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Headquarters,
Department of the Army
Washington, DC, 1 December 1982

5/5 19 Jan 1983

**Immediate Action
INTERIM CHANGE**

AR 135-178
Interim Change
No. 105
Expires 1 December 1984

Army National Guard and Army Reserve
Separation of Enlisted Personnel

Justification. Purpose of this interim change is to improve the quality of the Reserve force and to assist the unit commander in separating unsatisfactory participants from his command by transferring them to the IRR in an expeditious manner. This is a "WRENCH-UP" initiative.

Expiration. This interim change expires 2 years from date of publication and will be destroyed at that time unless sooner rescinded or superseded by a permanent change.

1. AR 135-178, 15 July 1977, is changed as follows:

Page 1-9. Paragraph 1-28 is expanded to add subparagraph c to read:

c. A member transferred to the IRR for unsatisfactory participation (prior to 1 December 1982) with a tentative characterization of service of less than honorable normally will be discharged at the expiration of his or her statutory service obligation (ETS) with that characterization. However, he or she may earn a higher characterization at ETS (in accordance with the standards at chapter 1, section II) by --

(1) Rejoining the same or another ARNG or USAR unit and participating satisfactorily for remainder of his or her statutory service obligation, but not less than 12 months; or

(2) Volunteering for and serving satisfactorily on a tour of at least 45 days active duty for training.

Pages 7-9 through 7-11. Section VII. Unsatisfactory Participation of Statutorily Obligated Members is rescinded.

2. Post these changes per DA Pam 310-13.

3. File this interim change in front of the publication.

(AGUZ-PPC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

Distribution:

To be distributed in accordance with DA Form 12-9A, requirements for AR, Army National Guard and Army Reserve. Active Army: B; ARNG: A; USAR: A.

Headquarters,
Department of the Army
Washington, DC, 29 October 1982

Immediate Action INTERIM CHANGE

AR 135-178
Interim Change
No. IO4
Expires 29 October 1984

Army National Guard and Army Reserve

Separation of Enlisted Personnel

Justification. Purpose of this interim change is to improve the quality of the Reserve force and to assist the unit commander in separating unsatisfactory participants from his command by transferring them to the IRR in an expeditious manner. This is a "WRENCH UP" action.

Expiration This interim change expires 2 years from date of publication and will be destroyed at that time unless sooner rescinded or superseded by a permanent change.

AR 135-178, 15 July 1977, is changed as follows:

Page 4-9. Paragraph 4-23e is superseded to read:

e. Failure to participate satisfactorily with at least three but not more than eight unexcused absences (see AR 135-91, chap 4, sec III).

Page 4-10. Paragraph 4-27a(7) is superseded to read:

(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least three, but not more than eight, unexcused absences from unit training assemblies within a 1-year period. A member with more than eight unexcused absences may not be recommended for separation under this paragraph (see para 4-25a(2)).

2. Post these changes per DA Pam 310-13.

3. File this interim change in front of the publication.

(AGUZ-PPC)

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General, United States Army
Chief of Staff

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Major General, United States Army
The Adjutant General

Distribution:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve. Active Army: B; ARNG: A; USAR: A.

Headquarters,
Department of the Army
Washington, DC, 30 July 1982

Immediate Action INTERIM CHANGE

AR 135-178
Interim Change
No. 103
Expires 30 July 1984

Army National Guard and Army Reserve

Separation of Enlisted Personnel

Justification. Interim change includes DOD policy (para B.1.g. Part 3, Encl 3, DOD Directive 1332.14, Enlisted Administrative Separations) to eliminate the offer of an administrative discharge board in chapter 6, AR 135-178 for service members with less than 6 years of total active and/or Reserve military service and eliminates the requirement for the service member's consent under the Expeditious Discharge Program in section VII, chapter 4, AR 135-178.

Expiration. This interim change expires 2 years from date of publication and will be destroyed at that time unless sooner rescinded or superseded by a permanent change.

1. AR 135-178, 15 July 1977, is changed as follows:

Page 1-2. In paragraph 1-3c, delete the second sentence and substitute the following: "Such counsel will be a lawyer within the meaning of Article 27(b)(1), Uniform Code of Military Justice, unless the appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted non-lawyer counsel. (See appendix C for an example of a Certificate of Nonavailability.)"

Page 1-2. Delete subparagraphs 1-3(c)(1) and 1-3(c)(2).

Page 4-10. Paragraph 4-26c is superseded to read:

c. Force the separation of members who possess the potential for rehabilitation.

Pages 4-10 and 4-10.1. Delete paragraph 4-29a in its entirety.

Page 4-11. In paragraph 4-29f delete (in lines five and six) the phrase: "the date he/she consented to the separation and."

Page 4-11. Redesignate paragraphs 4-29b through g to read as paragraphs 4-29a through f.

Page 4-11. In paragraph 4-30c, delete the phrase, "if the member voluntarily consents to the proposed separation," and add the phrase, "affected member's" after "the" and before "acknowledgement" in line 3.

Page 4-11. Delete paragraph 4-30d.

Page 4-11. In paragraph 4-30f(2), delete (in lines one and two) the phrase, "the member does not consent to such separation, or."

Page 4-11. Redesignate paragraphs 4-30e and f to read as paragraphs 4-30d and e.

Page 4-13. In figure 4-2, delete all of paragraph 4. Change word "your" to "you" in paragraph 5 and redesignate paragraphs 5 through 9 to read as paragraphs 4 through 8.

Page 4-15. In figure 4-3, delete second sentence of paragraph 1.

Page 4-15. In figure 4-3, delete paragraphs 4 and 5 in their entirety and redesignate paragraphs 6 and 7 to read as paragraphs 4 and 5.

Page 6-4. In paragraph 6-12c, after the phrase, "separated for unsuitability," add the phrase, "if the member has 6 more years of total military service at the time of separation."

Page 8-1. Expand subparagraph 8-2b(2) to add: (Exception: those members who are being recommended for separation under chapter 6 and who will not have 6 years of total active and/or reserve military service at the time of separation.)

Page 8-10. In figure 8-2, expand paragraph 1 to add: (I understand that if I have less than 6 years of total active and/or reserve military service at the time of separation and am recommended for separation under chapter 6, I am not entitled to have my case heard by a board of officers).

30 July 1982

IO3, AR 135-178

2. Post these changes per DA Pam 310-13.
3. File this interim change in front of the publication.

(DAAG-PPC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

Distribution:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve. Active Army: B; ARNG: A; USAR: A.

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 December 1981

Immediate Action INTERIM CHANGE

AR 135-178
Interim Change
No. 102
EXPIRES 15 December 1982

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change is forwarded to the field to implement policy that has direct impact on the service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by 1st class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 5, AR 135-178.

Pages 4-2.1 and 4-3, subparagraph 4-10a(2) is superseded to read:

(2) A member found to meet the requirements of (1) above will be discharged on the earliest practicable date following such determination, and prior to entry on initial tour of ADT.

Page 4-3, paragraph 4-10, subparagraph e is added to read:

e. This policy does not apply to pregnancy (see sec. V, chap. 4, AR 135-91).

Page 7-1, paragraph 7-5, line 5. Add the following at end of sentence:

with the exception of those members being processed under the provisions of section VII.

Pages 7-9 and 7-10, subparagraph 7-46a is superseded to read:

a. When a member of a troop program unit has accrued nine or more unexcused absences during a 12-month period (see AR 135-91), the unit commander will notify the member in writing of the proposed separation, his/her rights, and the proposed characterization of service (fig. 8-1) allowing 45 days for reply. These procedures also apply when separation for unsatisfactory participation is determined appropriate in the cases of members who are absent without proper authority from annual training (para 4-13b(2)(a), AR 135-91) and members who fail to obtain assignment upon relocation (para 4-25a(2), AR 135-91). Reasonable effort should be made to furnish this notification to the member through personal contact by a member of the command, who will obtain a written acknowledgment of receipt from the member.

(AGUZ-PPC)

15 December 1981

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve.

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USAR: A

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 16 September 1981

Immediate Action
INTERIM CHANGE

AR 135-178
INTERIM CHANGE
NO. 101
Expires 16 September 1982

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change is forwarded to the field to implement policy that has direct impact on the service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by 1st class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 5, AR 135-178.

Page i, section V, chapter 1 is superseded to read:

V. Transfer to the Individual Ready Reserve (IRR) in Lieu of Discharge		
Policy	1-25	1-8
Purpose	1-26	1-9
Applicability	1-27	1-9
Character of service	1-28	1-9

Page 1-2, subparagraph 1-3o is superseded to read:

o. Contractually obligated member. A member who is serving under an enlistment contract, or extension (has either completed his statutory service obligation, or has not acquired one). (See para 1-3a and 2-2, AR 135-91.)

Page 1-2.1, subparagraph 1-4b is amended by changing the last sentence to read: The section also provides for the disposition of those members determined to be physically unfit for active duty.

Page 1-8, section V is superseded as follows:

Section V. TRANSFER TO THE INDIVIDUAL READY RESERVE
(IRR) IN LIEU OF DISCHARGE

1-25. Policy. To retain potential mobilization assets, only those members with no potential to meet mobilization requirements will be discharged. Personnel meeting the criteria in a, b or c below will be transferred to the IRR.

a. Except as provided in d below, transfer to the IRR to complete a statutory service obligation is mandatory in cases of members who have completed BT or at least 8 weeks of one station training or one station unit training and are separated, for one of the following reasons:

- (1) Sole surviving sons/daughters and surviving family members (sec V, chap. 4).
- (2) Inability to perform duties due to parenthood (para 4-11.1).
- (3) Dependency (sec II, chap. 5).
- (4) Hardship (sec II, chap. 5).
- (5) Pregnancy (para 4-11b).

b. Except as provided in d below, the following criteria apply to members who have completed BT or 8 weeks of OSUT and who are to be separated under one of the reasons cited in (1) or (2) below. Members separated under (1) or (2) below whose service will be characterized as honorable will be transferred to the IRR. Members separated under (1) or (2) whose service is characterized as under honorable conditions will be transferred to the IRR unless they clearly have no potential for useful service under conditions of full mobilization. Before making a "no potential" determination, the separation authority must give due consideration to all pertinent factors, including the positive motivation that a full mobilization may have on the member and the probable maturing effect of an additional two or more years in age. The fact that the member is being separated for one of these reasons is not sufficient basis, by itself, for a "no potential" determination.

- (1) Expeditious Discharge Program (sec VII, chap. 4).
- (2) Unsuitability-apathy (para 6-5c).

c. The criteria in a and b above also apply to those ARNGUS and USAR members who are separated while serving under a contractual obligation only, as distinct from a six-year statutory obligation.

d. Members who have less than 3 months to serve on their statutory or contractual obligation, whichever expires later, will be discharged.

1-26. Purpose. The purpose of this policy is to retain in the IRR all members who have some potential for useful service under conditions of full mobilization. Many individuals who are separated in peacetime would be retained during a full mobilization.

1-27. Applicability. These policies apply to ARNGUS and USAR enlisted personnel to whom the referenced separation policies apply.

1-28. Character of service. a. The service of members who are transferred to the IRR under the programs cited in paragraph 1-25 above will be characterized as honorable or under honorable conditions. This will be based on the member's behavior and performance of duty in the unit, in the same manner as set forth in paragraph 1-10b(1) and (2) for type of discharge.

b. Reassignment orders transferring the member to the appropriate control group of the IRR will show the specific reason for transfer (para 1-25a(1) thru (5) and para 1-25b(1) or (2)). Character of service will be entered under Additional Instructions on the orders.

Page 4-1, paragraph 4-2 is amended by changing the word "general" in line 10 to read: "under honorable conditions."

Page 4-2, paragraph 4-9 is superseded to read:

4-9. For other good and sufficient reasons. An enlisted member may be separated for other good and sufficient reasons when so determined by HQDA.

Page 4-3, subparagraph 4-11b(2) is changed to supersede the last sentence to read: If she is eligible for and elects separation the criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged. Delete subparagraphs (a) and (b).

Page 4-4, subparagraph 4-11.1c is superseded to read:

c. Separation authority. Commanders specified in paragraph 1-6 are authorized to order separation under this paragraph when it is determined that the member has been unable to perform prescribed duties for one of the reasons indicated in a above. The criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged.

Page 4-6, subparagraph 4-17h is superseded to read:

h. The criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged.

Page 4-9, paragraph 4-21 is amended by changing the phrase "or chapters 6, 7, and 9" to read: "or chapters 6, 7, 9 and 11."

Page 4-9, subparagraph 4-26a(1) is amended by changing the phrase "or chapters 5, 6 or 7" to read: "or chapters 5, 6, 7 or 11."

Page 4-12, paragraph 4-31 is superseded to read:

4-31. Separation authority. Authority to separate members under provisions of this section is delegated to State adjutants general for ARNG members, and to MUSARC commanders for members of the USAR. This authority will not be further delegated. The criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged.

Page 4-15, paragraph 3, Figure 4-3 is amended by changing the phrase "In understand" to read "I understand" in line 1.

Page 4-15, paragraph 5, Figure 4-3 is amended by changing the word "voluntarily" to read "voluntarily" in line 1.

Page 5-1, paragraph 5-3 is amended by inserting "(para 5-8)" following the words "may be separated" in line 2.

Page 5-2, paragraph 5-8 is superseded to read:

5-8. Type of separation. The criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged.

Page 6-1, subparagraph 6-5c is changed to supersede the last sentence to read:

The criteria in section V, chapter 1 will govern whether the member will be transferred to the IRR, or be discharged. Delete subparagraphs (1) and (2).

Page 6-2, subparagraph 6-6c(1) is amended by deleting the phrase "or d."

Page 7-1, paragraph 7-3 is amended by inserting "normally" following the word "will" in line 3.

Page 8-7, subparagraph 8-13b is amended by changing the phrase "paragraph 6-5d or 7-30g." to read: "chapter 11."

(AGUZ-PPC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve.

Active Army: B
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CHANGE }
No. 4 }

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 August 1981

**ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL**

Effective 15 September 1981

This change updates counsel for consultation requirements; revises procedures governing nonreply by member to notice of rights in separation proceedings; and implements DOD policy which makes homosexuality a mandatory and separate basis for separation.

Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

AR 135-178, 15 July 1977, is changed as follows:

1. New or changed material is indicated by a star.
2. Remove old pages and insert new pages as indicated below:

<i>Remove pages</i>	<i>Insert pages</i>
v v	v v
v 1-1 through 1-2.1	v 1-1 through 1-2.1
v 1-5 through 1-8	v 1-5 through 1-8
v 4-1 and 4-2	v 4-1 and 4-2.1
v 4-9 and 4-10	v 4-9 and 4-10.1
v 4-13 through 4-15	v 4-13 through 4-15
v 6-1 and 6-2	v 6-1 and 6-2
v 7-7 through 7-10	v 7-7 through 7-11
v 8-1 through 8-10	v 8-1 through 8-10.1
.....	v 11-1 through 11-4

3. File this change sheet in front of the publication for reference purposes.

*This change supersedes Immediate Action Interim Change 101, dated 27 November 1980; Immediate Action Interim Change 102, dated 27 November 1980; and Immediate Action Interim Change 103, dated 10 March 1981.

The proponent agency is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to Commander, US Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-RCC, 9700 Page Boulevard, St. Louis, MO 63132.

By Order of the Secretary of the Army:

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General, United States Army
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Brigadier General, United States Army
The Adjutant General

DISTRIBUTION:

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CHANGE }
No. 3 }

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 August 1980

**ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL**

Effective 15 September 1980

This change implements provisions of DOD policy which provides for transfer to the Individual Ready Reserve of enlisted personnel whose performance of duty or participation is unsatisfactory. The words "he," "him," "his," in this change are intended to include both the masculine and the feminine genders unless the context indicates otherwise.

Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

AR 135-178, 15 July 1977, is changed as follows:

1. New or changed material is indicated by a star.
2. Remove old pages and insert new pages as indicated below:

<i>Remove pages</i>	<i>Insert pages</i>
1 through v	i through v
1-1 and 1-2	1-1 and 1-2.1
1-6 through 1-9	1-6 through 1-9
3-1 through 3-2.1	3-1 and 3-2.1
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7-8.1 through 7-9	7-9 through 7-9
8-1 through 8-8	8-1 through 8-12
3. File this change sheet in front of the publication for reference purposes.

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This change supersedes Immediate Action Interim Change IO2, 1 March 1980, and Immediate Action Interim Change IO3, 1 April 1980.

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to Commander, US Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-RCC, 9700 Page Boulevard, St. Louis, MO 63132.

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

DISTRIBUTION:

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ARNG—A

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CHANGE }
No. 2 }

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 October 1979

**ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL**

Effective 1 October 1979 by DOD direction

This change incorporates DOD criteria for screening obligated enlisted members for retention as mobilization assets instead of discharge. Criteria applies to the expeditious discharge program, dependency, hardship, inability to perform duties due to parenthood, pregnancy, secretarial authority, sole surviving sons or daughters, and unsuitability—apathy. The words "he", "him," "his" in this change are intended to include both the masculine and the feminine gender unless the context indicates otherwise.

Interim changes to this pamphlet are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

AR 135-178, 15 July 1977, is changed as follows:

1. New or changed material is indicated by a star.
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<i>Remove pages</i>	<i>Insert pages</i>
i through iv	i through v
1-1 through 1-7	1-1 through 1-9
4-1 through 4-12	4-1 through 4-15
5-1 and 5-2	5-1 through 5-3
6-1 through 6-3	6-1 through 6-4
8-1 through 8-8	8-1 through 8-8
A-1	A-1

3. File this change sheet in front of the publication for reference purposes.

*This regulation supersedes Immediate Action Interim Change I01, dated 31 July 1979 to AR 135-178.

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to Commander, US Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-RCC, 9700 Page Boulevard, St. Louis, MO 63132.

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

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Major General, United States Army
The Adjutant General

Distribution:

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Active Army: B
ARNG: A
USAR: A

CHANGE }
No. 1 }

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 1 February 1979

**ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL**

Effective 1 April 1979

This change corrects errors in the original publication; allows discharge of unsatisfactory participants within 3 months of ETS in lieu of ordering to 45 days ADT; provides authority for destruction of the undeliverable discharge certificates; and specifies that women found to be pregnant upon enlistment will be discharged under the Pre-IADT Discharge Program.

Users of this regulation will not implement interim changes unless the change document has been authenticated by The Adjutant General. (Interim changes expire 1 year after publication date.) If a formal printed change is not received by the time the interim change expires, users will destroy the interim change.

AR 135-178, 15 July 1977, is changed as follows:

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<i>Remove pages</i>	<i>Insert pages</i>
i through ii	i through iii
1-1 through 1-7	1-1 through 1-7
3-1 and 3-2	3-1 through 3-2.1
4-1 through 4-6	4-1 through 4-12
5-1 and 5-2	5-1 and 5-2
6-1 and 6-2	6-1 and 6-2
7-1 through 7-8	7-1 through 7-8.1
8-1 through 8-4	8-1 through 8-4.1
9-1 and 9-2	9-1 and 9-2
10-1	10-1
A-1	A-1
B-1 and B-2	B-1 and B-2

3. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to Commander, US Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-RCPD-PRO, 9700 Page Boulevard, St. Louis, MO 63132.

*This change supersedes DA STL MO //AGUZ-RPP-PR// Message 017330Z December 1977, subject: Interim Change 1-1 to AR 135-178; DA STL MO //AGUZ-RCPD-PRO// Message 191430Z April 1978, subject: Interim Change 1-2 to AR 135-178, and DA STL MO //AGUZ-RCPD-PRO// Message 291522Z September 1978, subject: Interim Change 1-3 to AR 135-178.

C 1, AR 135-178

1 February 1979

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Brigadier General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve.

Active Army: B

ARNG: A

USAR: A

ARMY REGULATION }
No. 135-178 }HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 July 1977ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL

Effective 15 August 1977

This regulation revises policies on separation of Army National Guard and Army Reserve enlisted personnel. Local supplementation of this regulation is permitted but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to Cdr, RCPAC, ATTN: AGUZ-RCC; other commands will furnish one copy of each to the next higher headquarters.

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*This regulation supersedes AR 135-178, 30 December 1969, including all changes.

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CHAPTER 1

GENERAL PROVISIONS

Section I. GENERAL

1-1. Scope. *a.* This regulation prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARN-GUS) and the United States Army Reserve (USAR), except as indicated below:

(1) Separation of enlisted members serving on active duty (AD) will be governed by appropriate Active component regulations.

(2) Separation of enlisted members serving on Initial Active Duty for Training (IADT) will be governed by appropriate Active component regulations.

(3) Enlisted members of the ARNGUS or USAR serving on 45-day ADT who demonstrate through their actions or traits that they should be discharged will be released and returned to their Reserve component unit or USAR control group for discharge action.

b. Discharge of an enlisted member from status held as a Reserve of the Army will also terminate membership in the ARNGUS or USAR. In the case of ARNGUS personnel, termination of status as a member of the ARNG of the State rests with State military authorities.

c. As used in this regulation, the masculine gender pronoun will be construed to include both male and female personnel, unless otherwise expressly so stated.

1-2. Conduct of separation process. The separation process will be conducted efficiently and in a manner which will afford each individual being separated the courtesy, recognition, and consideration deserved by the nature of service performed. Separation must be accomplished in a manner which will enhance the dignity of the individual and leave the former member with a favorable attitude toward the military service.

1-3. Explanation of terms. For the purpose of this regulation, the explanation of terms in AR 140-1 and the following will apply:

a. Administrative separation board. A board of officers appointed by the convening authority to present findings based on evidence presented in a case and to recommend retention in the service or separation and reason therefor, and, if separation is recommended, the characterization of service to be furnished.

★b. Appointed counsel for consultation. A qualified counsel who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. Such counseling may be accomplished face-to-face, by mail, or by telephone, as appropriate. The appointed counsel shall be a commissioned officer of the Judge Advocate General's Corps, unless appropriate authority certifies in the permanent record that such officer is not available and states the qualifications of the substituted nonlawyer counsel, who must be a commissioned officer in the grade of first lieutenant or higher. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel will advise the member that if he receives a discharge certificate which is less than an honorable discharge certificate, there is no automatic upgrading nor review by any Government agency; that upgrading is considered only upon application to the Army Board for Correction of Military Records or the Army Discharge Review Board; and that consideration by either of these boards does not guarantee upgrading of a discharge certificate which is less than an honorable discharge certificate.

Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel, however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

c. Appointed counsel for representation. A counsel appointed to represent an individual who is being processed for separation during the course of any hearing before a board of officers. Such counsel will possess the qualifications in (1) or (2) below, as applicable. The appointed counsel for consultation need not be the same individual.

(1) The appointed counsel for an individual being processed for separation which could result issuance of a characterization of service under other than honorable conditions under this regulation is a lawyer within the meaning of the Uniform Code of Military Justice (UCMJ), Article 27(b)(1), unless appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted nonlawyer counsel (app C).

(2) The appointed counsel for an individual being processed for separation by reason of unsuitability need not meet the qualifications described in (1) above; however, if he/she is not a lawyer, he/she must be a commissioned officer in the grade of first lieutenant or higher.

d. Convening authority. The officer authorized by Army regulations to convene an administrative separation board and take final action with respect to a specific type of separation.

e. Deferred enlisted member. Individuals who have not served on active duty for at least 6 months (ADT is not creditable as active duty) and who are deferred from induction by reason of Reserve participation.

f. Separation authority. The officer authorized to take final action with respect to specified types of separation.

g. Nonlocatee. An enlisted member who has failed to furnish an address through which personal contact is possible.

h. Reserve of the Army. Enlisted members of the ARNGUS and the USAR.

i. ROTC program. The Senior Reserve Officers' Training Corps of the Army.

j. Respondent. An enlisted member who has been notified that action has been initiated to separate the member under this regulation.

k. Separation. Separation includes discharge, transfer from unit status to the Individual Ready Reserve (IRR), release from military control, and dropped from the rolls of the Army.

l. USAR enlisted members of the ROTC Program. A student who is participating in the ROTC Program and who is required to be an enlisted member of the USAR (10 USC 2104 and 2107).

m. Basic training (BT). Initial entry training which provides nonprior service personnel instruction in basic skills common to all soldiers and precedes advanced individual training (AIT).

n. One station unit training (OSUT). Initial entry training in which elements of BT and AIT are provided in the same unit, under one cadre throughout the total period of training. In OSUT, elements of BT and AIT are either integrated, i.e., provided simultaneously, or are nonintegrated, i.e., provided in distinct BT/AIT phases.

o. Contractually obligated member. A member who has completed his statutory service obligation and/or is serving under an appointment, enlistment contract, or extension, only (see para 2-3, AR 135-91).

p. Statutorily obligated member. A member who is serving by reason of law (see para 2-1, AR 135-91).

1-4. Statutory authority. The following provisions of law contained in title 10, USC, pertain to the separation of Reserves of the Army.

a. Section 1001 provides for regulatory directives pertaining to standards and qualifications for retention in the Reserve Components and for the disposition of those members who fail to comply with such standards and qualifications.

b. Section 1004 provides that members of the Ready Reserve not on active duty will undergo a medical examination every 4 years and execute and submit annually a certificate of physical fitness. The section also provides for the disposition of those members determined to be physically fit for active duty.

c. Section 1162(a) provides that the Secretary

of the Army will prescribe regulations for discharge of Reserves of the Army.

d. Section 1162(b) provides that Reserves of the Army who become regular or duly ordained ministers of religion may be discharged upon their request.

e. Section 1163(b) describes the circumstances under which Reserves of the Army may be dropped from the rolls of the Army.

f. Section 1163(c)(1) precludes discharge of Reserves of the Army for cause under other than honorable conditions unless such discharge is the result of an approved sentence of a court-martial or approved findings of a board of officers.

g. Section 1163(c)(2) provides that a Reserve

of the Army may waive the right to proceedings of a court-martial or a board of officers.

h. Section 3260 provides that an enlisted member of the ARNGUS who is not concurrently discharged as a Reserve of the Army automatically becomes a member of the USAR.

1-5. Service obligation. AR 135-91 defines the various service obligations incurred by military personnel upon initial entry into military service and prescribes the method of fulfillment.

★1-6. Authority to approve separation. *a.* Except as provided in section VII, chapter 4, the authority to approve the separation of enlisted members of the USAR is delegated to area commanders, the Commanding General, US Army Reserve Components Personnel and Administration Center (CG, RCPAC), and professors of military science (PMS) (app A). MUSARC commanders are authorized to separate USAR members under the provisions of section VII, chapter 4.

b. Except for cases in which approval of Headquarters Department of the Army (HQDA) is required, area commanders may delegate authority to discharge individuals, for reasons for which a discharge under other than honorable conditions may be given, to a general officer in command having a staff judge advocate for cases arising in that command. Action taken pursuant to such a delegation will cite this paragraph as authority. Cases requiring approval at HQDA will be furnished to CG, RCPAC.

★c. The separation authority delegated to commanders by this regulation will not include the authority to discharge a member under court-martial sentence to dishonorable or bad conduct discharge, prior to the completion of appellate review, unless the discharge authority

intends such discharge action as a remission of the conviction.

1-7. Appeals. *★a. General.* An enlisted member who has been denied a requested separation may appeal such adverse action. The member's immediate commander will inform the member in writing of the adverse decision, the reasons for the action, that he/she has the right to appeal the action, and the appeal procedures. The written notice will be delivered to the member either by personal contact or by certified mail (restricted delivery) with return receipt requested. If delivered by personal contact the member's signature will be obtained on the file copy of the notice. The appeal will explain those facts pertinent to the member's case which he/she feels were not fully considered and may include any additional appropriate evidence which the appellant may wish to present.

★b. How submitted. Appeals will be submitted to the unit commander, who will forward through channels to the separation authority who denied the request for separation. Each level of command will recommend approval or disapproval and state reasons if disapproval is recommended.

★c. Authority to act on appeals. The separation authority or higher authority may act on the appeal when the decision is favorable to the member concerned. When disapproval is recommended, the authority to take final action will be—

(1) CG, RCPAC in all cases in which the State adjutant general or area commander was the final authority for the original action.

(2) The Adjutant General, HQDA, in all cases in which the CG, RCPAC was the final authority for the original action.

★Section II. FACTORS GOVERNING ISSUANCE OF CERTIFICATES OF DISCHARGE UNDER HONORABLE, GENERAL, AND OTHER THAN HONORABLE CONDITIONS AND CORRESPONDING CHARACTERIZATIONS OF SERVICE

1-8. General. As the type of discharge certificate furnished the enlisted member is very important, it is essential that all pertinent factors be considered so that the type of discharge cer-

tificate issued will reflect accurately the nature of the service rendered.

1-9. Discharge certificates. Discharge certifi-

ates are furnished to all enlisted members when they are separated from the United States Army except as otherwise provided in this regulation. Instructions for the completion of discharge certificates are contained in paragraph 1-16. The issuance of discharge certificates as the result of administrative action is governed by this regulation. The three types of discharge certificates which may be issued under this regulation are listed in table 1-1.

1-10. Character of discharge. *a.* The characterization of the discharge certificate issued upon administrative discharge will be based solely upon the enlisted member's behavior and performance of duty during the current period of service, when the member was either—

(1) Actually performing active duty, AT, ADT, or IDT; or

(2) Actively participating in or under an obligation to participate in Reserve activities, and the behavior relates directly to the member's Reserve status.

b. Under honorable conditions.

(1) *Honorable Discharge Certificate (DD Form 256A).* An honorable discharge is a separation from the United States Army with honor. The issuance of an honorable discharge is conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the grade held and the capabilities of the member concerned.

(2) *General Discharge Certificate (DD Form 257A).* A general discharge is a separation from the United States Army under honorable conditions of an enlisted member whose military record is not sufficiently meritorious to warrant an honorable discharge. When an enlisted member's service is characterized as general, except when discharge by reason of misconduct or unsuitability, the specific basis for such discharge will be included in the enlisted member's military personnel record.

c. Under other than honorable conditions.

(1) *Discharge Certificate Under Other Than Honorable Conditions (DD Form 794A).* This type of discharge is an administrative separation from the United States Army under conditions

other than honorable. It may be issued for misconduct.

(2) *Special consideration.* In any case in which a discharge under other than honorable conditions is authorized by regulation, a member may be awarded an honorable or general discharge, as appropriate, if during the current or a prior enlistment or period of service the member has been awarded a personal decoration, or if warranted by the particular circumstances of his/her case.

