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ROUTINE

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FM CNO WASHINGTON DC//N1//
TO NAVADMIN

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NAVADMIN 033/94

MSGID/GENADMIN/PERS2//

SUBJ/IMPLEMENTATION OF DOD POLICY ON HOMOSEXUAL CONDUCT//

REF/A/DOC/SECDEF/22DEC93//

REF/B/DOC/SECDEF/22DEC93//

REF/C/DOC/SECDEF/22DEC93//

REF/D/RMG/CNO/230012ZFEB93//

NARR/REF A IS DODDIR 1304.26 CONCERNING QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION. REF B IS DODDIR 1332.14 CONCERNING ENLISTED ADMINISTRATIVE SEPARATIONS. REF C IS DODDIR 1332.30 CONCERNING SEPARATION OF REGULAR COMMISSIONED OFFICERS. REF D IS NAVADMIN 026/93.//

RMKS/1. THIS NAVADMIN PROVIDES IMPLEMENTATION GUIDANCE EFFECTIVE ON THE DTG OF THIS MESSAGE IN SUPPORT OF REFS A, B, AND C REGARDING BOTH ACCESSIONS AND ADMINISTRATIVE SEPARATIONS. THIS MESSAGE IS VERY LENGTHY AND COMPLICATED. THIS WAS NECESSARY TO ENSURE THAT THE GUIDANCE IS COMPREHENSIVE. IT IS IMPERATIVE THAT ALL HANDS UNDERSTAND THE NEW POLICY ON HOMOSEXUAL CONDUCT IN THE NAVY. RECOMMEND GET THE WORD OUT VIA POD NOTES, GMT, CAPTAIN'S CALL, ETC., TO ENSURE EVERYONE IS AWARE OF THE NEW POLICY AND PROCEDURES. THIS NAVADMIN IS ORGANIZED AS FOLLOWS:

- A. POLICY - (PARA 2)
- B. DEFINITIONS - (PARA 3)
- C. NEW APPLICANTS, PROSPECTS, AND MEMBERS OF THE DELAYED ENTRY PROGRAM (DEP) - (PARAS 4 AND 5)
- D. NEW MILPERSMAN ARTICLE 3630810 (SEPARATION FROM THE DEP) - (PARA 6)
- E. ENLISTED SEPARATION PROCESSING PROCEDURES (ACTIVE/RES) - (PARA 7)
- F. OFFICER SEPARATION PROCESSING PROCEDURES - (PARA 8)
- G. FACT-FINDING - (PARA 9)

2. ON 22 DEC 93, SECRETARY OF DEFENSE RELEASED NEW DEPARTMENT OF DEFENSE REGULATIONS ON HOMOSEXUAL CONDUCT IN THE ARMED FORCES. THESE REGULATIONS IMPLEMENT THE LAW (10 USC 654) ENACTED BY PASSAGE AND SIGNING OF THE FY-94 DOD AUTHORIZATION BILL. REVISIONS HAVE BEEN MADE TO THE PREVIOUS POLICY TO EMPHASIZE THAT DOD JUDGES THE SUITABILITY OF PERSONS TO SERVE IN THE ARMED FORCES ON THE BASIS OF CONDUCT AND THEIR ABILITY TO MEET REQUIRED STANDARDS OF DUTY, PERFORMANCE, AND DISCIPLINE; TO DISTINGUISH SEXUAL ORIENTATION, WHICH

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IS PERSONAL AND PRIVATE, FROM HOMOSEXUAL CONDUCT; AND TO MAKE CLEAR THE PROCEDURAL RIGHTS OF A SERVICE MEMBER. THIS NAVADMIN CANCELS PROCEDURAL GUIDANCE IN REF D.

3. THE FOLLOWING DEFINITIONS APPLY TO BOTH ACCESSION AND ADMINISTRATIVE SEPARATION POLICIES:

A. HOMOSEXUAL - A PERSON, REGARDLESS OF SEX, WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS.

B. BISEXUAL - A PERSON WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL AND HETEROSEXUAL ACTS.

C. HOMOSEXUAL ACT - (1) ANY BODILY CONTACT, ACTIVELY UNDERTAKEN OR PASSIVELY PERMITTED, BETWEEN MEMBERS OF THE SAME SEX FOR THE PURPOSE OF SATISFYING SEXUAL DESIRES; AND (2) ANY BODILY CONTACT THAT A REASONABLE PERSON WOULD UNDERSTAND TO DEMONSTRATE A PROPENSITY OR INTENT TO ENGAGE IN SUCH AN ACT AS DESCRIBED IN PARA 3C(1) ABOVE.

D. HOMOSEXUAL CONDUCT - A HOMOSEXUAL ACT, A STATEMENT BY THE MEMBER THAT DEMONSTRATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS, OR A HOMOSEXUAL MARRIAGE OR ATTEMPTED MARRIAGE.

E. STATEMENT THAT A MEMBER IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT MEANS LANGUAGE OR BEHAVIOR THAT A REASONABLE PERSON WOULD BELIEVE WAS INTENDED TO CONVEY THE STATEMENT THAT A PERSON ENGAGES IN, ATTEMPTS TO ENGAGE IN, OR HAS A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS.

F. SEXUAL ORIENTATION - AN ABSTRACT SEXUAL PREFERENCE FOR PERSONS OF A PARTICULAR SEX, AS DISTINCT FROM A PROPENSITY OR INTENT TO ENGAGE IN SEXUAL ACTS.

G. A HOMOSEXUAL MARRIAGE OR ATTEMPTED MARRIAGE - IS WHEN A MEMBER HAS MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX.

