at the hearing. You have the right to consult with military counsel prior to making this decision, and I encourage you to exercise that right regarding this important matter. If you elect to consult with military counsel, I will arrange for a consultation appointment, and the ten-day period will run from the date of that appointment. If you decline to consult with military counsel, the ten-day period will run from the date you receive this notification.

#

Encl: (1) Exercise of Rights Form  
(2) Privacy Act Form

**ACKNOWLEDGEMENT & ELECTION**

I have read and understand the above notifications.

I understand that an adverse determination (not in the line of duty, or due to misconduct, or both) may negatively impact my entitlement to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extension of enlistment, date of expiration of active obligated service, and accrual of annual leave.

I understand that prior to such determination I have the right to an informal hearing before the Commanding Officer and a right to be represented by military counsel at no expense to me at that hearing.

I understand that I have the right to consult with a military counsel prior to making my decision as to whether to request a hearing.

I understand my rights under Article 31(b), UCMJ and 10 U.S.C. § 1219.

*(Circle one):* I (request)(decline) an opportunity to consult with military counsel regarding my decision to request an informal hearing.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**RIGHT TO MISCONDUCT AND LINE OF DUTY INFORMAL HEARING:  
EXERCISE OF RIGHTS**

From: [Name], USCG  
To: Commanding Officer, [Unit]  
Subj: RIGHT TO LINE OF DUTY AND MISCONDUCT INFORMAL HEARING

Ref: (a) Your ltr 5830 of [date].  
(b) Administrative Investigations Manual, COMDTINST M5830.1, chapter 7

**1. Consultation with Counsel regarding reference (a) (initial and complete one)**

\_\_\_\_\_ I **consulted** with \_\_\_\_\_ (name) of \_\_\_\_\_

(command), a military lawyer, on \_\_\_\_\_ (date of consultation)

– OR –

\_\_\_\_\_ I **waive** my right to consult with a military lawyer.

**2. Informal Hearing (initial and complete one)**

\_\_\_\_\_ I **request** an informal hearing. – OR –

\_\_\_\_\_ I **elect to present written materials** in lieu of a hearing. – OR –

\_\_\_\_\_ I **waive unconditionally** my right to an informal hearing.

**3. Representation by Military Counsel (initial and complete one, if notification letter indicates that you are entitled to representation)**

\_\_\_\_\_ I **request** to be represented by military counsel, at no expense to me.

– OR –

\_\_\_\_\_ I **decline** to be represented by detailed military counsel.

\_\_\_\_\_  
Signature:      Date:

***For Command Use:***

Informal hearing held on \_\_\_\_\_ (date) at \_\_\_\_\_  
(location).

Written materials received on \_\_\_\_\_ (date), and have been appended to the investigation.

\_\_\_\_\_  
Commanding Officer

\_\_\_\_\_  
Date

**Exhibit (7-A-2)**

5830

Spouse of Deceased Member  
C/O Representative of Spouse of Deceased Member  
Address  
City, State Zip-Code

Re: NOTIFICATION OF RIGHT TO LINE OF DUTY / MISCONDUCT  
INFORMAL HEARING - **SPOUSE**

This is to inform you that questions have arisen concerning whether the death of your spouse was in the line of duty or due to misconduct and that I am required to make a line of duty and misconduct determination pursuant to the Coast Guard Administrative Investigations Manual (AIM), COMDTINST M5830.1(series), Chapter 7, which I've attached. In case you have not already received a factual summary of the matter, I am attaching the factual material that I will be considering in making that determination.

Before I make that determination, however, I will afford you an informal hearing opportunity for you to present any information that you wish me to consider on the issue of a potential adverse misconduct or not in the line of duty finding. In lieu of an in-person hearing, you may present any written materials you would like for me to consider. In either case, you may examine the factual information presented in the Administrative Investigation dated [DDMONYEAR] and any other information that I may consider in making my determination.

This informal hearing will be *administrative* in nature. Please understand that you are not required to make any statement or to present any evidence at all. However, I must inform you that should I determine that your spouse's death did not occur in line of duty or was due to misconduct, that adverse determination may bar all or part of any surviving spouse benefit plan annuity to which you otherwise may have been entitled. Accordingly, you may wish to participate, directly or indirectly through a Representative, in this informal hearing. You have the right to be represented during the proceedings by civilian counsel, at your own expense. Before you decide whether or not you want to make a statement, or submit evidence, you may consult with a civilian lawyer, at your own expense. You may also consult with the Coast Guard decedent affairs representative, who will be able to explain the nature of the proceeding and types of benefit issues involved, in the context of the your spouse's death. If you decide to make a statement, directly or through your Representative, anything you say may be used as evidence in the administrative proceeding in making a line of duty or misconduct determination. Again, you do not have to make any statement or sign any document pertaining to this matter, other than acknowledgement of this letter and an expression of your preference for an oral hearing, written hearing, or no hearing at all.

You must acknowledge receipt of this notification within ten calendar days, indicating whether you desire an informal hearing.

COMDTINST M5830.1A

//SIGNATURE//  
Title  
Rank  
U. S. Coast Guard

Encl: (1) AIM, Chapter 7

(2) Factual excerpts of the Administrative Investigation dtd DDMONYEAR

(3) Exercise of Rights Form

(4) Privacy Act Form

**RIGHT TO MISCONDUCT AND LINE OF DUTY INFORMAL HEARING:  
EXERCISE OF RIGHTS**

From: **Surviving Spouse or Representative for Surviving Spouse**  
To: Commanding Officer, [Unit]  
Re: RIGHT TO LINE OF DUTY AND MISCONDUCT INFORMAL HEARING

In response to your ltr 5830 of [date] and pursuant to the Administrative Investigations Manual, COMDTINST M5830.1, chapter 7, I make the following declaration:

I understand that an adverse determination (not in the line of duty, or due to misconduct, or both) may negatively impact my entitlement to survivor's benefits.

I understand that prior to such determination I have the right to an informal hearing before the Convening Authority, [Name, Title, and Rank of officer signing the notification letter].

**With Regards to the Informal Hearing (initial one)**

- \_\_\_\_\_ I **request** an informal hearing. *-OR-*
- \_\_\_\_\_ I **elect to present written materials only**, in lieu of a hearing. *-OR-*
- \_\_\_\_\_ I **waive unconditionally** my right to an informal hearing

\_\_\_\_\_  
Signature:      Date:

(Circle one): (Surviving Spouse)(Representative)

***For Command Use:***

Informal hearing held on \_\_\_\_\_ (date) at \_\_\_\_\_ (location).

Written materials received on \_\_\_\_\_ (date), and have been appended to the investigation.

\_\_\_\_\_  
Commanding Officer

\_\_\_\_\_  
Date

## Exhibit (7-B)

### GUIDE FOR LOD / MISCONDUCT INVESTIGATING OFFICERS

- I. Purpose of Investigation.** The purpose of an LOD investigation is to protect the interests of the member (or surviving spouse) and to ensure the Government awards benefits properly. It is primarily a fact-finding process. The report of investigation includes all information needed to evaluate the disability claims and other issues related to the death, disease, or injury that may have occurred or may arise many years later. The LOD and misconduct investigation is separate and distinct from judicial processes or other disciplinary action. Adverse findings are **not** vehicles for imposing punishment or as means of enforcing good order and discipline.
- II. Preliminary Preparation:** Read Chapter 7 with particular attention to those parts that have specific application to the investigation. Investigating Officers must consult with legal counsel before starting the investigation and as often as necessary. When it appears that a line of duty / misconduct determination will be required, this guide should be used in addition to the generic guide provided as Exhibit 7-E to this manual.
- III. Conducting the Investigation:** The investigating officer is responsible for:
- A. Determining duty status according to the following guidelines:
1. Generally:
    - a. A death, disease or injury of a member, incurred while a member is absent without authority, is "not in line of duty". It does not matter whether the disease or injury was or was not the result of the member's misconduct.
    - b. For the definition of the term "unauthorized absence," *see* Article 7-F-2.c.
    - c. Unless there is compelling evidence to the contrary, you may rely on the immediate commander's determination that the member was "present for duty" or was "absent **with** authority."
    - d. Inquire further into the facts and circumstances of the member's duty status when the immediate commander indicates that the member was "absent without authority," or where there is evidence to indicate that the commander's determination that the member was "present for duty" or "was absent with authority" is incorrect.
    - e. Documentation in these instances may be in the form of orders, records of duty status changes, incident reports, statements of witnesses, or other evidence that clarifies the member's status at the time of the incident.
  2. For members who, while traveling to or from duty or training, die or incur a disease or injury:

- a. Document the member's status in relation to the duty or training undertaken. Copies of relevant orders are essential.
  - b. Document the hour the member was scheduled to start duty or training, or the hour they completed duty or training, the method of travel, the shortest route between the place of duty or training, and the place where the member commenced travel to start duty or the place where the member was returning after completing duty or training. Use maps or diagrams. Document the time and place the disease or injury occurred and any other facts relevant to the question of whether the member, at the time the death, disease or injury occurred, was on the "authorized" route to or from duty or training at a time when he or she would have been normally expected to be traveling.
- B. Determining whether the proximate cause of the member's death, disease or injury involved misconduct. (For explanations of the terms "misconduct" and "proximate cause," *see* 7-F-2.b.)
1. To do this, get the facts by:
    - a. Interviewing witnesses, including the member, as able, affording Art. 31 Rights, as needed.
    - b. Getting copies of military police reports; Coast Guard Investigative Service (CGIS) reports; hospitalization or clinical records; blood, breath, urine, or tissue tests; and photographs.
    - c. Getting copies of civilian police reports, if any. Generally, civilian police reports involving traffic investigations are available from the civilian agency involved. In some states, civilian police reports involving criminal investigations are not directly available. In any case where there are problems in getting civilian police reports, contact the local CGIS office for help in getting copies of these reports or an extract or summary of them.
    - d. Preparing maps, charts, diagrams, or other exhibits that might be helpful to an understanding of the incident.
    - e. Getting evidence regarding the mental responsibility of the member. Obtain a copy of the psychiatric evaluation and include it in the investigative file. If there has been no psychiatric evaluation and one is necessary, have the member's commander or the Convening Authority to request one and get a copy for the file.
    - f. Covering any other matters deemed relevant.
  2. Organize the facts to answer the issues raised in the Convening Order's tasking.
- C. Interviewing Witnesses.

Interview all witnesses who have knowledge of the matter under investigation. Interview



the subject of the investigation in all cases except where precluded by medical necessity. If witnesses other than the subject are not available for personal interview, get copies of available sworn or unsworn statements made by those witnesses to other investigators. If no such statements are available, arrange, where possible, for others to take their statements.

1. You do not have to advise civilian witnesses, or military witnesses not suspected of committing an offense, of their Article 31 (Miranda/Tempia) self-incrimination protection rights.
2. Advise a military witness of his or her rights under Article 31, Uniform Code of Military Justice (UCMJ) when you suspect the commission of an offense. Consult with the servicing legal office on the need for and specific requirements of such advice and use the Military Justice Manual form provided as Exhibit (4-B) to this manual.
3. Advise the subject of the LOD/Misconduct investigation before questioning:
  - a. Advise the member of 10 U.S.C. § 1219 which states: "A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that he has. Any such statement against (his)(her) interests, signed by a member, is invalid."
  - b. Advise the member of his or her rights under Article 31: UCMJ, if you suspect he or she committed an offense. *See*, Exhibit (4-B) to this Manual.
  - c. Advise the member that, to the extent of Federal Law and Regulations, his or her Privacy and Access to records about him or her, will be honored. For the surviving spouse or Representative, advise that although the privacy interests of a deceased person are substantially reduced, the Coast Guard will comply with the law and regulations.
  - d. Exhibit (7-A) to this Manual may be used to advise the suspect of the disclosure rights addressed above in the paragraph directly above (3.c.) and to obtain the subject's statement (or that of the surviving spouse or Representative), if able.
4. Advise all witnesses asked to supply personal information in an LOD investigation of relevant provisions of the Privacy Act (5 U.S.C. § 552a(c)(3)). Include the Privacy Act statement on the form used to collect all witnesses' statements.
5. If the member under investigation has been transferred from the place where the investigation is held, request the member's new commander or, if applicable, the hospital commander where the member is hospitalized, get a statement and forward it for inclusion in the report of investigation.
6. In any event, the report of investigation must contain the sworn statement of the subject of the investigation or an explanation of the efforts made to get it and the reasons why you could not obtain it.

7. If a witness, including the subject, provides relevant information but declines to or cannot sign a written statement, then prepare a written summary of the information provided orally. Include the summary in the investigative file with an explanation of the reason for it.

**IV. Checklist for Contents of the LOD/Misconduct Administrative Investigation:** The following is a checklist of matters which should be included (as applicable) in any investigative report concerning LOD/misconduct:

- A. The complete name, grade or title, service number, social security number, service or occupation, station or residence of the member.
- B. All facts leading up to and connected with an injury or disease.
- C. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records and pathological, histological and toxicological studies.
- D. Complete information concerning the site and terrain at which the incident in question occurred, and photographs, charts, diagrams, or other exhibits that may be deemed helpful to a complete understanding of the incident.
- E. 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 illness.
- F. 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.
- G. Complete information as to the nature and extent of death, disease or injury to Coast Guard personnel and the place and extent of any hospitalization resulting there from. Obtain costs when available if third party liability is possible and for treatment at civilian hospitals in every case.
- H. 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. 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.
- I. When material, evidence regarding the mental competence or impairment of the injured person. In all cases of apparent suicide or attempted suicide, all possible evidence bearing on the mental condition of the person shall be obtained. This will include all available evidence as to social background, actions, and moods immediately prior to the suicide

attempt, any troubles which might have motivated the incident, and pertinent examination or counseling by specially experienced persons.

- J. Documentation that statements solicited from an injured service member (or surviving spouse or Representative) respecting the occurrence or aggravation of the death, disease or injury are in compliance with the provisions of this manual.
- K. Documentation of any mechanical failures or failure of or lack of safety equipment that may have contributed to the injury or disease.
- L. 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.

**Exhibit (7-C-1)****Member Sample Privacy Act Statement—LOD/Misconduct**STATEMENT (*see note 1*)

I, \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (grade) \_\_\_\_\_, \_\_\_\_\_ (organization) \_\_\_\_\_, am aware that I **may** submit a sworn statement in connection with this investigation concerning my \_\_\_\_\_ (specify what the disease or injury is) \_\_\_\_\_. I have been advised that Title 10 U.S.C. §1219 provides as follows:

"A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that (he)(she) has. Any such statement against (his)(her) interest, signed by a member, is invalid." I understand that I cannot be required to sign any such statement but that if I willingly do so it may be considered in determining my line of duty and misconduct status. (I have also been advised of my rights under Article 31: UCMJ (*see note 2*.) I make and sign the following sworn statement voluntarily and with this understanding:

(body of statement)

\_\_\_\_\_  
(signature of member)\_\_\_\_\_  
(date)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(signature of person administering the oath (*see note 3*))

**AUTHORITY:** 5 U.S.C. §§ 301, 2108, and 3309-3315; 10 U.S.C. §§ 507, 972, 1074, and 1201-1221; 14 U.S.C. §§ 93(a)(17) and 632; 37 U.S.C. §§ 204, 403, and 802; 38 U.S.C. §§ 1110, 1131, 1710 and 1712; as well as EO 9397.

**PURPOSE:** Information provided is used by processing authorities in determining whether you were or were not acting in line of duty and whether your illness or injury were the results of your own (mis)conduct. Any information that you provide may be considered in that process. The information collected will be filed in your master personnel record and you will be given a copy as well. If you are represented by counsel, your attorney will be given a copy as well.

**ROUTINE USES:** NONE.

**DISCLOSURE IS VOLUNTARY:** If information is not provided, the Coast Guard will complete processing using information that is available. You are advised that you are initially presumed to be entitled to have certain pay and/or benefit entitlement 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 **only if** the record does not contain sufficient evidence to overcome any presumptions in your favor. **But 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 reaching a favorable determination. Therefore, it may be in your interest to provide additional information. But the choice is yours.

NOTES:

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. Omit if military member is not suspected committing of an offense.
3. The investigating officer, any other person authorized by 14 U.S.C. § 636 (or 10 U.S.C. § 936), or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

Exhibit 7-C-2

Surviving Spouse/Representative Sample Privacy Act Statement—LOD/Misconduct

STATEMENT (see note 1)

I, \_\_\_\_\_ (name) \_\_\_\_\_, the surviving spouse of, \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (grade) \_\_\_\_\_, \_\_\_\_\_ (organization) \_\_\_\_\_, am aware that I may submit a sworn statement in connection with this investigation concerning the death, disease or injury to my former spouse. I understand that neither my Representative nor I can be required to sign any such statement but that if either my Representative or I willingly do so, it may be considered in determining the line of duty and misconduct status for my former spouse.

I make and sign the following sworn statement voluntarily and with this understanding:

(body of statement)

\_\_\_\_\_  
(signature of surviving spouse) (date)

--OR--

\_\_\_\_\_  
(signature of surviving spouse’s Representative) ((date)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(signature of person administering the oath (see note 2))

**AUTHORITY:** 5 U.S.C. §§ 301, 2108, and 3309-3315; 10 U.S.C. §§ 507, 972, 1074, and 1201-1221; 14 U.S.C. §§ 93® and 632; 37 U.S.C. §§ 204, 403, and 802; 38 U.S.C. §§ 1110, 1131, 1710 and 1712; as well as EO 9397.