(3) *Consideration required.* Commanders and members of boards of officers responsible for recommending discharges to be furnished, and commanders having responsibility for determining finally the type of discharge certificate to be issued, are urged to consider all facets of a particular case involving discharge in order that a fair decision will result. Mental status evaluations or other similar medical evaluations given during the period of service which is being characterized will not be considered in determining the type and character of separation.

1-11. Issuance of a discharge certificate under other than honorable conditions. *a.* A discharge certificate under other than honorable conditions will be issued only on the approval of the convening authority, a general officer in command who has a judge advocate officer on his/her staff (if authority has been delegated to him/her pursuant to para 1-6b for cases arising in his/her command), or by higher authority, based upon the approved recommendation of a board of officers appointed pursuant to the provisions of chapter 8, unless the member waives the board. Prior to such action, the procedures and safeguards indicated in paragraph 8-2 must be observed.

★ *b.* If a member waives his/her rights, the separation authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct discharge by reason of misconduct. If discharge is directed, the type of certificate will be specified.

1-12. Separation counseling of members being discharged with a discharge certificate under other than honorable conditions. The purpose and functions of the Army Discharge Review

Board (AR 15-180) and the Army Board for Correction of Military Records (AR 15-185) will be explained concurrently with delivery of the discharge certificate under other than honorable conditions to the member. Such explanation may be furnished the member in written form.

1-13. Periodic explanation. Commanders of troop program units will insure that each member receives periodically an explanation of the types of discharge certificates explained herein, the basis for issuance, and the possible effects upon reenlistment and related matters. This regulation will be followed as a guide as to the extent and content of this explanation. This explanation will be given when determined by the commander to be essential. Commanders will insure that the information is presented in a manner which will create a deep and lasting impression on each member who receives it. Failure on the part of the enlisted member to receive or to understand such explanation will not be considered as a defense in an administrative proceeding or a bar thereto. As appropriate, this explanation may be furnished to the member in written form.

1-14. Limitations on administrative separations and board hearings. *a.* Administrative separation pursuant to this regulation should not be based upon conduct which has been considered at prior administrative or judicial proceedings and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separation under the provisions of this regulation are subject to the following limitations.

(1) No member will be considered for administrative separation because of conduct which has been the subject of judicial proceedings resulting in acquittal or action having the effects thereof. Whether an action has the effect of an acquittal will be determined solely by CG, RCPAC in accordance with the exception procedure set forth in *b*(3) below.

(2) No member will be considered for administrative separation because of conduct which has been the subject of administrative separation proceedings resulting in a final deter-

mination that the member should be retained in the service.

(3) No member will be considered for administrative separation because of conduct which was considered by a general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate body or agency, and remains suspended.

b. The limitations set forth in *a* above are not applicable when—

(1) Substantial new evidence, fraud, or collusion is discovered, which was not known at the time of original proceedings, despite the exercise of due diligence, and which will probably produce a result significantly less favorable to the member at a new hearing.

(2) Subsequent conduct by a member warrants considering him/her for separation. Such conduct need not independently justify the member's separation, but must be sufficiently serious to raise a question as to the member's potential for further useful military service. However, this exception does permit further consideration of conduct of which the member has been absolved in a prior final factual determination by an administrative or judicial body.

(3) An express exception has been granted by CG, RCPAC pursuant to a request by the convening authority through channels that, due to the unusual circumstances of the case, administrative separation should be accomplished.

c. No convening authority will direct separation if a board recommends retention nor will a characterization of service of less favorable character than that recommended by the board be issued. However a convening authority may direct retention when separation is recommended, or may issue a characterization of service of a more favorable character than that recommended.

d. A convening authority may forward a case to CG, RCPAC when a board of officers has recommended retention and he/she believes, due to the unusual circumstances of the case, that discharge, or transfer from a unit to the IRR, if appropriate, is warranted and in the Army's best

interest. Prior to forwarding the case, however, the member will be advised of the convening authority's intentions in this regard, given the opportunity to review the proposed forwarding correspondence, and be permitted to present written matters in rebuttal thereto if desired. It is the policy of HQDA that when the proceedings of a duly constituted board of officers are proper, the recommendations of the board will be upheld unless compelling justification is provided that would warrant separation by the Secretary of the Army as an exception to policy and in the best interest of the Army. CG, RCPAC may grant separation authority. Separation, if granted, will be under honorable conditions and, if discharged, the member will be awarded an Honorable or General Discharge Certificate.

1-15. Medical evaluation. *a.* When an enlisted member is to be processed for discharge under the provisions of paragraph 4-9 or 4-11*b*, chapter 4; chapter 6; section VI of chapter 7; chapter 9 or chapter 11 of this regulation, the member will be referred to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 for medical evaluation. The reason for considering the member for separation will be furnished the medical officer or civilian physician. The medical officer or civilian physician will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when—

(1) Specifically requested by the individual subject to separation action.

(2) Specifically requested by the commanding officer recommending separation action.

(3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.

(4) Requested by the board considering the separation action.

★(5) Individual is being considered for discharge under the provisions of paragraph 6-5*b*.

b. In all other cases, the physician performing the physical examination will accomplish the

mental status evaluation. In exceptional cases in *a*(1) through (5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

★*c.* When an individual is being considered for discharge under the provisions of chapter 11, an appropriate mental status evaluation will be obtained as specified in AR 140-120.

d. The medical officer or civilian physician will forward the original of the evaluation report to the member's commander. A copy will be filed in the member's health records.

★*e.* Members being considered for discharge under the provisions of paragraph 4-9 or 4-11*b*, chapter 4; chapter 6; section VI of chapter 7; chapter 9 or chapter 11, who refuse to undergo medical examination, mental status evaluation or psychiatric evaluation when required will be processed as follows:

(1) The member will be advised in writing that failure to undergo such examination or evaluation will be the basis for the board to proceed with its findings, and recommendations, notwithstanding the absence of such information. The member will also be advised in the same letter of notification that in the event a discharge by reason of misconduct is approved, the member may receive a discharge under other than honorable conditions.

(2) When an enlisted member has failed or refuses to comply after notification as provided in (1) above, or when the member's whereabouts are unknown or unascertained after following the actions prescribed in AR 135-133, discharge action may be initiated without affording the privileges provided in paragraph 8-2*a*. Copies of communications remaining unanswered or returned unclaimed or the substance thereof with the dates and addresses will be included in the recommendations for discharge, together with a brief description of any other means used to locate or communicate with the member concerned. These documents will be furnished to the board of officers, if a board is required, and will be made a part of the board proceedings.

Table 1-1. Types of Discharge Certificates

<i>DD Form No.</i>	<i>Type discharge</i>	<i>Character of discharge</i>
256A	Honorable	Honorable.
257A	General	Under honorable conditions.
794A	Under Other Than Honorable Conditions	Under conditions other than honorable.

Section III. PREPARATION OF DISCHARGE CERTIFICATES

1-16. General. *a. Number of copies.* Discharge certificates will be prepared in original only.

b. How prepared. Entries on discharge certificates will be typewritten or neatly printed in ink. Only black typewriter ribbon or permanent black or blue-black ink will be used.

c. Entries. Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the member's name in signature order, followed by the social security account number, grade, and "USAR." When discharge certificate is prepared by automated systems, the member's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) In the space between the lines in the lower right section of the certificate, type in capital letters, in signature order, the name of the commanding officer or designated officer, and in upper case letters, centered below the name, the officer's grade and branch. The desig-

nated officer will sign the discharge certificate in the space provided.

1-17. Amendments and corrections to discharge certificates. The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of errors therein will be made on written application of the individual to CG, RCPAC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the CG, RCPAC on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) (AR 15-180).

1-18. Orders. Orders directing discharge will be issued as prescribed in AR 310-10.

1-19. Notification of discharge to Selective Service System (Not Used).

1-20. Records disposition. Personnel records of discharge personnel will be disposed of in accordance with instructions contained in AR 635-10 or other appropriate regulations under which discharged.

Section IV. EFFECTIVE DATE OF DISCHARGE

1-21. Effective date of discharge. *a.* The effective date of discharge will be at 2400 hours of the date of notice of discharge unless—

(1) Discharge by reason of change of military status, in which case the effective date will be the day prior to the date of the member's en-

try into a new military status (see paras 3-2, 4-4, or 4-5a).

(2) Discharged under the provisions of paragraph 3-10, in which case the effective date will be the last day of the month during which maximum allowable age is attained.

(3) Otherwise provided by law.

b. Provided there is no evidence of fraud or manifest error and the member receives actual or constructive delivery, orders discharging a member from the USAR will not be revoked or effective date of separation changed after the effective date of discharge unless such revocation is in the form of written confirmation of oral orders actually issued prior to the effective date of separation. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation.

c. After effective date of discharge, orders may be amended by the separation authority only to correct administrative errors, such as errors concerning rank, social security account number, or misspelled name.

1-22. Notification of discharge. a. Except as provided in paragraph 1-21, discharge is effective at the time of notice to the member of discharge.

b. Notice of discharge may be either—

(1) Actual, as by delivery to the member of the discharge certificate, or

★(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be discharged. Receipt by the member's organization at the proper station of the order directing his discharge will be deemed sufficient notice. The

date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to the Cdr, RCPAC, ATTN: AGUZ-RMC-R, 9700 Page Blvd., St. Louis, MO 63132. If the documents mailed to the individual are returned unclaimed or undeliverable, they will be destroyed.

1-23. Mentally incompetent. The effective date of discharge of a mentally incompetent member may also be constructive, as when the member has been placed in an institution (AR 635-40).

1-24. Nonlocatee or in hands of civil authorities. Discharge of an enlisted member who has been convicted by civil authority is governed by chapter 7. However, when discharge under the provisions of chapter 6, or section IV or V of chapter 7 has been ordered by competent authority, and the member is a nonlocatee or is absent in the hands of civil authorities subsequent to the date discharge is approved by the appropriate authority or subsequent to the issuance of the discharge orders, the discharge may be executed notwithstanding such absence.

Section V. TRANSFER TO THE INDIVIDUAL READY RESERVE (IRR) IN LIEU OF DISCHARGE

1-25. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons (excluding para 1-25i) prior to completion of their statutory military service obligation will be screened to insure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their statutory military service obligation. These criteria are based upon the

probability that, under conditions of full mobilization, such members would be retained in the Service.

a. Expeditious Discharge Program (sec VII, chap. 4).

b. Dependency (sec II, chap. 5).

c. Hardship (sec II, chap. 5)

d. Inability to perform duties due to parenthood (para 4-11.1).

e. Pregnancy (para 4-11b.).

- f.* Secretarial authority (para 4-9).
- g.* Sole surviving sons/daughters and surviving family members (sec V, chap. 4).
- h.* Unsuitability—apathy (para 6-5*c*).
- ★*i.* Misconduct (unsatisfactory participation (sec VII, chap. 7)).

1-26. Applicability. These policies apply to ARNGUS and USAR enlisted personnel to whom the referenced discharge policies apply.

★**1-27. Character of service.** *a.* The service of members who are transferred to the IRR under the programs cited in paragraph 1-25*a* through *h* above will be characterized as honorable or

under honorable conditions. This will be based on the member's behavior and performance of duty in the unit, in the same manner as set forth in paragraph 1-10*b*(1) and (2) for type of discharge. The service of members transferred to the IRR under the programs cited in paragraph 1-25*i* normally will be tentatively characterized as under other than honorable conditions.

b. Reassignment orders transferring the member to the appropriate control group of the IRR will show the specific reason for transfer (para 1-25*a* thru *i*). Character of service will be entered under Additional Instructions on the orders.

CHAPTER 2

DISCHARGE OF ENLISTED MEMBERS OF THE ARMY NATIONAL GUARD OF THE UNITED STATES

2-1. General. This chapter prescribes general procedures governing the discharge of enlisted members of the ARNGUS from status as Reserves of the Army.

2-2. Authority to approve discharge. Authority to approve the discharge, by direction of the Secretary of the Army, of enlisted members of the ARNGUS is delegated to officers of the ARNGUS designated by State adjutants general concerned in accordance with National Guard Regulation 600-200 and this regulation, where appropriate.

2-3. Criteria and procedures for discharge. The criteria and procedures for separation of ARNGUS enlisted members and the type of discharge certificate to be furnished are contained in NGR 600-200, except as follows: Investigative files developed in conjunction with implementation of the Army Security Program will not be released to any State adjutant general or other Army National Guard personnel not in active Federal service (para 4-7, AR 604-10). In cases involving misconduct or

unsuitability of enlisted members of the ARNGUS based upon derogatory information furnished by a Federal agency, the following actions will be taken:

a. The Chief, National Guard Bureau (NGB) will request the appropriate area commander to convene a board of officers appointed under this regulation to make recommendations as to the retention or discharge of the member concerned. The area commander will issue a letter appointing the board. The composition and proceedings of the board will be in accordance with AR 15-6 and chapter 8 of this regulation.

b. The area commander will forward the board proceedings together with appropriate recommendations to the Chief, NGB, who will approve or disapprove the findings and recommendations. The Chief, NGB is responsible for advising the area commander and the enlisted member concerned through the appropriate State adjutant general of the final action taken on the recommendations.

CHAPTER 3

DISCHARGE OF ENLISTED MEMBERS NOT QUALIFIED
FOR RETENTION

Section I. CATEGORIES FOR WHICH DISCHARGE IS AUTHORIZED

★3-1. Completion of terms of enlistment or period of statutorily obligated service. *a.* The period of military service required for all enlisted members of the Army will be in accordance with applicable laws. Periods for which enlistment is authorized are set forth in AR 140-111. Upon expiration of term of enlistment or period of statutorily obligated service, the enlisted member will be discharged.

b. A member retired under the provisions of 10 USC 3914 may be discharged from the Retired Reserve upon the member's request and upon completion of 30 years active and inactive service.

c. No enlisted person may be held in service beyond the normal expiration of a term of service unless expiration of term of service is extended by law. When through administrative error an enlisted member is not discharged on the actual date of completion of term of enlistment or date of completion of statutorily obligated service, or as provided in paragraph 1-21a(1) and (3), a remark will be included in the "Remarks" section of the individual's Enlisted Qualification Record (DA Form 2, 2-1) as follows: "Retained beyond normal discharge date for the convenience of the Government."

3-2. Appointment as a commissioned or warrant officer. An enlisted member will be discharged upon acceptance of an appointment as a—

a. Commissioned or warrant officer of any of the Armed Forces, or Reserve Components thereof. A formal discharge certificate will not be issued when member is discharged to accept appointment as a commissioned or warrant officer in the ARNG. Termination of enlistment will be made in accordance with paragraph 4-5.

b. Commissioned officer of the Public Health Service.

c. Commissioned officer of the Environmental Science Services Administration.

3-3. Nonavailability of member of Standby Reserve. An enlisted member of the Standby Reserve will be discharged when 12 months after general mobilization the member remains unavailable for active duty and the member's case has been reviewed and discharge determined to be appropriate because of extended nonavailability.

3-4. Medically unfit for retention. *a.* Discharge will be accomplished when it has been determined (AR 40-501) that an enlisted member is no longer qualified for retention by reason of medical unfitness (AR 140-120) unless the member requests and is—

(1) Granted a waiver under AR 140-120.

(2) Eligible for transfer to the Retired Reserve (AR 140-10).

★b. Disposition of members on duty or ADT who were not medically qualified under procurement medical fitness standards at the time of initial enlistment will be accomplished as set forth in paragraph 4-10 of this regulation, and paragraph 6-6, AR 40-3.

c. When it has been determined that a hospitalized member is no longer medically qualified for retention (chap. 3, AR 40-501), and when a period of ADT has or will expire while the member is still a patient, the following, as appropriate, will apply:

(1) Paragraph 1-5, AR 135-200 for amendment, attachment, or relief from attachment orders.

★(2) AR 635-40 if on ADT pursuant to or-

ders which specify a period of more than 30 days.

★(3) Paragraph 6-8, AR 40-3 and AR 635-40 if on ADT pursuant to orders which specify a period of 30 days or less.

(4) If appropriate, a copy of amending or attaching orders, personnel records, or copies of board proceedings will be forwarded to the responsible headquarters having jurisdictional control over the member's records where necessary administrative actions will be accomplished.

3-5. For security reasons. The provisions of AR 604-10 apply.

★**3-6. Failure or refusal of contractually obligated enlisted members to accept or comply with official orders or correspondence or to satisfactorily participate in required training.** See para 6-22, AR 135-91.

3-7. Noncitizens who are members of the USAR. A noncitizen who is a member of the USAR will be discharged under honorable conditions and given an Honorable Discharge Certificate (DD Form 256A) provided the member's military record so indicates, and upon qualifying under the following conditions:

- a. At the time of release from active duty, the member fails or refuses to give a permanent mailing address within the United States or its territories, but gives only an address in a foreign country; or
- b. Leaves the United States for permanent residence in a foreign country; or
- c. Visits a foreign country of which the individual is a national for a continuous period of 6 months or more.

3-8. Unacceptable for induction. (Not Used).

3-9. Ministers of religion and divinity students. An enlisted member may request discharge upon entering full-time training to become, or to engage in full-time employment as, a regular or duly ordained minister of religion.

a. A minister of religion is classified as either a duly ordained minister of religion or a regular minister of religion as follows:

(1) *Duly ordained minister of religion.* A person who has been ordained in accordance with the ceremonial ritual or discipline of a

church, religious sect, or organization, established on the basis of the community's doctrine and practices of a religious character, to preach and teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who, as a regular customary vocation, preaches and teaches the principles of religion and administers the ordinances of worship as embodied in the creed or principles of such church, sect, or organization.

(2) *Regular minister of religion.* A person who, as a customary vocation, preaches and teaches the principles of the religion of a church, religious sect, or an organization of which the individual is a member, without having been formally ordained as a minister of religion but who is recognized by such church, sect, or organization as a regular minister.

b. Requests will be substantiated by appropriate documentary evidence as follows:

(1) Statement from the appropriate authority of the church, religious sect, or organization that the enlisted member has met the requirements for recognition and has been appointed a regular or duly ordained minister of religion and is employed full-time in a religious occupation (a above).

(2) Statement from appropriate authority of the religious order that as a divinity student the military member—

(a) Is fully qualified and acceptable for further religious training.

(b) Must be separated from military status for further theological education or processing into the religious order or organization.

(c) If separated, will be eligible for ordination or recognition as a minister on or about a specified date.

(3) Statement from the seminary or other educational institution in which the religious training is now or will be received that the individual is now or will be, concurrent with discharge, a full-time divinity student preparing for the ministry.

3-10. Attainment of maximum allowable age. An enlisted member who attains age 60 as set forth in AR 140-10, unless granted a waiver, will be discharged or, if eligible and the member applies, be transferred to the Retired Reserve.

3-11. Approved exemption from involuntary order to active duty. An enlisted member will be discharged upon an approved recommendation of a board of officers appointed under

the provisions of AR 601-25 that the member be exempt from reporting for involuntary call to active duty under emergency or mobilization circumstances.

Section II. SEPARATION FOR MINORITY

3-12. Separation because of minority. This section sets forth the criteria and procedures and

provides authority for the discharge of enlisted personnel by reason of minority.

3-13. Criteria. *a.* A minor under 17 years of age is incapable of entering into a valid enlistment. The enlistment of a minor who was under 17 years of age at date of enlistment and who has not attained the age of 17 upon receipt of satisfactory evidence of the date of his birth, is void. The discharge authority will not issue a discharge certificate. However, he will issue an order releasing the individual from military control. This order will reflect the length of time the enlisted member served in a military status with the notation that such time is creditable, if otherwise creditable, for longevity and retirement, should the individual later return to the military service. The order will also reflect that the individual's enlistment is void because of minority and that his release from military control is being accomplished for this reason. Copies of the order will be issued to the individual and will also be made a permanent part of his personnel records.

b. If a minor enlisted without proper consent and having passed his 17th but not his 18th birthday, when verified, will be discharged upon application of a parent or legal guardian as prescribed by law.

c. An enlisted man who enlisted when 17 years of age, with the written consent of his parents or guardian, will not be discharged under this section.

3-14. Evidence required. *a.* In support of an application for discharge or release from military status because of minority, the following evidence of age is required.

(1) A duly authenticated copy of a municipal or other official record of birth of the member, or

(2) If no official record of birth of the member can be obtained, an affidavit of the parents or guardian must be furnished stating specifically why an official record cannot be obtained. The affidavit must be accompanied by one of the following:

(*a*) A baptismal certificate; a certified copy or photostat of school records, preferably the first term of school; the affidavit of the physician or midwife in attendance at the birth of the individual; or a notarized transcript from the records of the hospital in which the individual was born, or

(*b*) Affidavits of at least two persons not related to the enlisted member, testifying from their personal knowledge as to the date of birth.

b. In case of an enlistment under an assumed

name, the identification of the individual with the person mentioned in the record of birth or the affidavits must be shown by the affidavit of the parents or guardian.

c. Birth or baptismal certificates will be examined carefully for alterations other than those made officially. Care will be taken to note the "date of filing". A delayed birth certificate with date of filing subsequent to the individual's enlistment or one with no filing date is not acceptable unless supported by substantial evidence to establish the date and place of filing.

d. If the parents are divorced or otherwise legally separated, the application for discharge must be accompanied by a copy of the court order or other evidence showing that the parent submitting the application has custody of the enlisted member. If either parent has lost control of the member by judgment of a court, appointment of a guardian, desertion of family, or waiver, an application from such parent for the discharge of the member will not be considered.

e. Although a guardian usually is not recognized as such unless legally appointed, a person who has assumed support of a minor and performed the duties of guardian for 5 years immediately preceding the enlistment will, for the purpose of this regulation, be recognized as a guardian. An affidavit supporting "guardianship" under these conditions will be submitted with the birth certificate.

3-15. Doubtful cases. Any doubtful case will be forwarded for decision to the Cdr, RCPAC, ATTN: AGUZ-PAD.

3-16. Pay and allowances. *a.* Except as provided in *b* below, an enlisted member discharged or released from military control because of minority is entitled to retain whatever pay and allowances he has already received during the period of minority enlistment or period of service, but no pay and allowances may be paid to the member after the date of determination of minority.

b. An individual who enlisted in the Reserve Components after becoming 17 years of age and is discharged for minority prior to attaining the 18th birthday upon request of the individual's parents or guardian is entitled to pay and allowances to the date of discharge. (Rule 6, table 1-4-1, Department of Defense Military Pay and Allowances Entitlements Manual (DODPM).)

CHAPTER 4

SEPARATION OF ENLISTED MEMBERS OF THE USAR FOR THE CONVENIENCE OF THE GOVERNMENT

Section I. GENERAL

4-1. Scope. This chapter sets forth the conditions under which enlisted members of the USAR may be separated for the convenience of the Government. In addition, only Section VII is applicable to enlisted members of the ARNG.

4-2. Authority. The separation of enlisted members of the USAR for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by

this authority. Except as delegated by paragraph 1-6 or by special Department of the Army directives, the separation of any member of the USAR for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general characterization of service as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

Section II. CATEGORIES FOR WHICH SEPARATION IS AUTHORIZED

4-3. Reduction in authorized strength. A reduction in authorized strength by an official order applicable to all members of a class of personnel so specified in the order.

4-4. Discharge for immediate reenlistment. Qualified enlisted members may be discharged to permit their reenlistment in accordance with AR 140-111, provided they apply for and are qualified for reenlistment. A formal discharge certificate is not required. Discharge may be accomplished—

a. During the last 90 days of current enlistment or period of obligated service for the purpose of immediate reenlistment in the USAR.

b. For the purpose of immediate reenlistment in the USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of reenlisting in the USAR in order to qualify for enrollment in the Advanced Course or the Scholarship Assistance Program, Senior Army ROTC Program.

d. Special instructions contained in the discharge orders will read as follows:

Your enlistment in the USAR on _____
_____ was terminated on the effective date of

this order as a result of your immediate reenlistment. No formal discharge will be issued by reasons of this reenlistment.

★4-5. Enlistment or appointment in any component of the Armed Forces. *a.* An enlisted member will be discharged upon enlistment in any component of the Armed Forces (other than appointment as a cadet or midshipman to one of the service academies). A formal discharge certificate will not be issued when a member is discharged to—

(1) Enlist in the Regular Army.

(2) Enlist in the Air Force or Navy Reserve.

(3) Accept appointment as a commissioned or warrant officer.

b. Discharge to enlist in a regular component of any of the Armed Forces in the United States other than the Army is not authorized for enlisted members within the 60-day period immediately preceding the effective date of order to active duty or ADT other than AT or during the performance of active duty, ADT, or AT.

c. An enlisted member of the USAR who becomes an enlisted member of the ARNG will be

transferred to the ARNG in accordance with AR 140-10.

d. A contractually obligated individual who enlisted or reenlisted for the USAR dual status technician program will, upon application, be discharged—

(1) Upon failure to be employed as a technician.

(2) Upon separation from employment as a technician.

e. Additional instruction contained in orders evidencing an individual's discharge under *a*(1) through (4) above to accept a different military status will be in the format below—

Additional Instructions (use as appropriate);

Your enlistment in the USAR on (date) was terminated on (date), preceding date of enlistment in (Regular Army), (ARNGUS) or in the (Air Force) or (Navy) Reserve. No formal discharge will be issued by reason of this termination.

Your enlistment in the USAR on (date) was terminated on (date), preceding date of appointment as a (commissioned) or (warrant officer) in any component of the Armed Forces. No formal discharge will be issued by reason of this termination.

4-6. Women enlisted specifically for WAC College Junior Program. (Rescinded.)

4-7. USAR members enrolled in advanced course or receiving ROTC scholarship assistance. A USAR member enrolled in the advanced course or receiving scholarship assistance who leaves school or is disenrolled from the ROTC Program for reasons other than to evade accepting a commission or to willfully avoid the execution of any other aspect of the ROTC contract will be discharged unless the member voluntarily locates and accepts assignment with a USAR troop program unit within 30 days subsequent to leaving school or after being disenrolled from the ROTC.

4-7.1. ROTC/selected reserve simultaneous membership program (SMP). Individuals who enlist directly for participation in the SMP and

who apply but are not accepted for enrollment in the ROTC advanced course, may be discharged from the USAR at their request.

4-8. Failure or inability to obtain parental consent to enter into the Senior ROTC Program Advanced Training Phase (Not Used.)

4-9. For other good and sufficient reasons. An enlisted member may be separated for other good and sufficient reasons when so determined by HQDA. Such separation will be as specified in *a* or *b* below.

a. Except as indicated in *b* below, members who *have* successfully completed BT or 8 weeks of OSUT, *have not* completed their statutory service obligation, and whose separation is approved by HQDA for reasons other than those in *b* below will be transferred to the IRR under the provisions of AR 140-10.

b. Members who *have not* completed BT or 8 weeks of OSUT, those who *have* completed their statutory service obligation, those whose discharge is approved by HQDA in lieu of retention based upon sustaining the recommendation of a convening authority (when a board of officers convened to consider discharging the member for misconduct (excludes unsatisfactory participation) or unsuitability recommends retention), and others as determined by HQDA, will be discharged (para 1-14c and *d*).

4-10. Discharge of members who did not meet the medical fitness standards. *a.* Commanders are authorized to discharge members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment, or who become medically disqualified under these standards prior to entry on IADT. Eligibility for discharge will be governed by the following:

(1) A medical finding of the Staff Surgeon that the member has a medical condition which—

(*a*) Would have permanently disqualified the member from entry in the military service had it been detected, or had it existed, at the time of enlistment.

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(b) Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

(2) A member found to meet the requirements of (1) above will be discharged on the

earliest practicable date following such determination, and prior to entry on initial tour of ADT. As an exception, a member who elects to complete the period of service for which enlisted will not be discharged under this paragraph. Such member will be required to sign a statement acknowledging that he has been informed of his eligibility for separation but elects to complete his period of service. The statement will become a permanent part of the member's personnel records.

b. The provisions of paragraph 5-7, AR 635-200 apply to members on active duty or initial active duty for training at the time such medical disqualification is discovered and/or determined.

c. Members who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active duty training, or inactive duty training will be processed as specified in chapter 8, AR 635-40.

d. This paragraph is not to be used as a substitute for unsuitability separations in cases of character and behavior disorders. Such cases will be processed under the provisions of chapter 6 of this regulation.

4-11. Marriage, pregnancy and parenthood.

a. *Marriage.* An enlisted member will not be either voluntarily or involuntarily, separated, solely by reason of marriage.

b. Pregnancy.

(1) When it has been determined that an enlisted woman was pregnant upon enlistment, she will be involuntarily discharged under the provisions of paragraph 4-20a(5).

★(2) When it has been determined that a member became pregnant subsequent to enlistment, she will be given the opportunity to elect one of the options applicable to her under the provisions of section V, chapter 4, AR 135-91. If she is eligible for and elects separation, action will be taken as follows:

★(a) A member who *has* successfully completed BT or 8 weeks of OSUT and who *has not* completed her statutory service obligation will be transferred to the IRR under the provisions of section V, chapter 1, and AR 140-10.

★(b) A member who *has not* completed BT or 8 weeks of OSUT or *has* completed her

statutory service obligation will be discharged or transferred to the Retired Reserve, if eligible.

(3) If the woman incurred an active duty obligation as a result of a federally subsidized program, she is ineligible for separation under the provisions of this paragraph unless the required period of active duty has been completed.

(4) Women who request separation for pregnancy may request a specific date, which will not be later than 30 days prior to the expected date of delivery. This date may be accelerated by the separation authority if the applicant cannot fully meet the performance requirements of her duty MOS.

(5) If, before separation is accomplished, a medical doctor determines that her pregnancy has terminated for any reason, the authority for separation contained in this section no longer applies.

★(6) Enlisted women who remain in an active status after confirmation of pregnancy will be granted leave of absence as outlined in section V, chapter 4, AR 135-91.

c. *Parenthood.* Members will not be discharged either voluntarily or involuntarily solely by reason of parenthood. This does not preclude the consideration of appropriate cases under the provisions of paragraph 4-11.1 or chapter 5.

4-11.1. Inability to perform prescribed duties due to parenthood. a. *General.* This paragraph prescribed procedures for separation because of inability to perform prescribed duties, repetitive absences from scheduled training assemblies or failure to attend annual training as a result of parenthood.

b. *Procedures.* When it has been determined that separation is appropriate for any of the reasons indicated in a above, the member will be notified in writing by his immediate commander that his separation has been recommended pursuant to this paragraph and will be given the specific basis for the proposed action. If the characterization of service "under honorable conditions" is recommended, the member will be allowed not less than 10 days to consult with an appointed counsel for consultation (para 1-3b).

c. Separation authority. Commanders specified in paragraph 1-6 are authorized to order separation under this paragraph when it is determined that the member has been unable to perform prescribed duties for one of the reasons indicated in *a* above.