H. PROPENSITY. PROPENSITY TO ENGAGE IN HOMOSEXUAL ACTS MEANS MORE THAN AN ABSTRACT PREFERENCE OR DESIRE TO ENGAGE IN HOMOSEXUAL ACTS; IT INDICATES A LIKELIHOOD THAT A PERSON ENGAGES IN OR WILL ENGAGE IN HOMOSEXUAL ACTS.

I. COMMANDER - A COMMISSIONED OR WARRANT OFFICER WHO, BY VIRTUE OF RANK AND ASSIGNMENT, EXERCISES PRIMARY COMMAND AUTHORITY OVER A MILITARY ORGANIZATION OR PRESCRIBED TERRITORIAL AREA THAT UNDER PERTINENT OFFICIAL DIRECTIVES IS RECOGNIZED AS A "COMMAND".

4. A PERSON'S SEXUAL ORIENTATION IS CONSIDERED A PERSONAL AND PRIVATE MATTER, AND IS NOT A BAR TO SERVICE ENTRY OR CONTINUED SERVICE UNLESS MANIFESTED BY HOMOSEXUAL CONDUCT. DURING THE ACCESSION PROCESS, ALL APPLICANTS, PROSPECTS AND MEMBERS OF THE DEP SHALL NOT BE ASKED OR REQUIRED TO REVEAL WHETHER THEY ARE HETEROSEXUAL, HOMOSEXUAL OR BISEXUAL AND WILL NOT BE ASKED OR REQUIRED TO REVEAL IF THEY HAVE ENGAGED IN HOMOSEXUAL CONDUCT UNLESS INDEPENDENT EVIDENCE IS RECEIVED INDICATING THAT THE APPLICANT

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ENGAGED IN SUCH CONDUCT OR UNLESS THE APPLICANT VOLUNTEERS A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL OR WORDS TO THAT EFFECT. HOMOSEXUAL CONDUCT IS GROUNDS FOR BARRING ENTRY IN TO THE NAVAL SERVICE EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

A. WHEN AN APPLICANT, PROSPECT, OR MEMBER OF THE DEP MAKES A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, OR INDEPENDENT EVIDENCE IS RECEIVED DURING THE NORMAL COURSE OF ACCESSION PROCESSING THAT DEMONSTRATES THE INDIVIDUAL ENGAGED IN, ATTEMPTED TO ENGAGE IN, OR SOLICITED ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT, OR MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX, THE APPLICANT OR PROSPECT SHALL BE REJECTED BY THE COMMANDING OFFICER OF THE NAVY RECRUITING DISTRICT OR COMMANDER, NAVY RECRUITING COMMAND, AND THE MEMBER OF THE DEP SHALL BE SEPARATED FROM THAT PROGRAM IN ACCORDANCE WITH MILPERSMAN ARTICLE 3630810, UNLESS:

(1) IN THE CASE OF AN INDIVIDUAL WHO MAKES A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, THERE IS A FURTHER DETERMINATION MADE, BASED UPON EVIDENCE OBTAINED THROUGH NORMAL ACCESSION PROCESSING, THAT HE OR SHE HAS DEMONSTRATED THAT HE OR SHE IS NOT A PERSON WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS THE PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS; OR

(2) IN THE CASE OF AN INDIVIDUAL ABOUT WHOM EVIDENCE IS RECEIVED DEMONSTRATING THAT THE INDIVIDUAL ENGAGED IN, ATTEMPTED TO ENGAGE IN, OR SOLICITED ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT OR ACTS, THERE IS A FURTHER DETERMINATION MADE, BASED UPON EVIDENCE OBTAINED THROUGH NORMAL ACCESSION PROCESSING, THAT (A) SUCH ACTS ARE A DEPARTURE FROM THE APPLICANT'S USUAL AND CUSTOMARY BEHAVIOR, (B) SUCH ACTS, UNDER ALL OF THE CIRCUMSTANCES, ARE UNLIKELY TO RECUR, (C) SUCH ACTS WERE NOT ACCOMPLISHED BY THE USE OF FORCE, BT

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COERCION, OR INTIMIDATION, AND (D) THE APPLICANT DOES NOT HAVE A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS; OR

(3) IT IS DETERMINED THAT THE INDIVIDUAL MADE A STATEMENT, ENGAGED IN ACTS, OR MARRIED OR ATTEMPTED TO MARRY A PERSON OF THE SAME SEX FOR THE PURPOSE OF AVOIDING MILITARY SERVICE AND REJECTION OF THE INDIVIDUAL WOULD NOT BE IN THE BEST INTEREST OF THE NAVAL SERVICE.

5. ALL APPLICANTS WILL BE INFORMED OF THE RESTRICTIONS ON PERSONAL CONDUCT IN THE ARMED FORCES BEFORE ENLISTMENT. FOR THOSE WHO ENLIST THROUGH A MILITARY ENTRANCE PROCESSING STATION (MEPS), A BRIEFING SHALL BE PRESENTED BY THE MEPS STAFF PRIOR TO THE OATH OF ENLISTMENT. FOR OFFICER ACCESSIONS THAT DO NOT PROCESS THROUGH A MEPS, BRIEFINGS SHALL BE PRESENTED PRIOR TO THE ADMINISTRATION OF OATHS OF APPOINTMENT (RESERVE OFFICER TRAINING CORPS (ROTC) AND DIRECT APPOINTMENT PROGRAMS) OR DURING THE INITIAL 72 HOURS OF RECEPTION ACTIVITIES (SERVICE ACADEMIES AND OFFICER CANDIDATE SCHOOL (OCS) PROGRAMS). HOWEVER, FAILURE TO RECEIVE SUCH INFORMATION SHALL NOT CONSTITUTE A DEFENSE IN ANY ADMINISTRATIVE OR DISCIPLINARY PROCEEDINGS.