**PURPOSE:** Information provided is used by processing authorities in determining whether your former spouse was or was not acting in line of duty and whether (his)(her) death , illness or injury were the results of (his)(her) own misconduct. Any information that you provide may be considered in that process. The information collected will be filed in your former spouse’s master personnel record and you will be given a copy as well. If you are represented by another person, your Representative will be given a copy as well.

**ROUTINE USES:** NONE.

**DISCLOSURE IS VOLUNTARY:** If information is not provided, the Coast Guard will complete processing using information that is available. You are advised that you are initially presumed to be entitled to have certain pay and/or benefit entitlement 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 **only if** the record does not contain sufficient evidence to overcome any such presumptions in your favor. **But if** the completed record does contain sufficient evidence to overcome such presumptions in your favor, however, your election not to provide the requested

COMDTINST M5830.1A

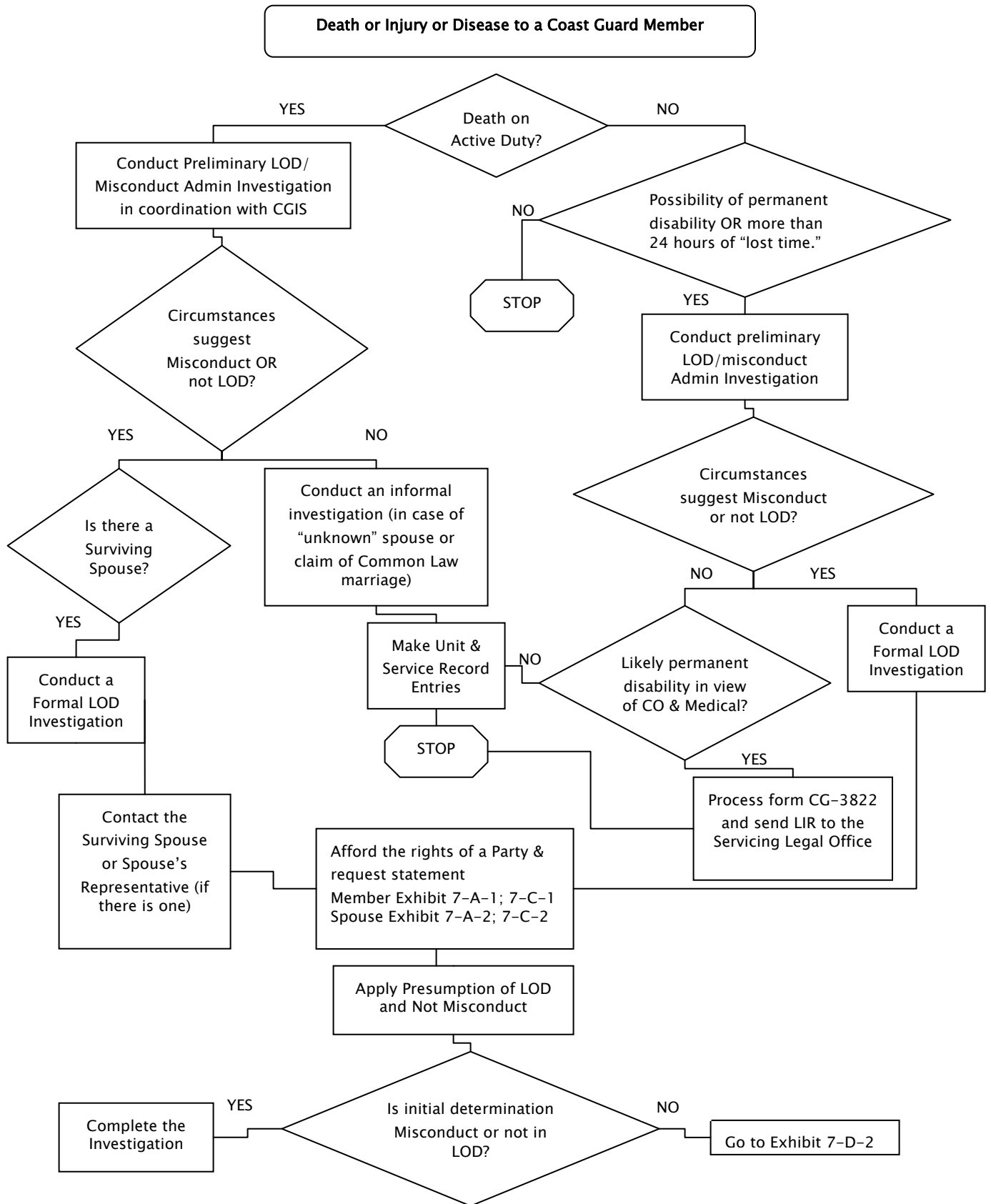
information possibly could preclude the decision maker from reaching a favorable determination. Therefore, it may be in your interest to provide additional information. But the choice is yours.

NOTES:

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. The investigating officer, any other person authorized by 14 U.S.C. § 636 (or 10 U.S.C. § 936), or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

**Exhibit (7-D-1)**

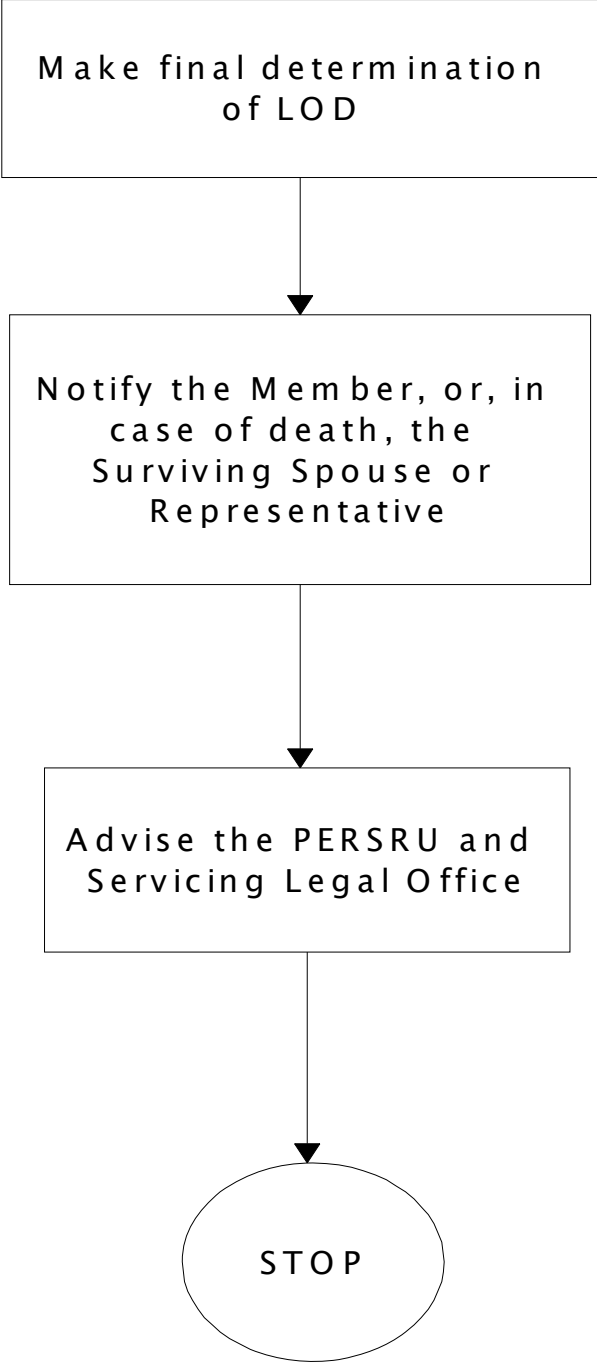
**FLOWCHART FOLLOWING INITIAL DETERMINATION OF MISCONDUCT OR NOT IN LINE OF DUTY**





**Exhibit (7-D-2)**

**FLOWCHART FOLLOWING INITIAL DETERMINATION OF IN LINE OF DUTY**



**Exhibit (7-E)****DEATH OR INJURY TO A COAST GUARD MEMBER - CHECKLIST**

1. The following checklist is intended as a guide to assist Investigating Officers in preparing legally sufficient death or injury investigations. It is not intended to rigidly structure an investigation, but is intended to ensure thoroughness and to backstop the Investigating Officer, as necessary. This guide is designed for use in every injury to Coast Guard members. If it becomes apparent that a line of duty/misconduct determination is appropriate, the guide provided as Exhibit 7-B should also be consulted.
  - a. Facts. NOTE: Each fact must be supported by evidence included and referenced as an Exhibit.
    - \_\_\_\_\_ (1) If CGIS investigated death incident, obtain relevant information from CGIS Report of Investigation.
    - \_\_\_\_\_ (2) Complete description of site or incident given.
    - \_\_\_\_\_ (3) Complete description of events leading up to incident given.
    - \_\_\_\_\_ (4) Accurate description of incident provided.
    - \_\_\_\_\_ (5) Vehicles, equipment, weapons, etc., involved described.
    - \_\_\_\_\_ (6) Pertinent regulations and instructions cited. NOTE: Unless the particular regulation or instruction expressly covers the incident, (i.e. "Coast Guard Regulations, Article . . . states that . . . [quote]"), then the applicability of the particular regulation or instruction is actually an opinion and should be stated as such.
    - \_\_\_\_\_ (7) Persons involved identified. Make a special effort to identify and obtain point of contact information for next of kin.
    - \_\_\_\_\_ (8) Any signs of intoxication or drug use noted. NOTE: That a sailor was observed stumbling and slurring words is a fact; that he or she blew 0.09 on an intoximeter is a fact; that a shipmate said that the sailor was "high" is also a fact; however, the Investigating Officer's determination that the sailor was intoxicated is an opinion and should be cited as such.
    - \_\_\_\_\_ (9) Experience of persons with particular equipment, *etc.*, noted.
    - \_\_\_\_\_ (10) Driving experience of parties noted (if appropriate).
    - \_\_\_\_\_ (11) Unsafe practices by parties involved noted.
    - \_\_\_\_\_ (12) Injuries described.
    - \_\_\_\_\_ (13) Cause of death, injury, or illness stated. NOTE: A qualified medical expert's opinion may be reported as a fact; the Investigating Officer's conclusion, however, is an opinion and should be cited as such.
    - \_\_\_\_\_ (14) Statutes, ordinances, or regulations violated noted. NOTE: A police officer's or court's determination may be reported as a fact; the Investigating Officer's conclusion, however, is an opinion and should be cited as such.
    - \_\_\_\_\_ (15) Any traffic citations listed.
    - \_\_\_\_\_ (16) Use of seatbelts and other personal safety equipment discussed.
  - b. Opinions. NOTE: Each opinion must refer to the supporting Findings of Fact.

- \_\_\_\_\_ (1) Whether the proper degree of care exercised by personnel involved. NOTE: In cases involving known or likely claims by for against the Government, Investigating Officers must NOT render ultimate opinions as to the Government's liability or responsibility for an incident.
- \_\_\_\_\_ (2) Whether equipment, etc., involved was properly maintained.
- \_\_\_\_\_ (3) Whether such maintenance contributed to incident.
- \_\_\_\_\_ (4) Whether regulations, instructions regarding equipment, etc., were followed.
- \_\_\_\_\_ (5) Cause of incident.
- \_\_\_\_\_ (6) Fault attributed to personnel involved.
- \_\_\_\_\_ (7) LOD/Misconduct determination needed (*See* Exhibit 7-B).

c. Recommendations. NOTE: Each recommendation must be supported by evidence included and referenced as an Exhibit, and should also refer to supporting Opinions, which, in turn, refer to supporting Findings of Fact.

- \_\_\_\_\_ (1) Regarding personnel training and staffing.
- \_\_\_\_\_ (2) Regarding equipment, infrastructure and maintenance.
- \_\_\_\_\_ (3) Regarding sufficiency of instructions, regulations.
- \_\_\_\_\_ (4) Regarding improved procedures.
- \_\_\_\_\_ (5) Regarding disciplinary action or commendation.

NOTE: As with Opinions, above, in cases involving known or likely claims by or against the Government, recommendations should not reach ultimate liability issues or suggest settlement positions.

**Exhibit (7-F)****DISABILITY OF A RESERVIST DUE TO INJURY OR ILLNESS**

1. The following checklist is intended as a guide to assist Investigating Officers in preparing legally sufficient investigations regarding injury or illness of a Reservist. It is not intended to rigidly structure an investigation, but is intended to ensure thoroughness and to backstop the Investigating Officer, as necessary. If it becomes apparent that a line of duty/misconduct determination is appropriate, the guide provided as Exhibit 7-B should also be consulted. This guide supplements the generic guide is designed for use in every injury to Coast Guard members, Exhibit (7-E), due to the inherent difficulty often associated with delayed recognition of injury or illness to Reservists, specifically, the difficulty (sometimes) in knowing whether current symptoms were caused (or exacerbated) on duty or off duty.
  - a. Facts. NOTE: Each fact must be supported by evidence included and referenced as an Exhibit.
    - \_\_\_\_\_ (1) Identify the persons involved. Make a special effort to identify and obtain point of contact information for next of kin.
    - \_\_\_\_\_ (2) Describe the events leading up to the diagnosis of illness or disease.
    - \_\_\_\_\_ (3) Diagnosis noted.
    - \_\_\_\_\_ (4) Prognosis for patient noted.
    - \_\_\_\_\_ (5) State the medically accepted course of illness or disease.
    - \_\_\_\_\_ (6) Describe the actions of parties contributing to illness or disease.
    - \_\_\_\_\_ (7) Note when illness or disease most likely contracted, according to the statements of treating physicians, documentary evidence, or statements of witnesses.
    - \_\_\_\_\_ (8) Status of Reservists 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.
  - a. Opinions. NOTE: Each opinion should refer to the supporting Findings of Fact.
    - \_\_\_\_\_ (1) Cause of illness or disease.
    - \_\_\_\_\_ (2) Whether illness contracted in LOD.
    - \_\_\_\_\_ (3) Whether case is proper one for the Physical Disability Evaluation System (PDES).
  - c. Recommendations. NOTE: Each recommendation must be supported by evidence included and referenced as an Exhibit, and should also refer to supporting Opinions, which, in turn, refer to supporting Findings of Fact.
    - \_\_\_\_\_ (1) Regarding referral to PDES.
    - \_\_\_\_\_ (2) Regarding disciplinary action.
    - \_\_\_\_\_ (3) Regarding appropriate administrative actions.

Exhibit (7-G)

<b>U.S. DEPARTMENT OF HOMELAND SECURITY U. S. COAST GUARD CG-3822 (REV. 7-06)</b>		<b>INJURY REPORT</b> <b>FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATION</b> <i>Submit typewritten original to the COMMANDANT (GLGL)</i>			
FROM (Name of reporting Command)					
TO: <b>COMMANDANT (G-LGL) WASHINGTON, DC 20593-0001</b>			VIA: COMMANDER, MLC COMMANDER, <span style="float: right;">(e) or COAST GUARD DISTRICT (dl)</span>		
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. <input type="checkbox"/> USCG <input type="checkbox"/> USCGR	
5. FIRST SEEN BY MEDICAL OFFICER		DATE	TIME	PLACE	
6. DIAGNOSIS					
<b>7. CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION</b>					
A. UNDER INFLUENCE OF <input type="checkbox"/> ALCOHOL <input type="checkbox"/> BARBITURATES <input type="checkbox"/> NARCOTICS <input type="checkbox"/> OTHER (specify)			B. <input type="checkbox"/> NOT UNDER THE INFLUENCE OF ANY LISTED IN ITEM 7A		
			C. <input type="checkbox"/> UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION		
<b>8. BASIS FOR OPINION IN 7A OR 7B ABOVE</b>					
A. CLINICAL FINDINGS (specify)					
B. BLOOD SPECIMEN FOR ALCOHOL DETERMINATION <input type="checkbox"/> WAS TAKEN <input type="checkbox"/> 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 <input type="checkbox"/> TEMPORARY <input type="checkbox"/> PERMANENT PARTIAL <input type="checkbox"/> 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 <input type="checkbox"/> PRESENT FOR DUTY <input type="checkbox"/> LEAVE OR LIBERTY <input type="checkbox"/> ABSENT WITHOUT AUTHORITY (complete A & B)					
A. INDIVIDUAL WAS ABSENT WITHOUT AUTHORITY FROM <input type="checkbox"/> PLACE OF DUTY <input type="checkbox"/> RESTRICTION <input type="checkbox"/> ARREST		PERIOD OF ABSENCE FROM (Hour & date):  TO (Hour & date):		B. ABSENCE MATERIALLY INTERFERED WITH MILITARY DUTY <input type="checkbox"/> YES <input type="checkbox"/> NO	
13. THE PERSON CONCERNED WAS <input type="checkbox"/> PERFORMING MILITARY DUTY <input type="checkbox"/> IN A MILITARY VEHICLE <input type="checkbox"/> AS OPERATOR <input type="checkbox"/> OTHER (Specify) <input type="checkbox"/> PARTICIPATING IN SERVICE PLANNED RECREATION <input type="checkbox"/> IN A MILITARY AIRCRAFT <input type="checkbox"/> AS CREW MEMBER <input type="checkbox"/> IN A CIVILIAN VEHICLE <input type="checkbox"/> AS PASSENGER					

PREVIOUS EDITION IS OBSOLETE

Reverse of CG-3822 (Rev. 6-04)

NAME:

SSN: - -

DATE:

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.

