

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Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex.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 dis-