6. MILPERSMAN ARTICLE 3630810 IS HEREBY REVISED TO READ AS FOLLOWS EFFECTIVE DTG OF THIS MESSAGE:

A. 3630810 - SEPARATION FROM DELAYED ENTRY PROGRAM.

(1) MEMBERS OF THE DELAYED ENTRY PROGRAM (DEP) (INACTIVE RESERVE STATUS) WILL BE SEPARATED IF IT IS DETERMINED THAT THEY NO LONGER MEET THE QUALIFICATIONS FOR ENLISTMENT AS PRESCRIBED IN DOD DIRECTIVE 1304.26 OR BY COMMANDER, NAVY RECRUITING COMMAND.

(2) COMMANDING OFFICERS OF NAVY RECRUITING DISTRICTS ARE AUTHORIZED TO SEPARATE A MEMBER OF THE DEP UNDER THIS ARTICLE WITH AN ENTRY LEVEL DESCRIPTION OF SEPARATION.

(3) PROCEDURES: MEMBER SHALL BE NOTIFIED IN WRITING OF THE FOLLOWING:

(A) BASIS OF THE DISQUALIFICATION. IN THE CASE OF DISQUALIFICATION DUE TO HOMOSEXUAL CONDUCT, THE BASIS FOR DISQUALIFICATION SHALL READ, QUOTE - HOMOSEXUAL CONDUCT AS EVIDENCED BY:

(1) MEMBER'S STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THE EFFECT, WHICH CREATES A REBUTTABLE PRESUMPTION THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS THE PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS;

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AND/OR

(2) MEMBER ENGAGING IN, ATTEMPTING TO ENGAGE IN, OR SOLICITING ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT OR ACTS; AND/OR

(3) MEMBER'S MARRIAGE OR ATTEMPTED MARRIAGE TO A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX. UNQUOTE.

(B) THAT THE DESCRIPTION OF SEPARATION WILL BE ENTRY LEVEL.

(C) THAT THE MEMBER HAS THE RIGHT TO SUBMIT EVIDENCE ON HIS OR HER BEHALF.

END OF REVISION TO MILPERSMAN ARTICLE 3630810.

7. ENLISTED SEPARATION PROCESSING PROCEDURES (ACTIVE/RESERVE):

A. HOMOSEXUAL CONDUCT IS GROUNDS FOR SEPARATION FROM THE NAVAL SERVICE. HOMOSEXUAL CONDUCT INCLUDES HOMOSEXUAL ACTS, A STATEMENT BY A MEMBER THAT DEMONSTRATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS, OR A HOMOSEXUAL MARRIAGE OR ATTEMPTED MARRIAGE. A STATEMENT BY A MEMBER THAT DEMONSTRATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS IS GROUNDS FOR SEPARATION NOT BECAUSE IT REFLECTS THE MEMBER'S SEXUAL ORIENTATION, BUT BECAUSE THE STATEMENT INDICATES A LIKELIHOOD THAT THE MEMBER ENGAGES IN OR WILL ENGAGE IN HOMOSEXUAL ACTS. A MEMBER'S SEXUAL ORIENTATION IS CONSIDERED A PERSONAL AND PRIVATE MATTER, AND IS NOT A BAR TO CONTINUED SERVICE UNDER THIS SECTION UNLESS MANIFESTED BY HOMOSEXUAL CONDUCT IN THE MANNER DESCRIBED IN PARAGRAPH C BELOW. ALL PROCEEDINGS WILL FOLLOW PARA 9 REGARDING FACT-FINDING. THIS NAVADMIN REPLACES MILPERSMAN 3630400 UNTIL CHANGE CAN BE INCORPORATED IN REVISED ARTICLE.

B. IF THE COMMANDING OFFICER BELIEVES THAT, BY A PREPONDERANCE OF THE EVIDENCE, HOMOSEXUAL CONDUCT AS DEFINED IN PARA 3D ABOVE HAS OCCURRED, THE VERBATIM REASON FOR PROCESSING ON THE MEMBER'S NOTICE OF AN ADMINISTRATIVE PROCEDURE PROPOSED ACTION AND STATEMENT OF AWARENESS AND REQUEST FOR, OR WAIVER OF, PRIVILEGES IS, QUOTE - HOMOSEXUAL CONDUCT AS EVIDENCED BY:

(1) MEMBER'S STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, WHICH CREATES A REBUTTABLE PRESUMPTION THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS;

(2) MEMBER ENGAGING IN, ATTEMPTING TO ENGAGE IN, OR SOLICITING ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT OR ACTS; AND/OR

(3) MEMBER'S MARRIAGE OR ATTEMPTED MARRIAGE TO A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX. UNQUOTE.

C. A MEMBER SHALL BE SEPARATED BY REASON OF HOMOSEXUAL CONDUCT IF ONE OF MORE OF THE FOLLOWING APPROVED FINDINGS IS MADE:

(1) THE MEMBER HAS ENGAGED IN, ATTEMPTED TO ENGAGE IN, OR SOLICITED ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT OR ACTS, UNLESS THERE ARE FURTHER APPROVED FINDINGS THAT:

(A) SUCH ACTS ARE A DEPARTURE FROM THE MEMBER'S USUAL AND CUSTOMARY BEHAVIOR,

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- (B) SUCH ACTS, UNDER ALL OF THE CIRCUMSTANCES, ARE UNLIKELY TO RECUR,
- (C) SUCH ACTS WERE NOT ACCOMPLISHED BY USE OF FORCE, COERCION, OR INTIMIDATION,
- (D) UNDER THE PARTICULAR CIRCUMSTANCE OF THE CASE, THE MEMBER'S CONTINUED PRESENCE IN THE NAVAL SERVICE IS CONSISTENT WITH THE INTEREST OF THE NAVAL SERVICE IN PROPER DISCIPLINE, GOOD ORDER, AND MORALE; AND
- (E) THE MEMBER DOES NOT HAVE A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS.