★(1) Members who *have* successfully completed BT or 8 weeks of OSUT and *have not* completed their statutory service obligation will be transferred to the IRR under the provisions of section V, chapter 1 and AR 140-10.

★(2) Members who *have not* completed BT

or 8 weeks of OSUT and those who *do not have* a statutory service obligation will be discharged.

d. Type of separation. The service of members separated under the provisions of this paragraph will be characterized as honorable or under honorable conditions, as appropriate (sec II, chap. 1).

4-12. Bona fide conscientious objectors. See AR 600-43.

Section III. ERRONEOUS ENLISTMENTS/EXTENSIONS

4-13. Erroneous enlistment/extension. *a.* When it is discovered that an individual's enlistment/extension is erroneous because he/she failed to meet the qualifications for enlistment or reenlistment (AR 140-111) and no intent to obtain enlistment/extension by fraud is evident, the unit commander will initiate action to obtain authority to retain the member, to discharge the member for erroneous enlistment/extension, or to void the enlistment/extension, as appropriate, under the provisions of this section. The unit commander will forward the case through channels to the appropriate separation authority listed in paragraph 1-6*a* with the following information:

(1) Facts relating to and circumstances surrounding the erroneous enlistment/extension.

(2) The desire of the member regarding retention or discharge.

(3) A statement by the immediate commander as to the member's conduct, efficiency, and overall value to the Army Reserve.

(4) A specific recommendation for retention or discharge, and the reasons therefor, by each commander in the chain of command.

b. The commander specified in paragraph 1-6*a* will take action as follows:

(1) Direct discharge in all cases in which the disqualification was nonwaiverable. In an exceptionally meritorious case when, in the judgment of the commander having discharge authority, the retention of the member would definitely be in the best interest of the Government, he may direct retention. The following statement will be entered in Item 27 of the member's Personnel Qualification Record (DA

Form 2-1): "Discharge action based on erroneous enlistment/extension is waived and retention is authorized by _____." The original copy of the approved document will be forwarded to Cdr, RCPAC, ATTN: AGUZ-RMC-R for inclusion in the member's OMPF.

(2) Direct discharge in those cases in which the disqualification was waiverable but separation is deemed to be in the best interest of the Government.

(3) Direct retention in those cases in which the disqualification was waiverable and retention is deemed to be in the best interest of the Government and the individual. The member's Personnel Qualification Record will be annotated and the original copy of the approved document will be processed as in (1) above.

c. This section is not applicable to individuals eligible for separation under the provisions of section II, chapter 3, or paragraph 4-10 of this regulation and individuals not meeting medical fitness standards for retention (AR 635-40).

d. Upon establishment that an enlistment is erroneous and the individual is a nonlocatee or in the hands of civil authorities, the enlistment will be voided. The separation authority will issue orders releasing the individual from military control by reason of a void enlistment (Format 505, AR 310-10). No discharge certificate will be issued. The following entry will be made in Item 27, DA Form 2-1 (Enlisted Qualification Record): "Released from military control by virtue of a void enlistment (cite order number and issuing headquarters)." A copy of the order releasing the individual from military

control will be filed as a permanent document in his Military Personnel Records Jacket and Official Military Personnel File.

★*e.* Upon establishment that an enlistment is erroneous because the member is serving in an incompatible status, the separation authority will issue orders (Format 505, AR 310-10) voiding the erroneous (latter) enlistment. For example, a member of USAR Control Group (ROTC/SMP) enlists in a troop program unit. The latter enlistment is erroneous and will be voided but the member will not be released from military control unless the former enlistment was also erroneous. (Such member may

transfer to a troop program unit under the provisions of paragraph 2-7.1, AR 140-10.) No discharge certificate will be issued. The following entry will be made in Item 27, DA Form 2-1 (Enlisted Qualification Record): "Erroneous enlistment voided and member held to prior, untermiated enlistment (cite order number and issuing headquarters)." A copy of the order will be filed as a permanent document in the member's MPRJ and OMPF.

4-14. Pay and allowances. For pay and allowances, see table 1-4-1, DODPM.

Section IV. NATIONAL OR COMMUNITY HEALTH, SAFETY, OR INTEREST

4-15. National or community health, safety, or interest. An enlisted member may apply for discharge on the basis of importance to national or community health, safety, or interest in those instances where the critical need for the services of an enlisted member in a civilian capacity from the viewpoint of health, safety, or general welfare outweighs the need of the Nation for the individual in an active military status were he involuntarily ordered to active duty. Normally, favorable action on requests for discharge under the provisions of this policy will be made only when it is clearly determined that the request meets each of the following requirements—

a. The application is motivated by a critical national or community interest and is not primarily for the personal benefit of the applicant.

b. The applicant's importance to the national or community health, safety, or interest in a civilian capacity has become significantly greater than it was at the time the individual became a member of the Reserves by reason of an unusual change in the employer's requirements for the member's services. This may be substantiated by, but is not necessarily limited to such factors as—

(1) A substantial increase in defense supporting activity.

(2) A significant reduction in effectiveness of the employer's defense supporting activity because of the loss of personnel capable of performing the functions of the applicant and the employer's inability to replace such personnel.

c. The applicant is not presently assigned to a critical MOS listed in AR 135-33, or, if assigned to a critical MOS, a qualified replacement is available.

4-16. Evidence required. *a.* All applications will contain the following information and material:

(1) Name of firm or agency or description of individual enterprise with which the member is connected.

(2) Product manufactured or service performed

(3) Title and description of position filled.

(4) Applicant's connection with the activity prior to enlistment.

(5) Letters, affidavits, or other documentation from responsible officials of the firm, corporation, agency, or State substantiating the facts given above and setting forth the need for the services of the applicant.

b. Applications for discharge will be submitted as follows:

(1) An enlisted member of a USAR unit will submit his/her application to his/her unit commander who will immediately forward it, together with a recommendation and the member's records, through channels to the appropriate area commander for final action.

(2) A nonunit member will submit application to Cdr, RCPAC, ATTN: AGUZ-RCA for final action.

Section V. SOLE SURVIVING SONS/DAUGHTERS

4-17. Separation of sole surviving sons/daughters. *a.* Commanders specified in paragraph 1-6 are authorized upon approval of an application from an enlisted member who has been properly identified as a sole surviving son/daughter to order separation for the convenience of the Government.

b. For the purpose of this section, a "sole surviving son/daughter" is defined as the only remaining son/daughter in a family in which a parent or one or more sons or daughters—

- (1) Was killed in action; or
- (2) Died as a result of wounds, accident, or disease incurred in line of duty while serving in the Armed Forces; or
- (3) Is in a captured or missing in action status as a result of such service; or
- (4) is permanently 100 percent physically or mentally disabled as determined by the Veterans Administration or one of the military services, is hospitalized on a continuing basis, and is not gainfully employed because of such disability.

Note: Neither the acquisition nor retention of sole surviving son status is dependent upon the existence of any other living family member (Supreme Court Decision, *McKart vs US*, 395 U.S. 185 (1969)). Thus the continued existence of a family unit is not required as a prerequisite for qualification as a "sole surviving son." The same is true for qualification as a "sole surviving daughter." This also applies to the existence of a sole surviving son having one or more surviving sisters, or to a surviving daughter having one or more surviving brothers.

c. Members who are identified as sole surviving sons/daughters on the basis of 100 percent mental or physical disability or a parent or one or more sons or daughters and who have not served on active duty, exclusive or periods of ADT and AT for 6 months or more, are not eligible for separation under this paragraph.

d. To be eligible to apply for separation the member must have become a sole surviving son/daughter subsequent to incurring his current statutory military service obligation or his current period of enlistment.

e. The date an enlisted member becomes a sole surviving son/daughter will be determined

based upon the date of death or determination of 100 percent disability established by the Veterans' Administration or the military service, whichever is appropriate.

f. All applications submitted will include the following evidence:

(1) Name, grade, service number (when appropriate), social security account number, branch of service (i.e., Army, Navy, Marine Corps, Coast Guard, or Air Force), relationship, and date of death or disability of the family member upon which request is based.

(2) Veterans' Administration Claim Number, if appropriate.

(3) Name, age, and sex of other family members.

g. Commanders authorized to approve separation are also authorized to verify status of deceased or disabled family members by forwarding a request, including name, grade, service number (when appropriate), social security number, approximate inclusive dates of service, and branch of the Armed Forces to the Records Center as indicated in appendix B.

h. Separation under this section will be as follows:

★(1) Members who *have* successfully completed BT or 8 weeks of OSUT and *have not* completed their statutory service obligation will be transferred to the IRR under the provisions of AR 140-10.

★(2) Members who *have not* completed BT or 8 weeks of OSUT, and those who *have* completed their statutory service obligation will be discharged.

4-18. When separation is not authorized. Separation under this section is not authorized—

a. During a period of war or national emergency declared by the Congress.

b. A member who, having been advised of the provisions of this section, enlists, reenlists, or otherwise voluntarily extends the period of enlistment subsequent to the date of notification of the family casualty on which the status as a sole surviving son/daughter is based will have automatically waived his right for separation.

Section VI. PRE-IADT DISCHARGE PROGRAM

4-19. Purpose. This section establishes the criteria for discharging nonprior service male and female members who are identified by their unit commander prior to their entry on IADT as unsuitable for further service. This program is designed to improve overall quality and to re-

duce future adverse losses by early and expeditious elimination of such members.

4-20. Procedures. *a.* Members of units who have not entered on IADT and all applicants for enlistment will be counseled that they may be discharged should it be determined that they lack the aptitude, attitude, motivation, or self-discipline to become a useful member of the unit prior to their entry on IADT tour. Indicators of quality that will assist in identifying enlistees who should not be retained in the Army include, but are not limited to the following:

(1) Inability to accept instructions or directions.

(2) History of drugs or alcohol abuse, which was not discovered prior to enlistment. Disqualifying drug use is defined by paragraph 2-34, AR 40-501; AR 601-210; NGR 600-200 (ARNG) or AR 140-111 (USAR).

(3) Social/emotional maladjustment patterns.

(4) Inability to cooperate with peers and supervisors.

★(5) Pregnant enlisted women who are found to have been pregnant upon enlistment will be discharged under this paragraph. Pregnancy is a disqualifying medical condition for enlistment under table 2-1, AR 601-210; paragraph 2-8, NGR 600-200; table 2-1, AR 140-111; and paragraph 2-14k, AR 40-501. Women who are discharged under the Pre-IADT Discharge Program for pregnancies which occurred prior to enlistment (EPTS pregnancies) are not entitled to maternity care as provided in paragraph 4-46,

AR 40-3. Option of separation authorities provided elsewhere in this section to retain members recommended for discharge under the Pre-IADT Program does not apply to EPTS pregnancies.

b. When it is determined during the course of the pre-IADT training program that a member is untrainable, his immediate commander will personally notify him in writing of the proposed discharge and reasons therefor. Notification will be in the format as shown in figure 4-1 and will be furnished to the member as follows:

(1) It will be presented to the member during a training assembly for completion of the indorsement section of the letter.

(2) If the member cannot be personally notified of the proposed discharge, the notification letter will be mailed to the member's last known address by certified mail (For Delivery to Addressee Only) and return receipt requested. The letter should be mailed in time to reach the member at least 10 days prior to the date of the training assembly entered in paragraph 3 of the letter of notification.

(3) The following documentation will be placed in the member's MPRJ:

(a) A copy of the indorsement completed by the member, or

(b) A copy of the letter of notification and the post office receipt, or

(c) The original letter and envelope marked "unclaimed" or other designation indicating that it was not delivered.

1. Under the provisions of (cite this letter), I am initiating action to discharge you from the (Army National Guard of the State of _____ and as a Reserve of the Army) or (US Army Reserve).¹
2. The reasons for my proposed action are: (state specific factual details which constitute the basis for this action).
3. You have the right to present at the next monthly assembly on (insert date of next monthly assembly) any rebuttal or statements in your behalf or you may waive these rights by indorsement hereon.
4. If you are discharged under this program, you will receive an honorable discharge certificate.

Signature of commander

Typed name, grade, and branch
of commander

1st Ind

1. I hereby acknowledge notification of my proposed discharge.
2. a. I desire to make statements or rebut the reasons for my proposed discharge and will submit them at the next monthly assembly.
- b. I do not desire to make statements or rebut the reasons for my proposed discharge.

Signature of individual

Typed name, SSN, grade

¹Delete as appropriate.

★Figure 4-1

c. When the letter of notification is furnished the member, the IADT reservation made through the REQUEST system will be cancelled, if the beginning date of IADT is within 30 days.

d. Upon receipt of the completed indorsement from the member, the immediate commander will—

(1) If the member has indicated he does not desire to make statements or rebut reasons for the proposed discharge, forward the case to authorities specified in (3)(b) below for action in accordance with *e* below.

(2) If the member has indicated he desires to make statements or rebut the reason for dis-

charge, he will be afforded the opportunity at the assembly indicated in the notification. (For the purpose of this program, the term assembly refers to any assembly within a multiple unit assembly.)

(3) After consideration of the member's statement or rebuttal, immediate commanders take the following action.

(a) If the member is accepted for retention, file notification letter in unit file and make a new reservation for IADT through the REQUEST system if previous reservation was cancelled.

(b) If the member is not approved for retention, forward the notification letter with in-

dorsement and statements or rebuttal through channels to the State adjutant general for ARNG members or for USAR members to the appropriate area commander for final decision.

e. Upon receipt of correspondence from the immediate commanders, authorities indicated in (b) above will take the following action.

(1) If retention is not approved, accomplish the member's discharge. ARNG members will be discharged from the ARNG and as a Reserve of the Army in accordance with NGR 600-200. USAR members will be discharged under the provisions of this section. The IADT reservation will be cancelled if it was not previously done.

(2) When retention is approved, return the correspondence to the immediate commander ad-

vising him of the decision.

f. The immediate commander upon receipt of the final decision will advise the member of the decision and if the member is retained, obtain a new IADT reservation if the previous one has been cancelled.

4-21. Limitations. It is contrary to the intent of this program for commanders to use this policy as a substitute for appropriate administrative action under paragraphs 4-10 and 4-13, or chapters 6, 7, and 9.

4-22. Type of discharge. Members discharged under this program will be furnished an honorable discharge certificate.

Section VII. EXPEDITIOUS DISCHARGE PROGRAM (EDP)

4-23. General. This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) because of existence of one or more of the following conditions, may be separated:

- a. Poor attitude.
- b. Lack of motivation
- c. Lack of self-discipline.
- d. Inability to adapt socially or emotionally.
- e. Failure to participate satisfactorily (see limitation in para 4-26a(2)).

4-24. Scope. This policy applies to all non-prior service ARNG and USAR troop program unit enlisted personnel who have completed at least six months but not more than 36 months of continuous unit service on their first enlistment at the time the member's immediate commander formally recommends separation under this program. For the purpose of this policy, a break in unit service (assignment to the inactive Army National Guard or USAR control group) of not more than 90 days does not interrupt continuity of unit service. This program does not apply to

ARNG or USAR members on any type of FTTD or ADT.

4-25. Purpose. This policy provides for the expeditious elimination of substandard, nonproductive soldiers before board action becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative discharge boards by providing a means to separate such personnel expeditiously before they progress to the point where elimination by board action becomes necessary. The program is not intended to be a panacea for solving normal personnel problems, or a relief from the professional obligation of commanders to exercise effective leadership and exert a sincere effort to produce good soldiers from seemingly poor ones.

4-26. Limitations. It is contrary to the intent of this policy for commanders to--

a. Use this policy as a substitute for the following appropriate administrative actions--

(1) Paragraphs 3-1; 4-10; 4-13; section II, chapter 3; or chapters 5, 6, or 7 of this regulation, or equivalent provision of NGR 600-200.

(2) AR 135-91 after a member has accumulated more than 8 unexcused absences within one year (12 consecutive months).

(3) Processing through medical channels because of physical or mental defect.

b. Make arbitrary or capricious use of this authority.

c. Force separation of members who--

(1) Possess a potential for rehabilitation.

(2) Decline separation under this policy.

d. Effect separation of members who have not been evaluated for a period of at least 3 months in their current unit of assignment.

4-27. Identification and screening. *a.* Individual characteristics that will assist in identifying members who should not be retained include, but are not limited, to, the following:

(1) Quitter.

(2) Hostility toward the Army.

(3) Inability to accept instructions or directions.

(4) Clearly substandard performance.

(5) Evidence of social/emotional maladjustment.

(6) Lack of cooperation with peers or superiors.

(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least 3, but not more than 8, unexcused absences from unit training assemblies within a one-year period. In addition to this factor, one or more of the other characteristics must also apply to the member. The purpose of this requirement is to assure that a member who has been performing satisfactorily is not recommended for separation under this program solely on the basis of 8 or fewer unexcused absences, particularly if the reason for such absences bordered on being excusable. (Also, see para 4-26a(2).)

b. Personnel identified as vulnerable for separation under this program are those who obvi-

ously cannot adjust to the ARNG or USAR unit environment.

4-28. Counseling and rehabilitation. Commanders will insure that before recommending separation under this section, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action against him/her, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reason for counseling.

(2) The fact that continued behavior of similar nature may result in initiating action under this section or other provisions of this regulation.

(3) The type of separation that may be accomplished, the characterization of service that may be furnished, and the effect of each type action if taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken--

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months' duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), the commander will insure that appropriate alternate rehabilitation measures are employed.

c. Waivers.

(1) The counseling required by *a* above may not be waived.

(2) The rehabilitation required by *b* above may be waived by the separation authority when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems or a hazard to the unit's mission or to the member.

4-29. Standards and criteria. *★a.* No member will be separated under this program unless

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C 4, AR 135-178

he/she voluntarily consents to the proposed separation. The member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

b. The service of members separated under EDP may be characterized as honorable or under honorable conditions, as appropriate (para 1-10).

c. No member's service will be characterized as under honorable conditions under this section unless he is given the opportunity to consult with an appointed counsel for consultation (para 1-3*b*).

d. No member will be given a characterization of service under honorable conditions by the separation authority unless it was recommended by the commander initiating the rec-

ommendation for separation. In cases in which the separation authority disagrees with the recommendation for an honorable characterization of service, the case will be returned to the initiating commander with comment to that effect. The initiating commander may initiate new proceedings under this section or take other appropriate action.

e. Separation authorities may characterize service as honorable if an under honorable conditions characterization of service is recommended by the initiating commander.

f. When a member being processed under this program moves and leaves no forwarding address, or is otherwise nonlocatable, he/she may be separated provided the relocation occurred subsequent to the date he/she consented to the separation and the date the initiating commander formally recommended approval of the case. This provision does not apply to members absent in civil confinement or for whom civil trial or charges are pending (see para 4-26a). Separation under this section will be approved by the separation authority before executed.

g. Separation should be accomplished within 15 days following approval by the separation authority.

4-30. Procedures. *a.* The member's immediate commander will personally notify the member in writing of the proposed separation, the reasons therefor, and the effect of the separation. (See fig. 4-2 for notification letter, which is authorized for local reproduction.) In paragraph 2 of the letter covering reasons for the proposed action, state specific facts and incidents which are the basis for this action. The date in paragraph 7 should allow the member at least 10 days to consult with counsel when a characterization of service under honorable conditions is recommended.

b. Acknowledgment by the affected member will be in the form of an indorsement returning the notification to his/her immediate commander. (See fig. 4-3 for the form indorsement, also authorized for local reproduction.) Necessary administrative support will be made available to assist the member in preparing the indorsement.

c. If the member voluntarily consents to the proposed separation, the immediate com-

mander will forward his letter and the acknowledgment, with the member's MPRJ, through channels to the commander exercising separation authority. The immediate commander's indorsement should include all pertinent information to justify the recommendation for separation, such as the number of times the member has been counseled and circumstances of contributing events. Intermediate commanders in the chain of command will forward recommendations for discharge with a recommendation for approval or disapproval. Each intermediate commander will verify that the recommendation is not in conflict with any provision of this section. The separation authority will insure that the member has been fully counseled, that the recommendation is fully supported, and that such action is not contrary to any provisions of this program. Reassignment to another ARNG or USAR unit will be considered if warranted by the circumstances. If other unit assignments are not appropriate, and the member is considered to have mobilization potential, he will be transferred to the IRR (sec V, chap. 1 and AR 140-10).

d. If the member does not consent to the separation, the immediate commander will not forward the recommendation to the separation authority, but will close the case and take other appropriate action.

e. The separation authority may disapprove a recommendation for separation under this paragraph and return the case to the initiating commander with instructions for other disposition.

f. Disposition of documents generated in the course of processing such cases will be as follows:

(1) When discharge or transfer to IRR is approved, the notification letter, acknowledgment indorsement, and each forwarding indorsement, including the discharge authority's approval, will be made a permanent part of the MPRJ.

(2) When the member does not consent to such separation, or the recommended separation is not approved, the notification letter and acknowledgment indorsement, the forwarding indorsements and separation authority's disapproval will be retained in the member's

MPRJ until he/she is reassigned or until ETS, at which time they will be destroyed.

4-31. Separation authority. Authority to separate members under provisions of this section is delegated to State adjutants general for ARNG members, and to MUSARC commanders for members of the USAR. This authority may not be further delegated. Separation will be as specified in *a* and *b* below.

★*a.* Except as indicated in *b* below, all members separated under this section will be transferred to the IRR under the provisions of AR 140-10 to complete their statutory service obligation.

b. Members whom the separation authority determines, for some specific reason, have *no* potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of a situation requiring a full mobilization and the positive motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years in age. Also, see paragraph 1-25.

4-32. Orders. The separation approving authority will issue orders directing separation under provisions of this section.

SUBJECT:

TO:

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178 (Expeditions Discharge Program). I am recommending that your service be characterized as (Honorable) (Under Honorable Conditions).

2. The reasons for my proposed actions are:

3. The final decision as to whether you will be separated and, if so, whether by discharge or transfer to the IRR and the character of service you will receive rests with the separation authority. If your service is characterized as Under Honorable Conditions, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at no expense to the Government prior to completing the acknowledgement.¹

4. You have the right to decline this separation. If you so decline and your subsequent conduct indicates that such action is warranted, you may be subject to administrative separation procedures under other provisions of law or regulations.

5. You also have the right to submit a statement in your behalf, or you may waive this right.

6. You will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of your separation date.

7. There is no automatic upgrading nor review by any government agency of any discharge certificate/characterization of service which is Under Honorable Conditions.

8. You may be transferred to the Individual Ready Reserve (IRR) to complete your statutory service obligation.

9. Complete the attached acknowledgment and return it by _____

(Signature)

Name (Typed or Printed)

Rank, Commanding, Branch

¹ Applies only in cases where a Under Honorable Conditions characterization of service is recommended.

Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

(Expeditious Discharge Program)

Data Required by the Privacy Act of 1974

(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgement from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process members recommended for separation because of inability to meet acceptable standards required of service members in the ARNG or USAR. If separation is approved, information is filed in the OMPF. If member does not consent to separation or if recommendation is disapproved, information will be filed in the MPRJ until reassignment or ETS, at which time it will be destroyed. So long as filed in the OMPF or MPRJ, this personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Separation is voluntary. Failure to acknowledge notification of separation may subject member to separation under other provisions of regulation or law.

(Date Individual Signs)

(Q) 1st Ind

SUBJECT: Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

TO: Unit Commander

1. I hereby acknowledge notification of my proposed separation from the (ARNG of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178. I (do) (do not) voluntarily consent to this separation.

2. Statements in my own behalf (are) (are not) submitted herewith (as Inclosure _ _).

3. In understand that if my service is characterized as under honorable conditions, I may expect to encounter substantial prejudice in civilian life. I hereby acknowledge that I have been provided the opportunity to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at no expense to the Government prior to completing this acknowledgment.¹ I further understand that there is no automatic upgrading or review by any government agency of a characterization of service which is under honorable conditions, and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.

4. I understand that I may, prior to the date the separation authority approves my discharge, withdraw my voluntary consent to this separation.

5. I further understand that if I decline to accept this separation voluntarily I may at a future time, if my conduct so warrants, be subject to separation under other provisions of law or regulations.

6. I also understand that I will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of my separation.

7. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my statutory service obligation.

(Signature)

Name (Typed or Printed)

Grade, SSN

¹ Applies only in cases where an Under Honorable Conditions characterization of service is recommended.

★Figure 4-3. Acknowledgment of Pending EDP Discharge

CHAPTER 5

SEPARATION BECAUSE OF DEPENDENCY OR HARDSHIP

Section I. GENERAL

5-1. Purpose. This chapter sets forth the criteria and procedures and provides authority for the separation of enlisted members of the USAR by reason of dependency or hardship.

5-2. Authority to approve separation. The authority to approve separation, by authority of the Secretary of the Army, of enlisted personnel of the USAR for dependency or hardship is delegated to commanders specified in paragraph 1-6.

Section II. DEPENDENCY/HARDSHIP

5-3. Criteria. Enlisted members of the USAR may be separated when it is considered that continued participation in unit training or service on ADT would result in undue and genuine dependency or hardship.

a. Dependency. Dependency exists when because of death or disability of a member of an enlisted person's family, other members of his family become principally dependent upon him for care or support to the extent that service on active duty in the event of an emergency or continued participation in unit training would result in undue and genuine hardship.

b. Hardship. Hardship exists when in circumstances not involving death or disability of a member of an enlisted person's family his separation for the service would materially affect the care or support of his family by materially alleviating undue and genuine hardship.

c. Parenthood. Parenthood, either of a sole parent or married service member, may be a basis for separation under provisions of this paragraph. (A sole parent is defined as one who is single because of divorce or legal separation with award of custody by a court, death of spouse, or who has never been married.) The child/children must be under 18 years of age; must reside within the household; and evidence submitted (para 5-5c) must show that the roles of parent and service member are incompatible to the extent that the member cannot fulfill his

military obligation without neglecting the children.

d. Members of the family. For the purpose of separation under dependency or hardship conditions, the term "members of the family" includes *only* spouse, children, father, mother, brothers, sisters, and any person who stood *in loco parentis* to the enlisted member before enlistment. (The term "in loco parentis" as used herein is defined as "any person who has stood in the place of a parent to an enlisted member for 5 continuous years when the member was a child.")

5-4. Application of criteria. *a.* Separation may be approved when all of the following circumstances exist:

(1) Conditions have arisen or have been aggravated to an excessive degree since enlistment in the USAR.

(2) Conditions are not of a temporary nature.

(3) Every reasonable effort has been made by the enlisted member to ease the dependency or hardship conditions without success.

(4) Separation is the only readily available means of eliminating or materially alleviating the dependency or hardship condition.

b. Circumstances outlined in (1) and (2) below do not justify separation because of dependency or hardship. However, the existence of

these circumstances does not preclude separation because of dependency or hardship, provided the application meets the criteria described in *a* above.

(1) Pregnancy of an enlisted man's wife is not a disability for which his separation is justified. However, this does not preclude separation because of a permanent medical disability occurring as a result of pregnancy.

(2) Undue and genuine hardship does not necessarily exist solely because of altered income or because the member is separated from his family, or must suffer the inconvenience normally incident to military service.

5-5. Evidence required. *a.* The evidence required for dependency or hardship separation normally will be in affidavit form. The evidence must substantiate dependency or hardship conditions upon which the application for separation is based.

b. The evidence required will include affidavits or statements submitted by or in behalf of the enlisted member's dependents and by at least two disinterested persons or agencies having first hand knowledge of the circumstances. If dependency or hardship is the result of disability of a member of the individual's family, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and prognosis for recovery. There also will be furnished the names, ages, occupations, home addresses, and monthly incomes of other members of the applicant's family. The affidavits of disinterested individuals and agencies should include reasons within their knowledge that these members of the family can or cannot aid in the financial or physical care of the dependents concerned for the period the enlisted member is to be ordered to active duty in the event of an emergency or continue participation in unit training. When the basis for the application is the death of a member of the enlisted person's family, a death certificate or other proof of death should be furnished.

c. When the basis for the application is parenthood of either a sole parent or a married service member, the supporting evidence will be in affidavit form and will substantiate the applicant's claim that unexpected circumstan-

ces, or circumstances beyond his/her control, have occurred since acquired parenthood which prevent fulfillment of military obligations without resultant neglect of the child. Affidavits from the service member's immediate commander and officer who is the job supervisor will be considered sufficient. Evidence in *b* above is not required for these applications; however, sole parenthood resulting from divorce or legal separation will be substantiated by a judicial or court order awarding child custody to the service member.

5-6. Application for separation. Any enlisted member may submit a written application for separation because of dependency or hardship. Request for separation will be submitted as follows:

a. An enlisted member of a USAR unit will submit written application to the unit commander who will immediately forward it with recommendations and member's records through channels to the appropriate area commander for final action.

b. A nonunit enlisted member will submit a written request to the CG, RCPAC for final action.

5-7. Procedure. *a.* Upon receipt of a written application, with required supporting evidence, the commanders specified in paragraph 1-6 will perform the following:

(1) Consider carefully the facts upon which the request is based.

(2) Procure any other additional information that may be necessary to determine the validity of the request.

(3) Take final action to approve or disapprove the application.

b. All commanders taking final action on applications of individuals for dependency or hardship separation under this regulation will insure the expeditious handling of applications.

c. Applications upon which final action has been taken will become a permanent part of the enlisted member's MPRJ and OMPF.

5-8. Type of separation. Members who meet the criteria specified in this chapter will be separated as indicated in *a* or *b* below.

★*a.* Members who *have* successfully com-

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pleted BT or 8 weeks of OSUT and *have not* completed their statutory service obligation will be transferred to the IRR under the provisions of AR 140-10.

★b. Members who *have not* completed BT or 8 weeks of OSUT and members who *have* completed their statutory service obligation will be discharged.

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5-9. Character of Service. The service of members discharged under this chapter or transferred to the IRR under section V, chapter 1, and AR 140-10 will be characterized as honorable or under honorable conditions, as appropriate (para 1-10 and 1-27).

5-10. Personnel not qualified for separation. Nonobligated personnel who do not qualify for discharge because of dependency or hardship may be, if appropriate, screened to the Standby Reserve in accordance with AR 135-133.

CHAPTER 6

UNSUITABILITY

Section I. GENERAL

6-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted members of the USAR who are found to be unsuitable for further military service.

