

for the words “That if condition (5) above is met by a finding that”, in 37:272(a) and (b). The words “of such member”, “upon retirement”, and “to receive”, in 37:272(a), are omitted as surplusage.

In clause (1), the words “based upon accepted medical principles” are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words “at the time of the determination” are substituted for the word “current”, in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B-130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2008—Subsec. (b)(3)(B)(i). Pub. L. 110-417 struck out “the member has six months or more of active military service and” before “the disability was not noted” and substituted “(unless clear and unmistakable evidence demonstrates that the disability existed before the member’s entrance on active duty and was not aggravated by active military service)” for “(unless compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member’s entrance on active duty)”.

Pub. L. 110-181 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the member has at least eight years of service computed under section 1208 of this title;”.

1996—Pub. L. 104-201 added subsecs. (a) and (c), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for “Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—”.

1994—Pub. L. 103-337 substituted “10148(a)” for “270(b)” in introductory provisions.

1989—Par. (3)(B). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1985—Par. (1). Pub. L. 99-145 inserted “and stable” after “permanent nature”.

1980—Par. (3)(B)(iv). Pub. L. 96-513 substituted “after September 14, 1978” for “during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect”.

Pub. L. 96-343 added cl. (iv).

1978—Par. (3)(B)(iv). Pub. L. 95-377 added cl. (iv) which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Ef-

fective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87-651 substituted “training under section 270(b) of this title” for “training) under section 270(b) of this title”.

1958—Pub. L. 85-861 inserted “under section 270(b) of this title” after “(other than for training)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. A, title V, §572(d), Sept. 23, 1996, 110 Stat. 2533, provided that: “The amendments made by this section [amending this section and sections 1202 and 1203 of this title] shall take effect on the date of the enactment of this Act [Sept. 23, 1996] and shall apply with respect to physical disabilities incurred on or after such date.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Pub. L. 95-377, §3, Sept. 19, 1978, 92 Stat. 719, provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary’s designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member’s name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85-861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 99-145, title V, §513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 103-337, div. A, title XVI, §1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title V, §572(b), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1202	37:272(a) (clause (5)). 37:272(b) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37:272(a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1202	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B-130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104-201 substituted “a member described in section 1201(c) of this title” for “a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.”.

1994—Pub. L. 103-337 substituted “10148(a)” for “270(b)”.

1985—Pub. L. 99-145 inserted “and stable” after “determined to be of a permanent nature”.

1962—Pub. L. 87-651 substituted “training under section 270(b) of this title” for “training) under section 270(b) of this title”.

1958—Pub. L. 85-861 inserted “under section 270(b) of this title” after “(other than for training)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104-201, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

(a) SEPARATION.—Upon a determination by the Secretary concerned that a member described in

section 1201(c) of this title is unfit to perform the duties of the member’s office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member’s armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

- (1) the member has less than 20 years of service computed under section 1208 of this title;
- (2) the disability is not the result of the member’s intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;
- (3) based upon accepted medical principles, the disability is or may be of a permanent nature; and
- (4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was not noted at the time of the member’s entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member’s entrance on active duty and was not aggravated by active military service), or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85-861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95-377, §3(2), (3), Sept. 19, 1978, 92 Stat. 719, 720; Pub. L. 96-343, §10(c)(2), (3), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96-513, title I, §117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 101-189, div. A,