(2) THE MEMBER HAS MADE A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, UNLESS THERE IS A FURTHER APPROVED FINDING THAT THE MEMBER HAS DEMONSTRATED THAT HE OR SHE IS NOT A PERSON WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS. A STATEMENT BY A MEMBER THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, CREATES A REBUTTABLE PRESUMPTION THAT THE MEMBER ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS. THE MEMBER SHALL BE ADVISED OF THIS PRESUMPTION AND GIVEN THE OPPORTUNITY TO REBUT THE PRESUMPTION BY PRESENTING EVIDENCE DEMONSTRATING THAT HE OR SHE DOES NOT ENGAGE IN, ATTEMPT TO ENGAGE IN, HAVE A PROPENSITY TO ENGAGE IN, OR INTEND TO ENGAGE IN HOMOSEXUAL ACTS. PROPENSITY TO ENGAGE IN HOMOSEXUAL ACTS MEANS MORE THAN AN ABSTRACT PREFERENCE OR DESIRE TO ENGAGE IN HOMOSEXUAL ACTS; IT INDICATES A LIKELIHOOD THAT A PERSON ENGAGES IN OR WILL ENGAGE IN HOMOSEXUAL ACTS. IN DETERMINING WHETHER A MEMBER HAS SUCCESSFULLY REBUTTED THE PRESUMPTION THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS, SOME OR ALL OF THE FOLLOWING MAY BE CONSIDERED: BT

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- (A) WHETHER THE MEMBER HAS ENGAGED IN HOMOSEXUAL ACTS,
- (B) THE MEMBER'S CREDIBILITY,
- (C) TESTIMONY FROM OTHERS ABOUT THE MEMBER'S PAST CONDUCT, CHARACTER, AND CREDIBILITY,
- (D) THE NATURE AND CIRCUMSTANCES OF THE MEMBER'S STATEMENT, AND
- (E) ANY OTHER EVIDENCE RELEVANT TO WHETHER THE MEMBER IS LIKELY TO ENGAGE IN HOMOSEXUAL ACTS. THIS LIST IS NOT EXHAUSTIVE. ANY OTHER RELEVANT EVIDENCE MAY ALSO BE CONSIDERED.

(3) THE MEMBER HAS MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX (AS EVIDENCED BY THE EXTERNAL ANATOMY OF THE PERSONS INVOLVED).

D. BURDEN OF PROOF: THE MEMBER SHALL BEAR THE BURDEN OF PROVING THROUGHOUT THE PROCEEDING BY A PREPONDERANCE OF THE EVIDENCE THAT RETENTION IS WARRANTED UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARA 7(C)(1)(A)-(E) ABOVE.

E. NOTHING IN REF B REQUIRES THAT A MEMBER BE PROCESSED FOR SEPARATION WHEN A DETERMINATION IS MADE THAT:

- (1) THE MEMBER ENGAGED IN ACTS, MADE STATEMENTS, MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX FOR THE PURPOSE OF AVOIDING OR TERMINATING MILITARY SERVICE; AND
- (2) SEPARATION OF MEMBER WOULD NOT BE IN THE BEST INTEREST OF THE NAVAL SERVICE.

F. CHARACTERIZATION OF SERVICE OR DESCRIPTION OF SEPARATION WILL BE TYPE WARRANTED BY SERVICE RECORD (HONORABLE OR GENERAL) OR ENTRY LEVEL UNDER GUIDANCE PROVIDED IN MILPERSMAN ARTICLE 3610300. SEPARATION MAY NOT BE CHARACTERIZED AS OTHER THAN HONORABLE UNLESS THERE IS A FINDING THAT DURING THE CURRENT TERM OF SERVICE THE MEMBER ATTEMPTED, SOLICITED, OR COMMITTED A HOMOSEXUAL ACT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

- (1) BY USING FORCE, COERCION, OR INTIMIDATION;
- (2) WITH A PERSON UNDER 16 YEARS OF AGE;
- (3) WITH A SUBORDINATE IN CIRCUMSTANCES THAT VIOLATE CUSTOMARY NAVAL SUPERIOR-SUBORDINATE RELATIONSHIPS;
- (4) OPENLY IN PUBLIC VIEW;
- (5) FOR COMPENSATION;
- (6) ABOARD A NAVAL VESSEL OR AIRCRAFT; OR
- (7) IN ANOTHER LOCATION SUBJECT TO NAVAL CONTROL UNDER AGGRAVATING CIRCUMSTANCES THAT HAVE AN ADVERSE IMPACT ON DISCIPLINE,

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GOOD ORDER, OR MORALE COMPARABLE TO THE IMPACT CREATED BY SUCH ACTIVITY ABOARD A VESSEL OR AIRCRAFT.

G. CHNAVPER IS SEPARATION AUTHORITY IN ALL CASES. AUTHORITY FOR GENERAL COURT MARTIAL CONVENING AUTHORITIES TO SEPARATE MEMBERS IN LIEU OF TRIAL BY COURT-MARTIAL (MILPERSMAN ARTICLE 3630650) IS SUSPENDED FOR ALL CASES INVOLVING HOMOSEXUAL CONDUCT.