6-2. Policy. Action will be taken to separate an enlisted member for unsuitability when it is clearly established that—

a. It is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier, and

b. The member meets retention medical standards (AR 40-501).

6-3. Types of separation. The service of a member separated under this chapter will be characterized as honorable or under honorable conditions, as warranted by his military record.

6-4. Authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be separated.

b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for consideration of unsuitability and to order separation except as specified in *a* above.

c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

6-5. Applicability. An enlisted member is subject to separation under this chapter when one or more of the following conditions exist.

a. Inaptitude. Applicable to persons who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

b. Personality disorder. As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM II) of Mental Disorders, 2d Edition, section on mental disorders, International Classification of Diseases and Injuries—8, American Psychiatric Association (reference (h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational adjustments.

c. Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects, or mental, or organic diseases, including psychoneurosis, these traits are not necessarily produced by the physical or disease process. On the other hand, members considered for elimination may attempt to excuse immature, inadequate, and undisciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect-producing impairment of function insufficient to warrant separation under the provisions of AR 140-120 and related regulations is no bar to discharge for unsuitability. This provision is applicable to members who are pregnant and whose substandard performance of duty is not solely attributable to the condition of pregnancy; such as, failure to perform prescribed duties due to defective attitude rather than physical limitation or failure to report to duty without medical or military authorization. Separation for apathy will be as indicated in (1) or (2) below:

(1) Except as indicated in (2) below, all members separated under this paragraph who have successfully completed BT or 8 weeks of

OSUT and who *have not* completed their statutory service obligation will be transferred to the IRR to complete their statutory service obligation.

(2) Members who *have not* completed BT or 8 weeks of OSUT, members who *have* completed their statutory service obligation, and members whom the separation authority determines, for some specific reason, have *no* potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of the situation requiring a full mobilization, and the positive

motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years in age. (See, also, para 1-25.)

★*d. Homosexuality. Rescinded.* (See chapter 11 concerning homosexuality.)

e. Financial irresponsibility. Applicable to cases of individuals who have demonstrated a continuing inability to manage their financial affairs. Does not apply to cases warranting separation under the provisions of paragraph 7-30c or *d.*

Section II. COUNSELING AND REHABILITATION

6-6. Requirements. Commanders will insure that before taking separation action against an enlisted member under this chapter, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this chapter, the enlisted member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this chapter.

(3) The characterization of service that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will insure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation required by *a* and *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6-5*b* or *d.*

(2) Commands which are under the normal command of general officers and colonels having judge advocates on their staff may waive the requirement of *a* and *b* above when it is determined that further duty will, in their best judgment, create serious disciplinary problems or a hazard to the military mission or the member.

Section III. PROCEDURE

6-7. Medical evaluation. When a unit commander determines that an enlisted member under his control is to be processed for separation

under this chapter, he will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and re-

quest a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

6-8. Action by commanding officer. The unit commander of the member will—

a. Afford the member the opportunity to exercise the privileges as specified in paragraph 8-2*a*.

b. Not accept waivers of board hearings in the case of enlisted members who have completed 18 or more years of qualifying Federal service for retirement. Such members appearing before a board of officers convened under the provisions of this chapter must be represented by counsel. They may not waive this requirement.

c. Include report of medical examination according to standards prescribed in chapter 3, AR 40-501.

d. Forward the case with a recommendation that elimination proceedings pursuant to this chapter be initiated (para 6-10).

6-9. Suspension of favorable personnel action. Suspension of favorable personnel action will be initiated in accordance with AR 600-31 when a member is being considered for elimination under the provisions of this chapter.

6-10. Commanding officer's report. When the immediate commander determines that the best interest of the service will be met by separation action for unsuitability, a recommendation in letter form will be forwarded to the convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

a. Name, grade, social security number, age, date of enlistment of current period of service, length of term for which enlisted, if applicable, and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General, nondescriptive terms will not be used.

c. Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and Duty Military Occupational Specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. (Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to effect other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

6-11. Action by intermediate commander. Intermediate commander may take the following action:

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

★*b.* Approve the commanding officer's recommendation and forward the report to the commander exercising separation jurisdiction over the member.

★**6-12. Action by the convening authority on unit commander's recommendation.** On receiving a recommendation for separation for unsuitability, the conveying authority may—

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the organization for disposition by other means; or

c. Convene a board to determine whether the member should be separated for unsuitability; or

d. When the board hearing has been properly and effectively waived, direct separation of the member for unsuitability except as provided in paragraph 6-4a; or

★e. When the board hearing has been properly and effectively waived, approve separation, except as provided in paragraph 6-4a, and suspend execution of the separation (para 8-9); or

f. Direct the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which the action under this chapter is being considered.

6-13. Appointment of counsel. Appointed counsel for consultation and counsel for representation will be as specified in paragraph 1-3b and c.

6-14. Board of officers. See chapter 8.

★6-15. Limitations on administrative separations and board hearing. See paragraphs 1-14 and 8-7.

6-16. Action by convening authority on board's recommendation. The action of the convening authority will be as specified in paragraph 8-7. In addition, upon completion of the review, the commander may when the board recommends separation:

a. Direct separation of the member for unsuitability (except for members referred to in para 6-4a); or

★b. Disapprove the recommendation and direct retention of the member; or separation.

c. Approve separation for unsuitability and suspend execution of the separation (para 8-9).

★6-17. Suspension of execution of approved separation. See paragraph 8-9.

6-18. Disposition of proceedings. See paragraph 8-11.

★6-19. Errors and discrepancies noted before accomplishing separation. See paragraph 8-12.

6-20. Disposition of case. See paragraph 8-13.

CHAPTER 7

MISCONDUCT

Section I. GENERAL

★7-1. Purpose. This chapter prescribes the procedures for separation of enlisted members of the USAR for misconduct by reason of the following:

- a.* Fraudulent entry.
- b.* Conviction by civil court.
- c.* Other disqualifying patterns or acts of conduct.
- ★d.* Unsatisfactory participation of statutorily obligated members.

★7-2. Voidable enlistment. An enlistment procured through deliberate material misrepresentation, omission, or concealment of facts, which, if known at the time of enlistment, could have resulted in rejection of the individual, is voidable at the option of the Government. Discharge on the basis of fraudulent entry constitutes a voidance of the enlistment by the Government.

★7-3. Type of separation. An enlisted member separated for reasons indicated in paragraph 7-1 will be furnished a characterization of service of under other than honorable conditions. If warranted by the circumstances of the case, a characterization of service of hon-

orable or under honorable conditions may be furnished.

7-4. Authority. *★a.* Approval of CG, RCPAC is required before a member who has completed 18 or more years of qualifying Federal service for retirement may be separated under this chapter.

★b. Commanders exercising separation jurisdiction are authorized to convene boards of officers for misconduct and to order separation except as specified in *a* above.

★c. When separation is ordered, the case file of a member will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

7-5. Suspension of favorable personnel action. Suspension of favorable personnel action will be initiated in accordance with AR 600-31 when a member is being considered for elimination under this chapter.

Section II. RIGHTS OF THE ENLISTED MEMBER

★7-6. Purpose. To prescribe the rights of enlisted members being considered for separation for misconduct under this chapter. For limitations on administrative separations, board hearings and rehearing, provisions of paragraph 1-14 apply.

7-7. Notification to enlisted member. *a.* The unit commander will afford the member the

opportunity to exercise the privileges as specified in paragraph 8-2.

b. Waivers of board hearing will not be accepted in the case of enlisted members who have completed 18 or more years of qualifying Federal service for retirement. Such member appearing before a board of officers convened under the provisions of this regulation must be represented by counsel. They may not waive this requirement.

Section III. MEDICAL PROCESSING

★7-8. Medical evaluation. A unit commander who determines that an enlisted member assigned to his command is to be processed for separation under section VI of this chapter, will initially refer the member to a medical officer

or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

Section IV. FRAUDULENT ENTRY

7-9. Purpose. This section prescribes procedures for processing of fraudulent entry cases and provides for the administrative disposition of members found to have fraudulently entered the Armed Forces. For the purposes of this section, fraudulent entry is defined as the procurement of enlistment through any deliberate material misrepresentation, omission, or concealment of facts which, if known at the time, might have resulted in rejection.

7-10. Action by unit commander. Upon discovery of information which creates a suspicion that there may have been a deliberate material misrepresentation, omission, or concealment of facts or conditions which, if known at the time, might have resulted in rejection, the unit commander will submit a recommendation for discharge or retention, as appropriate, through intermediate commanders, if applicable, to the convening authority. The commanding officer's recommendation will be in letter form and will include the following information:

- a. Name, grade, social security number, age, date and term of enlistment, and prior service.
- b. Justification as to reason for action recommended.
- c. Record of other disciplinary action, including nonjudicial punishment.
- d. Report of medical evaluation.
- e. A statement by the member indicating that he has been advised of his rights (para 8-2).
- f. Any other pertinent information.

7-11. Action by intermediate commanders. Intermediate commanders will indorse the commanding officer's report to the convening authority. The indorsement will include a recommendation for approval or disapproval of the recommended action and reasons therefor.

7-12. Action by the convening authority.

a. Initial action. Upon receipt of the recommended action, the convening authority will make a determination as to whether the fact of fraudulent entry has been completely verified and proven. If not, further substantiating facts and evidence will be obtained, or confirmed as unobtainable and final determination made accordingly. If the fraudulent entry is verified, action will be taken to suspend the individual's pay and allowances in accordance with Part One, chapter 4, DODPM. The convening authority will also—

- (1) Disapprove a recommendation for discharge and direct retention (retention constitutes waiver of fraudulent entry); or
- (2) Approve a recommendation for retention; or
- (3) Convene a board of officers to determine whether the member should be separated; or
- (4) When the board hearing has been properly waived, approve separation of the member, except as provided in paragraph 7-4a; or
- (5) When the board hearing has been properly waived, approve separation and suspend execution of the separation (para 8-9), except as provided in paragraph 7-4a.

b. After board hearing. The action of the convening authority will be as specified in paragraph 8-7. In addition, upon completion of review, the convening authority may direct separation of members, except for those referred to in paragraph 7-4a.

7-13. Concealment of prior service. *a.* Upon discovery of concealment by a member of prior separation from any of the Armed Forces of the United States under conditions barring reentry into the Army, the member will be considered for discharge under the provisions of this chapter.

b. Complete verification of the facts concerning the alleged concealment will be made prior to initiating elimination action, including a thorough examination of pertinent records prepared at time of, or prior to, entry into the Army and, if appropriate, records of draft boards regarding statements or admissions made by the person concerned.

(1) *Suspected prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records by the custodian thereof, upon receipt of the name and social security number of the member involved. Accordingly, commanders will not request field investigations to establish evidence of prior military service. Where facts in-

dicating fraudulent entry as a result of concealment of prior service are disclosed, a report which will include the name and social security number of the member, with a brief statement of the nature of the suspected fraud and, when appropriate, a complete set of the member's fingerprints will be submitted to the Cdr, RCPAC, ATTN: AGUZ-RCA for verification prior to elimination action being taken.

(2) *Evidence required to verify prior service for administrative disposition.* Reproduction of documents pertaining to prior period of service, or the immediate availability of such documents is unnecessary when administrative disposition is to be made under this regulation. A statement of service, as distinguished from a certificate of service furnished by The Adjutant General is sufficient basis

for administrative action.

7-14. Concealment of true citizenship status.

a. Upon discovery that an alien has concealed true citizenship status at time of entry into the Army, the member will be considered for discharge under the provisions of this chapter. When it is ascertained through an inquiry to (or from) the Immigration and Naturalization Service that a warrant for the member's arrest has been issued by immigration officials, or that deportation proceedings are currently pending or contemplated upon completion of military service, the member will not be considered for retention.

b. The nearest office of the Immigration and Naturalization Service will be informed if a member is to be discharged in order that arrangements may be made by that office, if it so desires, to take the member into custody upon discharge. If the member has been retained in the service, the immigration officials will be advised.

c. A report of the facts, with a report of action taken, will be submitted to the Assistant Chief of Staff for Intelligence, (HQDA (DAMI-ZA) WASH, DC 20310), through intelligence channels.

7-15. Conviction by civil court. Upon discovery of concealment by a member of conviction by civil court of a criminal offense, action will be taken as indicated below. The concealment by prior service personnel of a conviction imposed during or subsequent to the member's last period of honorable active service, or not previously revealed to the Army, regardless of the date of its commission, constitutes fraudulent entry within the purview of this regulation.

a. A member who concealed a conviction by civil court of a criminal offense for which the member was sentenced to imprisonment, probation, or parole, or given a suspended sentence, for a term exceeding 1 year, will be considered for discharge under the provisions of this regulation. However, if the member's general qualifications are such that the member is an asset to the service and no form of civil custody exists, and/or custody is suspended by civil authorities, the unit commander may recommend retention. If retention is desired and a form of civil custody does exist, board action will not be taken nor retention directed until it has been ascertained that the civil authorities will terminate or suspend jurisdiction. If the civil authorities decline to terminate or suspend jurisdiction, the member will be considered for discharge and the civil

authorities will be notified of the results; the member will not be considered for retention. When recommendation for retention is authorized, the following information will be furnished to the conveying authority:

(1) Nature of the civil offense and disposition made thereof.

(2) Record of current and prior service.

(3) AFQT score or equivalent.

(4) Recommendation of unit commander.

b. An enlisted member who concealed a conviction by civil court for a criminal offense for which sentenced to imprisonment, probation, or parole, or given a suspended sentence for a term of 1 year or less, may be retained in service by the convening authority if the member's overall record warrants such action. Retention constitutes waiver of fraudulent entry. If a form of civil custody exists, the civil authorities will be contacted and requested to terminate or suspend custody for the duration of the period of service. If the civil authorities refuse to terminate or suspend jurisdiction, the member will be considered for discharge under the provisions of this regulation; the member will not be considered for retention. Civil authorities will be notified of the results.

7-16. Proof of concealment of criminal record.

Upon receipt of information that a member has a criminal record, proof of the fact of concealment may be established by comparing the criminal record against the statement made by the member as shown on the enlistment record completed at time of entry into the service. Information concerning the existence of a civil criminal record in any case may be secured by the Cdr, RCPAC from the Federal Bureau of Investigation upon receipt of a request therefor. However, if the details as to the exact circumstances or final sentence in a specific case are desired, they will be obtained by direct communication with the appropriate civil law enforcement agencies, other than the Federal Bureau of Investigation, by the commanders concerned.

7-17. Juvenile offenders. a. For the purpose of this section "juvenile offenders" includes an initial adjudication of guilt of an offense by a domestic court of the United States or its territorial possessions, or by a foreign court, without regard to whether a sentence has been imposed or suspended, or any other subsequent proceedings in the case. The law of the jurisdiction of the court will be determinative of whether a given proceeding con-

stitutes an adjudication of guilt. Adjudication as a juvenile offender includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Convening authorities may direct retention of a member who entered the Army fraudulently by concealing a record as a juvenile offender unless the evaluation of all the facts in the case, the determination of the court and its officers, and the record of military service clearly show the member to be morally unsuited for retention. The provisions herein do not apply to members who concealed minor offenses for which waivers normally would have been granted under AR 140-111. Proof of concealment of adjudication as a juvenile offender may be established by comparing the civil record against the statements made by the member, as shown on the enlistment record completed at the time of entry into the service. A member who has been adjudged a juvenile offender by a juvenile court is not considered to have a criminal record or a record of conviction because of such adjudication. The evidence must clearly show that the member gave a negative answer to a specific question as to whether the member has a record of being a juvenile offender, or denied that civil custody as a result of such record existed at time of entry into the service. If the member has committed an offense, evaluation of the facts in the case indicates that the member would have been unacceptable for military service, and that adjudication as a juvenile offender was concealed because of this offense, the following actions will be taken:

(1) After first being warned of his rights under Article 31, UCMJ, the member will be afforded the opportunity to make a statement regarding the alleged offense. The appropriate civil authorities will then be requested to furnish information concerning the actual nature of the offense, disposition made thereof (if not readily available), actual confinement served, whether any form of civil restraint still exists, and any other data deemed relevant to an evaluation of the case.

(2) If the member concealed the commission of an offense resulting in a sentence to confinement, probation, parole, or for a suspended sentence for a term exceeding 1 year, and the member's civil record and military record do not warrant retention, the member will be considered for discharge under the provisions of this chapter because of fraudulent entry. If a form of civil custody exists, the civil authorities will be notified of the results.

(3) If retention is desired and a form of civil custody exists, no action will be taken to retain the member until it is ascertained whether the civil authorities will relinquish such custody for the duration of the member's military service. If civil authorities decline to relinquish custody, the member will not be considered for retention but will be considered for discharge under the provisions of this regulation. Civil authorities will be notified of the results.

(4) If proof of concealment of the civil record cannot be established to the satisfaction of the commander concerned because the civil authorities decline to furnish the information outlined in *a* above, and such information cannot be obtained from other sources, the member will be retained in the service. Retention constitutes waiver of fraudulent entry.

7-18. Concealment of medical defects. Members who concealed a medical defect or disability upon entry into the service may be processed for discharge or retained in the service, whichever is appropriate. However, if it is established that concealment of a medical defect or disability which would have precluded entry into service was for the purpose of fraudulently obtaining veteran's benefits, hospitalization, disability retirement, monetary benefits or position to which the person would not otherwise be entitled, a member will be considered for discharge under this chapter.

7-19. Concealment of absence without leave or desertion from prior service. a. Upon discovery of concealment of absence without leave or desertion from the United States Navy, Air Force, Marine Corps, or Coast Guard, a report of the circumstances will be made to CG, RCPAC who will ascertain whether the service concerned desires to take custody of the member. If the appropriate service will accept custody, CG, RCPAC will issue necessary instructions to release the member from status as member of the USAR; a discharge certificate will not be issued. If the service from which the member absented himself does not desire to accept custody, CG, RCPAC will so advise the member's commanding officer. The commanding officer will furnish this information, with recommendations, to the convening authority for decision as to whether the member will be considered for discharge under the provisions of this regulation or retained in service.

b. Upon discovery of concealment of absence without leave or desertion from prior service in the

Army, a report of circumstances will be made to the commander of the Army area, or comparable major command beyond the continental United States in which the member is located. The report should include as a minimum the name, grade, and social security number. If available, the date of absence, organization and station from which absent, and the current address of member will also be furnished. If information is received from the Army commander that return to Active Army control is desired, the member will be dropped from the fraudulent enlistment and will not be furnished a discharge certificate (e below). If return to Active Army control is not desired, the unit commander will submit a recommendation for discharge or retention, through intermediate commanders, to the convening authority as outlined in paragraph 7-10.

c. When a member is dropped from a fraudulent enlistment, an appropriate entry will be made in the Enlisted Qualification Record (DA Form 2, 2-1) for the period of service from which dropped, showing why so dropped and to which period of service held.

7-20. Concealment of other disqualifications. Upon discovery that a member has procured entry into the Army by assuming the identity of another individual through the use of a discharge certificate or other military documents belonging to the true member or by concealment of any fact, circumstances, or condition that existed prior to entry which would have made the member ineligible for acceptance, other than concealment of minority or true name, the member will be considered for discharge under the provisions of this regulation. However, the convening authority

may, upon the request of the member's unit commander, direct retention if the member's general qualifications are such that the member is an asset to the service. A member's retention constitutes waiver of fraudulent entry.

7-21. Recording and effect of retention action. When a decision has been made to retain a member in the service, a notation will be made in the member's Enlisted Qualification Record (DA Form 2, 2-1) indicating the retention and that such retention constitutes waiver of fraudulent entry. After such action, no further cognizance of, or action with respect to the fraudulent entry will be taken.

7-22. Character of discharge. Normally a member discharged under this section will be given a discharge under other than honorable conditions unless the particular circumstances of the case warrant an honorable or general discharge. The following factors will be considered in determining the character of a discharge:

a. The character of discharge will be based on in-service records and activities.

b. False pre-enlistment records will not be used as a basis for characterizing a discharge.

c. The offense of fraudulent enlistment (10 USC 843, Art. 83, UCMJ) occurs when the member accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment as to the member's qualifications. Thus, upon receipt of pay and allowances, it becomes an in-service activity by the member and may be considered in characterizing a discharge, even though the member is not tried for the offense.

Section V. CONVICTION BY CIVIL COURT

7-23. Scope. This section prescribes procedures for processing cases of enlisted members who, during their current term of military service, have been initially convicted or adjudged juvenile offenders.

★7-24. Conditions which subject member to discharge. A member will be considered for discharge when it is determined that one or more of the following apply:

a. *Conviction by civil court.* When initially convicted by civil authorities (foreign or domestic), or action is taken which is tantamount to a finding of guilty, of an offense for which the maximum

penalty under the Uniform Code of Military Justice (UCMJ) is death or confinement for one year or more. If the offense is not listed in the Manual for Courts Martial, 1969 (Revised Edition) Table of Maximum Punishments, or is not closely related to a punishment listed therein, the maximum punishment authorized by the US Code or the District of Columbia Code, whichever is lesser, applies.

b. *Conviction of offense involving moral turpitude.* When initially convicted by civil authorities (foreign or domestic), or action is taken which is

tantamount to a finding of guilty, of an offense which involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code. The terms "moral turpitude", though normally applied to many offenses herein applies only to members convicted by civil court or disposed of as juvenile offenders whose offense involves narcotics violations, or sexual perversions, including, but not limited to—

- (1) Lewd acts.
- (2) Homosexual acts.
- (3) Sodomy.
- (4) Indecent exposure.
- (5) Indecent acts with, or assault upon, a child.
- (6) Other offenses which are considered related acts of sexual perversion.

c. Adjudication as juvenile offender. When initially adjudged a juvenile delinquent, wayward minor, or youthful offender, or placed on probation, or punished in any way, as the result of an offense involving moral turpitude.

7-25. Appeals. An enlisted member will be considered as having been convicted, or adjudged a juvenile offender, even though an appeal is pending or is subsequently filed. The discharge or recommendation for discharge, however, will not be accomplished or submitted until the member has indicated in writing that he does not intend to appeal the conviction or the adjudication as a juvenile offender, or until the time in which an appeal may be made has expired, whichever is earlier; or if an appeal has been made, until final action has been taken thereon. If the execution of the discharge is considered appropriate without waiting for final action of the appeal, approval of HQDA must be obtained.

7-26. Retention in the service. *a.* Cases often arise which warrant consideration with a view toward retention of the member in the service. In determining whether retention should be recommended or approved, full consideration should be given to the gravity of the offense involved, the circumstances relating thereto, and any matters in extenuation. Additionally, the military record of the member prior to the commission of the offense should be considered as well as prospects for rehabilitation. As a general rule, those involved in an offense of moral turpitude will not be recommended nor approved for retention.

b. Enlisted members who have been convicted by domestic or foreign courts of offenses which do not involve moral turpitude or which do not provide for punishment by confinement in excess of 1 year under the cited codes (para 7-24a), and those adjudged juvenile offenders (by domestic courts) for offenses not involving moral turpitude, will, as a general rule, be retained in service.

c. Elimination action as an exception to the above may be authorized by HQDA if the offense is indicative of an established pattern of frequent difficulty with civil authorities, and if the member's military record is not exemplary.

7-27. Type of discharge. For type of discharge, see paragraph 7-3.

7-28. Authority for discharge or retention. *a.* The convening authority is authorized to order discharge or direct retention in military service when disposition of an individual has been made by a foreign or domestic court of the United States or its territorial possessions (para 8-7).

b. Upon determination that an individual is to be separated with a discharge under other than honorable conditions, the convening authority will direct reduction as provided in paragraph 8-10.

c. The convening authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving member a probationary period to demonstrate successful rehabilitation (para 8-9).

7-29. Action following disposition by foreign or domestic courts. *a. When discharge is contemplated.* The enlisted member will be notified in writing of the basis for the proposed discharge action (para 8-2).

b. Board hearing waived or completed. The convening authority may—

(1) Disapprove recommendation for discharge and approve retention.

(2) Approve recommendation for retention.

(3) Approve recommendation for discharge and approve the issuance of the type of discharge certificate recommended by the board or one of a more favorable character than that recommended. He may not direct the issuance of a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined in accordance with paragraph 7-3.

(4) Approve recommendation for discharge and suspend execution of the discharge (para 8-9).

Section VI. OTHER DISQUALIFYING PATTERNS OR ACTS OF CONDUCT

7-30. Applicability. An enlisted member is subject to discharge under the provisions of this section when one or more of the following conditions exist:

a. Frequent incidents of a discreditable nature with civil or military authorities.

b. An established pattern for shirking.

c. An established pattern showing dishonorable failure to pay just debts.

d. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

★*e.* Sexual perversion, including but not limited to—

(1) Lewd and lascivious acts.

(2) Sodomy.

(3) Indecent exposure.

(4) Indecent acts with or assault upon a child.

(5) Other indecent acts or offenses.

f. Drug offense(s), defined as the use or incidental possession of any controlled substance or other drug in violation of law or regulation, where such use or possession is not covered by the exemption policy; or the sale, possession for other than personal use, or transfer of any controlled substance, or the introduction of any controlled substance onto an Army installation or other government property under Army jurisdiction. Controlled substances are those substances or immediate precursors listed in the current schedule of Title 21, US Code, Section 812. A drug is any substance which by its chemical nature alters structure or function in the living organism.

★*g.* Homosexual acts. **Rescinded.** (Policies and procedures concerning homosexual acts are set forth in chapter 11.)

7-31. Counseling and rehabilitation. Commanders will ensure that before taking dis-

charge action against an enlisted member under this section that adequate counseling and rehabilitation have been taken as follows:

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this section, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but is not limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this section.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are taken.

c. Waivers. Counseling and rehabilitation may be waived as follows:

★(1) Counseling and rehabilitation may be waived by the convening authority when separation is being considered under the provisions of paragraph 7-30*e* and *f*.

(2) The convening authority may waive the requirements of *a* and *b* above when it is determined that further duty of the member will, in his best judgement, create serious disciplinary problems or a hazard to the military mission or to the member.

7-32. Commanding officer's report. When the immediate commander determines that the best interest of the service will be met by separation

action because of misconduct, he will report the fact, in letter form, to the convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

a. Name, grade, social security number, age, date of enlistment of current period of service, length of term for which enlisted (if applicable), and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General nondescriptive terms will not be used.

c. Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and duty military occupational specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to recommend elimination for unsuitability or to accomplish other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

7-33. Action by intermediate commander. Intermediate commander may take the following action on misconduct cases under this section:

a. Disapprove the recommendation and direct reassignment of the member to another organi-

zation, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising discharge jurisdiction over the member.

c. Recommend discharge for unsuitability rather than misconduct.

7-34. Action by the convening authority on unit commander's recommendation. On receiving a recommendation for discharge for misconduct, the convening authority may—

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Disapprove the recommendation relating to misconduct and convene a board of officers to determine whether the member should be separated for unsuitability; or

d. Convene a board of officers to determine whether the member should be separated for misconduct; or

e. When the board hearing has been properly and effectively waived, direct separation of the member for misconduct (para 7-3); except as provided in paragraph 7-4a; or

f. When the board hearing has been properly and effectively waived, approve discharge of the member for misconduct, except as provided in paragraph 7-4a, and suspend execution of the discharge (para 8-9); or

g. Direct that the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered.

7-35. Appointment of counsel. Appointed counsel for consultation and counsel for representation for enlisted members being considered for separation because of misconduct will be as specified in paragraph 1-3*b* and *c*.

7-36. Board of officers. Composition, procedure, review, and disposition of the proceedings will be as specified in chapter 8. The proceedings of the board will contain a verbatim record of the findings and recommendations.

7-37. Limitations on administrative discharges, board hearings, and rehearings. See paragraph 1-14 and 8-7.

7-38. Action by convening authority on board's recommendation. The action will be as specified in paragraph 8-7. In addition, upon completion of the review, the convening authority may—

a. When the board has recommended discharge for misconduct—

(1) Direct discharge of the member for misconduct (except for members referred to in para 7-4*a*); or

(2) Direct discharge for unsuitability (except for members referred to in para 7-4*a*); or

(3) Disapprove the recommendation and direct retention of the member; or

(4) Approve discharge for misconduct and suspend execution of the discharge (para 8-9).

b. When the board has recommended discharge for unsuitability—

(1) Direct discharge of the member for unsuitability (except for members referred to in para 7-4*a*); or

(2) Disapprove the recommendation and direct retention of the member; or

(3) Approve discharge for unsuitability and suspend execution of the discharge (para 8-9).

7-39. Suspension of execution of approved discharge. The provisions of paragraph 8-9 apply concerning suspension of execution of approved discharge.

★7-40. Reduction in grade. Reduction in grade on approval of discharge under other than honorable conditions will be specified in paragraph 8-10.

7-41. Disposition of proceedings. Disposition of proceedings will be as specified in paragraph 8-11.

7-42. Errors and discrepancies noted before accomplishing discharge. Correction of errors and discrepancies noted before accomplishing discharge will be as specified in paragraph 8-12.

7-43. Disposition of case. Disposition of case when discharge has been accomplished will be as set forth in paragraph 8-13.

Section VII. UNSATISFACTORY PARTICIPATION OF STATUTORILY OBLIGATED MEMBERS

7-44. Purpose and scope. This section prescribes policy and procedures for processing cases of statutorily obligated enlisted members who fail to participate satisfactorily in unit training as required by AR 135-91. These instructions apply to all nonprior service ARNG and USAR enlisted members who have not served 24 months active duty, and provide for transfer to the IRR.

7-45. Separation. All members separated under this section who have not completed their statu-

tory military service obligation will be transferred to the IRR to complete that obligation.

7-46. Action by unit commander. *a.* When a member of a troop program unit has accrued 9 or more unexcused absences during a 12-month period (see AR 135-91), the unit commander will personally notify the member in writing of the proposed separation, his/her rights, and the proposed characterization of service (fig. 8-1) allowing 45 days for reply. Reasonable effort should be made to furnish this notification to the

member through personal contact by a member of the command, who will obtain a written acknowledgment of receipt from the member.

(1) If such effort is unsuccessful, the notification will be mailed to the member by certified mail (Return Receipt Requested) and a Receipt for Certified Mail (PS Form 3800) obtained.

★(2) The individual who mails the notification will prepare a Sworn Affidavit of Service by Mail (fig. 8-4) which will be inserted immediately together with the PS Form 3800, in the member's MPRJ. If the notice was properly and correctly mailed to the most recent address furnished by the member, it will constitute constructive notice to the member which will satisfy notice requirements for subsequent separation actions.