SIGNATURE OF INDIVIDUAL MAKING THE INQUIRY

SIGNATURE AND RANK OF COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION)

**FORWARDED APPROVED**

**APPROVED**

SIGNATURE OF DISTRICT/MLC COMMANDER

SIGNATURE OF CHIEF COUNSEL, U.S. COAST GUARD

BY DIRECTION

BY DIRECTION



<p>12. As a result of my investigation, I have determined the circumstances to be:  <i>(Include all pertinent details of symptoms and medically accepted estimated incubation period of disease.)</i></p>
<p>13. Sources of information <i>(list and identify documents, doctor's statements and Reservist's statement, if any; attach certified copies of each.)</i></p>
<p>14. RECOMMENDATION(S):</p> <p><input type="checkbox"/> Notice of Eligibility for Disability Benefits, including pay and allowances, be issued.</p> <p><input type="checkbox"/> Notice of Eligibility for Disability Benefits, (medical treatment only) be issued.</p> <p><input type="checkbox"/> Other: _____</p>
<p>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.</p> <p style="text-align: right;">_____ Signature</p>
<p><b>16. ACTION OF THE DISTRICT COMMANDER OR COMMANDING OFFICER TRAINING CENTER</b></p>
<p>16.</p> <p>1. FORWARDED, <i>approved</i> for the following reasons:</p> <p>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, <i>has</i> been issued.</p> <p style="text-align: center;">OR</p> <p>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, <i>has</i> been awarded.</p> <p style="text-align: center;">(DELETE THE INAPPLICABLE STATEMENT ABOVE)</p> <p style="text-align: right;">_____ Signature</p>
<p><b>17. ACTION OF COMMANDANT</b></p>
<p>17.</p> <p><input type="checkbox"/> APPROVED.</p> <p><input type="checkbox"/> DISAPPROVED for the following reasons:</p> <p><input type="checkbox"/> RETURNED for the following action:</p> <p style="text-align: right;">_____ Signature</p>



## CHAPTER 8 CONDUCTING A FORMAL INVESTIGATION

### A. PROCEDURES FOR A FORMAL BOARD

1. Scope. This section establishes procedures for conducting a Formal Investigation or a Formal Board of Investigation. Realizing that the Convening Authority may appoint a one-Member "Board," this section addresses more complex multi-Member boards. A single-Member Board should simply follow the applicable provisions and ignore inapplicable multi-Member provisions.
2. Duties of the Board.
  - a. Senior Member. 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 of the Board that certain information be elicited or developed in the interest of establishing or clarifying any matter before the Board, 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 conducted an adequate advance investigation, assembled witness statements, and marshaled the documentary and tangible evidence, so that the formal hearing portion of the investigation may proceed in an orderly and efficient fashion.
  - b. Members. Attendance at the proceedings of a Board of Investigation becomes the primary duty of any officer appointed as a Member. Members are required to attend at the designated time and place unless prevented by emergency or illness, or excused by the Convening Authority, or ordered away by superior authority.
    - (1) 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 a significant period of time and that absence would reduce the board to *less* than a majority of the total Membership, the Convening Authority shall be advised. The Convening Authority may appoint additional Members to ensure that a majority of the total number of Members is present, to ensure the board's continued progress. What constitutes a "significant" absence or delay will, of course, vary with the circumstances. However, as "default," a period in excess of 3 days should be considered "significant" delay.
    - (2) Any substitute or additional Member appointed must examine the record of the proceedings conducted prior to sitting as a Member, and accomplishment of that review shall be noted on the record. After reviewing the record (including all testimony and evidence reviewed or received), each substituted and additional Member shall participate fully in the subsequent proceedings of the Board, its deliberations, findings of fact, opinions, and recommendations, until the Board concludes its business and is dissolved.
    - (3) 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 that fact noted in the record. After return and review of the record of the proceedings missed, 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. Legal Counsel for the board is required and shall be appointed for a Formal Investigation. The servicing legal office shall be consulted, and a Judge Advocate made available to provide legal advice to the board as requested by the Senior Member. Such counsel cannot function as a Member of, or participant in, the board proceedings to which he or she provides advice.
4. Recorder.
  - a. Eligibility. The appointment of a Recorder for the Board is mandatory. However, the Convening Authority need not appoint a Recorder separate from the Members; that is, one of the Members may serve as a Recorder for the Board. If a separate Recorder is not appointed, the junior Member of the Board shall perform all the functions that would have been performed by a separate Recorder. If a separate Recorder is appointed, the Recorder must be a Judge Advocate qualified in accordance with Article 27(b), UCMJ. An Assistant Recorder may be appointed in very large or rather complex cases, but does not need to be a Judge Advocate. If an understanding of the matters under investigation involves a high degree of technical knowledge, the Convening Authority is encouraged to appoint an officer who possesses required technical knowledge to serve as Assistant Recorder.
  - b. Initial Investigation. Prior to the hearing, the Recorder conducts an initial investigation of the incident. All witnesses should be interviewed, with witness statements taken, and, in most cases, reduced to writing for later use by the Board. The Recorder shall insure that all Privacy Act and HIPAA requirements are fully complied with prior to requesting personal information from an individual. Documentary evidence should be assembled, and tangible evidence identified and marshaled for presentation to the Board.
  - c. Hearing. The Recorder shall arrange for a place for the Board to meet, call witnesses (except those requested or called by a Party), and arrange for the assistance of Court-Reporters, interpreters, Orderlies, and clerical assistants, as necessary. 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 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 interests concerned. If the Recorder is absent, an Assistant Recorder, may, in the discretion of the Board (if not previously otherwise directed by the Convening Authority), act as Recorder so that 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 9 of this manual generally apply to Formal Boards of

Investigation except where inconsistent with the provisions of this chapter. In some cases, obvious changes in terminology to fit the Board situation must be made (*e.g.*, substituting “Formal Board of Investigation” for “Court of Inquiry”; Formal Investigation “Recorder” for Court of Inquiry “Counsel for the Court”; and Formal Board “Senior Member” for Court of Inquiry “President”). The following policies and procedures in Chapter 9 concerning Courts of Inquiry are expressly adopted and apply with respect to Boards of Investigation, unless specifically noted elsewhere in this chapter:

- a. Interpreters and Court Reporters (if a verbatim record of proceedings is ordered).
- b. General procedure.
- c. Meeting of the Court.
- d. Recess and adjournment.
- e. Rules of evidence.
- f. Presence of a Party and counsel.
- g. Order of presentation.
- h. Interviewing witnesses.
- i. Exclusion of witnesses.
- j. Examination of witnesses.
- k. Affidavits and Depositions.
- l. Real evidence.
- m. Communications with the Convening Authority.
- n. Visiting scene of incident.
- o. Statements of Parties.
- p. Report by the Court.
- q. Preparation and submission of the record (Provisions concerning a verbatim record apply only when the Convening Authority directs a Board of Investigation to submit a verbatim record of proceedings.).
- r. Authentication of the verbatim transcript (accomplished via signature of the President of the Court).
- s. All Members sign the Investigative Report (or minority report, as appropriate).
- t. Privileged nature of Formal Investigation deliberation sessions (*see* Article 9.K.6).

6. Oaths. Members of the Board and a Recorder for a Formal Board of Investigation need not be sworn. The Recorder for the Board administers oaths for the Court-Reporter and interpreters, as necessary, and for every witness.
7. Challenges. If any Party to an Administrative 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 the oath. The Board does not decide the issue; instead it reports the facts to the Convening Authority, in writing. The Convening Authority must determine if the challenged Member should continue to sit, and shall communicate that decision, also in writing. Copies of these communications must be appended to the record. Unless the Convening Authority is convinced that the challenge is baseless or was made merely as a delaying tactic, the Convening Authority is encouraged to grant the challenge and replace the challenged Member when substitute Members are readily available and it is practical to do so.
8. Attendance of Witnesses. Generally, a Formal Board of Investigation has **no** power to subpoena witnesses. However, some statutory authorities do authorize issuance of a subpoena. *See e.g.*, 10 U.S.C. § 939 (redress of injury to property, UCMJ Article 139); 33 U.S.C. § 1227 (Secretary may issue subpoenas under the Ports and Waterways Safety Program) and § 2606 (shore protection from commercial or municipal waste); as well as 46 U.S.C. § 6304 (investigation of marine casualties – but this is typically done under the Marine Safety Manual as opposed to this manual) and § 7705 (suspension and revocation hearings – again, typically conducted pursuant to the Marine Safety Manual and not this manual). Moreover, a commander *can* lawfully order military members to attend and participate. Similarly, a civilian employee *can* be compelled to attend and to participate. 5 U.S.C. § 7513(a) (may take action against an employee to promote efficiency of the service, and the Civilian Personnel Actions: Discipline, Performance, Adverse Actions Appeals, and Grievances, COMDTINST M12750.4 expressly states that the penalty for providing false testimony or refusing to testify in an inquiry, investigation or other official proceeding ranges from reprimand to removal). Merit Service Protection Board case law holds that union members may be afforded representation, even as witnesses, and civilian non-employees may not be compelled to attend or participate. Investigating Officers should contact civilian personnel specialists to resolve issues concerning civilian witness participation.
9. Arguments. If the junior Board Member is designated as or otherwise acts as Recorder for the Board, he or she may not argue before the Board. In this event, only Parties or their counsel may make argument. A separate Recorder may argue before the Board; however, it must be remembered that the Recorder represents the interests of justice and must present a balanced, fair summary of the salient facts and compelling evidence. A separate Recorder does not argue against counsel for a Party, but argues for accuracy.
10. Sample Record. The sample record of proceedings of a Court of Inquiry in Exhibit (9-A) may be used as a guide in conducting proceedings and preparing a record of a Formal Board of Investigation, with appropriate changes in terminology, mentioned above. 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 made to more effectively carry out the fact-finding mission. After reviewing this chapter, Chapter 9 of this manual, and the Sample Record at Exhibit (9-A), any remaining questions should be directed to the Board's Legal Counsel or to the servicing legal office.

## **B. PROCEDURES FOR A ONE-OFFICER FORMAL INVESTIGATION**

1. Scope. While the duties of single Investigating Officer conducting a Formal Investigation are nearly identical to those of a multi-officer Formal Board, some peculiarities pertaining to one-officer Formal Investigations require special attention.
2. Duties of a Formal 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 found in this chapter that logically apply to a one-officer investigation.
4. Challenge. If a Party contends that the Investigating Officer cannot approach the fact-finding mission as a disinterested investigator, the Investigating Officer must report that contention, every allegation in support of it, 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. Due to the likelihood that the Investigating Officer has previously invested considerable time and energy in preparing for the Board of Investigation, a Convening Authority may be more reluctant to grant a challenge in a One-Officer Board situation than in a multi-officer Board of Investigation. However, unless the Convening Authority is convinced that the challenge is baseless or was made merely as a delaying tactic, the Convening Authority is encouraged to grant the challenge and replace the challenged officer when qualified substitutes are readily available.
5. Procedural Guide. Exhibit (8-A) is a sample procedural guide for a one-officer Formal Investigation.

**Exhibit (8-A)**

**PROCEDURAL GUIDE FOR A ONE OFFICER FORMAL INVESTIGATION**

THIS INVESTIGATION SHALL COME TO ORDER. PLEASE BE SEATED.

The record will show that this investigation was called to order at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) and is being held at \_\_\_\_\_ (place).

This investigation is convened by order of \_\_\_\_\_ dated \_\_\_\_\_, copies of which have previously been furnished to all parties and their counsel.

This investigation has been convened for the purpose of inquiring into all the facts and circumstances surrounding \_\_\_\_\_.

**(REP NAME)\_\_\_\_\_ has been named as reporter and will now be sworn. Please stand and raise your right hand. Do you swear (or affirm) that you will faithfully perform the duties as reporter to this investigation (so help you God)?**

**The following persons have been named as parties and are present with counsel:**

Party: \_\_\_\_\_ Counsel: \_\_\_\_\_

Party: \_\_\_\_\_ Counsel: \_\_\_\_\_

Party: \_\_\_\_\_ Counsel: \_\_\_\_\_

Is/are counsel qualified per Article 27(b), UCMJ? (YES)

The record will show that counsel [for all parties] is so qualified.

In my letter [to the parties] informing you of the time and place of this investigation, I also advised you of your rights as a party. Those letters, along with the attached Privacy Act statements, will be made exhibits \_\_\_\_\_ through \_\_\_\_\_.

Is there any objection to Exhibit \_\_\_\_\_?

[(Your objection is noted for the record.)(Exhibit \_\_\_\_\_ is accepted and will be made a part of the record.)(Exhibit \_\_\_\_\_ is excluded as being totally irrelevant.)]

I once again remind you that as parties to this investigation, you have 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.
- 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 your 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.

Do you understand your rights as a party?

Do you desire further explanation of any of your rights as a party?

Let the record reflect this investigation is properly convened and constituted.

Prior to this hearing I held some brief, informal interviews concerning the general nature of this incident as authorized by the Administrative Investigations Manual. These informal interviews were necessary to ensure that this hearing would be conducted in an efficient and effective manner. In those preliminary interviews, I spoke with the following persons:

\_\_\_\_\_

The nature and substance of those discussions were as follows:

I also reviewed the following documents:

In preparing my report, I will only consider the evidence presented at this hearing.

Do any parties have any other pre-hearing matters to be placed on the record at this time?

The convening order has been marked as exhibit \_\_\_\_\_ and is made a part of the record at this time.

Is there any objection to Exhibit \_\_\_\_\_?

I(Your objection is noted for the record.)(Exhibit \_\_\_\_\_ is accepted and will be made a part of the record.)(Exhibit \_\_\_\_\_ is excluded as being totally irrelevant.)]

The following witnesses will be called to testify before this investigation:

Do any parties have any objections to the witnesses who will testify, or their order of testimony?

Does any party wish to call other witnesses to testify before this investigation?

I have the following exhibits for consideration in these proceedings. Copies have been previously provided/made available for inspection and copying to all parties. I again show each exhibit to all parties for inspection.

Exhibit \_\_\_\_\_ is consisting of \_\_\_\_\_ pages.



Is there any objection to Exhibit \_\_\_\_ ?

(Your objection is noted for the record. Exhibit \_\_\_\_ is accepted and will be made a part of the record.)/(Exhibit is excluded as being totally irrelevant.)

*(REPEAT FOR EACH EXHIBIT)*

Do the parties have any Exhibits relevant to his investigation that they wish to enter into evidence?

Exhibit \_\_\_\_\_ is \_\_\_\_\_ consisting of \_\_\_\_\_ pages.

Is there any objection to Exhibit \_\_\_\_\_?

(Your objection is noted for the record. Exhibit \_\_\_\_\_ is accepted and will be made a part of the record.)/(Exhibit \_\_\_\_\_ is excluded as being totally irrelevant.)

There are no further exhibits.

Before proceeding, do any parties have any other matters to bring to the attention of this investigation?

All persons expected to be called as witnesses must now withdraw from the hearing room.

The first witness is \_\_\_\_\_.

PLEASE REMAIN STANDING AND RAISE YOUR RIGHT HAND. 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?

PLEASE BE SEATED. STATE YOUR RANK/RATE, FULL NAME, AND DUTY STATION. SPELL YOUR LAST NAME. (Note: Have civilians give their address.)

*(REPEAT FOR EACH WITNESS)*

Q. \_\_\_\_\_ .

A. \_\_\_\_\_ .

Do the parties have any questions for this witness?

Q. \_\_\_\_\_ .

A. \_\_\_\_\_ .

Does the witness have anything else to say that this investigation should consider?

Does any party wish to recall this witness later?

Thank you. You are excused. (Since your testimony may be needed later, please wait in \_\_\_\_\_.) (Since you will not be needed to testify later, you may return to your normal duties.)

AS LONG AS THIS HEARING CONTINUES, DO NOT DISCUSS YOUR TESTIMONY OR KNOWLEDGE OF IT WITH ANYONE EXCEPT MYSELF, THE PARTIES, OR THEIR COUNSEL. IF ANYONE ELSE TRIES TO TALK ABOUT THIS CASE WITH YOU, STOP THEM AND REPORT THE MATTER TO ME IMMEDIATELY. DO YOU UNDERSTAND? (REPEAT FOR EACH WITNESS)

*(DESIGNATION OF PARTIES DURING THE INVESTIGATION)*

I have determined that \_\_\_\_\_ has a direct interest in the subject of the inquiry, and in accordance with the Administrative Investigations Manual is hereby designated a party. As a party, you have 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.
- 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 your 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.

Do you understand your rights as a party?

Do you desire further explanation of your rights as a party?

*(AFTER APPOINTMENT OR WAIVER OF COUNSEL, ASK THE PARTY IF THEY HAVE EXAMINED ALL THE EVIDENCE OF RECORD, AND DETERMINE IF THEY WISH TO RECALL ANY OF THE PREVIOUS WITNESSES FOR FURTHER CROSS- EXAMINATION)*

*(REPEAT FOR EACH RECESS):*

The time is \_\_\_\_\_. This hearing will recess until \_\_\_\_\_.

This hearing shall come to order. The time is \_\_\_\_\_. All parties and counsel are present.

The next witness is \_\_\_\_\_.

I have no further witnesses.

The time is \_\_\_\_\_. This hearing shall adjourn to the scene of \_\_\_\_\_.