H. PROCEDURES:

(1) THE ADMINISTRATIVE BOARD PROCEDURE (MILPERSMAN ARTICLE 3640200.7 AND 8) SHALL BE USED IN ALL CASES WITH THE FOLLOWING MODIFICATIONS:

(A) WHEN PROCESSING IS BASED ON HOMOSEXUAL CONDUCT AS EVIDENCED BY MEMBER'S STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, WHICH CREATES A REBUTTABLE PRESUMPTION THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS, REPLACE PARA 4B OF THE NOTICE OF AN ADMINISTRATIVE BOARD PROCEDURES PROPOSED ACTION (LON) TO READ, QUOTE - TO PRESENT VERBAL OR WRITTEN STATEMENTS IN YOUR BEHALF, AND TO PRESENT EVIDENCE DEMONSTRATING THAT YOU DO NOT ENGAGE IN, ATTEMPT TO ENGAGE IN, HAVE A PROPENSITY TO ENGAGE IN, OR INTEND TO ENGAGE IN HOMOSEXUAL ACTS, UNQUOTE, AND ADD THE ADDITIONAL RIGHT TO PARA 4 OF MEMBER'S STATEMENT OF AWARENESS AND REQUEST FOR, OR WAIVER OF PRIVILEGES (SOA), QUOTE - TO PRESENT EVIDENCE DEMONSTRATING THAT I DO NOT ENGAGE IN, ATTEMPT TO ENGAGE IN, HAVE A PROPENSITY TO ENGAGE IN, OR INTEND TO ENGAGE IN HOMOSEXUAL ACTS, UNQUOTE.

(2) THE ADMIN BOARD, IF ELECTED, SHALL FOLLOW THE PROCEDURES FOR A HEARING SET FORTH IN MILPERSMAN ARTICLE 3640350.2 EXCEPT WITH RESPECT TO THE FOLLOWING MATTERS; IF THE BOARD FINDS THAT ONE OR MORE OF THE CIRCUMSTANCES AUTHORIZING SEPARATION UNDER PARA 7C(1)-(3) ABOVE IS SUPPORTED BY THE EVIDENCE, THE BOARD SHALL RECOMMEND SEPARATION UNLESS THE ADMIN BOARD FINDS THAT RETENTION IS WARRANTED UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARA 7C(1)(A)-(E) ABOVE.

(3) IF THE ADMIN BOARD, IF ELECTED, DOES NOT FIND THAT THERE IS SUFFICIENT EVIDENCE THAT ONE OR MORE OF THE CIRCUMSTANCES AUTHORIZING SEPARATION UNDER PARA 7C(1)-(3) ABOVE HAS OCCURRED, THE BOARD SHALL RECOMMEND RETENTION, UNLESS THE CASE INVOLVES ANOTHER BASIS FOR SEPARATION OF WHICH MEMBER HAS BEEN NOTIFIED.

(4) IF THE MEMBER WAIVES HIS OR HER RIGHT TO AN ADMIN BOARD, CHNAVPER WILL ASSESS ALL EVIDENCE PRESENTED.

(5) MEMBERS BEING PROCESSED FOR HOMOSEXUAL CONDUCT MUST BE DUAL OR MULTIPLE PROCESSED FOR ALL REASONS FOR WHICH MINIMUM CRITERIA ARE MET (MILPERSMAN ARTICLE 3610260.3 REFERS). FOR EXAMPLE, A MEMBER WHO ADMITS TO HOMOSEXUAL ACTS IN ADDITION TO MAKING A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL MUST BE DUAL PROCESSED. SEPARATE FINDINGS MUST BE MADE FOR EACH REASON FOR PROCESSING.

(6) FORWARD PROCESSED CASE BY LETTER OF TRANSMITTAL TO BUPERS (PERS 83). ENSURE THE MEMBER'S FULL NAME, RATE, AND SSN HAVE

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BEEN INDICATED ON EACH PAGE OF THE CASE. REFER TO MILPERSMAN ARTICLE 3640200.11(D)(2) FOR MESSAGE SUBMISSION OPTION IN THOSE CASES WHERE THE MEMBER WAIVES AN ADMINISTRATIVE BOARD.

(7) FINDINGS REGARDING WHETHER OR NOT RETENTION IS WARRANTED UNDER THE LIMITED CIRCUMSTANCES OF SECTION 7C, ABOVE, ARE REQUIRED IF THE MEMBER CLEARLY AND SPECIFICALLY RAISES SUCH LIMITED CIRCUMSTANCES.

8. OFFICER SEPARATION PROCESSING PROCEDURES:

A. HOMOSEXUAL CONDUCT IS GROUNDS FOR SEPARATION FROM THE NAVAL SERVICE. HOMOSEXUAL CONDUCTS INCLUDES HOMOSEXUAL ACTS, A STATEMENT BY A MEMBER THAT DEMONSTRATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS, OR A HOMOSEXUAL MARRIAGE OR ATTEMPTED MARRIAGE. A STATEMENT BY A MEMBER THAT DEMONSTRATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS IS GROUNDS FOR SEPARATION NOT BECAUSE IT REFLECTS THE MEMBER'S SEXUAL ORIENTATION, BUT BECAUSE THE STATEMENT INDICATES A LIKELIHOOD THAT THE MEMBER ENGAGES IN OR WILL ENGAGE IN HOMOSEXUAL ACTS. A MEMBER'S SEXUAL ORIENTATION IS CONSIDERED A PERSONAL AND PRIVATE MATTER, AND IS NOT A BAR TO CONTINUED SERVICE UNLESS MANIFESTED BY HOMOSEXUAL CONDUCT IN THE MANNER PRESCRIBED IN PARAGRAPH B BELOW. ALL PROCEEDINGS WILL FOLLOW PARA 9 REGARDING FACT-FINDING.