★(3) If the mail is returned as unclaimed or undeliverable and no better address can be determined, or the member receipts for the notification but fails to respond by the time specified in figure 8-1, such action will constitute a waiver of the member's right to a hearing before a board of officers. The separation authority may then proceed with appropriate action (para 8-2b(5) and fig. 8-1).

b. The unit commander will send his/her recommendation for separation through the intermediate commander(s), if any, to the separation authority. The recommendation will be in letter form and will include the following information:

(1) Name, grade, SSN, date and term of enlistment or obligated service.

(2) Justification for recommendation.

(3) Record of enforcement action taken.

(4) A statement by the member indicating that he/she has been advised of his/her rights. (If no reply is received or if notification was returned as undeliverable, include that evidence.)

7-47. Action by intermediate commander. Each intermediate commander will add his/her recommendation to that of the unit commander and forward the case to the convening authority.

7-48. Action by the convening authority. On receiving a recommendation for separation for

unsatisfactory participation, the convening authority may—

a. Disapprove the recommendation and return the case to the originator for disposition by other means.

b. Direct that the case be processed through medical channels, if appropriate (para 7-34g).

c. When the board hearing has been properly and effectively waived, direct separation by transfer to the IRR with a tentative characterization of service, normally under other than honorable conditions.

d. Convene a board of officers (chap. 8) to determine whether the member should be separated for misconduct (unsatisfactory participation—see para 7-45).

7-49. Action by convening authority on board's recommendation. a. The action will be as specified in paragraph 8-7. Also, on completion of the review, the convening authority will, when the board has recommended separation for misconduct (unsatisfactory participation) approve transfer of the member to the IRR.

b. The convening authority *may not* approve separation and suspend execution of the separation in these cases.

7-50. Orders. When transfer to the IRR has been approved, the separation authority will issue orders transferring the member to the USAR Control Group (Annual Training) with the approved tentative characterization of service shown under Additional Instructions. The reassignment orders should be delivered to the member by a member of the command and a written acknowledgement of receipt obtained. When these efforts are unsuccessful, the orders will be mailed to the member in the same manner as the initial notification letter (para 7-46).

7-51. Provisions for upgrading characterization of service. A member who is transferred to the IRR under this section with a tentative characterization of service of less than honorable normally will be discharged at the expiration of his/her statutory service obligation (ETS) with

that characterization. However, he/she may earn a higher characterization of service at ETS (in accordance with the standards at sec II, chap. 1) by—

a. Rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of his/her statutory service obligation, but not less than 12 months; or

b. Volunteering for and serving satisfactorily on a tour of at least 45 days active duty for training.

7-52. IRR members. *a.* When a member of the IRR whose enlistment provides that his/her

statutorily obligated service may be performed entirely in the IRR is identified as an unsatisfactory participant, the procedures outlined for unit members will be followed as nearly as possible.

b. A board of officers will be convened under chapter 8 to consider the circumstances and recommend appropriate disposition. When the member is retained in the IRR with a tentative characterization of service as a result of an approved board action, he/she will be discharged at expiration of his obligation with the same characterization unless he/she takes action to upgrade his/her characterization of service (para 7-51).

CHAPTER 8

BOARD OF OFFICERS

8-1. General. *a.* This chapter sets forth the general provisions governing boards of officers convened under the provisions of this regulation to make recommendations to the convening authority concerning separation action pertaining to enlisted members of the USAR and, where appropriate, to members of the ARNGUS.

b. Appointment of boards of officers under this regulation will be accomplished by letters issued by area commanders, or higher headquarters. Procedure for boards is prescribed in AR 15-6. One officer on a board (which consists of more than one member) will be from the same Reserve Component as the member whose case is referred for board action.

c. When sufficient basis exists to initiate separation action pertaining to USAR members as assigned under jurisdiction of the CG, RCPAC, the procedures set forth in paragraph 8-2 will apply. If an investigation and/or appointment of a board of officers is required, the case will be referred for necessary action to the commander in whose geographical area the member resides.

(1) Cases referred to area commanders by CG, RCPAC will include, to the extent possible, correspondence, statements, MPRJ, and similar related documentation.

(2) In those instances where circumstances indicate the need for Army investigative processes, as set forth in AR 195-2, the CG, RCPAC will request such investigation from the appropriate area commander. Upon completion of the investigation, area commander will initiate continuing action.

(3) Except for those types of cases where final action is restricted to HQDA, area commanders are authorized to take final action on board recommendations.

(4) Upon completion of final action, area commanders will forward the original of the board proceedings with approved disposition to the CG, RCPAC, who will accomplish discharge

action, if appropriate, and file the board proceedings in the enlisted member's OMPF.

d. Area commanders will appoint boards of officers upon request from a PMS to act upon cases involving USAR members of the Senior ROTC Program.

8-2. Rights of the enlisted member. *a.* The enlisted member will be notified in writing of the specific allegations on which the proposed action is based, the type of separation that may be issued, the characterization of service that may be given, and the fact that action has been suspended to give the member an opportunity to exercise the rights listed in *b(1)* through *(6)* below (fig. 8-1).

(1) This letter will be given to the member by his unit commander or a designated member of his command (in person), when possible. A signed receipt will be obtained. If this cannot be done, and the member's whereabouts are known or may be reasonably ascertained, the letter will be sent to the member by certified mail, Restricted Delivery, return receipt requested.

(2) This letter will be sent to the *nonunit* member by the Cdr, RCPAC, using certified mail as in (1) above.

b. Rights of the enlisted member are—

(1) To consult with a consulting counsel (1-3*b*). *This right may not be waived.*

(2) To appear and present his/her case before an administrative separation board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3*c*); military counsel of his/her own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his/her own behalf.

★(5) With the exception of (1) above, to waive the above rights in writing or by declining

to reply to the letter of notification by the time specified in figure 8-1. Failure of the member to respond and request consideration by a board of officers will be considered as a waiver of that right (fig. 8-1).

★(6) To withdraw his/her waiver of his/her rights listed in (2), (3), and (4) above any time prior to the date the separation authority orders, directs, or approves his/her separation and requests that his/her case be presented before a board of officers. The member will be required, within a reasonable time (not less than 30 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distances involved or other circumstances, a period in excess of 30 days may be allowed for the enlisted member to reply. If he/she elects to waive his/her rights, the member will personally sign a waiver (fig. 8-2). His/her consulting counsel will advise him/her in accordance with paragraph 1-3*b* and will sign the written waiver as witness. If the member refuses to consult with a consulting counsel, he/she will be ordered to do so by his/her commander. If he/she persists in his/her refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the member had consulted with a consulting counsel.

c. If a member waives his/her rights, the separation authority may disapprove the waiver and refer the case to an administrative separation board, or direct retention, or direct separation by reason of unsuitability or misconduct. If discharge is directed, the type of certificate will be specified.

d. A member unable to appear in person before an administrative separation board by reason of confinement by civil authorities will be advised (by certified mail, Restricted Delivery, return receipt requested) of the proposed separation, the characterization of service that may be issued, and the fact that action has been suspended to give him/her the opportunity to exercise the following rights.

(1) To consult by correspondence with a consulting counsel (para 1-3*b*). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his/her own expense to represent him/her and, in his/her absence, present his/her case before an administrative separation board.

(3) To submit statements in his/her own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 45 days from the date of receipt. If the reply is not received within 45 days of the date of receipt of the letter of notification, the recommendation of his/her separation, if approved by the separation authority, may be accomplished with the characterization of service or type of discharge certificate determined to be appropriate. Subparagraph 7-48*c* applies when separation is a result of unsatisfactory participation.

8-3. Board of officers. *a. Organization.* Boards of officers convened to determine whether a member should be separated under the provisions of this regulation will consist of not less than three commissioned officers, except as authorized by paragraph 8-1*b*, at least one of whom is the grade of major or higher; nonvoting recorder may be appointed. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

(3) In the case of a female enlisted member, the board will include a female officer, if reasonably available. In the case of nonavailability, the reason will be stated in the record of proceedings.

(4) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member an officer who is also a minority group member, if such officer is reasonably available. When requested, the appointed board member should normally be of the same minority group

as the respondent; however, nonavailability of an officer of the same minority group will not preclude convening the board. In the event of nonavailability, the reason will be stated in the record of proceedings.

(5) The officer initiating the action under this regulation or any intervening officer who had direct knowledge of the case is not a member of the board.

b. General. The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the member and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement on the data at hand so that further rehabilitation data may be secured.

c. Availability of witnesses.

(1) The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, a deposition or affidavit will be obtained, as appropriate.

(2) The member will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any available witness the member desires to call ((1) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.

d. Board procedures.

(1) Expect as modified herein, the board will conform to the provisions of AR 15-6. As an

exception to paragraph 3-7b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence he/she is entitled to have witnesses appear in person, if they are reasonably available (c(1) above).

(2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as possible and will contain a verbatim record of the findings and recommendations (fig. 8-3).

(3) A minimum of 30 days' written notice before date of hearing will be given a member who is to appear before a board of officers so that he/she or his/her counsel may prepare his/her case. When for overriding reasons the minimum of 30 days cannot be granted, the president of the board will insure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 45 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

(4) A member who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the member by the president of the board:

(a) The member may appear in person, with or without counsel, at all open proceedings of the board. The member may have military counsel of his/her own choice, provided proper authority determines the counsel requested is reasonably available. He/she may employ civilian counsel at his/her own expense. When a member appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he/she may receive as a result of the board action, the effects of such discharge, and that he/she may request counsel. The record will reflect the respondent's response.

(b) The member may challenge any voting member of the board for cause only.

(c) Member may request the appearance before the board of any witness whose testimony he/she believes to be pertinent to the case. The member will specify in the request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that the witness is reasonably available, and that the testimony can add materially to the case. The appearance of a witness will be under conditions set forth in c(1) above.

(d) Member may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(e) The member and his/her counsel may question any witness who appears before the board.

(f) Member may or may not submit to examination by the board. The provisions of Article 31, UCMJ will apply.

(g) Failure of the member to invoke any of the above rights, after having been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(5) For rules of procedures and evidence, and swearing of witnesses see AR 15-6.

(6) The president of the board will insure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the member. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(7) When the board is considering a case in which the respondent has exercised his/her right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent or of the type of discharge which had been recommended in his/her case. When it has come to the attention of the respondent or his/her counsel that facts intended to be excluded are known by any member of the board, failure to challenge the mem-

ber having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

8-4. Board findings. *a.* Each finding of a board of officers must be a clear and concise statement of facts or facts evidenced in the record or a conclusion which will be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions."

8-5. Recommendations. *a.* Recommendation of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army in consonance with the policies outlined in this and other pertinent regulations and guided by their conception of justice both to the Government and the member concerned.

c. Recommendations: Unsuitability. The board convened to determine whether a member should be separated for unsuitability will recommend that the member be—

(1) Separated because of unsuitability (indicating characterization of service—honorable or under honorable conditions—to be awarded).

(2) Retained in service. The recommendation will indicate that type of duty which is believed the member can perform satisfactorily.

d. Recommendations: Misconduct (fraudulent entry, misrepresentation of facts, conviction by civil court, or other disqualifying patterns or acts of conduct). The board will recommend that the member be—

(1) Retained in the service; or

(2) Discharged; if discharge is recommended, the reason for discharge (misconduct or unsuitability) and the type of discharge to be issued will be specified (para 7-3).

**e.* Recommendations: Homosexuality. The recommendations of a board convened to deter-

mine whether a member should be discharged for homosexuality will be made in accordance with chapter 11.

8-6. Forwarding report of proceedings. The complete report of proceedings will be forwarded to the convening authority for final determination and disposition. When board action has been completed on members referred to in paragraphs 6-4a and 7-4a, the findings and recommendations of the board will complete documentation and the recommendation of the convening authority will be forwarded to Cdr, RCPAC for final determination in cases where the convening authority recommends discharge.

8-7. Convening authority action. a. When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative separation proceedings. When the board recommends a separation under other than honorable conditions be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

★b. The convening authority's deputy or other officer with that headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases (including cases in which the enlisted member has waived his/her right to a board hearing under the provisions of para 8-2) except to direct a separation under other than honorable conditions. The convening authority may direct other appropriate disposition of the case.

c. No convening authority will direct separation if a board recommends retention, nor authorize the issuance of a separation of less favorable character than that recommended by the board. However, a convening authority may direct retention when separation is recommended or may issue a discharge or characterization of service of a more favorable character than that recommended.

d. If, in his review of a case in which separation has been recommended by the board, the

convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to c above. With respect to substantial defects, he/she may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board return the case to the same board for corrective action.

(4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board to include extras from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than the action of the first board.

(5) No more than one rehearing may be directed without approval from CG, RCPAC.

8-8. Retention, separation, or suspension. In determining whether a member should be retained or be administratively separated, consideration should be given to members's entire military record, including records of nonjudicial punishment imposed during a prior enlistment or

period of service only if such records of punishment would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

a. Cases in which the circumstances may warrant use of such records ordinarily will be limited to those involving patterns of conduct which would become manifest only over an extended period of time.

b. When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time, or have no probative value in determining whether the member should be retained or separated, will have minimum influence on the final determination.

c. If a decision is made that a member should be administratively separated, section II, chapter 1 applies in determining the characterization of service and the type of discharge certificate to be issued.

8-9. Suspension of execution of approved separation. ★*a.* In order to afford a highly deserving member a probationary period to demonstrate successful rehabilitation prior to expiration of the member's enlistment or period of obligated service, the convening or higher authority may suspend execution of an approved separation for a period not to exceed 6 months. However, suspension of a discharge is not authorized in a case where there is an approved finding that one or more of the circumstances authorizing separation by reason of homosexuality under paragraph 11-4 has occurred. During the period of suspension the member will be afforded an opportunity to demonstrate the capability of behaving properly under varying conditions during the probationary period and that the member can perform assigned duties efficiently.

b. Upon satisfactory completion of the probationary period, the authority who suspended the separation will cancel execution of the approved separation.

c. If there is additional misconduct on the part

of the member during the probationary period or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability, the commander concerned or the convening authority, whichever is appropriate, will take one of the following actions:

(1) Initiate punitive or new administrative action notwithstanding the suspension of the execution of the approved separation, or

(2) Vacate suspension of the approved separation when the member has been beyond military control for 15 days or more and separate the member in absentia; or

(3) Advise the member in writing that vacation action is being considered and the reasons which warrant such consideration. The member will be given an opportunity to furnish information in his/her own behalf or decline to make any statements. The convening authority will consider any information the member submits and will—

(*a*) Vacate suspension of approved separation and execute separation or

(*b*) Continue to suspend execution of the approved separation.

8-10. Reduction in grade. *a.* When a member is to be discharged with a discharge under other than honorable conditions, the convening authority will direct the immediate reduction to the pay grade of Private E-1 under paragraph 3-38c, AR 140-158 and this regulation.

b. When the member is to be transferred to the IRR for misconduct (unsatisfactory participation under the provisions of chap. 7), the convening authority will direct immediate reduction to Private E2 or E1, as appropriate, under the provisions of paragraph 3-38d, AR 140-158 or paragraph 6-35c, NGR 600-200, as applicable.

8-11. Disposition of proceedings. *a.* When separation is ordered by the convening authority, or his/her designee, he/she will so note on the proceedings and forward them as authority for separation the appropriate commander for execution of the separation (see para 8-13 for disposition of the case when separation is accomplished).

b. When separation is not ordered by convening authority, the proceedings will be filed at the headquarters of the convening authority and the member's commanding officer will be notified of the final action in the case. When deemed appropriate, consideration will be given to the member's transfer to a different organization. Ultimate disposition of the board proceedings will be governed by AR 340-18-7.

c. A member who is to be separated will be furnished a copy of the board proceedings, less written medical testimony and reports which would prove injurious to the member's physical or mental health.

(1) The respondent's copy of the proceedings will be marked "copy for (name and social security number of the member)" and furnished the member or his/her counsel. A signed receipt will be obtained from the member or the member's counsel to whom the copy is furnished and filed with the original board proceedings. If the member refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the member or the member's counsel does not desire a copy of the board proceedings or if for any other reason a copy is not furnished, a notation will be made on the member's copy to accompany the original. Release of this copy

thereafter may be made only by the CG, RCPAC.

8-12. Errors and discrepancies noted before accomplishing separation. The type of discharge and characterization of service directed by the convening authority may be changed only by CG, RCPAC. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case, the case will be referred for review before separation to RCPAC.

8-13. Disposition of the case. *a.* When separation of the member has been accomplished by appropriate authority under this regulation, the complete file of the case together with the member's MPRJ will be disposed of in accordance with the instructions contained in AR 640-10.

b. A notification of final action will be prepared on each enlisted member processed under paragraph 6-5*d* or 7-30*g*. This notification will include the name, grade, social security number, date and place of birth, and action taken on the case. Such notification will be forwarded to the Commander, US Army Investigative Records Repository, Fort George G. Meade, MD 20755.

SUBJECT: Separation Under AR 135-178

TO: (Service Member)

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) (your USAR unit)¹ for (Unsuitability, chap. 6) (Misconduct, chap. 7) (Homosexuality, chap. 11)¹ under AR 135-178. If you are separated, your service may be characterized as (under honorable conditions) (under other than honorable conditions).¹

2. The reasons for my proposed action are:

3. I am suspending action for 45 days to give you an opportunity to exercise the following privileges:

a. To consult with consulting counsel.
b. To appear and present your case before an administrative separation board.

c. To be represented at any hearing by appointed counsel for representation, military counsel of your own choice, if reasonably available, or civilian counsel at your own expense.

d. To submit statements in your own behalf.

e. With the exception of consulting with counsel, to waive the above rights in writing.

f. To withdraw your waiver of rights listed in b, c, and d above anytime before the date the separation authority orders, directs, or approves your separation, and request that your case be presented to a board of officers.

4. The final decision as to whether you will be separated (and, if so, whether by discharge or transfer to the IRR) and the character of service you will receive rests with the separation authority. If your service is characterized as less than honorable, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at your own expense before completing the inclosed acknowledgment. There is no automatic upgrading or review of the characterization of service.

a. If transferred to the IRR, it may be upgraded (in accordance with the standards of sec II, chap. 1) by—²

(1) Rejoining the same or another ARNG or USAR unit and participating satisfactorily for a period of 12 months; or

(2) Volunteering for and satisfactorily completing a tour of at least 45 days active duty for training. If neither of these actions is taken, the characterization of service at discharge will be the same as awarded on transfer to the IRR.

¹Delete as appropriate.

²To be used only when a member is recommended for unsatisfactory participation under section VII, chapter 7.

b. If you are discharged with a characterization of service which is less than honorable, you may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records for review of your characterization of service. Consideration by either board does not imply that the characterization of service will be upgraded.

5. Acknowledgment of this letter is required by _____. (45 days). Failure to respond to this letter and request consideration by an administrative separation board will be considered a waiver of that right.

Separation Under the Provisions of Chapter 6 or 7, AR 135-178
Data Required by the Privacy Act of 1974
(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgment from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process ARNGUS/USAR members recommended for separation under AR 135-178 because of (Unsuitability, chap. 6) (Misconduct, chap. 7) (Homosexuality, chap. 11)¹. If separation is approved, information is filed in the MPRJ. This personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Disclosure is voluntary. If service member refuses to provide information, separation may be accomplished using information available.

(Date member signed statement)

SUBJECT: Separation Under AR 135-178

TO: (Separation authority)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my separation for (Unsuitability, chap. 6) (Misconduct, chap. 7) (Homosexuality, chap 11)¹ under AR 135-178 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officers.²
4. Statements in my own behalf (are) (are not) submitted herewith (incl. _____).
5. I (request) (waive) representation by (counsel of representation) ((_____) as my military counsel) (civilian counsel at my own expense).¹
6. I understand that I may, up until the date the separation authority directs or approves my separation, withdraw this waiver and request that a board of officers hear my case.
7. I understand that I may expect to encounter substantial prejudice in civilian life if my service is characterized as under honorable conditions or under other than honorable conditions. (I further understand that as a result of a characterization of service of under other than honorable conditions, I may

¹Delete as appropriate.

²Do not use if the individual is in civil confinement.

★Figure 8-2

be ineligible for many or all benefits as a veteran under both Federal and State laws.³⁾

8. I understand that there is no automatic upgrading or review by any government agency of any characterization of service which is less than honorable. After discharge, I may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.

9. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my military service obligation. If so, I may upgrade my characterization of service by rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of my military service obligation, but not less than 12 months, or by volunteering for and satisfactorily completing a tour of at least 45 days active duty for training.⁴

10. I have retained a copy of this statement.

(Signature of individual)

(Typed name, SSN, grade)

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights, _____(name of member) knowingly made the choices indicated in the foregoing statement.

(Signature of counsel)

(Typed name, SSN, grade, branch)

(Date counsel signed statement)

³To be used if the individual has been recommended for a discharge under other than honorable conditions.

⁴To be used only when a member is recommended for separation for unsatisfactory participation under section VII, chapter 7.

(Date)

FINDINGS: In the board proceedings concerning Private E-2 John Doe, (111 11 1111), the board carefully considered the evidence before it and finds:

- 1. Private Doe is undesirable for further retention (in his unit) (in the military service)¹ because of unsuitability (chap. 6, AR 135-178).
- 2. Private Doe is undesirable for further retention in the military service because of misconduct (chap. 7, AR 135-178).
 - a. Conviction by civil court.
 - b. Conviction of offenses involving moral turpitude.
- 3. Private Doe is undesirable for further retention in his unit because of misconduct—unsatisfactory participation (chap. 7, AR 135-178).

RECOMMENDATION: In view of the findings, the board recommends that Private Doe be (transferred to the IRR) (discharged)¹ because of (Unsuitability, with a characterization of service of (Honorable) (Under Honorable Conditions)) or Misconduct, with a characterization of service of (Honorable) (Under Honorable Conditions) (Under Other Than Honorable Conditions²).

President

Member

Member

Recorder

¹ Delete as appropriate.

² This characterization of service can never be used in a separation for Unsuitability (chap. 6, AR 135-178).

★Figure 8-3. Verbatim findings and recommendations.

Affidavit of Service by Mail

State of _____)
)
County of _____)

_____, being duly sworn, deposes
(Name of individual who mailed notification)
and says:

I AM THE _____ of _____
(Job Title, e.g., Personnel Officer) (Unit)

ON the ____ day of _____ 19 ____ I mailed notification
dated _____, subject: Separation Under AR 135-178, a true copy of
which is attached hereto, via Certified mail, Restricted Delivery, return
receipt requested, to _____
(Name of Member on Orders)

at _____
(Most recent address of member)

that being the last known address given to the _____ as the one at which
(Unit)

official mail would be received by or forwarded to him, by depositing the
same in an official depository of the US Postal Service at _____

(Location of Postal Facility)

in a securely wrapped and sealed US postage-and-fees-prepaid envelope
addressed to him at said address.

(Signature and Rank of Affiant)

Sworn and subscribed before me this ____ day of _____ 19____
(Month)

(Signature and Rank of Officer Administering Oath)

Attachment

Copy of notification

The affidavit together with the receipt showing the certified mail receipt
number will be forwarded to the area commander or State adjutant gen-
eral for insertion in the member's MPRJ as an action pending document.

★Figure 8-4

CHAPTER 9

ALCOHOL OR OTHER DRUG ABUSE

9-1. Scope. *a.* This chapter provides the authority and outlines the procedures for discharge of USAR enlisted personnel based on alcohol or other drug abuse (e.g., the illegal, wrongful, or improper use of any controlled substance, alcohol, or other drugs) when the member is entitled to exemption under the policy as expressed in columns B and C, table 3-1, AR 600-85.

b. Offenses of alcohol or other drug abuse which are not exempt may properly be the basis for discharge proceedings under chapter 6 or 7; however, the evidentiary aspect of the exemption policy as expressed in table 3-1, column D, AR 600-85 is applicable to discharge under chapter 6, 7, or other separation authority.

9-2. Procedures. The immediate commander will—

a. Prepare a letter to the discharge authority including—

(1) A history of the member's alcohol or other drug abuse; and

(2) A complete explanation of how the criteria in paragraph 9-1 are met, and

(3) A résumé of the member's military record.

★*b.* Advise the member that he has the right to consult with consulting counsel as provided in paragraph 1-3*b.*

c. Notify the member in writing of the proposed discharge and reasons therefor, requiring acknowledgment within 48 hours (figs. 9-1 and 2).

d. Forward the case with the member's acknowledgment and any statements submitted by the member, to the discharge authority.

e. Notify the member of the final decision.

9-3. Type of discharge. Members discharged under this chapter receive honorable discharge certificates.

9-4. Discharge authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be discharged under this chapter.

b. Except as provided in *a* above, the commanders specified in paragraph 1-6*a* are authorized to take final action on cases processed under this chapter.

(Date)

SUBJECT: Letter of Notification

TO:

1. Under the provisions of chapter 9, AR 135-178, I am initiating action to discharge you from the Army Reserve. If my recommendation is approved, you will receive an honorable discharge certificate.
2. The reasons for my proposed action are: (State specific, factual details which constitute the basis for the determination that the soldier should be discharged for personal abuse of drugs, explaining how the criteria of para 9-1 are met.)
3. If you wish to be retained in the United States Army Reserve, you may submit statements in support of your desire and they will be considered by the discharge authority along with my recommendation for your elimination. If requested, military legal counsel will be made available to assist you in preparation of your comments. My recommendation, with your reply, will be submitted to (cite the appropriate discharge authority).
4. You are entitled to and must undergo a complete medical examination in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to..... (location)..... at (time) on (date).....*
5. Execute the attached acknowledgment and return it within 48 hours. Any comment you desire to submit requesting retention must reach me within 3 days after you receive this letter, unless you request and receive an extension for good cause shown.

 (Commander's Signature)
 (Typed Name, Grade)

 *Not required when enlisted physical is still valid.

Figure 9-1

SUBJECT: Receipt of Notification

TO: (Unit Commander)

1. Letter of Notification of action under the provisions of chapter 9, AR 135-178, dated was received at (hours) on (date)
2. I (do) (do not) request retention in the United States Army Reserve. I understand that military legal counsel will be available to assist me upon requests. I (do) (do not) desire that military counsel be appointed to assist me. *
3. I (will) (will not) submit statements in support of my request for retention. *

*Strike through as not applicable and initial when retention is not requested.

Figure 9-2

CHAPTER 10

DROPPING USAR MEMBERS FROM THE ROLLS OF THE ARMY

10-1. General. This chapter prescribes the criteria and procedures whereby a member of the USAR may be dropped from the rolls of the Army.

★10-2. Authority to drop from the rolls of the Army. *a.* Authority is delegated to the following commanders to drop members of the USAR from the rolls of the Army, except for Retired Reserve members entitled to receive retired pay in which case HQDA approval is required (para 10-3*b*).

(1) Area commanders.

(2) CG, RCPAC as concerns those USAR members under jurisdictional control of that center.

b. The authority and procedures for dropping members of the USAR ordered to AD, initial ADT, or ADT are contained in AR 630-10.

10-3. Criteria for dropping from the rolls of the Army. Members of the USAR may be dropped from the rolls of the Army for the following reasons:

a. Sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a civil court and whose sentence is final, whether or not actually confined.

b. Members of the Retired Reserve entitled to retired pay will be dropped from the rolls of the Army only if their retired pay is withheld under the provisions of Title 5, USC, sections 2281 through 2288.

10-4. Procedures. *a.* The appropriate commander will issue orders dropping the member from the rolls of the Army. The format of the order will be as prescribed in AR 310-10.

b. The member will be reduced to the grade of Private E-1 as prescribed in AR 140-15S.

c. Disposition of personnel records will be accomplished as set forth in AR 640-10.

CHAPTER 11 HOMOSEXUALITY

Section I. GENERAL

11-1. Purpose. This chapter establishes policy and sets forth the criteria and procedures for the separation of enlisted members of the ARNGUS and the USAR by reason of homosexuality. Nothing in these procedures precludes separation for another reason set forth in this regulation nor precludes trial by court-martial in appropriate cases.

11-2. Policy. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct, or who, by their statements demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the service to—

a. Maintain discipline, good order, and morale;

b. Foster mutual trust and confidence among service members;

c. Insure the integrity of the system of rank and command;

d. Facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy;

e. Recruit and retain members of the armed forces;

f. Maintain the public acceptability of military service;

g. Prevent breaches of security.

11-3. Definitions. For the purpose of this chapter, the following definitions will apply:

a. A homosexual is a person, regardless of sex, who engages in or desires to engage in, or intends to engage in homosexual acts.

b. A bisexual is a person who engages in or desires to engage in, or intends to engage in homosexual and heterosexual acts.

c. Homosexual act is defined as bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

11-4. Basis for separation. The basis for separation may include preservice, prior service, or current service conduct or statements. A member will be separated if one or more of the following approved findings are made:

a. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(1) Such conduct is a departure from the member's usual and customary behavior;

(2) Such conduct under all circumstances is unlikely to recur because it is shown, for example, that the act occurred solely as a result of immaturity, intoxication, coercion, or a desire to avoid military service;

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the member during a period of military service;

(4) Under the particular circumstances of the case, the member's continued presence in the service is consistent with the interest of the service in proper discipline, good order, and morale; and

(5) The member does not desire to engage in or intend to engage in homosexual acts.

b. The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

c. The member has married or attempted to marry a person known to be of the same biologi-

cal sex (as evidenced by the external anatomy of the persons involved) unless there is a further finding that the member is not a homosexual or bisexual (e.g., where the purpose of the marriage or attempt to marry was the avoidance or termination of military service).

11-5. Characterization of service. *a.* A discharge under other than honorable conditions may be issued in accordance with guidance on misconduct found in paragraph 7-3 if there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act:

- (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 military superior-subordinate relationships;
- (4) Openly in public view;
- (5) For compensation;
- (6) Aboard a military vessel or aircraft; or
- (7) In another location subject to military control pursuant to a finding that the conduct had, or was likely to have had, an adverse impact on discipline, good order, or morale due to

the close proximity of other members of the Armed Forces under circumstances in which privacy cannot reasonably be expected.

b. In all other cases, the discharge of a member separated under this provision shall be characterized as honorable or under honorable conditions in accordance with the guidance furnished in paragraph 1-10.