*(NORMALLY, NO TESTIMONY IS TAKEN WHEN VIEWING THE SCENE)*

This hearing will come to order. The time is \_\_\_\_\_. This hearing is reopened in (location) \_\_\_\_\_, to inspect \_\_\_\_\_. All parties and counsel are present.

The time is \_\_\_\_\_. This investigation is adjourned and will reopen at \_\_\_\_\_ (date/time/place).

This hearing shall come to order. The date/time is \_\_\_\_\_.

All parties and counsel are present.

I remind the parties of the rights I advised you of earlier in the proceedings. They are still in effect. Do any parties have any questions about their rights?

\_\_\_\_\_ (party) may call your first witness.

PLEASE REMAIN STANDING AND RAISE YOUR RIGHT HAND. 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?

PLEASE BE SEATED. STATE YOUR RANK/RATE, FULL NAME, AND DUTY STATION. SPELL YOUR LAST NAME. (Note: Have civilians give their address.)

Counsel, you may proceed.

Q. \_\_\_\_\_.

A. \_\_\_\_\_.

I have some questions for this witness.

Q. \_\_\_\_\_ .

A. \_\_\_\_\_ .

Does the witness have anything else to say that this investigation should consider?

\_\_\_\_\_ (party) Do you wish to recall this witness later?

Thank you. You are excused. (Since your testimony may be needed later, please wait in .)(Since you will not be needed to testify later, you may return to your normal duties.)

**AS LONG AS THIS HEARING CONTINUES, DO NOT DISCUSS YOUR TESTIMONY OR KNOWLEDGE OF IT WITH ANYONE EXCEPT MYSELF, THE PARTIES, OR THEIR COUNSEL. IF ANYONE ELSE TRIES TO TALK ABOUT THIS CASE WITH YOU, STOP THEM AND REPORT THE MATTER TO ME IMMEDIATELY. DO YOU UNDERSTAND?**

You may call your next witness.

[(I call \_\_\_\_\_ .)(I have no further witnesses.)]

Do any of the parties have anything further to present?

There being no further evidence to consider, \_\_\_\_\_ (each party) may make closing argument.

\_\_\_\_\_ (party), Do you have any further evidence or argument to present?

There being no further evidence or argument to be presented, investigation is now adjourned to consider all the evidence, and to submit to the Convening Authority its findings of fact, opinions, and recommendations. The date/time is. This hearing is closed.

**Exhibit 8-B**

## PRIVACY ACT STATEMENT

1. **AUTHORITY:** 44 U.S.C. § 3101, 5 U.S.C. § 301, 31 U.S.C. § 3531.
2. **PRINCIPAL PURPOSES:** The information which will be solicited is intended principally for the following purposes:
  - a. Determinations on disciplinary or punitive action.
  - b. Determinations on liability of personnel for losses of, or damage to, public property.
  - c. Evaluations of procedures, operations, material, and design by the Coast Guards and contractors, with a view to improving the efficiency and safety of the Coast Guard.
  - d. Other determinations, as required, in the course of Coast Guard administration.
3. **ROUTINE USES:** In addition to being used within the Coast Guard for the purposes indicated above, records of investigation are routinely furnished, as appropriate, to the U.S. General Accounting Office for fiscal matters; and to the Department of Justice for use in litigation involving the government.

Also, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities in connection with civilian criminal and 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 and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. **DISCLOSURE IS VOLUNTARY.** You are initially presumed to have the administrative and 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 not 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. Also, any determination as to whether you should be held peculiarly liable for repayment of the Government's loss would be based on other evidence in the investigative record, which possibly might not support a favorable determination.

## CHAPTER 9 COURTS OF INQUIRY

### A. OVERVIEW

1. Generally. Courts of Inquiry are the most formal of Administrative Investigations and are used when subpoena power is likely to be required. A Court of Inquiry should be reserved for the investigation of incidents of exceptional importance.
2. Characteristics of Courts of Inquiry.
  - a. Convened by written order of a General Courts-Martial Convening Authority (GCMCA).
  - b. Consists of at least three commissioned officers as Members and also has appointed legal advisor for the Court, known as the Counsel of the Court.
  - c. Uses a hearing procedure. Takes all testimony under oath and records proceedings, except those proceedings on the record and verbatim for which the court adjourns (such as deliberation by the Court).
  - d. Designates as Parties persons subject to the UCMJ whose conduct is subject to inquiry or who have a direct interest in the subject under inquiry and request to be so designated.
  - e. Has the power to order military personnel and civilian employees to appear, testify, and produce evidence, as well as the power to subpoena civilian witnesses to appear, testify, and produce evidence. Article 47, UCMJ, provides for the prosecution of civilian witnesses in U.S. District Court for failing to appear, testify, or produce evidence. Civilian witnesses who fail to comply with a subpoena may also be prosecuted in a United States District Court. *See* 10 U.S.C. § 847. Military witnesses who disobey a lawful order to appear and testify or produce evidence may also be prosecuted under Article 92, UCMJ (failure to obey an order).

### B. MEMBERS OF A COURT OF INQUIRY

A Court of Inquiry consists of three or more commissioned officers as Members, plus a separate Judge Advocate as Counsel for the Court. The President of the Court of Inquiry must hold the rank of Lieutenant Commander (LCDR) or higher, and shall be the most senior of the Members. Counsel for a Court of Inquiry must be a Judge Advocate qualified in accordance with Articles 27(b), and 42(a), UCMJ (qualified to be either trial or defense counsel detailed for a General Court-Martial).

1. Seniority of Members. Whenever feasible, all Members of a Court of Inquiry should be senior in rank to any officer designated as a Party in the Convening Order. However, one or more of the Members may be junior to a Party, provided the *majority* of the Members of the Court of Inquiry are senior in rank to every designated Party. If an officer senior to any Member is designated as a Party during the proceedings, the Convening Authority shall be immediately notified in order to revise the Court's Membership, as necessary, in accordance with the seniority principle. Whenever it is not feasible to universally adhere to the seniority principle in Membership, the Convening Authority shall attach an explanation of

the reasons therefore in the action on the record of the proceedings. The Counsel for the Court need not be senior to any of the designated Parties.

2. Duties of the President of the Court of Inquiry. The President shall decide upon matters relating to the routine business of the Court of Inquiry. 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 also ensures that the Counsel for the Court has done adequate advance investigation, assembled witness statements, and marshaled the documentary and tangible evidence, so that the inquiry may proceed in an orderly and efficient fashion.
3. Duties of the Members of the Court of Inquiry. The primary duty of any officer appointed as a Member of a Court in Inquiry is attendance at the proceedings. Members are required to be in attendance at the designated time and place unless prevented by emergency or illness, excused by the Convening Authority, or ordered away by superior 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 there are at least three Members and a majority of the total Membership is present, and the majority of those present is senior to every designated Party, no business other than adjournment shall be conducted. If it appears that a Member will be absent for a significant period of time (*See Article 8.2.b (1)*) and that absence would reduce the Court to fewer than three Members, the Convening Authority shall be advised. The Convening Authority may appoint additional Members to ensure that at least three Members will be present, to ensure the Court's continued progress. Any substitute or additional Member appointed must examine the record of the proceedings conducted prior to sitting as a Member, and accomplishment of that review shall be noted on the record. After reviewing the record, each substitute 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 completion of that review noted on the record. After return and review of the record and materials missed, 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.
4. Challenges to Members of a Court of Inquiry.
  - a. Initiation. Any Member of a Court of Inquiry may be challenged for cause (usually by a Party, but possibly by the Counsel for the Court) at any time during the proceeding. However, the Court will not entertain a challenge to more than one Member of the Court at a time. After stating the grounds for the challenge, the Party bringing the challenge may examine the Member concerning those grounds. This examination – as with all testimony before the Court—shall be under oath, and it shall be recorded verbatim. The Counsel for the Court (or counsel for the Party if challenge is brought by 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.

- b. Decision. Challenges to Members shall be heard and decided by the remaining Members, with deliberations conducted in private and out of the presence of the challenged Member, with legal advice from the Counsel of the Court, if desired (unless the challenge was initiated by Counsel for the Court, in which case legal advice would be provided independently through the servicing legal office). The burden of proving the ground for the challenge is on the Party who made the challenge. The decision on the challenge shall be made according to the preponderance of the evidence. The decision shall be read into the record with all Parties and all Members present. A sustained challenge is immediately reported to the Convening Authority. If a successful challenge against a Member reduces the number of Members to fewer than three, the Court shall adjourn until the Convening Authority appoints another Member or Members. The Convening Authority may wish to appoint sufficient Members to ensure an odd number which will prevent deadlocks. If the Membership is not reduced below three, the Court may proceed with its inquiry unless otherwise directed by the Convening Authority.

### C. COUNSEL FOR A COURT OF INQUIRY

1. Appointment. The appointment of a Counsel for the Court is mandatory. The Counsel for the Court must be a Judge Advocate qualified in accordance with Articles 27(b), and 42(a), UCMJ. An Assistant Counsel may be appointed to the Court, but this assistant need not be a Judge Advocate. If an understanding of the matters under inquiry involves a high degree of technical knowledge, a Convening Authority may appoint an officer who possesses the required technical knowledge as Assistant Counsel for the Court. The Counsel of the Court of Inquiry may communicate *directly* with the Convening Authority or the President of the Court on pre-hearing matters, but any communications with the Convening Authority must be in writing and shall be attached as enclosures to the report of the Court. Other communications during the hearing shall be before all Members, whether in closed deliberations or in open sessions before the Parties and on the record.
2. Duties of Counsel to Court of Inquiry.
  - a. 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 in the Court. The Counsel for the Court shall insure that all advice relating to the Privacy Act has been complied with prior to requesting an individual to supply protected personal information. Documentary evidence should be assembled, and tangible evidence identified and marshaled for presentation to the Board.
  - b. During the hearing. The Counsel for the Court shall arrange for a place for the Court to meet, call witnesses (except those requested or called by a Party), and arrange for the assistance of a Court-Reporter, as well as interpreters, orderlies, and clerical assistance, as needed. Additionally, the Counsel for the Court shall administer the oath or affirmation to all Members, Court Reporters, interpreters, and witnesses, and supervise the recording of the proceedings and the preparation of the record. The Counsel for the



Court shall insure the Privacy Act and HIPAA is fully complied with prior to requesting an individual to supply protected personal information. If the Counsel for the Court is absent, an Assistant Counsel for the Court who is a qualified Judge Advocate, 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.

- c. Responsibilities. 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 any person concerned. The Counsel for the Court is not a prosecutor. 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. However, in the interest of justice, fairness and candor to the Court, the Counsel for the Court may oppose motions made by the 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.

#### **D. COURT-REPORTER AND INTERPRETERS**

1. Court Reporters. The Court Reporter chosen to record the proceedings of the Court of Inquiry may use longhand, shorthand, or any recording device. In any event, a verbatim record of the proceedings shall be accurately and expeditiously compiled, verified, and authenticated.
2. Interpreters. In all Courts of Inquiry where testimony is to be given in a language other than English, 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 and particular dialect to be interpreted and also has a good command of the English language. If it appears to the Court that the interpreter is experiencing difficulty interpreting, or if there is an objection to 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 more competent interpreter be appointed. Until the appointment of another Interpreter, no further examination of any witness requiring interpretation shall be undertaken.

#### **E. COUNSEL FOR PARTIES**

Each Party named in the Convening Order, or subsequently identified by the Court of Inquiry, has the right to be represented by counsel. (*See* Article 10.D of this manual).

#### **F. CONVENING A COURT OF INQUIRY**

Any officer exercising General Court-Martial Convening Authority (GCMCA) may convene a Court of Inquiry.

1. The Form of the Convening Order. Courts of Inquiry are convened by written appointing order signed by the officer exercising GCMCA. The Convening Order shall be in letter

form addressed to the prospective President of the Court of Inquiry. Only under exceptional circumstances may a Court of Inquiry be convened by oral or message order, and then written confirmation of the oral and message order shall be issued as soon as practicable. Message orders and any confirmations of oral orders shall be included in the record of the proceedings of the Court of Inquiry.

2. Contents of the Convening Order. The Convening Order of a Court of Inquiry shall name the President, the Members, and the Counsel for the Court. The servicing legal office shall detail other Counsel. When appropriate, the Convening Authority shall also designate Parties to the inquiry. The Convening Order shall specify the time and place for the initial meeting. It shall recite the specific purpose 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 Convening Order should contain ample instructions to ensure the accomplishment of the purpose for which the Court was convened. Minimally, the Court shall be directed to report findings of fact. If the Convening Authority desires, the Convening Order may also direct that opinions and recommendations be submitted. In the appropriate cases, the Convening Order shall also provide for the Court-Reporter services in all cases, and for interpreters, if needed. (*See* Enclosure (3-E) for an example of Convening Orders for a Court of Inquiry).
3. Amendments. The Convening Authority may, at any time prior to the final report of the Court, amend the Convening Order to change the Membership, limit or broaden the scope of the Inquiry, name additional Parties or provide additional instructions. While the Court functions, deliberates, and decides independently of the Convening Authority, the Court conducts its Inquiry for, and at the discretion of, the Convening Authority.
4. Advance Copies. The Convening Authority shall forward an advance copy of the Convening Order, and any subsequent amendments to that order, to Commandant (CG-0944) to keep Headquarters informed about significant occurrences and actions being taken in connection with the composition of the Court of Inquiry.

## **G. PROCEDURE**

A Court of Inquiry uses a hearing procedure. It conducts all proceedings and takes all testimony under oath, both of which must be recorded verbatim, regardless of whether the Convening Order specifically addresses a verbatim transcript.

1. General Procedure. Procedurally, a Court of Inquiry is governed generally by the principles of military law, applying procedural rules similar to those for trials by General Court-Martial, with the exception of the Military Rules of Evidence. 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 Convening Order shall be given primary consideration in the determination of procedural questions not expressly covered in this manual. The Court should consult with the Counsel for the Court to resolve any procedural questions. A Court of Inquiry shall assemble at the place and, as nearly practicable, at the time named in the Convening 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 a court-martial, with the President in the center and the next Senior Members inboard, and the more junior Members outboard from center. Courts of Inquiry may be cleared of non-Members until the order constituting them and the instructions contained in the Convening Order have been read and the ground rules of proceeding decided. At the discretion of the President, Counsel for the Court need not withdraw when the Court is cleared for preliminary procedures. However, where such preliminary matters are not contentious, it is preferable to include the Parties (or their counsel) and the Counsel to the Court and the Court-Reporter present to facilitate a common understanding and agreement over the Court's anticipated procedures.

2. Sessions. The proceedings shall be public unless the Convening Authority or the Court, for security reasons or other good cause (which must be noted on the record), directs that the entire proceedings or any portion be closed to the public. Even if the inquiry is not open to the public, Parties to the Inquiry and their counsel are still able and encouraged to participate in the process. If the matter to be heard requires a security clearance, and Parties or their counsel do not have the required clearance, the Convening Authority shall be advised. The Military Personnel Security Program, COMDTINST M5520.12 (series) governs granting of security clearances.
3. Clearing the Court. The Court may be cleared at any time for deliberation or consultation, whereupon Parties and their counsel will withdraw. It is often most efficient in the case of an open hearing with numerous spectators for the Court to withdraw. If the Court withdraws, the Counsel for the Court will also withdraw, out of the presence of the Members, just like the Parties' counsel, unless requested for consultation by the President of the Court. However, in any event, Counsel for the Court must not be present for active deliberations. The Court may, however, suspend deliberations to consult with Counsel, and resume deliberations upon departure of the Counsel for the Court.
4. Spectators and Publicity. As a general rule, members of the news media will be permitted to attend open sessions of a Court of Inquiry. However, no special section of the hearing room shall be set aside for the press to the exclusion of other interested spectators, or that will interfere with the orderly conduct of the investigation. During any session of the Court, no recording or videotaping, or radio or television broadcasting of the proceedings, or the taking of photographs in the hearing room or from the hearing room shall be permitted.
5. Recess and Adjournment. Courts of Inquiry may recess or adjourn for such time as may be necessary without requiring the permission of the Convening Authority. However, except for national holiday (3-day) weekends, if the adjournment is for more than three days, the President shall advise the Convening Authority, in writing, of the duration and the reasons for the adjournment.
6. Rules of Evidence. The Court is not bound by the Military Rules of Evidence (MRE) prescribed for trials by courts-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. *See General MRE 401-403.* Compliance with the general spirit of the MRE will promote an orderly and efficient Inquiry and insure a full, fair, and impartial investigation. The Court shall safeguard the rights of witnesses and to the fullest extent possible, and while the Court should permit vigorous cross-examination of witnesses, the Court must not permit witnesses to be badgered or belittled by Parties' Counsel. For these reasons, among others, Counsel for the Court is appointed to advise the Court on procedural and evidentiary issues.