B. COMMANDERS ARE TO REPORT HOMOSEXUAL CONDUCT TO (PERS 82). ADMINISTRATIVE SHOW CAUSE PROCEEDINGS WILL BE CARRIED OUT IN ACCORDANCE WITH REF C AND SUBJECT TO THE FOLLOWING GUIDANCE: A COMMISSIONED OFFICER SHALL BE RECOMMENDED FOR SEPARATION BY THE SHOW CAUSE AUTHORITY (SCA), A BOARD OF INQUIRY (BOI) AND A BOARD OF REVIEW (BOR) IF ONE OR MORE OF THE FOLLOWING APPROVED FINDINGS IS MADE:

(1) THE OFFICER HAS ENGAGED IN, ATTEMPTED TO ENGAGE IN, OR SOLICITED ANOTHER TO ENGAGE IN A HOMOSEXUAL ACT OR ACTS, UNLESS THERE BT

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ARE APPROVED FURTHER FINDINGS THAT:

- (A) SUCH ACTS ARE A DEPARTURE FROM THE OFFICER'S USUAL AND CUSTOMARY BEHAVIOR;
- (B) SUCH ACTS UNDER ALL THE CIRCUMSTANCES ARE UNLIKELY TO RECUR;
- (C) SUCH ACTS WERE NOT ACCOMPLISHED BY USE OF FORCE, COERCION, OR INTIMIDATION;
- (D) UNDER THE PARTICULAR CIRCUMSTANCES OF THE CASE, THE OFFICER'S CONTINUED PRESENCE IN THE NAVAL SERVICE IS CONSISTENT WITH THE INTEREST OF THE NAVAL SERVICE IN PROPER DISCIPLINE, GOOD ORDER, AND MORALE, AND;
- (E) THE OFFICER DOES NOT HAVE A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS.

(2) THE OFFICER HAS MADE A STATEMENT THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, UNLESS THERE IS A FURTHER APPROVED FINDING THAT THE OFFICER HAS DEMONSTRATED THAT HE OR SHE IS NOT A PERSON WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS. A STATEMENT BY AN OFFICER THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, CREATES A REBUTTABLE PRESUMPTION THAT THE OFFICER ENGAGES IN HOMOSEXUAL ACTS, OR HAS A PROPENSITY, OR INTENT TO DO SO. THE OFFICER SHALL BE ADVISED OF THE PRESUMPTION AND GIVEN THE OPPORTUNITY TO REBUT THE PRESUMPTION BY PRESENTING EVIDENCE DEMONSTRATING THAT HE OR SHE DOES NOT ENGAGE IN, ATTEMPT TO ENGAGE IN, HAVE A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS. PROPENSITY TO ENGAGE IN HOMOSEXUAL ACTS MEANS MORE THAN AN ABSTRACT PREFERENCE OR DESIRE TO ENGAGE IN HOMOSEXUAL ACTS; IT INDICATES A LIKELIHOOD THAT A PERSON ENGAGES IN OR WILL ENGAGE IN HOMOSEXUAL ACTS. IN DETERMINING WHETHER AN OFFICER HAS SUCCESSFULLY REBUTTED THE PRESUMPTION THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS, SOME OR ALL OF THE FOLLOWING MAY BE CONSIDERED:

- (A) WHETHER THE OFFICER HAS ENGAGED IN HOMOSEXUAL ACTS,
- (B) THE OFFICER'S CREDIBILITY,
- (C) TESTIMONY FROM OTHERS ABOUT THE OFFICER'S PAST CONDUCT, CHARACTER, AND CREDIBILITY,
- (D) THE NATURE AND CIRCUMSTANCES OF THE OFFICER'S STATEMENT, AND

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(E) ANY OTHER EVIDENCE RELEVANT TO WHETHER THE OFFICER IS LIKELY TO ENGAGE IN HOMOSEXUAL ACTS. THIS LIST IS NOT EXHAUSTIVE. ANY OTHER RELEVANT EVIDENCE MAY ALSO BE CONSIDERED.

(3) THE OFFICER HAS MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX (AS EVIDENCED BY THE EXTERNAL ANATOMY OF THE PERSONS INVOLVED).

C. BURDEN OF PROOF: THE COMMISSIONED OFFICER SHALL BEAR THE BURDEN OF PROVING THROUGHOUT THE PROCEEDING BY A PREPONDERANCE OF THE EVIDENCE THAT RETENTION IS WARRANTED UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARA 8B(1)(A)-(E) ABOVE.

D. NOTHING IN REF C REQUIRES THAT AN OFFICER BE PROCESSED FOR SEPARATION WHEN A DETERMINATION IS MADE THAT:

(1) THE OFFICER ENGAGED IN ACTS, MADE STATEMENTS, OR MARRIED OR ATTEMPTED TO MARRY A PERSON KNOWN TO BE OF THE SAME BIOLOGICAL SEX FOR THE PURPOSE OF AVOIDING MILITARY SERVICE; AND

(2) SEPARATION OF THE OFFICER WOULD NOT BE IN THE BEST INTEREST OF THE NAVAL SERVICE.

E. CHARACTERIZATION OF SERVICE WILL BE HONORABLE OR GENERAL. SEPARATION MAY NOT BE CHARACTERIZED AS UNDER OTHER THAN HONORABLE UNLESS THERE IS A FINDING THAT WHILE THE OFFICER WAS IN THE NAVY, THE OFFICER ATTEMPTED, SOLICITED, OR COMMITTED A HOMOSEXUAL ACT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

(1) BY USING FORCE, COERCION, OR INTIMIDATION,

(2) WITH A PERSON UNDER 16 YEARS OF AGE,

(3) WITH A SUBORDINATE IN CIRCUMSTANCES THAT VIOLATE CUSTOMARY NAVAL SUPERIOR-SUBORDINATE RELATIONSHIPS,

(4) OPENLY IN PUBLIC VIEW,

(5) FOR COMPENSATION,

(6) ABOARD A NAVAL VESSEL OR AIRCRAFT; OR

(7) IN ANOTHER LOCATION SUBJECT TO NAVAL CONTROL UNDER AGGRAVATING CIRCUMSTANCES NOTED IN THE FINDING, THAT HAVE AN ADVERSE IMPACT ON DISCIPLINE, GOOD ORDER OR MORALE COMPARABLE TO THE IMPACT OF SUCH ACTIVITY ABOARD A VESSEL OR AIRCRAFT.