11-6. Authority. *a.* Commanders exercising general court-martial convening authority or higher are authorized to order separation for homosexuality.

b. Approval of CG, RCPAC is required before a member who has completed 18 or more years of qualifying Federal service for retirement may be separated under this chapter.

c. When separation is ordered, the case file of a member will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

Section II. PROCEDURE

11-7. Action by Unit commander. If there is any credible evidence to believe that a basis for separation exists, as outlined in paragraph 11-4, the unit commander of the member will--

a. Inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. A case may be referred to the local provost marshal for investigation and recording on DA Form 2800 (CID Report of Investigation), if the commander desires. The facts and circumstances of each case will govern the commander's decision as to the appropriate agency of investigation. Suspension of favorable personnel action will be initiated in accordance with AR 600-31, unless the appropriate commander determines the allegation is baseless.

b. If the immediate commander determines, based on his/her inquiry, that probable cause for separation exists, he/she will report this fact, in letter form, to the officer exercising separation jurisdiction, through intermediate commanders, furnishing the following:

(1) Name, grade, SSN, date of enlistment, length of term for which enlisted (if applicable), and prior service.

(2) Reason for action recommended. General, nondescriptive terms will not be used.

(3) Statement indicating whether the member has a Reserve commission or a warrant (if so, show grade and date of appointment).

(4) Aptitude area scores, and duty military occupational specialty (MOS).

(5) Record of trials by court-martial.

(6) Record of other disciplinary action. (Include record of non-judicial punishment.)

(7) A report of medical examination as prescribed by paragraph 8, AR 140-120. (See paragraph 1-15.)

(8) A statement by the member indicating that he/she has been advised of his/her rights (para 8-2).

(9) Any other information pertinent to the case.

c. If the information available is sufficiently credible to warrant investigation, take necessary action to protect the security of his/her command, including suspension of security clearance (if any) and denial of access to classified defense information pending completion of actions on the case. When the report of investigation substantiates such allegations, the commanding officer will report the circumstances of the case to Commander, US Army Central Personnel Security Clearance Facility (CCF), ATTN: PCCF-P, Fort Meade, MD 20755 for a determination as to whether the member's clearance should be revoked in accordance with AR 604-5. Suspension and recommendation for revocation of security clearance will conform to instructions contained in CCF Letter of Instruction (LOI) 80-1.

11-8. Action by intermediate commander. Intermediate commander may take one of the following actions:

a. Disapprove the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising separation jurisdiction over the member.

11-9. Action by discharge authority. On receiving a recommendation for discharge for homosexuality, the convening authority may—

a. Disapprove the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation un-

der paragraph 11-4 has occurred, or in the alternative, take other appropriate action under this regulation.

b. Disapprove the recommendation relating to homosexuality and convene a board of officers to determine whether the member should be separated for another reason of which the member has been duly notified.

c. Convene a board of officers to determine whether the member should be separated for homosexuality.

d. When the board hearing has been properly and effectively waived—

(1) If the discharge authority determines that there is not sufficient evidence to support separation under paragraph 11-4, the discharge authority will direct retention unless there is another basis for separation of which the member has been duly notified.

(2) If the discharge authority determines that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred, the member will be separated unless retention is required under the limited circumstances described in paragraph 11-4.

11-10. Board of Officers. The board shall follow the procedures specified in chapter 8 of this regulation, except:

a. If the board finds that one or more of the circumstances authorizing separation under paragraph 11-4 is supported by the evidence, the board shall recommend separation unless the board finds that retention is required under the limited circumstances described in that paragraph.

b. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred, the board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. The burden of proving that retention is required under the limited circumstances described in paragraph 11-4 rests with the mem-

ber except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

d. Findings by the board regarding the existence of the limited circumstances requiring a member's retention as set forth in paragraph 11-4 are required only if—

(1) The member clearly and specifically raises such limited circumstances; or

(2) The board or convening authority relies upon such circumstances to justify the member's retention.

11-11. Action by discharge authority on board's recommendation. The discharge authority shall follow the guidance as specified in paragraph 8-7 except that—

a. If the board recommends discharge for homosexuality—

(1) Approve the finding and direct discharge for homosexuality; or

(2) Disapprove the finding on the basis that;

(*a*) There is insufficient evidence to support the finding;

(*b*) Retention is required under the limited circumstances described in paragraph 11-4.

b. If the board recommends retention—

(1) Approve the finding and direct retention; or

(2) Forward the case to the CG, RCPAC for referral to the Secretary of the Army with a recommendation that the Secretary direct the discharge of the member under Secretarial authority (para 4-2).

11-12. Disposition of proceedings. Disposition of proceedings will be as specified in paragraph 8-11.

11-13. Errors and discrepancies noted before accomplishing discharge. Correction of errors and discrepancies noted before accomplishing discharge will be as specified in paragraph 8-12.

11-14. Disposition of case. Disposition of case when discharge has been accomplished will be as set forth in paragraph 8-13.

★APPENDIX A
AUTHORITY TO APPROVE SEPARATION
OF USAR ENLISTED MEMBERS

<i>Reason for discharge</i>	<i>AR 135-178</i>	<i>HQDA</i>	<i>Area Cdr</i>	<i>MUSARC</i>	<i>CG RCPAC</i>	<i>PMS</i>
Completion of ETS or period of obl svc	3-1	X	X	—	X	.....
Appointment as com- missioned or warrant	3-2	X	X	—	X	X
Nonavailability of member of Standby Reserve	3-3	X	.....	.....	X	.....
Medically unfit for retention	3-4	X	X	.....	X	.....
Failure to reply to official correspondence or to satisfactorily participate in tng	3-6	X	X	.....	X	.....
Noncitizens who are members of the USAR	3-7	X	X	.....	X	.....
Minister of religion and divinity students	3-9	X	X	.....	X	.....
Maximum allowable age	3-10	X	X	.....	X	.....
Approved exemption from invol order to AD	3-11	X	X	.....	X	.....
Minority	3-12	X	X	.....	X	X
Enlistment or appointment in other component of Armed Forces	4-5	X	X	.....	X	.....
National or Community Health Safety, or Interest	4-15	X	X	.....	X	.....
Expeditionary Discharge Program	Sec VII	.....	.....	X	.....	.....
Convenience of the Government	Chap 4	X	X	.....	X	X
Dependency or hardship	Chap 5	X	X	.....	X	.....
Unsuitability	Chap 6	X	X	.....	Note 1	.....
Misconduct	Chap 7	X	X	.....	Note 1	.....

Notes

1. Area commanders will appoint boards of officers upon request of CG, RCPAC and will take final action on board recommendations (para 8-1c). CG, RCPAC may approve discharge in those instances where individual waives right to appear before the board and agrees to accept discharge under other than honorable conditions (para 8-2b).

2. Except as otherwise provided in this regulation, and when such authority has been delegated by proper authority, commanders indicated above may accomplish separation action without referral to higher headquarters (para 1-6).

3. Approval of discharge of Retired Reserve enlisted members entitled to receive pay must be obtained from Headquarters, Department of the Army (para 10-2).

4. Board proceedings for enlisted men who have completed 18 or more years of qualifying Federal service for retirement must be forwarded to CG, RCPAC for final determination (para 8-6).

★APPENDIX B

LOCATION OF MILITARY PERSONNEL RECORDS

Note. The term "separated" includes deceased personnel.

Service	Category of military personnel records	Where to write
Air Force	All military personnel on active duty. All military personnel on the temporary disability retired list (TDRL). General officers on a retired (pay) status.	Directorate of Administrative Service Military Personnel Randolph AFB, TX 78148
★Army	All active duty commissioned (including general officers) and warrant officer personnel (including members of Reserve Components on active duty and members on TDRL).	US Army Military Personnel Center ATTN: Personnel Records Division Hoffman Building 200 Stovall Street Alexandria, VA 22332
	All active duty enlisted personnel (including members of Reserve Components on active duty).	US Army Enlisted Records and Evaluation Center Ft Benjamin Harrison, IN 46249
	US Army Reserve officers and enlisted personnel (See also AR 140-241.) All retired personnel	US Army Reserve Com- ponents Personnel and Administrative Center (RCPAC) 9700 Page Boulevard St. Louis, MO 63132
	Army National Guard—Officer and enlisted personnel.	Chief, National Guard Bureau Washington, DC or adjutant general of the State in which member is serving.
	Officers and warrant officers completely separated on and after 1 July 1917, and enlisted personnel completely separated on and after 1 November 1912.	Center Manager National Personnel Records Center, GSA 9700 Page Boulevard St. Louis, MO 63132
	Officers and warrant officers' papers prior to 1 July 1917.	Chief, Army and Air Corps Branch, Reference Division
	Enlisted personnel separated prior to 1 November 1912.	Office of Military Archives National Archives Records Service Washington DC 20408

Service	Category of military personnel records	Where to write
Coast Guard	Enlisted personnel separated less than 6 months. Officer personnel separated less than 3 months. All active Coast Guard personnel and members of the Reserve. Officer personnel completely separated before 1 January 1929.	Chief, Office of Personnel U.S. Coast Guard 1360 "E" St., N.W. Washington, DC 20226:
Marine Corps	Officer personnel on active duty or in Reserves. Enlisted personnel on active duty or in organized active Reserve. All personnel completely separated less than 4 months.	Director of Personnel U.S. Marine Corps Washington, DC 20380
Navy	Officers on active duty and those separated less than 1 year and all officers with rank of admiral. Enlisted personnel on active duty and those separated less than 4 months. Active Reservists and inactive Reservists with 18 or more months remaining in 1st term of enlistment.	Chief, Bureau of Naval Personnel Department of the Navy Washington, DC 20370
All Branches	If your request does not pertain to any of the categories listed above, address your inquiry to:	Center Manager, National Personnel Records Center, GSA 9700 Page Boulevard St. Louis, MO 63132

**APPENDIX C
QUALIFICATIONS OF NONLAWYER COUNSEL
CERTIFICATE**

Date.

HQ, 118th Infantry Division, Fort Jackson, South Carolina

Counsel within the meaning of paragraph 1-3c(1) AR 135-178, is unavailable to represent Private (E-2) John A. Doe, (000 00 0000), of this command, whose case has been referred to a Board of Officers convened under AR 135-178.

Captain R. Cronkhite, (000 00 0000), Infantry, is appointed counsel for the above-named individual. Captain Cronkhite has performed ten years of active service, during which time he has acted as recorder and as counsel for respondents before administrative elimination boards. He also has served as a Summary Court and as trial and defense counsel in Special Courts-Martial (state other qualifications). The mature judgment which this officer possesses, in addition to his knowledge of administrative board procedures, qualifies him to act as appointed counsel in this case.

.....
Commanding

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to Commander, US Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-RPP-PR, St. Louis, MO 63132.

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

PAUL T. SMITH
Major General, United States Army
The Adjutant General

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S/S

PAGE S

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 10 March 1981

SLS Reg Change 18
15 May 81

**Immediate Action
INTERIM CHANGE**

AR 135-178
INTERIM CHANGE
NO. I03
Expires 10 March 1982

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change implements DOD policy which makes homosexuality a mandatory and separate basis for separation; changes are immediately effective upon receipt; separation proceedings for homosexuality which have been initiated but not approved will be completed pursuant to procedures and guidance contained in the change; separations for homosexuality which have been approved by the discharge authority at the time of receipt of this change may be completed under procedures existing at the time of approval; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by first class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 4, AR 135-178.

Page 1-6, paragraph 1-15a(5) is superseded to read:

(5) Individual is being considered for discharge under the provisions of paragraph 6-5b.

Page 1-6, paragraph 1-15c is superseded to read: "c. When an individual is being considered for discharge under the provisions of chapter 11, an appropriate mental status evaluation will be obtained as specified in AR 140-120."

Page 1-6, paragraph 1-15e is amended by changing the phrase "or chapter 9" to read: "chapter 9 or chapter 11," and adding "mental status evaluation" after "medical examination."

Page 4-10, paragraph 4-29a is amended by changing the first sentence to read: "No member will be separated under this program unless he/she voluntarily consents to the proposed separation."

Page 6-2, paragraph 6-5d is superseded to read:

d. Homosexuality. RESCINDED (See Chapter 11 concerning homosexuality.)

Page 7-7, paragraph 7-30g is superseded to read:

g. Homosexual acts. RESCINDED (Policies and procedures concerning homosexual acts are set forth in chapter 11.)

Page 7-9, paragraph 7-40 is superseded to read:

7-40. Reduction in grade. Reduction in grade on approval of discharge under other than honorable conditions will be specified in paragraph 8-10.

Page 8-4, paragraph 8-5 is expanded to add subparagraph 8-5e to read:

e. Recommendations: Homosexuality. The recommendations of a board convened to determine whether a member should be discharged for homosexuality will be made in accordance with chapter 11.

Page 8-5, paragraph 8-7b is amended by deleting the second sentence therein.

Page 8-5, paragraph 8-9a is amended by adding the following after the first sentence: "However, suspension of a discharge is not authorized in a case where there is an approved finding that one or more of the circumstances authorizing separation by reason of homosexuality under paragraph 11-4 has occurred."

Add chapter 11 to read:

CHAPTER 11

HOMOSEXUALITY

Section I. GENERAL

11-1. Purpose. This chapter establishes policy and sets forth the criteria and procedures for the separation of enlisted members of the ARNGUS and the USAR by reason of homosexuality. Nothing in these procedures precludes separation for another reason set forth in this regulation nor precludes trial by court-martial in appropriate cases.

11-2. Policy. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct, or who, by their statements demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the service to --

- a. Maintain discipline, good order, and morale;
- b. Foster mutual trust and confidence among service members;
- c. Insure the integrity of the system of rank and command;
- d. Facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy;

- e. Recruit and retain members of the armed forces;
- f. Maintain the public acceptability of military service;
- g. Prevent breaches of security.

11-3. Definitions. For the purpose of this chapter, the following definitions will apply:

- a. A homosexual is a person, regardless of sex, who engages in or desires to engage in, or intends to engage in homosexual acts.
- b. A bisexual is a person who engages in or desires to engage in, or intends to engage in homosexual and heterosexual acts.
- c. Homosexual act is defined as bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

11-4. Basis for separation. The basis for separation may include preservice, prior service, or current service conduct or statements. A member will be separated if one or more of the following approved findings are made:

a. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(1) Such conduct is a departure from the member's usual and customary behavior;

(2) Such conduct under all circumstances is unlikely to recur because it is shown, for example, that the act occurred solely as a result of immaturity, intoxication, coercion, or a desire to avoid military service;

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the member during a period of military service;

(4) Under the particular circumstances of the case, the member's continued presence in the service is consistent with the interest of the service in proper discipline, good order, and morale; and

(5) The member does not desire to engage in or intend to engage in homosexual acts.

b. The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

c. 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) unless there is a further finding that the member is not a homosexual or bisexual (e.g., where the purpose of the marriage or attempt to marry was the avoidance or termination of military service).

11-5. Characterization of service.

a. A discharge under other than honorable conditions may be issued in accordance with guidance on misconduct found in paragraph 7-3 if there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act:

- (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 military superior-subordinate relationships;
- (4) Openly in public view;
- (5) For compensation;
- (6) Aboard a military vessel or aircraft; or
- (7) In another location subject to military control pursuant to a finding that the conduct had, or was likely to have had, an adverse impact on discipline, good order, or morale due to the close proximity of other members of the Armed Forces under circumstances in which privacy cannot reasonably be expected.

b. In all other cases, the discharge of a member separated under this provision shall be characterized as honorable or under honorable conditions in accordance with the guidance furnished in paragraph 1-10.

11-6. Authority.

a. Commanders exercising general court-martial convening authority or higher are authorized to order separation for homosexuality.

b. Approval of CG, RCPAC is required before a member who has completed 18 or more years of qualifying Federal service for retirement may be separated under this chapter.

c. When separation is ordered, the case file of a member will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable.

When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

Section II. PROCEDURE

11-7. Action by unit commander. If there is any credible evidence to believe that a basis for separation exists, as outlined in paragraph 11-4, the unit commander of the member will:

a. Inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. A case may be referred to the local provost marshal for investigation and recording on DA Form 2800 (CID Report of Investigation), if the commander desires. The facts and circumstances of each case will govern the commander's decision as to the appropriate agency of investigation. Suspension of favorable personnel action will be initiated in accordance with AR 600-31, unless the appropriate commander determines the allegation is baseless.

b. If the immediate commander determines, based on his/her inquiry, that probable cause for separation exists, he/she will report this fact, in letter form, to the officer exercising separation jurisdiction, through intermediate commanders, furnishing the following:

(1) Name, grade, SSN, date of enlistment, length of term for which enlisted (if applicable), and prior service.

(2) Reason for action recommended. General, nondescriptive terms will not be used.

(3) Statement indicating whether the member has a Reserve commission or a warrant (if so, show grade and date of appointment).

(4) Aptitude area scores, and duty military occupational specialty (MOS).

(5) Record of trials by court-martial.

(6) Record of other disciplinary action. (Include record of non-judicial punishment.)

(7) A report of medical examination as prescribed by paragraph 8, AR 140-120. (See paragraph 1-15.)

(8) A statement by the member indicating that he/she has been advised of his/her rights (para 8-2).

(9) Any other information pertinent to the case.

c. If the information available is sufficiently credible to warrant investigation, take necessary action to protect the security of his/her command, including suspension of security clearance (if any) and denial of access to classified defense information pending completion of actions on the case. When the report of investigation substantiates such allegations, the commanding officer will report the circumstances of the case to Commander, US Army Central Personnel Security Clearance Facility (CCF), ATTN: PCCF-P, Fort Meade, MD 20755 for a determination as to whether the member's clearance should be revoked in accordance with AR 604-5. Suspension and recommendation for revocation of security clearance will conform to instructions contained in CCF Letter of Instruction (LOI) 80-1.

11-8. Action by intermediate commander. Intermediate commander may take one of the following actions:

a. Disapprove the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising separation jurisdiction over the member.

11-9. Action by discharge authority. On receiving a recommendation for discharge for homosexuality, the convening authority may -

a. Disapprove the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred, or in the alternative, take other appropriate action under this regulation.

b. Disapprove the recommendation relating to homosexuality and convene a board of officers to determine whether the member should be separated for another reason of which the member has been duly notified.

c. Convene a board of officers to determine whether the member should be separated for homosexuality.

d. When the board hearing has been properly and effectively waived:

(1) If the discharge authority determines that there is not sufficient evidence to support separation under paragraph 11-4, the discharge authority will direct retention unless there is another basis for separation of which the member has been duly notified.

(2) If the discharge authority determines that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred, the member will be separated unless retention is required under the limited circumstances described in paragraph 11-4.

11-10. Board of Officers. The board shall follow the procedures specified in Chapter 8 of this regulation, except:

a. If the board finds that one or more of the circumstances authorizing separation under paragraph 11-4 is supported by the evidence, the board shall recommend separation unless the board finds that retention is required under the limited circumstances described in that paragraph.

b. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph 11-4 has occurred, the board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. The burden of proving that retention is required under the limited circumstances described in paragraph 11-4 rests with the member except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

d. Findings by the board regarding the existence of the limited circumstances requiring a member's retention as set forth in paragraph 11-4 are required only if:

(1) The member clearly and specifically raises such limited circumstances; or

(2) The board or convening authority relies upon such circumstances to justify the member's retention.

11-11. Action by discharge authority on board's recommendation. The discharge authority shall follow the guidance as specified in paragraph 8-7 except that:

a. If the board recommends discharge for homosexuality -

(1) Approve the finding and direct discharge for homosexuality; or

(2) Disapprove the finding on the basis that;

(a) There is insufficient evidence to support the finding;

(b) Retention is required under the limited circumstances described in paragraph 11-4.

b. If the board recommends retention -

(1) Approve the finding and direct retention; or

(2) Forward the case to the CG, RCPAC for referral to the Secretary of the Army with a recommendation that the Secretary direct the discharge of the member under Secretarial authority (para 4-2).

11-12. Disposition of proceedings. Disposition of proceedings will be as specified in paragraph 8-11.

11-13. Errors and discrepancies noted before accomplishing discharge.
Correction of errors and discrepancies noted before accomplishing discharge will be as specified in paragraph 8-12.

11-14. Disposition of case. Disposition of case when discharge has been accomplished will be as set forth in paragraph 8-13.

(AGUZ-RCC)

By Order of the Secretary of the Army:

Official:

E. C. MEYER
General, United States Army
Chief of Staff

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

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HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 27 November 1980

Immediate Action INTERIM CHANGE

AR 135-178
INTERIM CHANGE
NO. 102
Expires 27 November 1981

ARMY NATIONAL GUARD AND ARMY RESERVE SEPARATION OF ENLISTED PERSONNEL

This interim change is forwarded to the field to implement policy that has a direct impact on the service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by first class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in Change 4, AR 135-178.

Page 6-2, subparagraph 6-5d is superseded to read:

d. Homosexuality. (1) Applicable to personnel who:

(a) Have a history of one or more preservice homosexual acts (see definition at paragraph 7-30g), but have not engaged in a homosexual act during military service; or

(b) Are admitted homosexuals, but as to whom there is no evidence that they engaged in homosexual acts either before or during military service. A homosexual is an individual, regardless of sex, who desires bodily contact with another person of the same sex, actively undertaken or passively permitted with the intent of obtaining or giving sexual gratification.

(2) It is essential to distinguish between those who are homosexuals and those who profess homosexuality to avoid further military service. Any official, private, or public profession of homosexuality may be considered in determining whether an individual is an admitted homosexual.

Page 7-7, subparagraph 7-30e(2). Delete subparagraph 7-30e(2) and redesignate subparagraphs 7-30e(3) through (6) to read as subparagraph 7-30e(2) through (5).

Page 7-7, subparagraph 7-30g is superseded to read:

26 November 1980

g. Homosexual acts. Homosexual acts are defined as bodily contact between persons of the same sex, actively undertaken or passively permitted, with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act. Individuals who have been involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication, and absent other evidence that the individual is a homosexual, normally will not be processed for discharge because of homosexual acts. If other conduct is involved, individuals may be considered for discharge for other reasons set forth in this chapter or chapter 6.

(AGUZ-RCC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

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HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 27 November 1980

Immediate Action INTERIM CHANGE

AR 135-178

INTERIM CHANGE

NO. 101

Expires 27 November 1981

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change is forwarded to the field to implement policy that has a direct impact on the service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by first class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 4, AR 135-178.

Page 1-1, paragraph 1-3b. Supersede the first sentence to read: A qualified counsel who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 5 and 7 of this regulation. Such counseling may be accomplished face-to-face, by mail, or by telephone, as appropriate. The appointed counsel shall be a commissioned officer of the Judge Advocate General's Corps, unless appropriate authority certifies in the permanent record that such officer is not available and states the qualifications of the substituted nonlawyer counsel, who must be a commissioned officer in the grade of first lieutenant or higher.

Page 4-13, figure 4-2. Supersede paragraph 3 to read:

3. The final decision as to whether you will be separated and, if so, whether by discharge or transfer to the IRR and the character of service you will receive rests with the separation authority. If your service is characterized as Under Honorable Conditions, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at no expense to the Government, prior to completing the acknowledgement.¹

Page 4-15, figure 4-3. Supersede the first sentence of paragraph 3 to read:

I understand that if my service is characterized as under honorable conditions, I may expect to encounter substantial prejudice in civilian life. I hereby acknowledge that I have been provided the opportunity to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at no expense to the Government, prior to completing this acknowledgement.

Page 7-9, subparagraph 7-46a(2). Delete the last sentence.

Page 7-9, subparagraph 7-46a. Add subparagraph (3) to read:

(3) If the mail is returned as unclaimed or undeliverable and no better address can be determined, or the member receipts for the notification but fails to respond by the time specified in figure 8-1, such action will constitute a waiver of the member's right to a hearing before a board of officers. The separation authority may then proceed with appropriate action.(paragraph 8-2b(5) and figure 8-1).

Page 8-2, subparagraph 8-2b. Supersede subparagraph (5) to read:

(5) With the exception of (1) above, to waive the above rights in writing or by declining to reply to the letter of notification by the time specified in figure 8-1. Failure of the member to respond and request consideration by a board of officers will be considered as a waiver of that right.(figure 8-1).

Page 8-2, subparagraph 8-2b. Change subparagraph (6) by deleting the phrase which reads:

"indicating that he is a commissioned officer of the Judge Advocate General's Corps."

Page 8-8, figure 8-1. Supersede the second sentence of paragraph 4 to read:

If your service is characterized as less than honorable, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an appointed counsel as set forth in paragraph 1-3b, AR 135-178, or civilian counsel at your own expense, before completing the inclosed acknowledgement.

Page 8-8, figure 8-1. Number the last line as paragraph 5 and add the following sentence:

Failure to respond to this letter and request consideration by an administrative separation board will be considered a waiver of that right.

Page 8-9, figure 8-2. Supersede parenthetical entry for date of statement to read:

"(Date member signed statement)."

Page 8-10, figure 8-2. Supersede last paragraph to read:

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights,

27 November 1980

I01, AR 135-178

_____(name of member), knowingly made the choices indicated in the foregoing statement.

(Signature of counsel)

(Typed name, SSN, grade, branch)

(Date counsel signed statement)

(AGUZ-RCC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

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CHAPTER 1

GENERAL PROVISIONS

Section I. GENERAL

1-1. Scope. *a.* This regulation prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except as indicated below:

(1) Separation of enlisted members serving on active duty (AD) will be governed by appropriate Active component regulations.

★(2) Separation of enlisted members serving on Initial Active Duty of Training (IADT) will be governed by appropriate Active component regulations.

(3) Enlisted members of the ARNGUS or USAR serving on 45-day ADT who demonstrate through their actions or traits that they should be discharged will be released and returned to their Reserve component unit or USAR control group for discharge action.

b. Discharge of an enlisted member from status held as a Reserve of the Army will also terminate membership in the ARNGUS or USAR. In the case of ARNGUS personnel, termination of status as a member of the ARNG of the State rests with State military authorities.

c. As used in this regulation, the masculine gender pronoun will be construed to include both male and female personnel, unless otherwise expressly so stated.

1-2. Conduct of separation process. The separation process will be conducted efficiently and in a manner which will afford each individual being separated the courtesy, recognition, and consideration deserved by the nature of service performed. Separation must be accomplished in a manner which will enhance the dignity of the individual and leave the former

member with a favorable attitude toward the military service.

1-3. Explanation of terms. For the purpose of this regulation, the explanation of terms in AR 140-1 and the following will apply:

★*a. Administrative separation board.* A board of officers appointed by the convening authority to present findings based on evidence presented in a case and a recommend retention in the service or separation and reason therefor, and, if separation is recommended, the characterization of service to be furnished.

★*b. Appointed counsel for consultation.* A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel will advise the member that if he receives a discharge certificate which is less than an honorable discharge certificate, there is no automatic upgrading nor review by any Government agency; that upgrading is considered only upon application to the Army Board for Correction of Military Records or the Army Discharge Review Board; and that consideration by either of these boards does not guarantee upgrading of a discharge certificate which is less than an honorable discharge certificate. Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel,

however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

c. Appointed counsel for representation. A counsel appointed to represent an individual who is being processed for separation during the course of any hearing before a board of officers. Such counsel will possess the qualifications in (1) or (2) below, as applicable. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

(1) The appointed counsel for an individual being processed for separation which could result issuance of a characterization of service under other than honorable conditions under this regulation is a lawyer within the meaning of the Uniform Code of Military Justice (UCMJ), Article 27(b)(1), unless appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted non-lawyer counsel (app C).

(2) The appointed counsel for an individual being processed for separation by reason of unsuitability need not meet the qualifications described in (1) above; however, if he/she is not a lawyer, he/she must be a commissioned officer in the grade of first lieutenant or higher.

★d. Convening authority. The officer authorized by Army regulations to convene an administrative separation board and take final action with respect to a specific type of separation.

★e. Deferred enlisted member. Individuals who have not served on active duty for at least 6 months (ADT is not creditable as active duty) and who are deferred from induction by reason of Reserve participation.

f. Separation authority. The officer authorized to take final action with respect to specified types of separation.

g. Nonlocatee. An enlisted member who has failed to furnish an address through which personal contact is possible.

h. Reserve of the Army. Enlisted members of the ARNGUS and the USAR.

i. ROTC program. The Senior Reserve Officers' Training Corps of the Army.

j. Respondent. An enlisted member who has been notified that action has been initiated to separate the member under this regulation.

k. Separation. Separation includes discharge, transfer from unit status to the Individual Ready Reserve (IRR), release from military control, and dropped from the rolls of the Army.

l. USAR enlisted members of the ROTC Program. A student who is participating in the ROTC Program and who is required to be an enlisted member of the USAR (10 USC 2104 and 2107).

m. Basic training (BT). Initial entry training which provides nonprior service personnel instruction in basic skills common to all soldiers and precedes advanced individual training (AIT).

n. One station unit training (OSUT). Initial entry training in which elements of BT and AIT are provided in the same unit, under one cadre throughout the total period of training. In OSUT, elements of BT and AIT are either integrated, i.e., provided simultaneously, or are nonintegrated, i.e., provided in distinct BT/AIT phases.

★o. Contractually obligated member. A member who has completed his statutory service obligation and/or is serving under an appointment, enlistment contract, or extension, only (see para 2-3, AR 135-91).

★p. Statutorily obligated member. A member who is serving by reason of law (see para 2-1, AR 135-91).

1-4. Statutory authority. The following provisions of law contained in title 10, USC, pertain to the separation of Reserves of the Army.

a. Section 1001 provides for regulatory directives pertaining to standards and qualifications for retention in the Reserve Components and for the disposition of those members who fail to comply with such standards and qualifications.

b. Section 1004 provides that members of the Ready Reserve not on active duty will undergo a medical examination every 4 years and execute and submit annually a certificate of phys-

ical fitness. The section also provides for the disposition of those members determined to be physically unfit for active duty.

c. Section 1162(a) provides that the Secretary of the Army will prescribe regulations for discharge of Reserves of the Army.

d. Section 1162(b) provides that Reserves of the Army who become regular or duly ordained ministers of religion may be discharged upon their request.

e. Section 1163(b) describes the circumstances under which Reserves of the Army may be dropped from the rolls of the Army.

f. Section 1163(c)(1) precludes discharge of Reserves of the Army for cause under other than honorable conditions unless such discharge is the result of an approved sentence of a court-martial or approved findings of a board of officers.

g. Section 1163(c)(2) provides that a Reserve

Board (AR 15-180) and the Army Board for Correction of Military Records (AR 15-185) will be explained concurrently with delivery of the discharge certificate under other than honorable conditions to the member. Such explanation may be furnished the member in written form.