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 irreconcilable, yet convincing argument from both the Counsel for the Court and from counsel for one or more Parties. The Court may also call for advice from an independent legal resource. In such cases, the servicing legal office should be consulted, and a Judge Advocate may be made available to provide additional, independent legal advice to the Court.
8. Oaths.
  - a. Court Reporter. The Court 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?"*
  - b. Counsel for the Court of Inquiry. The Counsel for the Court shall, before entering upon the duties of the office (with exception of swearing in the Court-Reporter), 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 the Counsel for the Court (or assistant counsel for the court) to this court?"*
  - c. Court Members. Before the Court begins the Inquiry prescribed by the Appointing Order, the Counsel for the Court shall administer the oath to the President and Members using the following form:  
*"Do you, AB, CD, and EF, swear or affirm that you will faithfully perform all the duties incumbent upon you as a Member of this court, and that you will examine and inquire, according to the evidence, into the matter now before you without partiality?"*
  - d. 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?"*
  - e. 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?"*

- f. Interpreter. Every interpreter shall, before entering upon the duties of that service, make an oath or affirmation, administered by 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?”
9. Communication with the Convening Authority. If at any time during the course of the proceedings it should appear, from the evidence adduced or otherwise, that circumstances exist that suggest that 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 instructions set forth in the Convening Order, a report and recommendation to that effect should be made, in writing, from the President to the Convening Authority. The Convening Authority may take such action on this report as he or she deems appropriate, and shall reply, in writing. Copies of all such communications and replies shall be appended to the record.
10. Opening and Closing Argument. After the testimony, the taking of evidence, and statements by the Parties (if they so desire), the Counsel for the Court and counsel for the Parties shall be permitted to present argument if they so desire. The Counsel for the Court has the right to make an opening argument statement and, if any argument is made on behalf of any Party, a closing argument. Counsel for the Parties do not have the right to make an opening argument statement, but may do so, with the consent of the President. Unless the Parties and the President agree otherwise, the Counsel for the Court will present arguments first. The Court may, if it so desires, set any reasonable limitations on the arguments. Common restrictions may include the rule that one counsel only speaks per Party per statement, and arguments are limited in time, as appropriate to the quantity and complexity of the evidence.
11. Closing the Inquiry. After all the evidence has been presented and all statements and arguments have been received, the Court shall declare the inquiry closed. The Members shall then consider the evidence, plus Parties’ statements and arguments, if made. The instructions contained in the Convening Order shall be carefully reexamined and scrupulously followed. At the end of deliberations, the Court shall be reopened for announcement of the Court’s determination. However, unless specifically directed by the Convening Authority, the inquiry shall not be reopened for the announcement of the findings of underlying fact, opinions, and recommendations. The President is responsible for delivering the written report containing the Court’s findings of fact, opinions and recommendations to the Counsel for the Court, as part of the record of the proceeding.

## H. WITNESSES

1. Order of Presentation. Witnesses are usually examined in the following order: first, 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 finally, witnesses requested by the Court. The order of examining each witness is usually direct examination, cross-examination; redirect examination, re-cross examination, and examination by the Court. Each witness will then be permitted to make a statement, while still under oath, relating to matters pertinent to the inquiry but 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 previous examination by the Court. The foregoing order of presentation need not be followed when the Court, in the exercise of its sound discretion, feels that a deviation there from will secure a more effective presentation without prejudice to the interest of any Party.

2. Attendance by 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 by the Court to appear and be examined before Courts of Inquiry in the same manner as provided for courts-martial. *See* Military Justice Manual, COMDTINST M5810.1 (series).
3. Interviewing Witnesses. The Counsel for the Court, any Party, and any counsel for a 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 Standard Investigations, prior to any witness appearing before the Court of Inquiry. However, the Court is under no obligation to order military persons to submit to out-of-Court interviews, and it cannot compel civilians to submit to out-of-Court interviews. The Court can compel witnesses to testify, either via affidavits, or in depositions, or in a Court of Inquiry. However, the Court cannot be compelled to do so.
4. Exclusion of Witnesses. Witnesses other than a Party should be excluded from the hearing room, except when testifying. In some cases, however, it may be necessary for an expert witness to listen to the testimony of fact witnesses to be able to testify in an informed manner. In such instances, where the expert witness is not a fact witness, the Court may authorize the expert to be present during the open sessions of the Court. In these instances, the record must identify which fact witnesses' testimony that the expert witness listened to prior to testifying as an expert.
5. Examination of Witnesses. A witness, once sworn, should be informed of the general nature of the inquiry unless it appears from the record that the witness has been previously so informed. The Court shall protect every witness from improper questions, harsh or inappropriate 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 anyone other than Counsel for the Court, or counsel for a Party, or the Court-Reporter (to verify the accuracy of the Record).

## **I. AFFIDAVITS AND DEPOSITIONS**

1. Conditions for Use of Affidavits. Under appropriate circumstances, when a Court of Inquiry desires the testimony of a witness, but the witness 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 outside the subpoena range of the Court (beyond the jurisdiction of the

Federal court in whose district the Court of Inquiry is conducting its hearing; generally, more than 100 miles from the nearest U.S. District Courthouse). Other such circumstances may also include cases where the witness is, by reason of age, illness, infirmity, imprisonment, or military necessity, immune to process, or for other reasonable cause, is unable or refuses to appear to testify in person before the Court of Inquiry. An affidavit in lieu of testimony may *also* be used in the discretion of the Court when all Parties agree to substitute it for stipulated, anticipated live testimony.

2. Situations in which Depositions are Desired. Sometimes situations arise where it would be desirable to take a deposition pursuant to oral or written interrogatories. This may be accomplished in such a manner as the Court of Inquiry directs, after hearing presentations by Counsel for the Court and Parties concerned. The use of videotape is authorized and may be preferred to more traditional forms of deposition. If there is any reasonable likelihood that the deposition might be required in a subsequent court-martial proceeding, the deposition procedures should comply with Rule 702, R.C.M.

## **J. REAL EVIDENCE**

1. Documents. The original of a document or writing is superior in evidentiary value to a copy. This is true even with regard to modern photographic duplications, which are susceptible to tampering through such devices as masking or page substitutions, and even “morphing.” However, often it is not feasible to incorporate originals in the record of the Court of Inquiry due to such factors as inconvenience involved in obtaining the documents, 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 the proceedings should reflect the location of the original, contain the most reliable copy obtainable, and indicate how its reliability was established (e.g., the certificate of the custodian of the official record or an affidavit of comparison with the original document by Counsel and/or by Members of the Court of Inquiry). A Court of Inquiry may receive a copy of a document, noting in 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 Authority or Reviewing Authority.
2. Exhibits.
  - a. General. Exhibits shall be numbered in the sequence in which they are received in evidence. It is neither required nor desired to use separate numbering schemes between the Government and the Parties or the Court. A common numbering scheme is preferred. It is ordinarily impracticable to attach real evidence (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 (*e.g.* photographs) so that they may be properly considered on review, and then the details of the location and access should be appended to or included in the record to aid the Convening Authority in physical review, if necessary.
  - b. Custody. At the conclusion of the inquiry, the Counsel for the Court should deliver physical evidence to the Convening Authority (or designated representative), to be preserved for subsequent use as evidence if further action is to be taken. Generally, when Final Action has been taken in the case, such articles shall be returned to their

rightful owners, as known. Otherwise, it may be maintained by the Convening Authority or disposed of in accordance with agency directives. In cases where such evidence is of a contraband nature, involves a risk of danger (whether weapons or flammables or toxins or is otherwise harmful), or the material may be needed in further proceedings, the Counsel for the Court shall ensure that proper chain of custody record keeping and safekeeping procedures are scrupulously followed.

- c. Logs. When original deck logs, bell books, or other Coast Guard logs are received as exhibits, a certified accurate copy will be substituted when the record is prepared for submission, and the originals returned to the originating unit for storage or disposition in accordance with agency directives.
3. Visiting the Scene of the Incident. When practicable, it may be desirable to visit the scene of the incident. Usually no testimony is taken at the scene, because the sole purpose is 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 Court-Reporter, in case the Court has questions or comment or instructions, which should be preserved, verbatim, in the Record. Any Party may waive attendance. Neither the Counsel for the Court, nor any Party nor counsel, has a right to make a record at the scene of the incident, absent express invitation of the Court. However, both Counsel for the Court and Parties (and their counsel) may take pictures, take measurements, and generally diagram the scene of the incident.
  4. Statements of Parties. Regardless of whether a Party has previously testified as a witness, the Party may make an unsworn statement to the Court *after* all witnesses have testified and *before* the closing arguments. 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. The Party may not be cross-examined on 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.

## **K. DELIBERATIONS AND THE REPORT OF THE COURT OF INQUIRY**

1. Closing the Inquiry. After all the evidence has been presented and all statements and arguments have been received, the Court shall declare the Inquiry closed and the Members shall retire to deliberate and to prepare their written report. Pursuant to the Convening Order, the report must contain findings of fact, and if so directed by the Convening Order, also contain opinions and recommendations.
2. Finding of Facts. The Court, after deliberating on the evidence received during the Inquiry, shall first proceed to record the pertinent facts found that constitute a detailed description of the matters investigated. The findings of fact shall include only those facts that the Court believes the evidence establishes, and nothing further. A fact need not be proved beyond a reasonable doubt to be listed as an established fact. Credible information in the record that has been established by a preponderance of the evidence is an adequate and sufficient factual basis.



3. Opinions. If opinions were requested in the Convening Order, the Court shall list all of its opinions drawn from and supported by the facts. Depending on the nature of the inquiry and the provisions of the Convening Order, opinions may include inferences drawn from the facts, opinions as to the performance of duty by individuals concerned or as to performance of functions by equipment involved, and opinions required by regulation (such as LOD/Misconduct determinations discussed in Chapter 7). Moreover, it is appropriate for Investigating Officers to comment on the credibility of witnesses and relative strengths of evidence in the opinions section of the investigation report, particularly where statements or other evidence appears to conflict. Each and every opinion, however, must identify the established facts that support it. Opinions without specific, credible, and clearly identified factual foundations amount only to unsubstantiated speculation, which provide little value in a report of investigation.
4. Recommendations. When the Convening Order calls for recommendations, the Court shall make such recommendations as are specifically directed as well as 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(s) of the Court recommends trial by court-martial for any Party to the Inquiry, a charge sheet, signed and sworn to by the Member(s) recommending trial shall be submitted to the Convening Authority with the record of the proceedings. *See* Rule 301, R.C.M. If a *punitive* letter of reprimand or admonition is recommended, a draft of the recommended letter must be prepared and forwarded with the record of the proceedings. If a *non-punitive* letter is recommended, a draft of the letter shall be prepared and separately forwarded to the appropriate commander for consideration, but it will not be included as part of the record of the proceedings. Consistent with the prohibition against including non-punitive draft correspondence with the IR, for other-than-criminal proceedings, the Court shall similarly refrain from forwarding “adverse” draft correspondence unless and until requested by the Convening Authority or Final Action Authority.
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 Authority or Reviewing Authority. The deliberations of the Court of Inquiry are closed and may not be discussed except in the exclusive company of the Members.

#### **L. PREPARATION AND SUBMISSION OF THE RECORD**

1. Composition. The Record of proceedings of a Court of Inquiry shall include the original Convening 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 the counsel. The verbatim record is intended to be comparable to 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 rights shall, in all cases, be recorded verbatim. The written report of findings of facts, 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 facts, opinions and recommendations to which they concur. This requirement includes an officer who participated in only part of the proceedings. 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 the Counsel for the Court. In case the President cannot authenticate the Record, another Member in lieu of the President shall sign it, and in case Counsel for the Court cannot authenticate the record, either the Assistant Counsel shall sign it for the Court or a Member in lieu of Counsel for the Court.
3. Forwarding. The Record of proceedings, together with the number of complete copies required by the Convening Order, shall be forwarded to the Convening Authority by the President using a short letter of transmittal. One complete copy, plainly marked on the over page as an "Advance Copy" shall be mailed directly to Commandant (CG-0944).

**Exhibit (9-A)**  
**SAMPLE REPORT OF A COURT OF INQUIRY**

RECORD OF PROCEEDINGS OF A COURT OF INQUIRY  
Convened on board USCGC \_\_\_\_\_(W \_\_\_\_\_)

OR

Convened at (Command / Unit / Location):  
By the Order of:

Commander, First Coast Guard District:  
To inquire into (the incident) aboard USCGC \_\_\_\_\_(W \_\_\_\_\_)

OR

To inquire into (the incident) at (Command / Unit / Location):  
Which occurred on (incident date):  
Proceedings Ordered on (Convening date):

Notes: A copy of the preliminary statement, exhibits, findings of fact, opinions and recommendations will be attached as per the Standard Investigation and Formal Investigation investigative report (IR) format.

The record of proceedings shall be prepared on standard 8 1/2 X 11 inch paper.

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), notation as to 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 also be listed in chronological order in the index, showing the page at which each was admitted in evidence. When an index is required, it precedes the Convening Order.

The original Convening Order follows the cover page as Enclosure "A". Amendments or modifications thereto are Enclosures "B", "C", *et cetera*. Written communications with the convening authority will follow the Convening Order and any amendments or modifications thereto.

**-FIRST DAY-**

On board (at)  
USCGC \_\_\_\_\_(W \_\_\_\_\_)  
(Command or Unit)  
(date)

The court met at (local time)

Present:

Rear Admiral \_\_\_\_\_, USCG; President

Captain \_\_\_\_\_, USCG; and  
Commander \_\_\_\_\_, USCGR; Members.  
Lieutenant Commander \_\_\_\_\_, USCG, Counsel for the Court.

The Court was cleared and the Counsel for the Court read the Convening Order, original attached, marked as Enclosure "A", and an amendment thereto, original attached, marked as Enclosure "B". All matters preliminary to the inquiry having been determined, and the Court having decided to sit with open doors, was opened.

**PARTY AND COUNSEL ENTER.**

Lieutenant Commander \_\_\_\_\_ USCG, entered as a Party to the Inquiry and introduced Lieutenant \_\_\_\_\_, USCGR, as his counsel (qualified in accordance with articles 27(b), and 42(a) of the UCMJ). Lieutenant took a seat as counsel for the Party, Lieutenant Commander \_\_\_\_\_.

Note: If a Party appears and waives the right to be present or to be represented by counsel, this shall fact shall be reported verbatim. If any designated Party or counsel is absent, the record shall indicate that absence, the reasons therefore, if known, and whether or not the Party (or counsel) 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 Court Reporter, YN1 \_\_\_\_\_, USCG, the Members of the court, and Counsel for the Court were sworn.

Note: Interpreters and Assistant Counsel, if any, are also sworn.

Note: Informing the Party or Parties of their rights is accomplished at this time. Counsel for the Court informs the Party or Parties of their rights in accordance with Article 10.F of this Manual; and this event is recorded verbatim. The record will clearly show that all Parties have been designated as Parties. See Article 10.G.3 regarding the additional rights of a person who has been injured.

**RIGHT TO CHALLENGE ACCORDED.**

The Party objected to Captain \_\_\_\_\_, USCG, as a Member, stating that Captain \_\_\_\_\_ (had already formed an opinion that the Party was guilty of culpable conduct with regard to the question of the responsibility for the (incident)).

Upon request of the challenging Party, the challenged Member took the stand, was duly sworn and was examined as follows:

**VOIR DIRE EXAMINATION**

Questions by counsel for Lieutenant Commander \_\_\_\_\_, challenging Party:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Questions by Counsel for the Court.

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Neither the Court, Counsel for the Court, nor the Party desired to examine the challenged Member further. Captain \_\_\_\_\_ was excused from the witness stand.

Ensign \_\_\_\_\_, USCG, was called as a witness by the Party (*OR* the Counsel for the Court), was duly sworn, and examined as follows:

**DIRECT EXAMINATION**

Questions by the counsel for the challenging Party (the Counsel for the Court):

Q. State your name, grade, organization and present station.

A. \_\_\_\_\_.

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

**CROSS EXAMINATION**

Questions by the Counsel for the Court (the challenging Party):

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Neither the Counsel for the Court, the Court, nor the Party desired to examine the witness further. The witness was duly dismissed from the stand, warned not to discuss his (her) testimony, and withdrew from the courtroom.

The court closed at (local time), (date), 20\_\_\_\_. The challenged Member withdrew from the remainder of the Members.

**Challenged sustained:**

The Court opened at (local time), (date), 20\_\_\_\_.

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

The President announced that the challenge of the party was sustained and that Captain \_\_\_\_\_ was relieved as a Member and excused.

Captain \_\_\_\_\_ withdrew from his (her) seat as a Member.

Note: 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 Convening Authority of this fact.

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 former member and the Court would then proceed as follows:

The number of Members remaining after excusing the former Member being at least three, the Court determined to proceed. The Counsel for the Court was instructed to inform the Convening Authority that Captain \_\_\_\_\_, USCG, was challenged by an Party – for cause—and excused by Court.

*All communications with the convening authority will be in writing and will be made part of the record, as enclosures.*

**Adjournment.**

The court adjourned at (local time), (date), 20\_\_\_\_ (to await the appointment of a new member).

**Challenged denied:**

The Court opened at (local time), (date), 20\_\_\_\_.

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

The President announced that the challenge of the party was denied and that Captain

\_\_\_\_\_ was retained as a Member.

Captain \_\_\_\_\_ returned to his (her) seat and duties as a Member

**SECOND DAY-**

On board (at)  
USCGC \_\_\_\_\_(W \_\_\_\_\_)  
(Command or Unit)  
(date)

The court met at (local time).

All persons connected with the court who were present when the court adjourned were again present.

**COUNSEL FOR PARTY IS ABSENT:**

Continue the "all present" above entry by stating "except Lieutenant \_\_\_\_\_, Counsel for the Party, because Lieutenant \_\_\_\_\_ was unexpectedly called as a witness in a general court-martial."

Lieutenant Commander \_\_\_\_\_, 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 the Party's waiver of his (her) right to have counsel present.