F. A COMMISSIONED OFFICER MAY BE CONSIDERED FOR SEPARATION UNDER ALL THE REASONS IN SECTIONS A THRU D OF ENCL (2) REF C; HOWEVER, SEPARATE FINDINGS UNDER EACH APPLICABLE SECTION SHALL BE REQUIRED AS TO THE REASON FOR SEPARATION.

G. SECNAV IS SEPARATION AUTHORITY IN ALL CASES. NO OFFICER SHALL BE RETAINED WITHOUT THE APPROVAL OF THE SECRETARY OF THE NAVY WHEN AN APPROVED FINDING OF HOMOSEXUAL CONDUCT IS MADE.

H. FINDINGS REGARDING WHETHER OR NOT RETENTION IS WARRANTED UNDER THE LIMITED CIRCUMSTANCES OF PARAGRAPH 8B ARE REQUIRED IF THE MEMBER CLEARLY AND SPECIFICALLY RAISES SUCH LIMITED CIRCUMSTANCES.

9. FACT-FINDING:

A. RESPONSIBILITY:

(1) ONLY THE MEMBER'S COMMANDER AS DEFINED IN PARA 3I ABOVE IS AUTHORIZED TO INITIATE FACT-FINDING INQUIRIES INVOLVING HOMOSEXUAL

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CONDUCT. A COMMANDER MAY INITIATE A FACT-FINDING INQUIRY ONLY WHEN HE OR SHE HAS RECEIVED CREDIBLE INFORMATION THAT THERE IS BASIS FOR DISCHARGE. COMMANDERS ARE RESPONSIBLE FOR ENSURING THAT INQUIRIES ARE CONDUCTED PROPERLY AND THAT NO ABUSE OF AUTHORITY OCCURS.

(2) A FACT-FINDING INQUIRY MAY BE CONDUCTED BY THE COMMANDER PERSONALLY OR BY A PERSON HE OR SHE APPOINTS. IT MAY CONSIST OF AN EXAMINATION OF THE INFORMATION REPORTED OR A MORE EXTENSIVE INVESTIGATION, AS NECESSARY.

(3) THE INQUIRY SHOULD GATHER ALL CREDIBLE INFORMATION THAT DIRECTLY RELATES TO THE GROUNDS FOR POSSIBLE SEPARATION. INQUIRIES SHALL BE LIMITED TO THE FACTUAL CIRCUMSTANCES DIRECTLY RELEVANT TO THE SPECIFIC ALLEGATIONS.

(4) IF A COMMANDER HAS CREDIBLE EVIDENCE OF POSSIBLE CRIMINAL CONDUCT, HE OR SHE SHALL FOLLOW THE PROCEDURES OUTLINED IN THE MANUAL FOR COURTS-MARTIAL AND IMPLEMENTING REGULATIONS ISSUED BY THE SECRETARY OF THE NAVY.

B. BASES FOR CONDUCTING INQUIRIES:

(1) A COMMANDER WILL INITIATE AN INQUIRY ONLY IF HE OR SHE HAS CREDIBLE INFORMATION THAT THERE IS A BASIS FOR DISCHARGE. CREDIBLE INFORMATION EXISTS WHEN THE INFORMATION, CONSIDERING ITS SOURCE AND THE SURROUNDING CIRCUMSTANCES, SUPPORTS A REASONABLE BELIEF THAT THERE IS A BASIS FOR DISCHARGE. IT REQUIRES A DETERMINATION BASED ON ARTICULABLE FACTS, NOT JUST A BELIEF OR SUSPICION.

(2) A BASIS FOR DISCHARGE EXISTS IF:

(A) THE MEMBER HAS ENGAGED IN A HOMOSEXUAL ACT.

(B) THE MEMBER HAS SAID THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR MADE SOME OTHER STATEMENT THAT INDICATES A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS; OR BT

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(C) THE MEMBER HAS MARRIED OR ATTEMPTED TO MARRY A PERSON
OF THE SAME SEX.

(3) CREDIBLE INFORMATION DOES NOT EXIST, FOR EXAMPLE, WHEN:
(A) THE INDIVIDUAL IS SUSPECTED OF ENGAGING IN HOMOSEXUAL
CONDUCT, BUT THERE IS NO CREDIBLE INFORMATION, AS DESCRIBED, TO
SUPPORT THAT SUSPICION; OR

(B) THE ONLY INFORMATION IS THE OPINIONS OF OTHERS THAT A
MEMBER IS HOMOSEXUAL; OR

(C) THE INQUIRY WOULD BE BASED ON RUMOR, SUSPICION, OR
CAPRICIOUS CLAIMS CONCERNING A MEMBER'S SEXUAL ORIENTATION;

(D) THE ONLY INFORMATION KNOWN IS AN ASSOCIATIONAL
ACTIVITY SUCH AS GOING TO A GAY BAR, POSSESSING OR READING
HOMOSEXUAL PUBLICATIONS, ASSOCIATING WITH KNOWN HOMOSEXUALS, OR
MARCHING IN A GAY RIGHTS RALLY IN CIVILIAN CLOTHES. SUCH
ACTIVITY, IN AND OF ITSELF, DOES NOT PROVIDE EVIDENCE OF HOMOSEXUAL
CONDUCT.