1-13. Periodic explanation. Commanders of troop program units will insure that each member receives periodically an explanation of the types of discharge certificates explained herein, the basis for issuance, and the possible effects upon reenlistment and related matters. This regulation will be followed as a guide as to the extent and content of this explanation. This explanation will be given when determined by the commander to be essential. Commanders will insure that the information is presented in a manner which will create a deep and lasting impression on each member who receives it. Failure on the part of the enlisted member to receive or to understand such explanation will not be considered as a defense in an administrative proceeding or a bar thereto. As appropriate, this explanation may be furnished to the member in written form.

1-14. Limitations on administrative separations and board hearings. *a.* Administrative separation pursuant to this regulation should not be based upon conduct which has been considered at prior administrative or judicial proceedings and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separation under the provisions of this regulation are subject to the following limitations.

(1) No member will be considered for administrative separation because of conduct which has been the subject of judicial proceedings resulting in acquittal or action having the effects thereof. Whether an action has the effect of an acquittal will be determined solely by CG, RCPAC in accordance with the exception procedure set forth in *b*(3) below.

(2) No member will be considered for administrative separation because of conduct which has been the subject of administrative separation proceedings resulting in a final determination that the member should be retained in the service.

(3) No member will be considered for administrative separation because of conduct which was considered by a general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate body or agency, and remains suspended.

b. The limitations set forth in *a* above are not applicable when—

(1) Substantial new evidence, fraud, or collusion is discovered, which was not known at the time of original proceedings, despite the exercise of due diligence, and which will probably produce a result significantly less favorable to the member at a new hearing.

(2) Subsequent conduct by a member warrants considering him/her for separation. Such conduct need not independently justify the member's separation, but must be sufficiently serious to raise a question as to the member's potential for further useful military service. However, this exception does permit further consideration of conduct of which the member has been absolved in a prior final factual determination by an administrative or judicial body.

(3) An express exception has been granted by CG, RCPAC pursuant to a request by the convening authority through channels that, due to the unusual circumstances of the case, administrative separation should be accomplished.

c. No convening authority will direct separation if a board recommends retention nor will a characterization of service of less favorable character than that recommended by the board be issued. However a convening authority may direct retention when separation is recommended, or may issue a characterization of service of a more favorable character than that recommended.

d. A convening authority may forward a case to CG, RCPAC when a board of officers has recommended retention and he/she believes, due to the unusual circumstances of the case, that discharge, or transfer from a unit to the IRR, if appropriate, is warranted and in the Army's best interest. Prior to forwarding the case, however, the member will be advised of the convening authority's intentions in this regard,

given the opportunity to review the proposed forwarding correspondence, and be permitted to present written matters in rebuttal thereto if desired. It is the policy of HQDA that when the proceedings of a duly constituted board of officers are proper, the recommendations of the board will be upheld unless compelling justification is provided that would warrant separation by the Secretary of the Army as an exception to policy and in the best interest of the Army. CG, RCPAC may grant separation authority. Separation, if granted, will be under honorable conditions and, if discharged, the member will be awarded an Honorable or General Discharge Certificate.

1-15. Medical evaluation. *a.* When an enlisted member is to be processed for discharge under the provisions of paragraph 4-9 or 4-11*b*, chapter 4; chapter 6; section VI of chapter 7; or chapter 9 of this regulation, the member will be referred to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 for medical evaluation. The reason for considering the member for separation will be furnished the medical officer or civilian physician. The medical officer or civilian physician will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when—

- (1) Specifically requested by the individual subject to separation action.
- (2) Specifically requested by the commanding officer recommending separation action.
- (3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.
- (4) Requested by the board considering the separation action.
- (5) Individual is being considered for discharge under the provisions of paragraph 6-5*b*, 6-5*d*, or 7-30*g*.

b. In all other cases, the physician performing the physical examination will accomplish the mental status evaluation. In exceptional cases in *a*(1) through (5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

c. When an individual is being considered for discharge under the provisions of paragraph

6-6*d* or 7-30*g*, the psychiatrist doing the psychiatric portion of the medical evaluation will be furnished a copy of the documents on which the suspicion of homosexuality rests. In addition to SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History), the medical officer or civilian physician will prepare a report of mental status evaluation. The medical evaluation and the psychiatric study of the individual will include the following:

(1) Personal history, including, when appropriate, an opinion regarding the existence of homosexuality.

(2) Report of member's mental and physical condition in relation to the conduct under consideration, indicating whether the member meets the retention standards prescribed in chapter 3, AR 40-501, and recommend medical disposition if it is deemed appropriate.

(3) An opinion whether the member should be discharged under the provisions of this regulation or medical regulations, as appropriate, or be retained in service. If retention is recommended, and considered appropriate, a statement of the procedures likely to be of value in the member's rehabilitation may be included.

d. The medical officer or civilian physician will forward the original of the evaluation report to the member's commander. A copy will be filed in the member's health records.

**e.* Members being considered for discharge under the provisions of paragraph 4-9 or 4-11*b*, chapter 4; chapter 6; section VI of chapter 7; or chapter 9 who refuse to undergo medical examination or psychiatric evaluation when required will be processed as follows:

(1) The member will be advised in writing that failure to undergo such examination or evaluation will be the basis for the board to proceed with its findings, and recommendations, notwithstanding the absence of such information. The member will also be advised in the same letter of notification that in the event a discharge by reason of misconduct is approved, the member may receive a discharge under other than honorable conditions.

(2) When an enlisted member has failed or refuses to comply after notification as provided in (1) above, or when the member's whereabouts are unknown or unascertained after fol-

lowing the actions prescribed in AR 135-133, discharge action may be initiated without affording the privileges provided in paragraph 8-2a. Copies of communications remaining unanswered or returned unclaimed or the substance thereof with the dates and addresses will be included in the recommendation for dis-

charge, together with a brief description of any other means used to locate or communicate with the member concerned. These documents will be furnished to the board of officers, if a board is required, and will be made a part of the board proceedings.

Table 1-1. Types of Discharge Certificates

<i>DD Form No.</i>	<i>Type discharge</i>	<i>Character of discharge</i>
256A -----	Honorable -----	Honorable.
257A -----	General -----	Under honorable conditions.
794A -----	Under Other Than Honorable Conditions	Under conditions other than honorable.

Section II. PREPARATION OF DISCHARGE CERTIFICATES

1-16. General. *a. Number of copies.* Discharge certificates will be prepared in original only.

b. How prepared. Entries on discharge certificates will be typewritten or neatly printed in ink. Only black typewriter ribbon or permanent black or blue-black ink will be used.

c. Entries. Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the member's name in signature order, followed by the social security account number, grade, and "USAR." When discharge certificate is prepared by automated systems, the member's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) In the space between the lines in the lower right section of the certificate, type in capital letters, in signature order, the name of the commanding officer or designated officer, and in upper case letters, centered below the name, the officer's grade and branch. The des-

ignated officer will sign the discharge certificate in the space provided.

1-17. Amendments and corrections to discharge certificates. The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of errors therein will be made on written application of the individual to CG, RCPAC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the CG, RCPAC on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) (AR 15-180).

1-18. Orders. Orders directing discharge will be issued as prescribed in AR 310-10.

1-19. Notification of discharge to Selective Service System. (Not Used.)

1-20. Records disposition. Personnel records of discharged personnel will be disposed of in accordance with instructions contained in AR 653-10 or other appropriate regulations under which discharged.

Section IV. EFFECTIVE DATE OF DISCHARGE

1-21. Effective date of discharge. *a.* The effective date of discharge will be at 2400 hours of the date of notice of discharge unless---

(1) Discharge by reason of change of military status, in which case the effective date will be the day prior to the date of the member's

entry into new military status (see paras 3-2, 4-4, or 4-5a).

(2) Discharged under the provisions of paragraph 3-10, in which case the effective date will be the last day of the month during which maximum allowable age is attained.

(3) Otherwise provided by law.

b. Provided there is no evidence of fraud or manifest error and the member receives actual or constructive delivery, orders discharging a member from the USAR will not be revoked or effective date of separation changed after the effective date of discharge unless such revocation is in the form of written confirmation of oral orders actually issued prior to the effective date of separation. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation.

c. After effective date of discharge, orders may be amended by the separation authority only to correct administrative errors, such as errors concerning rank, social security account number, or misspelled name.

1-22. Notification of discharge. a. Except as provided in paragraph 1-21, discharge is effective at the time of notice to the member of discharge.

b. Notice of discharge may be either—

(1) Actual, as by delivery to the member of the discharge certificate, or

(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be discharged. Receipt by the member's organi-

zation at the proper station of the order directing his discharge will be deemed sufficient notice. The date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to the Cdr, RCPAC, ATTN: AGUZ-RCM-R, 9700 Page Blvd., St. Louis, MO 63132. If the documents mailed to the individual are returned unclaimed or undeliverable, they will be destroyed.

1-23. Mentally incompetent. The effective date of discharge of a mentally incompetent member may also be constructive, as when the member has been placed in an institution (AR 635-40).

1-24. Nonlocatee or in hands of civil authorities. Discharge of an enlisted member who has been convicted by civil authority is governed by chapter 7. However, when discharge under the provisions of chapter 6, or section IV or V of chapter 7 has been ordered by competent authority, and the member is a nonlocatee or is absent in the hands of civil authorities subsequent to the date discharge is approved by the appropriate authority or subsequent to the issuance of the discharge orders, the discharge may be executed notwithstanding such absence.

Section V. TRANSFER TO THE INDIVIDUAL READY RESERVE (IRR) IN LIEU OF DISCHARGE

1-25. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons (excluding para 1-25i) prior to completion of their statutory military service obligation will be screened to insure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their

statutory military service obligation. These criteria are based upon the probability that, under conditions of full mobilization, such members would be retained in the Service.

a. Expeditious Discharge Program (sec VII, chap. 4).

b. Dependency (sec II, chap. 5).

c. Hardship (see II, chap. 5)

d. Inability to perform prescribed duties due to parenthood (para 4-11.1).

e. Pregnancy (para 4-11b).

CHAPTER 4

SEPARATION OF ENLISTED MEMBERS OF THE USAR FOR THE CONVENIENCE OF THE GOVERNMENT

Section I. GENERAL

4-1. Scope. This chapter sets forth the conditions under which enlisted members of the USAR may be separated for the convenience of the Government. In addition, only Section VII is applicable to enlisted members of the ARNG.

4-2. Authority. The separation of enlisted members of the USAR for the convenience of the Government is the prerogative of the Sec-

retary of the Army and will be accomplished only by this authority. Except as delegated by paragraph 1-6 or by special Department of the Army directives, the separation of any member of the USAR for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general characterization of service as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

Section II. CATEGORIES FOR WHICH SEPARATION IS AUTHORIZED

4-3. Reduction in authorized strength. A reduction in authorized strength by an official order applicable to all members of a class of personnel so specified in the order.

4-4. Discharge for immediate reenlistment. Qualified enlisted members may be discharged to permit their reenlistment in accordance with AR 140-111, provided they apply for and are qualified for reenlistment. A formal discharge certificate is not required. Discharge may be accomplished—

a. During the last 90 days of current enlistment or period of obligated service for the purpose of immediate reenlistment in the USAR.

b. For the purpose of immediate reenlistment in the USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of immediate reenlistment in USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of reenlisting in the USAR in order to qualify for enrollment in the Advanced Course or the Scholarship Assistance Program, Senior Army ROTC Program.

d. Special instructions contained in the discharge orders will read as follows:

Your enlistment in the USAR on _____ was terminated on the effective date of this order as a result of your immediate reenlistment. No formal discharge will be issued by reason of this reenlistment.

4-5. Enlistment or appointment in any component of the Armed Forces. *a.* An enlisted member will be discharged upon enlistment in any component of the Armed Forces (other than appointment as a cadet or midshipman to one of the service academies). A formal discharge certificate will not be issued when a member is discharged to—

(1) Enlist in the Regular Army.

(2) Enlist in the Air Force or Navy Reserve.

(3) Enlist in the Army National Guard.

(4) Accept appointment as a commissioned or warrant officer.

b. Discharge to enlist in a regular component of any of the Armed Forces in the United States other than the Army is not authorized for enlisted members within the 60-day period im-

mediately preceding the effective date of order to active duty or ADT other than AT or during the performance of active duty, ADT, or AT.

★*c.* A contractually obligated individual who enlisted or reenlisted for the USAR dual status technician program will, upon application, be discharged—

(1) Upon failure to be employed as a technician.

(2) Upon separation from employment as a technician.

d. Additional instruction contained in orders evidencing an individual's discharge under *a*(1) through (4) above to accept a different military status will be in the format below—

Additional Instructions (use as appropriate);

Your enlistment in the USAR on (date) was terminated on (date), preceding date of enlistment in (Regular Army), (ARNGUS) or in the (Air Force) or (Navy) Reserve. No formal discharge will be issued by reason of this termination.

Your enlistment in the USAR on (date) was terminated on (date), preceding date of appointment as a (commissioned) or (warrant officer) in any component of the Armed Forces. No formal discharge will be issued by reason of this termination.

4-6. Women enlisted specifically for WAC College Junior Program. (Rescinded.)

4-7. USAR members enrolled in advanced course or receiving ROTC scholarship assistance. A USAR member enrolled in the advanced course or receiving scholarship assistance who leaves school or is disenrolled from the ROTC Program for reasons other than to evade accepting a commission or to willfully avoid the execution of any other aspect of the ROTC contract will be discharged unless the member voluntarily locates and accepts assignment with a USAR troop program unit within 30 days subsequent to leaving school or after being disenrolled from the ROTC.

4-7.1. ROTC/selected reserve simultaneous membership program (SMP). Individuals who enlist directly for participation in the SMP and who apply but are not accepted for enrollment

in the ROTC advanced course, may be discharged from the USAR at their request.

4-8. Failure or inability to obtain parental consent to enter into the Senior ROTC Program Advanced Training Phase. (Not Used.)

4-9. For other good and sufficient reasons. An enlisted member may be separated for other good and sufficient reasons when so determined by HQDA. Such separation will be as specified in *a* or *b* below.

★*a.* Except as indicated in *b* below, members who *have* successfully completed BT or 8 weeks of OSUT, *have not* completed their statutory service obligation, and whose separation is approved by HQDA for reasons other than those in *b* below will be transferred to the IRR under the provisions of AR 140-10.

★*b.* Members who *have not* completed BT or 8 weeks of OSUT, those who *have* completed their statutory service obligation, those whose discharge is approved by HQDA in lieu of retention based upon sustaining the recommendation of a convening authority (when a board of officers convened to consider discharging the member for misconduct (excludes unsatisfactory participation) or unsuitability recommends retention), and others as determined by HQDA, will be discharged (para 1-14*c* and *d*).

4-10. Discharge of members who did not meet the medical fitness standards. *a.* Commanders are authorized to discharge members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment, or who become medically disqualified under these standards prior to entry on IADT. Eligibility for discharge will be governed by the following:

(1) A medical finding of the Staff Surgeon that the member has a medical condition which—

(*a*) Would have permanently disqualified the member from entry in the military service had it been detected, or had it existed, at the time of enlistment.

(*b*) Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

(2) A member found to meet the requirements of (1) above will be discharged on the

dorsement and statements or rebuttal through channels to the State adjutant general for ARNG members or for USAR members to the appropriate area commander for final decision.

e. Upon receipt of correspondence from the immediate commanders, authorities indicated in (b) above will take the following action.

(1) If retention is not approved, accomplish the member's discharge. ARNG members will be discharged from the ARNG and as a Reserve of the Army in accordance with NGR 600-200. USAR members will be discharged under the provisions of this section. The IADT reservation will be cancelled if it was not previously done.

(2) When retention is approved, return the correspondence to the immediate commander advising him of the decision.

Section VII. EXPEDITIOUS DISCHARGE PROGRAM (EDP)

4-23. General. This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) because of existence of one or more of the following conditions, may be separated:

- a. Poor attitude.
- b. Lack of motivation
- c. Lack of self-discipline.
- d. Inability to adapt socially or emotionally.
- e. Failure to participate satisfactorily (see limitation in para 4-26a(2)).

4-24. Scope. This policy applies to all non-prior service ARNG and USAR troop program unit enlisted personnel who have completed at least six months but not more than 36 months of continuous unit service on their first enlistment at the time the member's immediate commander formally recommends separation under this program. For the purpose of this policy, a break in unit service (assignment to the inactive Army National Guard or USAR control group) of not more than 90 days does not interrupt continuity of unit service. This program does not apply to ARNG or USAR members on any type of FTTD or ADT.

***4-25. Purpose.** This policy provides for the expeditious elimination of substandard, non-

f. The immediate commander upon receipt of the final decision will advise the member of the decision and if the member is retained, obtain a new IADT reservation if the previous one has been cancelled.

4-21. Limitations. It is contrary to the intent of this program for commanders to use this policy as a substitute for appropriate administrative action under paragraphs 4-10 and 4-13, or chapters 6, 7, and 9.

4-22. Type of discharge. Members discharged under this program will be furnished an honorable discharge certificate.

productive soldiers before board action becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative discharge boards by providing a means to separate such personnel expeditiously before they progress to the point where elimination by board action becomes necessary. The program is not intended to be a panacea for solving normal personnel problems, or a relief from the professional obligation of commanders to exercise effective leadership and exert a sincere effort to produce good soldiers from seemingly poor ones.

4-26. Limitations. It is contrary to the intent of this policy for commanders to—

a. Use this policy as a substitute for the following appropriate administrative actions—

(1) Paragraphs 3-1; 4-10; 4-13; section II, chapter 3; or chapters 5, 6, or 7 of this regulation, or equivalent provision of NGR 600-200.

(2) AR 135-91 after a member has accumulated more than 8 unexcused absences within one year (12 consecutive months).

(3) Processing through medical channels because of physical or mental defect.

b. Make arbitrary or capricious use of this authority.

c. Force separation of members who—

- (1) Possess a potential for rehabilitation.
- (2) Decline separation under this policy.

d. Effect separation of members who have not been evaluated for a period of at least 3 months in their current unit of assignment.

4-27. Identification and screening. a. Individual characteristics that will assist in identifying members who should not be retained include, but are not limited to, the following:

- (1) Quitter.
- (2) Hostility toward the Army.
- (3) Inability to accept instructions or directions.
- (4) Clearly substandard performance.
- (5) Evidence of social/emotional maladjustment.
- (6) Lack of cooperation with peers or superiors.

(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least 3, but not more than 8, unexcused absences from unit training assemblies within a one-year period. In addition to this factor, one or more of the other characteristics must also apply to the member. The purpose of this requirement is to assure that a member who has been performing satisfactorily is not recommended for separation under this program solely on the basis of 8 or fewer unexcused absences, particularly if the reason for such absences bordered on being excusable. (Also, see para 4-26a(2).)

b. Personnel identified as vulnerable for separation under this program are those who obviously cannot adjust to the ARNG or USAR unit environment.

4-28. Counseling and rehabilitation. Commanders will insure that before recommending separation under this section, adequate counseling and rehabilitation measures have been taken.

a. *Counseling.* When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action against him/her, the member will be counseled by a responsible person or persons. Each counseling

session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

- (1) Reason for counseling.
- (2) The fact that continued behavior of similar nature may result in initiating action under this section or other provisions of this regulation.

(3) The type of separation that may be accomplished, the characterization of service that may be furnished, and the effect of each type action if taken and separation accomplished.

b. *Rehabilitation.* As a minimum, one of the following measures will be taken—

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months' duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), the commander will insure that appropriate alternate rehabilitation measures are employed.

c. *Waivers.*

(1) The counseling required by a above may not be waived.

(2) The rehabilitation required by b above may be waived by the separation authority when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems or a hazard to the unit's mission or to the member.

4-29. Standards and criteria. a. member will be separated under this program unless he/she voluntarily consents to the proposed separation. The member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

b. The service of members separated under EDP may be characterized as honorable or under honorable conditions, as appropriate (para 1-10).

c. No member's service will be characterized as under honorable conditions under this section unless he is given the opportunity to consult with an appointed counsel for consultation (para 1-3b).

d. No member will be given a characterization of service under honorable conditions by the separation authority unless it was recommended by the commander initiating the rec-

SUBJECT:

TO;

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178 (Expeditious Discharge Program). I am recommending that your service be characterized as (Honorable) (Under Honorable Conditions).

2. The reasons for my proposed actions are:

3. The final decision as to whether you will be separated and, if so, whether by discharge or transfer to the IRR and the character of service you will receive rests with the separation authority. If your service is characterized as Under Honorable Conditions, you may expect to encounter substantial prejudice in civilian life, and you have the right to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing the acknowledgment.¹

4. You have the right to decline this separation. If you so decline and your subsequent conduct indicates that such action is warranted, you may be subject to administrative separation procedures under other provisions of law or regulations.

5. You also have the right to submit a statement in your behalf, or you may waive this right.

6. You will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of your separation date.

7. There is no automatic upgrading nor review by any government agency of any discharge certificate/characterization of service which is Under Honorable Conditions.

★8. You may be transferred to the Individual Ready Reserve (IRR) to complete your statutory service obligation.

9. Complete the attached acknowledgment and return it by _____

(Signature)

Name (Typed or Printed)

Rank, Commanding, Branch

¹ Applies only in cases where a Under Honorable Conditions characterization of service is recommended.

Figure 4-2

Separation Under the Provisions of Section VII, Chapter 4, AR 135-178
(Expeditious Discharge Program)

Data Required by the Privacy Act of 1974

(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgement from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process members recommended for separation because of inability to meet acceptable standards required of service members in the ARNG or USAR. If separation is approved, information is filed in the OMPF. If member does not consent to separation or if recommendation is disapproved, information will be filed in the MPRJ until reassignment or ETS, at which time it will be destroyed. So long as filed in the OMPF or MPRJ, this personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Separation is voluntary. Failure to acknowledge notification of separation may subject member to separation under other provisions of regulation or law.

(Date Individual Signs)

(1) 1st Ind

SUBJECT: Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

TO: Unit Commander

1. I hereby acknowledge notification of my proposed separation from the (ARNG of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178. I (do) (do not) voluntarily consent to this separation.

2. Statements in my own behalf (are) (are not) submitted herewith (as Inclosure _____).

3. I understand that if my service is characterized as under honorable conditions, I may expect to encounter substantial prejudice in civilian life, and I hereby acknowledge that I have been provided the opportunity to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing this acknowledgment. I further understand that there is no automatic upgrading or review by any government agency of a characterization of service which is under honorable conditions, and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.

4. I understand that I may, prior to the date the separation authority approves my discharge, withdraw my voluntary consent to this separation.

5. I further understand that if I decline to accept this separation voluntarily, I may at a future time, if my conduct so warrants, be subject to separation under other provisions of law or regulations.

6. I also understand that I will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of my separation.

★7. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my statutory service obligation.

(Signature)_____
Name (Typed or Printed)_____
Grade, SSN

¹ Applies only in cases where an Under Honorable Conditions characterization of service is recommended.

CHAPTER 6

UNSUITABILITY

Section I. GENERAL

6-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted members of the USAR who are found to be unsuitable for further military service.

6-2. Policy. Action will be taken to separate an enlisted member for unsuitability when it is clearly established that—

a. It is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier, and

b. The member meets retention medical standards (AR 40-501).

6-3. Types of separation. The service of a member separated under this chapter will be characterized as honorable or under honorable conditions, as warranted by his military record.

6-4. Authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be separated.

b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for consideration of unsuitability and to order separation except as specified in *a* above.

c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

6-5. Applicability. An enlisted member is subject to separation under this chapter when one or more of the following conditions exist.

a. Inaptitude. Applicable to persons who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

b. Personality disorder. As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM II) of Mental Disorders, 2d Edition, section on mental disorders, International Classification of Diseases and Injuries—8, American Psychiatric Association (reference (h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational adjustments.

c. Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects, or mental, or organic diseases, including psychoneurosis, these traits are not necessarily produced by the physical or disease process. On the other hand, members considered for elimination may attempt to excuse immature, inadequate, and undisciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect-producing impairment of function insufficient to warrant separation under the provisions of AR 140-120 and related regulations is no bar to discharge for unsuitability. This provision is applicable to members who are pregnant and whose substandard performance of duty is not solely attributable to the condition of pregnancy; such as, failure to perform prescribed duties due to defective attitude rather than physical limitation or failure to report to duty without medical or military authorization. Separation for apathy will be as indicated in (1) or (2) below:

★(1) Except as indicated in (2) below, all members separated under this paragraph who *have* successfully completed BT or 8 weeks of OSUT and who *have not* completed their statutory service obligation will be transferred to the IRR to complete their statutory service obligation.

★(2) Members who *have not* completed BT or 8 weeks of OSUT, members who *have* completed their statutory service obligation, and members whom the separation authority determines, for some specific reason, have *no* potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of the situation requiring a full mobilization, and the positive motivation such condition

may well have on these members; also, the probable maturing effect of an additional two or more years in age. (See, also, para 1-25.)

d. Homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). Applicable to personnel not engaged in a homosexual act during their period of military service but who have a verified record of preservice homosexual acts. It is also applicable to other cases which do not fall within the purview of paragraph 7-30g.

e. Financial irresponsibility. Applicable to cases of individuals who have demonstrated a continuing inability to manage their financial affairs. Does not apply to cases warranting separation under the provisions of paragraph 7-30c or *d*.

Section II. COUNSELING AND REHABILITATION

6-6. Requirements. Commanders will insure that before taking separation action against an enlisted member under this chapter, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this chapter, the enlisted member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this chapter.

(3) The characterization of service that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will insure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation required by *a* and *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6-5b, or *d*.

(2) Commands which are under the normal command of general officers and colonels having judge advocates on their staff may waive the requirement of *a* and *b* above when it is determined that further duty will, in their best judgment, create serious disciplinary problems or a hazard to the military mission or the member.

Section III. PROCEDURE

6-7. Medical evaluation. When a unit commander determines that an enlisted member under his control is to be processed for separation under this chapter, he will initially refer

the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and re-

Section VI. OTHER DISQUALIFYING PATTERNS OR ACTS OF CONDUCT

7-30. Applicability. An enlisted member is subject to discharge under the provisions of this section when one or more of the following conditions exist:

a. Frequent incidents of a discreditable nature with civil or military authorities.

b. An established pattern for shirking.

c. An established pattern showing dishonorable failure to pay just debts.

d. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

e. Sexual perversion, including but not limited to—

- (1) Lewd and lascivious acts.
- (2) Homosexual acts (*g* below).
- (3) Sodomy.
- (4) Indecent exposure.
- (5) Indecent acts with or assault upon a child.
- (6) Other indecent acts or offenses.

★*f.* Drug offense(s), defined as the use or incidental possession of any controlled substance or other drug in violation of law or regulation, where such use or possession is not covered by the exemption policy; or the sale, possession for other than personal use, or transfer of any controlled substance, or the introduction of any controlled substance onto an Army installation or other government property under Army jurisdiction. Controlled substances are those substances or immediate precursors listed in the current schedule of Title 21, US Code, Section 812. A drug is any substance which by its chemical nature alters structure or function in the living organism.

g. Homosexual acts are bodily contact between persons of the same sex, actively undertaken or passively permitted by either or both, with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act. Individuals who have been involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication normally will not be processed for discharge because of homosexual acts. If other conduct is involved, individuals may be considered for discharge for other reasons set forth in this chapter or chapter 6.

7-31. Counseling and rehabilitation. Commanders will ensure that before taking discharge action against an enlisted member under this section that adequate counseling and rehabilitation have been taken as follows:

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this section, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but is not limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this section.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are taken.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation may be waived by the convening authority when separation is being considered under the provisions of paragraph 7-30*e, f,* and *g.*

(2) The convening authority may waive the requirements of *a* and *b* above when it is determined that further duty of the member will, in his best judgement, create serious disciplinary problems or a hazard to the military mission or to the member.

7-32. Commanding officer's report. When the immediate commander determines that the best interest of the service will be met by separation action because of misconduct, he will report the fact, in letter form, to the convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

a. Name, grade, social security number, age,

date of enlistment of current period of service, length of term for which enlisted (if applicable), and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General non-descriptive terms will not be used.

★*c.* Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and duty military occupational specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to recommend elimination for unsuitability or to accomplish other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

7-33. Action by intermediate commander. Intermediate commander may take the following action on misconduct cases under this section:

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising discharge jurisdiction over the member.

c. Recommend discharge for unsuitability rather than misconduct.

7-34. Action by the convening authority on unit commander's recommendation. On receiving a recommendation for discharge for misconduct, the convening authority may—

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, in which case the commanding

officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Disapprove the recommendation relating to misconduct and convene a board of officers to determine whether the member should be separated for unsuitability; or

d. Convene a board of officers to determine whether the member should be separated for misconduct; or

e. When the board hearing has been properly and effectively waived, direct separation of the member for misconduct (para 7-3); except as provided in paragraph 7-4a; or

f. When the board hearing has been properly and effectively waived, approve discharge of the member for misconduct, except as provided in paragraph 7-4a, and suspend execution of the discharge (para 8-9); or

g. Direct that the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered.

7-35. Appointment of counsel. Appointed counsel for consultation and counsel for representation for enlisted members being considered for separation because of misconduct will be as specified in paragraph 1-3b and c.

7-36. Board of officers. Composition, procedure, review, and disposition of the proceedings will be as specified in chapter 8. The proceedings of the board will contain a verbatim record of the findings and recommendations.

7-37. Limitations on administrative discharges, board hearings, and rehearings. See paragraph 1-14 and 8-7.

7-38. Action by convening authority on board's recommendation. The action will be as specified in paragraph 8-7. In addition, upon completion of the review, the convening authority may—

a. When the board has recommended discharge for misconduct—

(1) Direct discharge of the member for misconduct (except for members referred to in para 7-4a); or

(2) Direct discharge for unsuitability (except for members referred to in para 7-4a); or

(3) Disapprove the recommendation and direct retention of the member; or

(4) Approve discharge for misconduct and suspend execution of the discharge (para 8-9).

b. When the board has recommended discharge for unsuitability—

(1) Direct discharge of the member for unsuitability (except for members referred to in para 7-4a); or

(2) Disapprove the recommendation and direct retention of the member; or

(3) Approve discharge for unsuitability and suspend execution of the discharge (para 8-9).

7-39. Suspension of execution of approved discharge. The provisions of paragraph 8-9 ap-

ply concerning suspension of execution of approved discharge.

7-40. Reduction in grade. Reduction in grade on approval of an undesirable discharge will be as specified in paragraph 8-10.