**COMMUNICATION WITH THE CONVENING AUTHORITY READ INTO RECORD:**

Counsel for the Court read a communication from the Convening Authority, original attached, marked as Enclosure "C", appointing Captain \_\_\_\_\_, USCGR, a Member of the court. A copy of the amending order

was given to the Party, original attached, marked as Enclosure "D".

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.

**WITNESSES:**

No witnesses not otherwise connected with the inquiry were present.

Lieutenant \_\_\_\_\_, USCG, took the stand as a witness, was duly sworn, informed generally of the subject matter of the inquiry, and was 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 \_\_\_\_\_(W\_\_\_\_)?

A. I am, and that is the official log for (incident date).

**EXHIBITS:**

Note: Introducing documentary evidence or other material things, the following procedure should be followed by counsel:

Counsel: 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 incident) that occurred in USCGC \_\_\_\_\_(W\_\_\_\_) on (incident date).

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 incident).

The witness read from the said log extracts, copy appended, marked "Exhibit 1."

Neither the Court, Counsel for the Court, nor the Party desired further to examine this witness. The witness was dismissed from the stand, duly warned not to discuss his /her testimony, and withdrew from the courtroom.

**EXAMINATION OF A WITNESS CALLED BY THE COUNSEL FOR COURT:**

\_\_\_\_\_, Fireman, USCG, was called as a witness, was duly sworn, generally 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 there on 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 Party or Recorder (or Court) interrogating a witness shall be given the opportunity to complete such interrogation of that witness before further questions are propounded by others. After additional

persons have propounded questions, the initial questioner should be afforded opportunity to ask any follow-up questions raised by those supplemental questions. The supplemental questioners should have a similar opportunity to follow-up on the subsequent questions of the initial questioner. A typical sequence might progress as below:

Counsel for Party . . . Counsel for Court . . . Court . . .  
Counsel for Party . . . Counsel for Court . . . Court . . . *etc.*

**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 LCDR \_\_\_\_\_, Party:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

**REDIRECT EXAMINATION**

Questions by the Counsel for the Court:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

**REXCROSS EXAMINATION**

Questions by counsel for CDR \_\_\_\_\_, party:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

**EXAMINATION BY THE COURT**

Questions by a court member (President) (CAPT \_\_\_\_\_):

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Neither the Court, Counsel for 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 (and the Court) will be afforded the opportunity of further examination before the witness is excused.

**WARNING THE WITNESS:** (*See* Article 10.G.4)

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 manner: "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 (junior grade) \_\_\_\_\_, USCG was subject to inquiry, and that he (she) should properly be designated party to the inquiry. Accordingly, the President of the Court instructed the counsel for the to summon Lieutenant (junior grade) \_\_\_\_\_ to appear.

Time of session.

The court (adjourned) (recessed) at (local time), (date), 20\_\_\_\_.

The court (closed) (opened) at local time), (date), 20\_\_\_\_.

All persons connected with the inquiry who were present when the court (adjourned) (recessed) are again present in court (except \_\_\_\_\_).

\_\_\_\_\_, Chief Yeoman, USCG, was introduced as the Court-Reporter and was duly sworn.

No witness not otherwise connected with the inquiry were present.

**DESIGNATION AS A PARTY:**

Lieutenant (junior grade) \_\_\_\_\_, 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 therefore. (*See* NOTE for "First Day" regarding informing parties of their rights.)

LTJG \_\_\_\_\_ requested and was granted a delay in the proceedings until he (she) could obtain counsel.

Adjournment.

The court adjourned at local time), (date), 20\_\_\_\_.

**THIRD DAY-**

On board (at)  
USCGC \_\_\_\_\_(W\_\_\_\_\_)  
(Command or Unit)  
(date)

The court met at (local time).

All persons connected with the court were present when the court adjourned were again present in court.

LTJG \_\_\_\_\_introduced Commander \_\_\_\_\_, USCG, (qualified in accordance with article 27(b) of UCMJ), as his counsel. Captain \_\_\_\_\_ took a seat as LTJG \_\_\_\_\_'s counsel.

According rights to new party.

LTJG \_\_\_\_\_examined the Convening 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 LTJG \_\_\_\_\_ and his (her) counsel.

If desired, the Court will be recessed (or adjourned) for this purpose.

LTJG \_\_\_\_\_stated that he (she) did not desire to recall any of the previous Parties,

Witnesses will be recalled, if practicable.

No witnesses not otherwise connected with the Inquiry were present.

**COURT VISIT TO SITE OR SCENE**

The President announced that the Court would adjourn to the scene of the incident in USCGC\_\_\_\_\_(W\_\_\_\_\_).

The Court adjourned at (local time), (date), 20\_\_\_\_.

The Court met at (local time), (date), 20\_\_\_\_, in (location) USCGC\_\_\_\_\_(\_\_\_\_\_) to inspect (the site of the incident).

After completing inspection of the scene of the incident, all personnel present returned to the regular place of meeting where the Court was reassembled.

The court opened at (local time), (date), 20\_\_\_\_\_.

All the Members, Counsel for the Court, the Parties-and their respective counsel and the Court-Reporter were present.

No witnesses not otherwise connected with the Inquiry were present.

**REQUEST TO BE DESIGNATED AS A PARTY**

Ensign \_\_\_\_\_, USCG, entered, informed the Court that (he/she) had a direct interest in the subject matter of the Inquiry and requested designation as a Party and accompanying rights of a Party.

Ensign \_\_\_\_\_was directed to state the nature of (his/her) interest and replied as follows (verbatim):

\* \* \* \* \*

**DESIGNATION OF PARTY UPON REQUEST**

The Court, having decided that Ensign \_\_\_\_\_ had a direct interest in the subject of the Inquiry, designated (him/her) as a party. (See Note first day as to informing parties of their rights).

Ensign \_\_\_\_\_ stated: "I waive my right to be represented by counsel and to examine the record of proceedings thus far conducted." Ensign \_\_\_\_\_ read the Convening Order and modification(s) and indicated no objection to any Member of the Court; or

The Court recessed at (local time), (date), 20\_\_\_\_, to provide Ensign \_\_\_\_\_ with an opportunity to examine all the evidence of record.

The Court opened at (local time), (date), 20\_\_\_\_.

All persons connected with the Inquiry who were present when the Inquiry recessed were again present in Court.

No witnesses not otherwise connected with the Inquiry were present.

Ensign \_\_\_\_\_ 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 WITNESS**

Lieutenant \_\_\_\_\_, 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 generally informed by the Court of the suspected offense, was advised of (his/her) 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 procedural rights of a Party (and as a person injured in the events under inquiry).

Lieutenant \_\_\_\_\_ 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 (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. \_\_\_\_\_.

LCDR \_\_\_\_\_, a Party, moved to strike out this answer on the ground that it was an opinion of the witness.

The Counsel for the Court replied (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 (local time), (date), 20\_\_\_\_.  
The Court opened at (local time), (date), 20\_\_\_\_.  
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 (or by the Party's counsel), Commander \_\_\_\_\_:

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 (verbatim).

The Party (or Party's counsel) \_\_\_\_\_replied (verbatim).

The President announced that subject to objection by any Member of the Court, the witness' claim of privilege was sustained.

Questions by Ensign \_\_\_\_\_, Party:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Party examines himself.

Statement by Lieutenant \_\_\_\_\_, Party: (A Party may present relevant evidence on his/her own behalf by making a statement *either* in a narrative or in a question and answer format.)

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

-- OR--

Narrative . . .

REDIRECT EXAMINATION

Questions by the Counsel for the Court:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

EXAMINATION BY THE COURT

Questions by the President, CAPT \_\_\_\_\_:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Questions by any Member(s), CDR \_\_\_\_\_:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Neither the Counsel for the Court, the Court, nor the Parties desired further examination of this witness. The witness returned to his/her chair as a party.

The Counsel for the Court has no further evidence to present.

The Counsel for the Court stated that he/she had completed the presentation of the evidence.

Parties were informed of their 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. Examination of witness called by party.

I. B. Snipe, Machinery Technician, Third class, USCG, was called as a witness by Commander \_\_\_\_\_, 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 Lieutenant Commander \_\_\_\_\_, 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 A WITNESS**

Ensign \_\_\_\_\_, a Party, took the stand, and was informed by the Court that the Court suspected the witness of an offense, to wit: [Violation of UCMJ, Article XX, (common name of offense and brief description)]. 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 trial, and was reminded of the rights of a Party.

Ensign \_\_\_\_\_ indicated understanding of these rights and the choice to testify relative to the offense of which suspected.

(Ensign \_\_\_\_\_, a Party, indicated the withdrawal of the request to testify.)

-- or --

Ensign \_\_\_\_\_, 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 \_\_\_\_\_, Party (or by counsel for the Party):

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Questions by counsel for Lieutenant Commander \_\_\_\_\_, Party:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

**CROSS EXAMINATION**

Questions by the Counsel for the Court:

Q. \_\_\_\_\_?

A. \_\_\_\_\_.

Neither the Counsel for the Court, the Court, nor the Parties desired to examine this witness further. The witness returned to his/her 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 Ken U. Speakup, chief gunner's mate, USCG, be called as a witness for the Court.

Ken U. Speakup, 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. \_\_\_\_\_.

Questions by any Member, CDR \_\_\_\_\_:

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**

Lieutenant Commander \_\_\_\_\_ and Ensign \_\_\_\_\_, Parties, each submitted a signed written statement, which statements were read and are appended as exhibits (numbered \_\_\_\_ and \_\_\_\_, respectively).

Lieutenant \_\_\_\_\_, 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 make an oral argument in lieu of a written one, in which event it will be recorded in the record as given.

Lieutenant Commander \_\_\_\_\_, Party, read a written argument, which is appended, marked \_\_\_\_\_.

Lieutenant \_\_\_\_\_, Party (or his/her counsel), made the following oral argument:

\* \* \* \* \*

Ensign \_\_\_\_\_, 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 (or 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 (local time), (date), 20\_\_\_\_.

**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 [and submits the following opinions and recommendations]:

**FINDINGS OF FACT**

1. That a violent explosion occurred at (incident time), (incident date) in USCGC \_\_\_\_\_ (W \_\_\_\_\_). (Cite to testimony and/or exhibits).
2. CDR R. I. Peace, died during the (incident).
3. \*\*\*\*\*

**OPINIONS**

1. That the cause of the (incident) was \*\*\*\*\* (Cite to testimony and/or exhibits).

- 2. That Lieutenant Commander \_\_\_\_\_, a Party, violated Article (XX) of the UCMJ in that he/she (describe conduct or failure to act).
- 3. That the injuries to I. B. Bystander, which were caused by the (incident) occurred in the line of duty and were not the result of misconduct on his/her part.
- 4. That the injuries to LT \_\_\_\_\_, a Party, which were caused by the (incident) occurred in the line of duty and were not the result of misconduct on his/her part.
- 5. That the injuries to LTJG \_\_\_\_\_, a Party, which were caused by the (incident) did not occur in the line of duty, but were not the result of misconduct on his/her part.
- 6. That the injuries to ENS \_\_\_\_\_, a Party, which were caused by the (incident) did not occur in the line of duty because they were the result of his/her own misconduct.
- 7. That CDR R. I. Peace died during the (incident), and there being no compelling facts to the contrary, it should be presumed that he/she died in the line of duty and not due to misconduct on his/her part.

RECOMMENDATIONS (See Article 3.B.5 of this Manual.)

- 1. That Lieutenant Commander \_\_\_\_\_, USCG, a Party, be brought to trial by general court-martial on the charge of violation of Article (XX), UCMJ. An appropriate charge sheet, signed by the President of this Court as accuser, is forwarded herewith.
- 2. That Lieutenant \_\_\_\_\_, USCG, a Party be brought to Captain’s Mast, under Article 15, UCMJ, on the charge of violation of Article (YY), UCMJ. An appropriate charge sheet, signed by the President of this Court, as accuser, is forwarded herewith.
- 3. That Ensign \_\_\_\_\_, be issued a letter of reprimand for his/her failure to (describe failure to act). A draft letter of reprimand is forwarded herewith.
- 4. That, in order to prevent a recurrence of this type of (incident), the following actions be taken:

Rear Admiral,  
President

USCG Captain, USCG  
Member

Commander, USCGR  
Member

Note: If there is no minority report, the Members sign as shown above. If there is a minority report, the Member who disagrees with the majority does not sign the majority report. Instead the dissenting Member prepares, signs, and submits a minority report, as shown below.



MINORITY REPORT:

I concur with the majority report except as follows:

I disagree with the Court's finding of fact 3 for the reason that\_\_\_\_\_.

I disagree with the Court's opinion 2 for the reason that\_\_\_\_\_.

I disagree with the Court's recommendation 1 for the reason that\_\_\_\_\_.

The following additional (findings of fact) (opinions) (and recommendations) are submitted:\_\_\_\_\_.

Captain

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.

**AUTHENTICATION**

The President and the Counsel for the Court authenticated the record.

Rear Admiral,  
President

USCG Commander, USCG  
Counsel of the Court

Note: If either the President or the Counsel for the Court cannot authenticate the record, a Member or the Assistant Counsel for the Court shall sign instead, as follows:

Commander, USCG, (Member – or Assistant Counsel to the Court)  
in lieu of the(President – or -- Counsel of the Court)  
because of his/her (death)(disability)(absence due to orders)

**DOCUMENTS APPENDED.**

Note: Here all exhibits received in evidence are appended in the order in which they were marked during the inquiry. Other documents, including all correspondence between the Court and the Convening Authority, are appended in the order in which they were marked during the inquiry, as enclosures.

## CHAPTER 10 PARTIES AND WITNESSES

### A. DEFINITIONS

1. Party. A “Party” is any individual who has been so designated in connection with an Administrative Investigation.
2. Rights of a Party.
  - a. General. An individual designated a Party before an Administrative Investigation shall be advised of and afforded the following rights:
    - (1) To be given due notice of such designation as a Party;
    - (2) To be present during the proceedings, but not when the investigation is cleared for deliberation;
    - (3) To be represented by counsel;
    - (4) To examine and to object to the introduction of documentary and physical evidence as well as written statements;
    - (5) To object to the testimony of witnesses and cross-examine witnesses other than the Party’s own;
    - (6) To introduce evidence;
    - (7) To testify as a witness;
    - (8) The right against self-incrimination; and, if applicable, the rights set forth in Article 31, UCMJ;
    - (9) To make a voluntary *unsworn* statement, oral or written, to be included in the record of the proceedings;
    - (10) To make an argument at the conclusion of the presentation of evidence; and
    - (11) To be properly advised pursuant to the Privacy Act of 1974.
  - b. Additional Rights. A Party shall be advised of and afforded additional rights.
    - (1) To challenge Members of the Court of Inquiry or the Counsel for the Court for cause, stated to the Court. *See* Article 135(d), UCMJ;
    - (2) To receive a verbatim transcript of the proceedings of the Court of Inquiry;
    - (3) To petition the Convening Authority to subpoena witnesses or to subpoena evidence; and If charged with an offense, the Party cannot be called (involuntarily) as a witness, but retains the right to testify voluntarily. However, if the Party chooses to testify voluntarily, the Party is subject to cross-examination as well as examination by the Court.
3. Subject to Inquiry. An individual’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 individual's rights or privileges may be adversely affected, or personal reputation or profession standing may be jeopardized.

4. Direct Interest. An individual has a "direct interest" in the subject of Inquiry when the findings, opinions, or recommendations of the Administrative Investigation may reflect questionable or unsatisfactory conduct or performance of duty or may relate to a matter over which the person has or had a duty or right to exercise official control.

## **B. DESIGNATION OF PARTIES**

1. Effect of Designation. The purpose and effect of designating an individual as a Party is to afford that individual a hearing concerning possibly adverse information about the individual's conduct or performance of duty. It is generally not necessary to designate Parties to investigations unless the subject matter of the investigation involves issues of fact that pose a substantial risk of injustice to the individual or individuals if they were not afforded the rights of a Party during the investigation.
2. Who May Be Designated a Party at a Court of Inquiry.
  - a. Any member of the Coast Guard, or Coast Guard Reserve, subject to the UCMJ and whose conduct or performance of duty is the *subject* of inquiry, shall be designated a Party.
  - b. Any individual who is subject to the UCMJ or employed by the Department of Defense or Department of Transportation who has a direct interest in the subject of inquiry shall be designated a Party, upon *request* of the individual to the Court or Convening Authority.
  - c. An individual whose conduct or performance of duty is not the subject of the inquiry may still be designated a Party, as discussed below. However, even if an individual is the subject of the investigation, his or her name should not appear in the *subject line* of the investigatory report.
  - d. The President, the majority of Members, or the Counsel for the Court in a Court of Inquiry may always recommend to the Convening Authority that other individuals be designated as Parties. Unless good cause exists to the contrary, the Convening Authority should then designate (or cause them to be designated) as Parties.
  - e. Any member of the Coast Guard Reserve, if not subject to the UCMJ at the relevant time(s) of the incident(s), 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 the inquiry, may be designated a Party upon the individual's request to the Court of Inquiry or the Convening Authority.
  - f. No other individual may be designated as a Party to a Court of Inquiry without the express authorization of Commandant (CG-0944).