(4) CREDIBLE INFORMATION EXISTS, FOR EXAMPLE, WHEN:
(A) A RELIABLE PERSON STATES THAT HE OR SHE OBSERVED OR
HEARD A SERVICE MEMBER ENGAGING IN HOMOSEXUAL ACTS, OR SAYING THAT HE
OR SHE IS A HOMOSEXUAL OR BISEXUAL OR IS MARRIED TO A MEMBER OF THE
SAME SEX;

(B) A RELIABLE PERSON STATES THAT HE OR SHE HEARD,
OBSERVED, OR DISCOVERED A MEMBER MAKE A SPOKEN OR WRITTEN STATEMENT
THAT A REASONABLE PERSON WOULD BELIEVE WAS INTENDED TO CONVEY THE
FACT THAT HE OR SHE ENGAGES IN, ATTEMPTS TO ENGAGE IN, OR HAS A
PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS; OR

(C) A RELIABLE PERSON STATES THAT HE OR SHE OBSERVED
BEHAVIOR THAT AMOUNTS TO A NON-VERBAL STATEMENT BY A MEMBER THAT HE
OR SHE IS A HOMOSEXUAL OR BISEXUAL; I.E., BEHAVIOR THAT A REASONABLE
PERSON WOULD BELIEVE WAS INTENDED TO CONVEY THE STATEMENT THAT THE
MEMBER ENGAGES IN, ATTEMPTS TO ENGAGE IN, OR HAS A PROPENSITY OR
INTENT TO ENGAGE IN HOMOSEXUAL ACTS.

C. PROCEDURES:

(1) INFORMAL FACT-FINDING INQUIRIES AND ADMINISTRATIVE
SEPARATION PROCEDURES ARE THE PREFERRED METHOD OF ADDRESSING
HOMOSEXUAL CONDUCT. THIS DOES NOT PREVENT DISCIPLINARY ACTION OR
TRIAL BY COURTS-MARTIAL WHEN APPROPRIATE.

(2) COMMANDERS SHALL EXERCISE SOUND DISCRETION REGARDING WHEN
CREDIBLE INFORMATION EXISTS. THEY SHALL EXAMINE THE INFORMATION AND

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DECIDE WHETHER AN INQUIRY IS WARRANTED OR WHETHER NO ACTION SHOULD BE TAKEN.

(3) COMMANDERS OR APPOINTED INQUIRY OFFICIALS SHALL NOT ASK, AND MEMBERS SHALL NOT BE REQUIRED TO REVEAL, WHETHER A MEMBER IS A HETEROSEXUAL, A HOMOSEXUAL, OR A BISEXUAL. HOWEVER, UPON RECEIPT OF CREDIBLE INFORMATION OF HOMOSEXUAL CONDUCT (AS DESCRIBED IN PARA 9B(1) ABOVE), COMMANDERS OR APPOINTED INQUIRY OFFICIALS MAY ASK MEMBERS IF THEY ENGAGED IN SUCH CONDUCT. BUT THE MEMBER SHOULD FIRST BE ADVISED OF THE DOD POLICY (REFS A, B AND C) ON HOMOSEXUAL CONDUCT AND HIS OR HER RIGHTS UNDER UCMJ, ARTICLE 31B, IF APPROPRIATE. SHOULD THE MEMBER CHOOSE NOT TO DISCUSS THE MATTER FURTHER, THE COMMANDER SHOULD CONSIDER OTHER AVAILABLE INFORMATION. NOTHING IN THIS PROVISION PRECLUDES QUESTIONING A MEMBER ABOUT ANY INFORMATION PROVIDED BY THE MEMBER IN THE COURSE OF THE FACT-FINDING INQUIRY OR ANY RELATED PROCEEDINGS, NOR DOES IT PROVIDE THE MEMBER WITH ANY BASIS FOR CHALLENGING THE VALIDITY OF ANY PROCEEDINGS OR THE USE OF ANY EVIDENCE, INCLUDING A STATEMENT BY THE MEMBER IN ANY PROCEEDING.

(4) AT ANY GIVEN POINT OF THE INQUIRY, THE COMMANDER OR APPOINTED INQUIRY OFFICIAL MUST BE ABLE CLEARLY AND SPECIFICALLY TO EXPLAIN WHICH GROUNDS FOR SEPARATION HE OR SHE IS ATTEMPTING TO VERIFY AND HOW THE INFORMATION BEING COLLECTED RELATES TO THOSE SPECIFIC SEPARATION GROUNDS.

(5) A STATEMENT BY A MEMBER THAT HE OR SHE IS A HOMOSEXUAL OR BISEXUAL, OR WORDS TO THAT EFFECT, CREATES A REBUTTABLE PRESUMPTION THAT THE MEMBER ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS. THE MEMBER SHALL BE GIVEN THE OPPORTUNITY TO PRESENT EVIDENCE DEMONSTRATING THAT HE OR SHE DOES NOT ENGAGE IN, ATTEMPT TO ENGAGE IN, OR HAVE A PROPENSITY OR INTENT TO ENGAGE IN HOMOSEXUAL ACTS.

(6) THE MEMBER BEARS THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT HE OR SHE IS NOT A PERSON WHO ENGAGES IN, ATTEMPTS TO ENGAGE IN, HAS A PROPENSITY TO ENGAGE IN, OR INTENDS TO ENGAGE IN HOMOSEXUAL ACTS.

(7) THE ABOVE PROCEDURES CREATE NO SUBSTANTIVE OR PROCEDURAL RIGHTS.

10. QUESTIONS REGARDING ACCESSIONS SHOULD BE REFERRED TO BUPERS (PERS 23) AT DSN 224-5637,5550 OR COMMANDER, NAVAL RECRUITING COMMAND AT DSN 226-4775. QUESTIONS REGARDING SEPARATIONS OF ENLISTED PERSONNEL SHOULD BE REFERRED TO BUPERS (PERS 83) AT DSN 224-8222, 45, 46, 66. QUESTIONS REGARDING SEPARATIONS OF OFFICER PERSONNEL SHOULD BE ADDRESSED TO BUPERS (PERS 82) AT DSN 224- 4366, 8085.

11. RELEASED BY R. J. ZLATOPER, VADM, USN.// BT