3. Who May Be Designated a Party at a Formal Investigation.
  - a. 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.
  - b. Any member of the other Armed Forces of the United States and subject to the UCMJ; any person employed by the Department of Defense or the Department of Homeland Security; any member of the Coast Guard Reserve not subject to the UCMJ at the relevant time(s) of the incident(s) but whose conduct or performance of duty is subject to inquiry; or any member of the Coast Guard Auxiliary; who has a direct interest in the subject of the inquiry may, upon that individual's request, be designated a Party before a Formal Investigation.
  - c. No other individual may be designated a Party without the express authorization of Commandant (CG-0944).
4. Who May Designate a Party. Parties are designated by the Convening Authority of a Court of Inquiry or Formal Investigation, by a Court of Inquiry, or by a Formal Board of 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 Convening Order that an individual should be designated a Party, independently of that individual's request, the Convening Authority should include such designation in the Convening Order. The Convening Authority's power to designate continues during the entire proceedings before a Court of Inquiry or Formal Board of Investigation.
  - b. If at any time during the course of an investigation by a Court of Inquiry, or by a Formal Board of Investigation authorized to designate Parties, it appears to the Court of Inquiry or investigation that any person not previously designated a Party should be designated a Party, that person shall be informed of that conclusion; designated (or advised of the right to request to be designated) a Party; and when designated a Party, be informed of and afforded rights of a Party.

### **C. CHANGE IN THE STATUS OF A PARTY**

If an individual previously designated a Party is no longer believed to be or to have been materially involved in the matter under investigation by the Convening Authority, Court of Inquiry or Formal Investigation, that individual shall be informed of the change in focus, and the Party's designation may be withdrawn by the Court of Inquiry or Formal Board of Investigation, either upon application of the Party or upon the Court of Inquiry's or Formal Investigation's own initiative.

### **D. RIGHT TO COUNSEL**

1. Military Member Designated a Party. A military member designated a Party is *entitled* to be represented during the proceedings of an Administrative Investigation by military counsel provided by the government (appointed by the Convening Authority) at no expense to the Party, or by civilian counsel provided by the Party at no expense to the government.

In any case in which a Party declines to be represented by a specific, qualified appointed counsel, the Party is still entitled to have a different counsel appointed, if another qualified counsel is reasonably available. However, once a military Party accepts military counsel, if the Party later declines that Judge Advocate's representation without presenting objectively reasonable grounds for declining those services, then the Party is no longer entitled to further representation, but may be provided replacement counsel at the discretion of the Convening Authority, subject to availability. *See, generally*, Article 32, UCMJ and the Military Justice Manual, COMDTINST M5810.1 (series). The essence of this article is that a military Party, while entitled to competent legal representation, is not entitled to repetitively decline qualified counsel until the Party is offered representation by the Judge Advocate of his or her choosing, if that Judge Advocate is not reasonably available. The Party's right is to competent counsel, not to a particular attorney.

2. Civilian Designated a Party. A civilian designated a 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. Military counsel appointed by the Convening Authority will not be provided for a civilian designated as a Party except under the following circumstances:
  - a. The rare situation wherein the civilian Party is subject to trial by court-martial, and the Court of Inquiry or the Formal Board of Investigation may be used as a pre-trial investigation pursuant to Article 32, UCMJ, or
  - b. If doubt exists as to the mental or physical competency of the civilian Party, and the civilian Party is not represented by counsel capable of adequately protecting the civilian Party's interest.

#### **E. QUALIFICATIONS AND DUTIES OF COUNSEL**

1. Qualifications of Appointed Military Counsel, Generally. Appointed military counsel should be previously qualified under Articles 27(b), and 42(a), UCMJ. However, if it is not practicable to appoint a Judge Advocate fully qualified under Article 27(b), the Convening Authority may appoint military counsel qualified under Article 27(b)(1) only, or if such counsel is not reasonably available, the Convening Authority may appoint counsel with lesser qualification. However, in any case where other than fully qualified Article 27(b) counsel is appointed, the Convening Authority must provide an explanation in the record for such action.
2. Qualifications of Civilian Counsel, Generally. There are no special legal qualifications required of civilian counsel provided by the Party. However, civilian counsel must be licensed to practice law and be a member of the bar, in good standing, of a jurisdiction within the United States.
3. Qualifications of Military or Civilian Counsel in Investigations to be Used as an Investigation Pursuant to Article 32, UCMJ. In any case in which the Court of Inquiry or the Formal of Investigation is to be used as an investigation under Article 32, UCMJ, and the Party utilizes non-lawyer civilian representative or requests unqualified military representative, 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. The explanation of this right and any waiver shall be reported verbatim in the record of a Court of Inquiry, or in the case of a Formal Board of Investigation, must be in writing and attached to the investigatory report.

4. 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 the Formal Board of Investigation shall not proceed until counsel returns, 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 new counsel has been provided. The Party may waive the right to have counsel present, provided the Party understands that 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 of a Court of Inquiry, or in the case of a Formal Board of Investigation, must be in writing and attached to the investigatory report.
5. Special Duties of Counsel for Incompetent Party. When directing that a Court of Inquiry or an Administrative Investigation be convened, and a medical officer determines that a member to be designated a Party, or previously designated a Party, is incompetent due to injuries or disease and will likely remain so for at least 60 days, the Convening Authority may continue the proceedings of the Court or Board, but shall ensure that a qualified counsel is appointed to represent the Party during the proceedings of the Court or Board. Such counsel is obligated to both protect and to exercise the Party's rights that can be exercised by counsel, and to represent the Party as if though the Party was actually present.

## F. RIGHTS OF A PARTY

1. Explanation of Rights. At the start of the proceeding of a Court of Inquiry or Formal Board of Investigation, all designated Parties shall be informed expeditiously of the rights to counsel and not to testify, and shall be asked if further explanation is desired regarding any such rights. Further explanation shall be provided to any Party who requests it. Military counsel for any Party, if qualified under Article 27(b) UCMJ, or civilian counsel qualified under Article 27(b)(1), may decline further explanation by advising the investigative body that the Party to the proceeding has been fully informed and understands his or her rights as a Party. However, the initial, basic advisement of rights pursuant to Article 31(b), UCMJ, for military Parties and *Miranda* and *Tempia* rights for civilians cannot be waived. *See*, Article 10.F.6, below, and Exhibit (4-B) to this manual (a copy of Enclosure 5 to the Military Justice Manual (COMDTINST M5810.1 (series)). Upon designation of an individual as a Party during the course of the investigative proceeding, the same procedure shall be followed as regards information and explanation as to rights.
2. Examination of Previous Record by a Party Designated During Proceedings; Recall of Witnesses. The Record of proceedings to the point the investigation has progressed shall be made available expeditiously for examination by a newly designated Party and counsel. Such a Party may, in addition to calling witnesses to testify, also request that any witnesses who have testified previously be recalled for cross-examination. If circumstances do not permit the recalling of a witness or witnesses, additional testimonial evidence of that

witness may be obtained by affidavits and depositions, and entered into the Record. Unless the Court or Board determines that a substantial and irreparable prejudice to a Party will result, the *investigative* proceedings shall not be suspended pending the obtaining of such additional evidence. However, while awaiting such evidence, the Court or Board should not begin *deliberations*.

3. Previous Testimony of Witness Thereafter Designated 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. However once designated a Party, a witness cannot be compelled to testify, and any statement by the Party made after the close of evidence must be an unsworn statement.
4. Individual on Witness Stand When Designated a Party. If an individual is on the witness stand at the time of designation as a Party, or thereafter called as a witness, the Party cannot be compelled to testify, even on cross-examination with respect to previous (non-Party) testimony. Furthermore, any statement by the Party made after the close of evidence must be an unsworn statement. *See* Article 10.G., below, for additional guidance.
5. Failure to afford rights.
  - a. Non-judicial punishment (NJP) is not permitted solely on the basis of the record of a Court of Inquiry or Formal Board of Investigation before which the accused was not afforded the rights of a Party. Such rights would need to be given during either a new Court of Inquiry or Formal Board of Investigation or a separate Standard Investigation (such as an NJP investigation) prior to imposing NJP in such a case.
  - b. No adverse determination respecting the contracting or incidence of a disease or injury (*i.e.*, “not in the LOD” or “as a result of misconduct”), is permitted solely on the basis of the record of an Administrative Investigation before which the person concerned was not properly given notice and afforded his or her rights. A new hearing would be required in such a case.
  - c. In cases where a General Court-Martial is or reasonably should be contemplated, the Record of the Court of Inquiry or Formal Board of Investigation before which the accused was not designated a Party or afforded the rights of a Party cannot be used in lieu of an Article 32, UCMJ pretrial investigation.
  - d. Where charges are brought against an accused at a court-martial or other tribunal required to follow the Military Rules of Evidence, the testimony contained in the record of the proceedings of a Court of Inquiry or Formal Board of Investigation (if under oath), before which the accused was not designated a Party or afforded the rights of a Party, is subject to the evidentiary limitations, including potential exclusion, as discussed in Article 50, UCMJ.
6. Waiver of Rights of a Party. With the exception of advice as to Article 31(b), UCMJ rights, which cannot be waived by a Party, any other right is conclusively waived by the Party’s failing to exercise it unless there appears in the Record an express request to exercise it, and such request has been denied.



7. Right to a Copy of the Record. A Party to an investigation is entitled to a copy of the Investigative Report, although a Party may affirmatively waive the right to receive such a copy. Advance consideration should be given to conducting a separate pretrial investigation when the subject of the investigation involves either classified material or any unclassified material that might be of assistance in prosecution or support of a claim against the United States.

## G. WITNESSES

1. Calling Witnesses. Only Courts of Inquiry and investigations convened for the redress of injuries to property (per Article 139, UCMJ, and under Chapter 7 of the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9) have the power to subpoena witnesses. All Administrative Investigations, however, 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 civilians employed by the Federal Government available to testify. An Administrative Investigation is not confined to a particular Federal reservation in its quest for relevant testimony.
2. Competency of Witnesses. Any Party or other individual charged with an offense to matter under investigation shall be considered a competent witness before a Court of Inquiry, but may only testify at that individual's own request (18 U.S.C. § 3481). A person is considered as being "charged with an offense" when formally accused by indictment or information, or preferring charges and specifications pursuant to Article 30, UCMJ. Subject to this limitation, any Party or other individual with relevant knowledge, able to differentiate between truth and lies and committed to telling the truth, regardless of whether charged with or suspected of an offense, is competent as a witness before any Administrative Investigation.
3. Warning Required Before Requesting Statement 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 interest, is invalid. *See*, 10 U.S.C. § 1219. Any individual 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 an investigator, 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 medical treatment intake surveys. *See* paragraph 4.H the Medical Manual, COMDTINST M6000.1(series).
4. Warning Witnesses Not to Discuss Testimony.  
The Administrative Investigation may direct military or civilian 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 with other witnesses, either before or after testifying in the investigation. 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 OF 1974**

The following procedures shall be applicable to all administrative fact-finding bodies.

1. Advice Required. When any individual is asked to supply protected personal information in the course of an investigation to a person acting on behalf of the Government, the person seeking the information shall first provide the individual, in duplicate, a Privacy Act Statement containing prescribed information, as discussed in the Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series). *See* Enclosure (4-C) of this manual for a form useful for this purpose when the investigation is to determine whether “misconduct” or “not in the LOD” findings are appropriate. Individuals shall not be required to acknowledge receipt of a Privacy Act Statement, either by signing the statement or by other means. The requirement for a Privacy Act Statement is in addition to other applicable warnings or advice 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, as a record, will be placed in a system of records and which is retrieved from that system by using that person’s name or other assigned personal identifier.
3. Practical application. It is not necessary to give a Privacy Act Statement to every individual interviewed during an investigation. However, it is necessary to give a Privacy Act Statement to any individual who is interviewed in connection with an investigation when that individual is either the subject of the investigation (*e.g.*, the injured member subject to a LOD/Misconduct investigation), or a Party to the investigation.
4. Privacy Act Statement Contents. Exhibit (4-C) to this manual provides guidance to supplement the Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (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. Exhibit (7-C-1) contains a Privacy Act Statement that has been designed to be given to the subject of a “LOD” investigation. Exhibit (7-C-2) contains a Privacy Act Statement that has been designed for a surviving spouse. Questions regarding the use of these enclosures shall be resolved through the servicing Judge Advocate or the Counsel for the Court or Commandant (CG-0944).

## CHAPTER 11 REQUIREMENTS FOR SPECIFIC INVESTIGATIONS

### A. AIRCRAFT INVESTIGATIONS

1. General. For the sole purpose of safety and accident prevention, the Safety and Environmental Health Manual, COMDTINST M5100.47, provides for the conduct, analysis and review of investigations of aircraft mishaps. An investigation initially convened to examine claims issues may later be broadened into a combined administrative investigation to address wider mission or organizational issues.

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 Coast Guard Claims and Litigation Manual, COMDTINST M5890.9. 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.

2. Enemy Action. Per Article 2.C.4, above, an investigation is not required for aircraft accidents or other aircraft mishaps incident to direct enemy action. 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.
3. Specific Facts. *See* Article 5.B.3. The Investigative Report should include (but not be limited to) data on the following matters, where relevant:
  - 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 that 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 LOD/Misconduct 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.

## **B. 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 should be included in the record, if applicable:
  - a. Date, time of day, place, and probable cause of explosion.
  - b. Kind of explosives or ammunition and the quantity involved.
  - c. Time intervals, if measurable, between explosions.
  - d. Existence of barricades and affect 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:
    - g. Radius of complete destruction.

- h. Radius of structural damage beyond economical repair.
- i. Radius of repairable structural damage.
- j. Radius of general glass breakage.
- k. Distances to which significant missiles were projected (include kind and weight).
- l. Distance between locations, if explosions occurred at more than one location.
- m. Distance between a vessel and other vessels or structures affected and distances to nearby vessels or structures not affected.
- n. Approximate shape and dimensions of crater.
- o. Personnel involved and the extent of their involvement.

If the explosion involved a Coast Guard Cutter, *see* Exhibits (11-A) and (11-B), as well.

### **C. 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 tide and current, the time of the tide, and other factors involving natural elements 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 vessel pertinent to the loss or stranding should be investigated and reported. The investigation should ensure that proper identification is made as to the name, grade, class of service, permanent home address, length of service, and marine experience of each material witness to the incident. The primary object of the investigation should be to ascertain the cause and individual responsibility for the loss or stranding and the damage resulting there from. *See* Article 2.C.4. concerning loss or stranding as a result of enemy action.
2. Determination of Vessel's Position. Investigation should be made as to what navigation plotting system was used (paper or electronic), whether the position of the vessel at the last favorable opportunity was accurately determined and, if not, when it was last accurately ascertained. For vessels equipped with electronic charting systems and/ or GPS, this important data shall be preserved and analyzed. In appropriate cases, a competent officer, not attached to the vessel involved and not a Member of the Administrative Investigation, should be directed to work up the reckoning of the vessel from the data available to enable the investigative body to fix the true position of the vessel 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 vessel so determined, as well as the position when aground, as determined by satellite, GPS, radar, or visual means other means, should be laid off on the electronic or paper chart by which the vessel was navigated.

3. Navigation in Pilot Waters. If land was sighted and the distance estimated before the vessel struck, it should be ascertained what steps were taken during the time land was in sight to correct the vessel'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 Vessel. Whenever investigation is made into the loss of a vessel, the investigative body should call for the official report of the commanding officer, officer-in-charge, or coxswain of such vessel containing the narrative of the disaster. This report should be read to the investigating body in the presence of the commanding officer, officer-in-charge, or coxswain and of such of the surviving officers and crew as can be assembled and should be appended to the record of investigation. This article does not impose a duty to investigate loss due direct enemy actions.
5. Specific Facts. *See* Exhibits (11-A) and (11-B) 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.

#### **D. COLLISIONS AND ALLISIONS**

1. General. In the event of a collision or allision 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 that warrants investigation, the investigation should ensure that proper identification is made as to the name, grade, class of service, permanent home address, length of service, and marine experience of each material witness to the incident.
2. Damage to Vessels or Property Caused by Coast Guard Vessels. No officer, pilot or agent of a non-Coast Guard vessel involved in a collision or allision 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 private counsel obtained at the choice and at the cost of the person represented. The witness or the witness' counsel may, upon request, be furnished with a copy of that portion of the record containing the witness' testimony, at cost. In addition to the guidance in this manual regarding hearing procedures and witnesses, *see also* paragraph 2-D-4 of the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9.
3. Damage to Coast Guard Vessels 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 11.D.1 and 11.D.2 above. This Article does not impose a duty to investigate damage to vessels due to direct enemy action. *See* Article 2.C.4.
4. Other Sources of Guidance. *See* Coast Guard Claims and Litigation Manual, COMDTINST M5890.9 (series).
5. Specific Facts. *See* Exhibits (11-A) and (11-B) 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. ACCIDENTAL OR INTENTIONAL FLOODING OF A VESSEL**

In cases of grounding, collision, structural or material failure that involve accidental or intentional flooding of parts of a Coast Guard vessel, the following information, which is set forth in a different format in Exhibits (11-A) and (11-B) should be included in the record, if applicable:

1. Draft forward and aft, and list of vessel 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.
2. General distribution and amounts of variable weights, particularly fuel and water, before damage.
3. Compartments flooded and the rapidity of flooding of individual compartments, if available.
4. 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.
5. The material condition of readiness in effect at the time of the casualty.
6. Summary of steps taken to control damage and to correct list or trim.
7. Performance of installed damage control equipment, such as pumps, flood control systems, automatic door and hatch closures, etc.
8. Extent of damage (hull, machinery, electronics supplies, cargo, etc.), including description and value thereof.

#### **F. PRETRIAL INVESTIGATIONS.**

1. Investigation of Charges. If the sole object of an investigation is to determine whether an active-duty Coast Guard member engaged in personal misconduct, then that member's immediate commander must initiate an investigation under R.C.M. 303, MCM, either by appointing a Preliminary Investigation Officer or by predicating a CGIS investigation, instead of using the administrative investigation options contained in this manual. In all other cases, if practicable, when a Court of Inquiry or Administrative Investigation required to conduct a hearing is convened to investigate an incident that is reasonably likely to result in General Court-Martial charges, it should be provided with the 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 is generally preferable to conduct an appropriate Administrative Investigation to capture and preserve statements and other evidence immediately, and to address the Article 32 investigation issues subsequently. A full discussion of such investigations is found in Chapters 1 and 3 of the Military Justice Manual, COMDTINST M5810.1 (series).

2. Investigation Prior to Charges. If an offense was investigated before the accused was charged, the investigation may be used in lieu of an Article 32, UCMJ investigation, provided the provisions of R.C.M. 405(b) are met. In summary these require that:
  - a. The accused was present at the investigation (hearing) 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 accuser'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 and the right to demand further investigation 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 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.

#### **G. GSA ACCIDENT INVESTIGATION**

*See* Motor Vehicle Manual, COMDTINST M11240.9 (series) and 41 C.F.R. subpart 101-39.4 (setting forth the procedures for reporting and investigating accidents involving vehicles from the General Services Administration's (GSA) Interagency Fleet Management System (IFMS)).

#### **H. LOSS, DESTRUCTION, OR DAMAGE TO GOVERNMENT-OWNED PROPERTY**

1. General. The Property Management Manual, COMDTINST M4500.5 (series), establishes the administrative action necessary when Government property is lost, damaged, or destroyed. Mandatory Reporting of Incidents to the Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series) 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 of those instructions should be consulted to make a determination as to how the matter should be investigated, if at all. When it is determined that an investigation under this manual should be convened, privacy and representational issues relevant to designating Parties 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, as well as coordination with CGIS and DHSIG as appropriate.



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, 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, vessel'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 described above for the handling and safeguarding of the funds, records, or property entrusted to them.
  - d. Any local condition that was unusual, that required special care, or that 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, and findings and evidence supporting the determination included in the report:
  - 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) that raises a strong inference (that would satisfy a "likelihood" or "preponderance" standard) that the individual's fault or negligence was the proximate cause of the loss.
  - b. *Fault* means conduct or behavior evidencing bad faith, mismanagement, or neglect of care, or as mal-performance resulting from inattention, dereliction, or misconduct.
  - c. *Negligence* means conduct that fails to conform to the standard of care that a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Acts or omissions that, without objectively reasonable 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* in this context means an act or omission that 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.

## **I. CLAIMS BY OR AGAINST THE GOVERNMENT**

1. **General.** An Administrative Investigation ordered to inquire into a certain incident, when a claim or possible claim for or against the Government is involved in the same incident, is guided by the provisions of Article 2.D.1 of this manual and chapter 2 of the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9. This provision does not apply to claims arising out of contracts entered into with the Coast Guard. For contract claims investigations see Federal Acquisition Regulations. It is mandatory to consult with assigned legal counsel for the investigation about matters involving potential claims or litigation.
2. **Forwarding Reports.** If the *exclusive* purpose for convening the investigation was the handling of a claims matter, the IR shall be forwarded in accordance with the Claims and Litigation Manual. However, if the investigation was not ordered solely to inquire into a claims matter, then a copy of the IR should be forwarded like any other report, per Chapter 6 of this manual, with the original of any claims received or made provided to the servicing legal office that will handle the claim. The copy of the IR 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. The preliminary statement of the IR shall contain the language in Article 3.B.2.a.11., stating that the IR is attorney work product.

## **J. WILLFUL DAMAGE OR WRONGFUL TAKING OF PROPERTY**

See Article 139, UCMJ, Claims and Litigation Manual, COMDTINST M5890.9 (series), and Article 2.B.5. of this manual, regarding Boards to investigate complaints of willful damage or wrongful taking of a person's property.

## **K. LOD/MISCONDUCT INVESTIGATIONS**

Chapter 7 of this manual contains detailed information relevant to investigations involving LOD/Misconduct determinations. See Chapter 7 for specific information required in LOD and misconduct IRs.

## **L. RETENTION HEARING – ADMINISTRATIVE DISCHARGE BOARDS**

See Chapter 12 of the PERSMAN and the Administrative Separation Board Manual (ADSEPMAN), COMDTINST M1910.2).

**M. REDUCTION IN GRADE DUE TO INCOMPETENCY**

1. General. Article 5.C.38.c(2)(a) of the PERSMAN requires a Board of Investigation prior to reducing a chief petty officer by reason of incompetency.
2. Procedure. Such Boards shall follow the procedures, composition, and rights of a Party in the Administrative Separation Board Manual with the following modifications:

The board shall, after its closed session, open and announce it's 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.

**N. VIOLATIONS OF ENVIRONMENTAL LAW**

1. Background.
  - a. Compliance with environmental law is an essential function of command. Environmental compliance inspections by state and Federal environmental regulators are occurring with greater frequency since the 1992 passage of the Federal Facility Compliance Act. That law exposes Federal agencies to punitive civil penalties for failing to comply with the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act (RCRA). These penalties may be assessed by the Environmental Protection Agency (EPA) or by a state. In accordance with the Financial Resources Management Manual, COMDTINST M7100.3 (series), any such penalty assessed must normally be paid from unit operating funds.
  - b. In addition, all environmental resources are gaining greater protection through increasing legal requirements and agency enforcement. The Coast Guard is subject to an extensive array of requirements that expose Federal employees and Federal agencies to enforcement actions. A brief overview of the requirements follows.
    - (1) Pollution Permitting/Waste Management Practices. Most measurable discharges into the air, land or water require a permit to ensure that public health and safety is protected. Most of the major environmental laws, including the Clean Water Act (CWA), the Clean Air Act and RCRA require a discharger to obtain a permit prior to the discharge. In addition, it is very important once a permit has been granted to comply with the requirements of the permit, which have the force of law. The only real alternative to complying with cumbersome permitting provisions is vigilant and vigorous pollution prevention that can dramatically reduce waste generation.
    - (2) Spill Reporting and Clean Up. Environmental laws also contain strict provisions concerning the reporting and clean-up of spills into the environment. The Coast

Guard is familiar with the CWA, and Oil Pollution Act of 1990 (OPA 90), which prohibit discharges and require reporting spills of oil or a hazardous substance into the water. In addition, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also requires the reporting and clean-up of “releases” of a hazardous substance onto the land. Spill reporting is usually the primary notification to government agencies to ensure site remediation, and is therefore strictly enforced by the agencies.

- (3) **Protection for Special Resources.** In addition to the common environmental resources described above, the law provides greater protection for special resources. An example is the Endangered Species Act, which prohibits the “taking” of an endangered species or its habitat. “Takings” includes harassment of protected species. Some of the endangered species that could be affected by Coast Guard operations include the Right Whale, the Humpback Whale and the West Indian Manatee.
  - (4) **Environmental Enforcement.** The array of enforcement measures available to the EPA and state agencies is extremely broad. Civil and criminal penalties are available for virtually all of the violations described above. The majority of possible violations will probably involve issues such as improperly kept records or mistakes in labeling and manifesting hazardous wastes. Technical violations such as these will normally be enforced through informal means such as phone calls, letters, or on-site follow-up visits by regulators. Correcting these violations should be viewed as within the realm of normal operations and business practices for a Coast Guard unit. However, regulators will view recurring violations, or accidents releasing hazardous substances that affect public health, more seriously. These types of violations are likely to be addressed in civil penalty cases against the Coast Guard, or in extreme cases, even in criminal actions against an individual. Additionally, if an enforcement agency chooses not to pursue a violation, many environmental statutes allow citizens to bring civil actions to enforce provisions.
2. **Internal Reporting.** When a unit receives a Notice of Violation (NOV), warning letter, inquiry letter, proposed Consent Order from an environmental regulatory agency, or any other form of notice from an environmental regulatory agency, the command shall immediately notify (voice and facsimile notice are acceptable) its servicing legal office, which shall ensure that the appropriate Maintenance and Logistics Command (MLC) legal office and Commandant (CG-0942) are informed. In conjunction with such notification, where possible, unit commanders shall take corrective action or consult with their servicing environmental technical office (MLC, Civil Engineering Unit (CEU) or Commandant (CG-43)) when Environmental Compliance and Restoration (EC&R) funds are required for a corrective project.
  3. **Issues for Investigation.** An investigation into the possible violation of an environmental law should, at a minimum, include the data required by paragraph 2.B.3. of this manual. A Convening Authority may also specify in the Convening Order any other area that should receive the investigating officer’s special attention. In addition to requiring compliance

with Chapter 2 of the Claims and Litigation Manual and paragraph 11.I, above, for cases involving potential claims against the government, the Convening Authority should normally require the following information to be included:

- a. Date, time of day, place, and probable cause of the event.
- b. Copy of any notice of violation received.
- c. Identification of any other law or regulation that may have been violated.
- d. The duration of any violation.
- e. The type and quantity of any material released.
- f. The weather and atmospheric conditions and their affect on the spread or dissipation of the release.
- g. The cause, nature, and extent of any injuries or physical damage caused by the violation.
- h. The range and extent of known effects.
- i. The personnel involved and the extent of their involvement.
- j. Summary of steps taken to remedy the violation.
- k. Any notification provided to regulators or other governmental entities.

**Exhibit (11-A)**

**DAMAGE TO OR LOSS OF A COAST GUARD VESSEL**

1. The following checklist is intended as a guide to assist Investigating Officers in preparing legally sufficient vessel damage/loss investigations. It is not intended to rigidly structure an investigation, but is intended to ensure thoroughness and to backstop the Investigating Officer, as necessary.

a. Facts. NOTE: Each fact must be supported by evidence included and referenced as an Exhibit.

- \_\_\_\_\_ (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 (XRAY, YOKE, ZEBRA, etc.).
- \_\_\_\_\_ (6) Personnel involved identified, including how long qualified on watch; degree and recency of training; how long on watch at the time of the incident; human factors affecting performance on that watch.
- \_\_\_\_\_ (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) Stage of tides, status of currents at time of incident.
- \_\_\_\_\_ (13) Chart use. NOTE: When possible, the original chart should be secured and included as an Exhibit to the investigation, whether in paper or electronic format (or both).
- \_\_\_\_\_ (14) Maneuvering boards/radar plots used included or described.
- \_\_\_\_\_ (15) Any personnel injuries noted.
- \_\_\_\_\_ (16) Extent of damage described.
- \_\_\_\_\_ (17) Pre-incident measures of readiness of vessel and crew, including:
  - a. Staffing (billets filled and recent turnover}, plus individual (pipeline and advance training) and unit(informal and formal)training.
  - b. Maintenance by vessel's force
  - c. Dedicated shoreside maintenance
  - d. Availability periods, dockside and drydock
  - e. CASREP list
  - f. SHIPALTS pending
  - g. OPTEMPO and nature of employment of vessel and crew

b. Opinions. NOTE: Each opinion must be supported by evidence included and referenced as an Exhibit, and should refer to the supporting findings of fact. In cases involving known or likely claims by for against the Government, Investigating Officers must NOT render ultimate opinions as to the Government's liability or responsibility for an incident.

- \_\_\_\_\_ (1) Whether Coast Guard personnel performed duties properly.
- \_\_\_\_\_ (2) Whether proper navigation procedures were followed.
- \_\_\_\_\_ (3) Whether repairs to vessel economical.
- \_\_\_\_\_ (4) Whether unit procedures were proper.

c. Recommendations. NOTE: Each recommendation must be supported by evidence included and referenced as an Exhibit, and should also refer to supporting opinions.

- \_\_\_\_\_ (1) Regarding personnel training and staffing.
- \_\_\_\_\_ (2) Regarding equipment, infrastructure and maintenance.
- \_\_\_\_\_ (3) Regarding sufficiency of instructions, regulations.
- \_\_\_\_\_ (4) Regarding improved procedures.
- \_\_\_\_\_ (5) Regarding repair or replacement of vessel.
- \_\_\_\_\_ (6) Regarding disciplinary action or commendation.

**Exhibit (11-B)****FACTORS TO BE CONSIDERED IN COAST GUARD SURFACE VESSEL INCIDENT**

The following list is a compilation of factors, which should be examined when investigating/reviewing a cutter incident. 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.

FACTORSREFERENCE

- |  |                               |
|--|-------------------------------|
| <p>(1) CHARTS</p> <ul style="list-style-type: none"> <li>(a) Largest scale practical used</li> <li>(b) All charts used corrected to date</li> <li>(c) Identical charts for CONN, CIC, NAVPLOT</li> <li>(d) Hazards marked, navigational draft used to mark shoal water</li> <li>(e) Advance and transfer used in turns</li> <li>(f) Danger bearings/ranges used</li> <li>(g) Labeling used: <ul style="list-style-type: none"> <li>turn bearings/ranges</li> <li>track lines</li> <li>designated objects for fixing position</li> </ul> </li> <li>(h) Soundings in feet or fathoms</li> </ul>  | <p>CI 3530.2, CI M5000.3B</p> |
| <p>(2) NAVIGATION RELATED PUBLICATIONS<br/>(corrected to date)</p> <ul style="list-style-type: none"> <li>(a) Coast Pilot</li> <li>(b) Fleet Guide</li> <li>(c) Sailing Directions</li> <li>(d) Light List</li> <li>(e) Notice to Mariners, Local NTM</li> <li>(f) Tide Tables</li> <li>(g) Tidal Current Tables</li> <li>(h) Navigation Rules, International - Inland</li> <li>(i) Command Navigation Standards</li> <li>(J) Commanding Officer's Standing Orders for OOD</li> <li>(k) Night Order Book</li> <li>(l) Navigator's Standing Orders for the QMOW</li> <li>(m) Engineer Officer's Standing Orders for EOOW</li> <li>(n) Vessel's Log</li> <li>(o) Bearing Book: <ul style="list-style-type: none"> <li>Electronic Navigation fix accuracy verified via other means</li> <li>3 objects and 1 range used</li> <li>depth recorded each fix (beneath keel or waterline)</li> <li>depth recorded in feet or fathoms</li> </ul> </li> </ul> | <p>CI 3530.2,</p>             |



vessel's head marked  
objects used for fixes

- (3) COMPUTATIONS CI 3530.2, CI M5000.3B
- (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 3530.2, CI M5000.3B
- (a) Compasses:  
error posted  
alignment between repeaters
  - (b) Fathometer:  
set to correct mode
  - (c) Radar:  
range and bearing error posted
  - (d) Electronic navigation equipment:  
fix accuracy verified via other means  
operation confirmed by message traffic 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
  - (i) Electronic Charting System:  
was it available and being utilized
- (5) ENVIRONMENTAL FACTORS CI 3530.2, CI M5000.3B
- (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 3530.2, CI M5000.3B

COMDTINST M5830.1A

- (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)
- (7) MAINTENANCE PROCEDURES CI M5000.3B
- (8) EFFECTIVENESS OF SURVIVAL EQUIPMENT AND PROCEDURES CI M5000.3B, CIM10470.10
- (9) EFFECTIVENESS OF DAMAGE CONTROL EQUIPMENT AND PROCEDURES CI M5000.3B, CI M9000.6 (series) NAVSHIP TECH MANUALS 079, VOL II, 9930
- (10) SUPERVISORY ERROR IN CHAIN OF COMMAND CI M5000.3B
- (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 bridge
  - (e) OOD distracted from or overwhelmed by duties.
- (11) PHYSIOLOGICAL OR PSYCHOLOGICAL CONDITIONS CI M5000.3B
- (a) Fatigue
  - (b) Job dissatisfaction
  - (c) Watchstander confusion
- (12) PERSONNEL EXPERIENCE LEVEL CG PQS, CI M5000.3B
- (13) ADEQUACY OF UNIT TRAINING CI M5000.3B, MASTER TRAINING LIST (MTL) CG WATCHSTATION PQS, CI M1414.8 (series)
- (a) PQS complete
  - (b) Pipeline and 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 Pipeline and formal school training
  - (j) Required Team Training completed
- (14) EFFECT OF PERSONAL FACTORS
- (a) Medical factors:
    - seasickness
    - prescription drugs in use
    - self-medication (over the counter drugs)
  - (b) OPTEMPO
  - (c) Personal concerns affecting professional performance
- (15) PERSONNEL PERFORMANCE/KNOWLEDGE CI M5000.3B
- (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) OPERATIONAL RISK MANAGEMENT CI 3500.3
- operational risk evaluated
- (17) MISCELLANEOUS CI M5000.3B
- (a) Marine traffic in area
  - (b) Availability of navigational aids
  - (c) Restricted waters or open ocean transit
  - (d) Nav. Team brief conducted
  - (e) Crew trained in relevant procedures:
    - towing drills, buoy handling,
    - special sea detail, fog nay, etc.
  - (f) Mission's effect or restriction on
  - (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 and utilized
- (18) ACTION TAKEN
- (a) Action not taken in time
  - (b) Action taken was insufficient
  - (c) Wrong action
  - (d) Action taken to prevent further damage
  - (e) Action taken was insufficient

(f) Wrong action

2. The servicing legal office may have examples of investigations involving similar incidents that may help tailor or shape the scope and focus of investigations.

NOTE: CI = Commandant Instruction  
CI M = Commandant Manual