7-41. Disposition of proceedings. Disposition of proceedings will be as specified in paragraph 8-11.

7-42. Errors and discrepancies noted before accomplishing discharge. Correction of errors and discrepancies noted before accomplishing discharge will be as specified in paragraph 8-12.

7-43. Disposition of case. Disposition of case when discharge has been accomplished will be as set forth in paragraph 8-13.

★Section VII. UNSATISFACTORY PARTICIPATION OF STATUTORILY OBLIGATED MEMBERS

7-44. Purpose and scope. This section prescribes policy and procedures for processing cases of statutorily obligated enlisted members who fail to participate satisfactorily in unit training as required by AR 135-91. These instructions apply to all nonprior service ARNG and USAR enlisted members who have not served 24 months active duty, and provide for transfer to the IRR.

7-45. Separation. All members separated under this section who have not completed their statutory military service obligation will be transferred to the IRR to complete that obligation.

7-46. Action by unit commander. a. When a member of a troop program unit has accrued 9 or more unexcused absences during a 12-month period (see AR 135-91), the unit commander will personally notify the member in writing of the proposed separation, his rights, and the proposed characterization of service (fig. 8-1) allowing 45 days for reply. Reasonable effort should be made to furnish this notification to the member through personal contact by a member of the command, who will obtain a written acknowledgment of receipt from the member.

(1) If such effort is unsuccessful, the notification will be mailed to the member by certified mail (Return Receipt Requested) and a Receipt for Certified Mail (PS Form 3800) obtained.

(2) The individual who mails the notification will prepare a Sworn Affidavit of Service by Mail (fig. 8-4) which will be inserted immediately together with the PS Form 3800, in the member's MPRJ. If the notice was properly and correctly mailed to the most recent address furnished by the member, it will constitute constructive notice to the member which will satisfy notice requirements for subsequent separation actions. If the mail is returned as undeliverable and no better address can be determined, action will proceed in the same manner as if a receipt had been obtained.

b. The unit commander will send his recommendation for separation through the intermediate commanders(s), if any, to the separation authority. The recommendation will be in letter form and will include the following information:

(1) Name, grade, SSN, date and term of enlistment or obligated service.

(2) Justification for recommendation.

(3) Record of enforcement action taken.

(4) A statement by the member indicating that he has been advised of his rights. (If no reply is received or if notification was returned as undeliverable, include that evidence.)

7-47. Action by intermediate commander. Each intermediate commander will add his recommendation to that of the unit commander and forward the case to the convening authority.

7-48. Action by the convening authority. On receiving a recommendation for separation for unsatisfactory participation, the convening authority may—

a. Disapprove the recommendation and return the case to the originator for disposition by other means.

b. Direct that the case be processed through medical channels, if appropriate (para 7-34*g*).

c. When the board hearing has been properly and effectively waived, direct separation by transfer to the IRR with a tentative characterization of service, normally under other than honorable conditions.

d. Convene a board of officers (chap. 8) to determine whether the member should be separated for misconduct (unsatisfactory participation—see para 7-45).

7-49. Action by convening authority on board's recommendation.

a. The action will be as specified in paragraph 8-7. Also, on completion of the review, the convening authority will, when the board has recommended separation for misconduct (unsatisfactory participation) approve transfer of the member to the IRR.

b. The convening authority *may not* approve separation and suspend execution of the separation in these cases.

7-50. Orders. When transfer to the IRR has been approved, the separation authority will issue orders transferring the member to the

USAR Control Group (Annual Training) with the approved tentative characterization of service shown under Additional Instructions. The reassignment orders should be delivered to the member by a member of the command and a written acknowledgement of receipt obtained. When these efforts are unsuccessful, the orders will be mailed to the member in the same manner as the initial notification letter (para 7-46).

7-51. Provisions for upgrading characterization of service. A member who is transferred to the IRR under this section with a tentative characterization of service of less than honorable normally will be discharged at the expiration of his statutory service obligation (ETS) with that characterization. However, he may earn a higher characterization of service at ETS (in accordance with the standards at sec II, chap. 1) by—

a. Rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of his/her statutory service obligation, but not less than 12 months; or

b. Volunteering for and serving satisfactorily on a tour of at least 45 days active duty for training.

7-52. IRR members. *a.* When a member of the IRR whose enlistment provides that his statutorily obligated service may be performed entirely in the IRR is identified as an unsatisfactory participant, the procedures outlined for unit members will be followed as nearly as possible.

b. A board of officers will be convened under chapter 8 to consider the circumstances and recommend appropriate disposition. When the member is retained in the IRR with a tentative characterization of service as a result of an approved board action, he will be discharged at expiration of his obligation with the same characterization unless he takes action to upgrade his characterization of service (para 7-51).

CHAPTER 8

BOARDS OF OFFICERS

8-1. General. *a.* This chapter sets forth the general provisions governing boards of officers convened under the provisions of this regulation to make recommendations to the convening authority concerning separation action pertaining to enlisted members of the USAR and, where appropriate, to members of the ARNGUS.

b. Appointment of boards of officers under this regulation will be accomplished by letters issued by area commanders, or higher headquarters. Procedure for boards is prescribed in AR 15-6. One officer on a board (which consists of more than one member) will be from the same Reserve Component as the member whose case is referred for board action.

c. When sufficient basis exists to initiate separation action pertaining to USAR members as assigned under jurisdiction of the CG, RCPAC, the procedures set forth in paragraph 8-2 will apply. If an investigation and/or appointment of a board of officers is required, the case will be referred for necessary action to the commander in whose geographical area the member resides.

(1) Cases referred to area commanders by CG, RCPAC will include, to the extent possible, correspondence, statements, MPRJ, and similar related documentation.

(2) In those instances where circumstances indicate the need for Army investigative processes, as set forth in AR 195-2, the CG, RCPAC will request such investigation from the appropriate area commander. Upon completion of the investigation, area commander will initiate continuing action.

(3) Except for those types of cases where final action is restricted to HQDA, area commanders are authorized to take final action on board recommendations.

(4) Upon completion of final action, area commanders will forward the original of the

board proceedings with approved disposition to the CG, RCPAC, who will accomplish discharge action, if appropriate, and file the board proceedings in the enlisted member's OMPF.

d. Area commanders will appoint boards of officers upon request from a PMS to act upon cases involving USAR members of the Senior ROTC Program.

★8-2. Rights of the enlisted member. *a.* The enlisted member will be notified in writing of the specific allegations on which the proposed action is based, the type of separation that may be issued, the characterization of service that may be given, and the fact that action has been suspended to give the member an opportunity to exercise the rights listed in *b(1)* through *(6)* below (fig. 8-1).

(1) This letter will be given to the member by his unit commander or a designated member of his command (in person), when possible. A signed receipt will be obtained. If this cannot be done, and the member's whereabouts are known or may be reasonably ascertained, the letter will be sent to the member by certified mail, Restricted Delivery, return receipt requested.

(2) This letter will be sent to the *nonunit* member by the Cdr, RCPAC, using certified mail as in (1) above.

b. Rights of the enlisted member are—

(1) To consult with a consulting counsel (1-3*b*). *This right may not be waived.*

(2) To appear and present his case before an administrative separation board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3*c*); military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his own behalf.

(5) With the exception of (1) above, to waive the above rights in writing.

(6) To withdraw his waiver of his rights listed in (2), (3), and (4) above any time prior to the date the separation authority orders, directs, or approves his separation and requests that his case be presented before a board of officers. The member will be required, within a reasonable time (not less than 30 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distances involved or other circumstances, a period in excess of 30 days may be allowed for the enlisted member to reply. If he elects to waive his rights, the member will personally sign a waiver (fig. 8-2). His consulting counsel will advise him in accordance with paragraph 1-3b and will sign the written waiver as witness, indicating that he is a commissioned officer of the Judge Advocate General's Corps. If the member refuses to consult with a consulting counsel, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the member had consulted with a consulting counsel.

c. If a member waives his rights, the separation authority may disapprove the waiver and refer the case to an administrative separation board, or direct retention, or direct separation by reason of unsuitability or misconduct. If discharge is directed, the type of certificate will be specified.

d. A member unable to appear in person before an administrative separation board by reason of confinement by civil authorities will be advised (by certified mail, Restricted Delivery, return receipt requested) of the proposed separation, the characterization of service that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following rights.

(1) To consult by correspondence with a consulting counsel (para 1-3b). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his own expense to represent him and, in his absence,

present his case before an administrative separation board.

(3) To submit statements in his own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 45 days from the date of receipt. If the reply is not received within 45 days of the date of receipt of the letter of notification, the recommendation of his separation, if approved by the separation authority, may be accomplished with the characterization of service or type of discharge certificate determined to be appropriate. Subparagraph 7-48c applies when separation is a result of unsatisfactory participation.

8-3. Board of officers. a. Organization. Boards of officers convened to determine whether a member should be separated under the provisions of this regulation will consist of not less than three commissioned officers, except as authorized by paragraph 8-1b, at least one of whom is the grade of major or higher; nonvoting recorder may be appointed. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

(3) In the case of a female enlisted member, the board will include a female officer, if reasonably available. In the case of nonavailability, the reason will be stated in the record of proceedings.

★(4) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member an officer who is also a minority group member, if such officer is reasonably available. When requested, the appointed board member should normally be of the same minority group as the respondent; however, nonavailability of an officer of the same minority group will not preclude convening the board. In the event of nonavailability, the reason will be stated in the record of proceedings.

★(5) The officer initiating the action under this regulation or any intervening officer who

had direct knowledge of the case is not a member of the board.

b. General. The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the member and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement on the data at hand so that further rehabilitation data may be secured.

c. Availability of witnesses.

(1) The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, a deposition or affidavit will be obtained, as appropriate.

(2) The member will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any available witness the member desires to call ((1) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.

d. Board procedures.

(1) Expect as modified herein, the board will conform to the provisions of AR 15-6. As an exception to paragraph 3-7b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence he is entitled to have witnesses appear in person, if they are reasonably available (c(1) above).

(2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as

possible and will contain a verbatim record of the findings and recommendations (fig. 8-3).

(3) A minimum of 30 days' written notice before date of hearing will be given a member who is to appear before a board of officers so that he or his counsel may prepare his case. When for overriding reasons the minimum of 30 days cannot be granted, the president of the board will insure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 45 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

(4) A member who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the member by the president of the board:

(a) The member may appear in person, with or without counsel, at all open proceedings of the board. The member may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When a member appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board action, the effects of such discharge, and that he may request counsel. The record will reflect the respondent's response.

(b) The member may challenge any voting member of the board for cause only.

(c) Member may request the appearance before the board of any witness whose testimony he believes to be pertinent to the case. The member will specify in the request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that the witness is reasonably available, and that the testimony can add materially to the case. The appearance of a witness will be under conditions set forth in c(1) above.

(d) Member may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn

statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(e) The member and his counsel may question any witness who appears before the board.

(f) Member may or may not submit to examination by the board. The provisions of Article 31, UCMJ will apply.

(g) Failure of the member to invoke any of the above rights, after having been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(5) For rules of procedures and evidence, and swearing of witnesses, see AR 15-6.

(6) The president of the board will insure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the member. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(7) When the board is considering a case in which the respondent has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent or of the type of discharge which had been recommended in his case. When it has come to the attention of the respondent or his counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

8-4. Board findings. *a.* Each finding of a board of officers must be a clear and concise statement of facts or facts evidenced in the record or a conclusion which will be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions."

8-5. Recommendations. *a.* Recommendation of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of

the rules and regulations of the Army in consonance with the policies outlined in this and other pertinent regulations and guided by their conception of justice both to the Government and the member concerned.

c. Recommendations: Unsuitability. The board convened to determine whether a member should be separated for unsuitability will recommend that the member be—

(1) Separated because of unsuitability (indicating characterization of service—honorable or under honorable conditions-to be awarded).

(2) Retained in service. The recommendation will indicate that type of duty which is believed the member can perform satisfactorily.

d. Recommendations: Misconduct (fraudulent entry, misrepresentation of facts, conviction by civil court, or other disqualifying patterns or acts of conduct). The board will recommend that the member be—

(1) Retained in the service; or

(2) Discharged; if discharge is recommended, the reason for discharge (misconduct or unsuitability) and the type of discharge to be issued will be specified (para 7-3).

8-6. Forwarding report of proceedings. The complete report of proceedings will be forwarded to the convening authority for final determination and disposition. When board action has been completed on members referred to in paragraphs 6-4*a* and 7-4*a*, the findings and recommendations of the board will complete documentation and the recommendation of the convening authority will be forwarded to Cdr, RCPAC for final determination in cases where the convening authority recommends discharge.

8-7. Convening authority action. *★a.* When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative separation proceedings. When the board recommends a separation under other than honorable conditions be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

★b. The convening authority's deputy or other

officer with that headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases (including cases in which the enlisted member has waived his/her right to a board hearing under the provisions of para 8-2) except to direct a separation under other than honorable conditions. The convening authority is required to personally sign any action directing a separation under other than honorable conditions of a member under his command. The convening authority may direct other appropriate disposition of the case.

c. No convening authority will direct separation if a board recommends retention, nor authorize the issuance of a separation of less favorable character than that recommended by the board. However, a convening authority may direct retention when separation is recommended or may issue a discharge or characterization of service of a more favorable character than that recommended.

d. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *c* above. With respect to substantial defects, he may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board to include extras from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial

matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than the action of the first board.

(5) No more than one rehearing may be directed without approval from CG, RCPAC.

8-8. Retention, separation, or suspension. In determining whether a member should be retained or be administratively separated, consideration should be given to members's entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishment would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

a. Cases in which the circumstances may warrant use of such records ordinarily will be limited to those involving patterns of conduct which would become manifest only over an extended period of time.

★*b.* When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time, or have no probative value in determining whether the member should be retained or separated, will have minimum influence on the final determination.

★*c.* If a decision is made that a member should be administratively separated, section II, chapter 1 applies in determining the characterization of service and the type of discharge certificate to be issued.

8-9. Suspension of execution of approved separation.

a. In order to afford a highly deserving member a probationary period to demonstrate suc-

cessful rehabilitation prior to expiration of the member's enlistment or period of obligated service, the convening or higher authority may suspend execution of an approved separation for a period not to exceed 6 months. During the period of suspension the member will be afforded an opportunity to demonstrate the capability of behaving properly under varying conditions during the probationary period and that the member can perform assigned duties efficiently.

b. Upon satisfactory completion of the probationary period, the authority who suspended the separation will cancel execution of the approved separation.

c. If there is additional misconduct on the part of the member during the probationary period or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability, the commander concerned or the convening authority, whichever is appropriate, will take one of the following actions:

(1) Initiate punitive or new administrative action notwithstanding the suspension of the execution of the approved separation, or

★(2) Vacate suspension of the approved separation when the member has been beyond military control for 15 days or more and separate the member in absentia; or

(3) Advise the member in writing that vacation action is being considered and the reasons which warrant such consideration. The member will be given an opportunity to furnish information in his own behalf or decline to make any statements. The convening authority will consider any information the member submits and will—

(a) Vacate suspension of approved separation and execute separation or

(b) Continue to suspend execution of the approved separation.

★8-10. **Reduction in grade.** a. When a member is to be discharged with a discharge under other than honorable conditions, the convening authority will direct the immediate reduction to the pay grade of Private E-1 under paragraph 3-38c, AR 140-158 and this regulation.

b. When the member is to be transferred to the IRR for misconduct (unsatisfactory partic-

ipation under the provisions of chap. 7), the convening authority will direct immediate reduction to Private E2 or E1, as appropriate, under the provisions of paragraph 3-38d, AR 140-158 or paragraph 6-35c, NGR 600-200, as applicable.

8-11. **Disposition of proceedings.** ★a. When separation is ordered by the convening authority, or his designee, he will so note on the proceedings and forward them as authority for separation the appropriate commander for execution of the separation (see para 8-13 for disposition of the case when separation is accomplished).

b. When separation is not ordered by convening authority, the proceedings will be filed at the headquarters of the convening authority and the member's commanding officer will be notified of the final action in the case. When deemed appropriate, consideration will be given to the member's transfer to a different organization. Ultimate disposition of the board proceedings will be governed by AR 340-18-7.

c. A member who is to be separated will be furnished a copy of the board proceedings, less written medical testimony and reports which would prove injurious to the member's physical or mental health.

(1) The respondent's copy of the proceedings will be marked "copy for (name and social security number of the member)" and furnished the member or his counsel. A signed receipt will be obtained from the member or the member's counsel to whom the copy is furnished and filed with the original board proceedings. If the member refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the member or the member's counsel does not desire a copy of the board proceedings or if for any other reason a copy is not furnished, a notation will be made on the member's copy to accompany the original. Release of this copy thereafter may be made only by the CG, RCPAC.

★8-12. **Errors and discrepancies noted before accomplishing separation.** The type of discharge and characterization of service directed by the convening authority may be changed

only by CG, RCPAC. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case, the case will be referred for review before separation to RCPAC.

★8-13. Disposition of the case. *a.* When separation of the member has been accomplished by appropriate authority under this regulation, the complete file of the case together with the member's MPRJ will be disposed of in accord-

ance with the instructions contained in AR 640-10.

b. A notification of final action will be prepared on each enlisted member processed under paragraph 6-5*d* or 7-30*g*. This notification will include the name, grade, social security number, date and place of birth, and action taken on the case. Such notification will be forwarded to the Commander, US Army Investigative Records Repository, Fort George G. Meade, MD 20755.

SUBJECT: Separation Under AR 135-178

TO: (Service Member)

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) (your USAR unit)¹ for (Unsuitability, chap. 6) (Misconduct, chap. 7)¹ under AR 135-178. If you are separated, your service may be characterized as (under honorable conditions) (under other than honorable conditions).¹

2. The reasons for my proposed action are:

3. I am suspending action for 45 days to give you an opportunity to exercise the following privileges:

- a. To consult with consulting counsel.
- b. To appear and present your case before an administrative separation board.
- c. To be represented at any hearing by appointed counsel for representation, military counsel of your own choice, if reasonably available, or civilian counsel at your own expense.
- d. To submit statements in your own behalf.
- e. With the exception of consulting with counsel, to waive the above rights in writing.

f. To withdraw your waiver of rights listed in b, c, and d above anytime before the date the separation authority orders, directs, or approves your separation, and request that your case be presented to a board of officers.

4. The final decision as to whether you will be separated (and, if so, whether by discharge or transfer to the IRR) and the character of service you will receive rests with the separation authority. If your service is characterized as less than honorable, you may expect to encounter substantial prejudice in civilian life and you have the right to consult with an officer of the Judge Advocate General's Corps (or civilian counsel at your own expense) before completing the inclosed acknowledgment. There is no automatic upgrading or review of the characterization of service.

a. If transferred to the IRR, it may be upgraded (in accordance with the standards of sec II, chap. 1) by—

(1) Rejoining the same or another ARNG or USAR unit and participating satisfactorily for a period of 12 months; or

(2) Volunteering for and satisfactorily completing a tour of at least 45 days active duty for training. If neither of these actions is taken, the characterization of service at discharge will be the same as awarded on transfer to the IRR.

b. If you are discharged with a characterization of service which is less than honorable, you may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records for review of your characterization of service. Consideration by either board does not imply that the characterization of service will be upgraded.

5. Acknowledgment of this letter is required by _____ (45 days).

¹ Delete as appropriate.

Separation Under the Provisions of Chapter 6 or 7, AR 135-178
Data Required by the Privacy Act of 1974
(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgment from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process ARNGUS/USAR members recommended for separation under AR 135-178 because of (Unsuitability, chap. 6) (Misconduct, chap. 7)¹. If separation is approved, information is filed in the MPRJ. This personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Disclosure is voluntary. If service member refuses to provide information, separation may be accomplished using information available.

(Date member and counsel sign statement)

SUBJECT: Separation Under AR 135-178

TO: (Separation authority)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my separation for (Unsuitability, chap. 6) (Misconduct, chap. 7)¹ under AR 135-178 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officers.²
4. Statements in my own behalf (are) (are not) submitted herewith (incl._____).
5. I (request) (waive) representation by (counsel of representation) ((_____) as my military counsel) (civilian counsel at my own expense).¹
6. I understand that I may, up until the date the separation authority directs or approves my separation, withdraw this waiver and request that a board of officers hear my case.
7. I understand that I may expect to encounter substantial prejudice in civilian life if my service is characterized as under honorable conditions or under other than honorable conditions. (I further understand that as a result of a characterization of service of under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws.³)
8. I understand that there is no automatic upgrading or review by any government agency of any characterization of service which is less than honorable. After discharge, I may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish

★Figure 8-2. Individual's statement.

review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.

9. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my military service obligation. If so, I may upgrade my characterization of service by rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of my military service obligation, but not less than 12 months, or by volunteering for and satisfactorily completing a tour of at least 45 days active duty for training.⁴

10. I have retained a copy of this statement.

(Signature of individual)

(Typed name, SSN, grade)

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights, _____ (name of individual), who appeared of sound mind, personally and knowingly made the choices indicated in the foregoing statement.

(Signature of counsel)

(Typed name, SSN, grade, branch)

¹ Delete as appropriate.

² Do not use if the individual is in civil confinement.

³ To be used if the individual has been recommended for a discharge under other than honorable conditions.

⁴ To be used only when a member is recommended for separation for unsatisfactory participation under section VII, chapter 7.

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AR 135-178

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC 1 April 1980

Immediate Action INTERIM CHANGE

AR 135-178
INTERIM CHANGE
NO. 103
Expires 1 April 1981

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change is required as the result of policy implemented in Interim Change I02 to AR 135-178 and recent change in policy which requires all unsatisfactory participant obligors to be retained in the Individual Ready Reserve. This interim change has a direct and immediate impact on the individual service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by first class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 3, AR 135-178.

Page 1-8, paragraph 1-25 is amended by superseding the first sentence to read: To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons (excluding paragraph 1-25i) prior to completion of their statutory military service obligation will be screened to ensure that only those with no potential to meet mobilization requirements are discharged.

Page 3-1, subparagraph 3-1a is superseded to read:

a. The period of military service required for all enlisted members of the Army will be in accordance with applicable laws. Periods for which enlistment is authorized are set forth in AR 140-111. Upon expiration of term of enlistment or period of statutorily obligated service, the enlisted member will be discharged.

Page 3-2, paragraph 3-6 is superseded to read:

3-6. Failure or refusal of contractually obligated enlisted members to accept or comply with official orders or correspondence or to satisfactorily participate in required training. See paragraph 6-22, AR 135-91.

Page 4-2, paragraph 4-9b is amended by changing the phrase "for misconduct or unsuitability" to read: "for misconduct (excludes unsatisfactory participation) or unsuitability."

Page 7-1, paragraph 7-1 is expanded to add subparagraph 7-1d to read:

- d. Unsatisfactory participation of statutorily obligated members.

Page 7-1, paragraph 7-8 is superseded as follows:

7-8. Medical evaluation. A unit commander who determines that an enlisted member assigned to his command is to be processed for separation under this chapter (with exception of Sec VII), will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

Page 7-9, paragraph 7-44 is amended by changing the last sentence to read: These instructions apply to all nonprior service ARNG and USAR enlisted members who have not served 24 months active duty, and provide for transfer to the IRR.

Page 7-9, paragraph 7-45 is superseded to read:

7-45. Separation. All members separated under this section who have not completed their statutory military service obligation will be transferred to the IRR to complete that obligation.

Page 7-9, subparagraph 7-46b(4) is rescinded.

Page 7-9, subparagraph 7-48c is superseded as follows:

- c. When the board hearing has been properly and effectively waived, direct separation by transfer to the IRR with a tentative characterization of service, normally under other than honorable conditions.

Page 7-9.1, subparagraph 7-49a is superseded to read:

- a. The action will be as specified in paragraph 8-7. Also, on completion of the review the convening authority will, when the board has recommended separation for misconduct (unsatisfactory participation), approve transfer of the member to the IRR.

Page 7-9.1, paragraph 7-50 is superseded as follows:

7-50. Orders. When transfer to the IRR has been approved, the separation authority will issue orders transferring the member to the USAR Control Group (Annual Training) with the approved tentative characterization of service shown under Additional Instructions. The reassignment orders should be delivered to the member by a member of the command and a written acknowledgment of receipt obtained. When these efforts are unsuccessful, the orders will be mailed to the member in the same manner as the initial notification letter (para 7-46).

Page 7-9.1, subparagraph 7-51b is rescinded.

Page 8-2, subparagraph 8-2d(4) is expanded to add: Subparagraph 7-48c applies when separation is a result of unsatisfactory participation.

Page 8-6, subparagraph 8-10b is superseded to read:

b. When the member is to be transferred to the IRR for misconduct (unsatisfactory participation under the provisions of chap 7), the convening authority will direct the immediate reduction to Private E-2 or E-1, as appropriate, under the provisions of paragraph 3-38d, AR 140-158 or paragraph 6-35c, NGR 600-200, as applicable.

Page 8-8, Figure 8-3 is superseded as follows:

(Date)

FINDINGS: In the board proceedings concerning Private E-2 John Doe, (111 11 1111) the board carefully considered the evidence before it and finds:

1. Private Doe is undesirable for further retention (in his unit) (in the military service) because of unsuitability (chap. 6, AR 135-178).
2. Private Doe is undesirable for further retention in the military service because of misconduct (chap. 7, AR 135-178).
 - a. Conviction by civil court.
 - b. Conviction of offenses involving moral turpitude.
3. Private Doe is undesirable for further retention in his unit because of misconduct--unsatisfactory participation (chap. 7, AR 135-178).

1 April 1980

RECOMMENDATION: In view of the findings, the board recommends that Private Doe be (transferred to the IRR) (discharged)¹ because of (Unsuitability, with a characterization of service of (Honorable) (Under Honorable Conditions)) or Misconduct, with a characterization of service of (Honorable)² (Under Honorable Conditions) (Under Other Than Honorable Conditions²).

President

Member

Member

Recorder

¹ Delete as appropriate.

² This characterization of service can never be used in a separation for Unsuitability (chap. 6, AR 135-178).

* Figure 8-3 Verbatim findings and recommendations.

(AGUZ-RCC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve.

- Active Army: B
- ARNG: A
- USAR: A

AR 135-178

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 1 March 1980

Immediate Action INTERIM CHANGE

AR 135-178
INTERIM CHANGE
NO. 102
Expires 1 March 1981

ARMY NATIONAL GUARD AND ARMY RESERVE

SEPARATION OF ENLISTED PERSONNEL

This interim change is forwarded to the field to implement DOD policy that has direct impact on the service member; expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal printed change; is being distributed by 1st class mail through the publications pinpoint distribution system to all holders of AR 135-178; is, as an interim measure, issued in other than page-for-page format; and will be included in change 3, AR 135-178.

Page 1-1, subparagraph 1-1a(2) is superseded as follows:

(2) Separation of enlisted members serving on Initial Active Duty for Training (IADT) will be governed by appropriate Active component regulations.

Page 1-1. Heading at subparagraph 1-3a is superseded to read: Administrative separation board.

Page 1-1, subparagraph 1-3b is superseded as follows:

b. Appointed counsel for consultation. A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel will advise the member that if he receives a discharge certificate which is less than an honorable discharge certificate, there is no automatic upgrading nor review by any Government agency; that upgrading is considered only upon application to the Army Board for Correction of Military Records or the Army Discharge Review Board; and that consideration by either of these boards does not guarantee upgrading of a discharge certificate which is less than an honorable discharge certificate. Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel,

however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

Page 1-2, subparagraph 1-3d is superseded as follows:

d. Convening authority. The officer authorized by Army Regulations to convene an administrative separation board and take final action with respect to a specific type of separation.

Page 1-2. Heading at subparagraph 1-3e is superseded to read: Deferred enlisted member.

Page 1-2, last subparagraph in paragraph 1-3 entitled: One station unit training (OSUT) is designated as subparagraph 1-3n.

Page 1-2, expand paragraph 1-3 to add subparagraph 1-3o to read:

o. Contractually obligated member. A member who has completed his statutory service obligation and/or is serving under an appointment, enlistment contract, or extension, only (see para 2-2, AR 135-91).

Page 1-2, expand paragraph 1-3 to add subparagraph 1-3p to read:

p. Statutorily obligated member. A member who is serving by reason of law (see para 2-1, AR 135-91).

Page 1-8, section V is superseded as follows:

Section V. TRANSFER TO THE INDIVIDUAL READY RESERVE (IRR)
IN LIEU OF DISCHARGE

1-25. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons prior to completion of their statutory military service obligation will be screened to ensure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their statutory military service obligation. These criteria are based upon the probability that, under conditions of full mobilization, such members would be retained in the Service.

- a. Expeditious Discharge Program (sec VII, chap 4).
- b. Dependency (sec II, chap 5).

- c. Hardship (sec II, chap 5).
- d. Inability to perform prescribed duties due to parenthood (para 4-11.1).
- e. Pregnancy (para 4-11b).
- f. Secretarial authority (para 4-9).
- g. Sole surviving sons/daughters and surviving family members (sec V, chap 4).
- h. Unsuitability - apathy (para 6-5c).
- i. Misconduct (unsatisfactory participation (sec VII, chap 7)).

1-26. Applicability. These policies apply to ARNGUS and USAR enlisted personnel to whom the referenced discharge policies apply.

1-27. Character of service.

a. The service of members who are transferred to the IRR under the programs cited in paragraph 1-25 a thru h above will be characterized as honorable or under honorable conditions. This will be based upon the member's behavior and performance of duty in the unit, in the same manner as set forth in paragraph 1-10b(1) and (2) for type of discharge. The service of members transferred to the IRR under the programs cited in paragraph 1-25i normally will be tentatively characterized as under other than honorable conditions.

b. Reassignment orders transferring the member to the appropriate control group of the IRR will show the specific reason for transfer (para 1-25a thru i). Character of service will be entered under Additional Instructions on the orders.

Page 3-1, heading at paragraph 3-1 and subparagraph 3-1a are superseded as follows:

3-1. Completion of terms of enlistment or period of statutorily obligated service.

a. The period of military service required for all enlisted members of the Army will be in accordance with applicable laws. Periods for which enlistment is authorized are set forth in AR 140-111. Upon expiration of term of enlistment or period of statutorily obligated service, the enlisted member will be discharged. As an exception, unsatisfactory participants who are within 3 months of completing their statutory obligation may be retained and discharged under this paragraph at ETS if the commander determines that separation under the provisions of section V, chapter 1 and section VII, chapter 7 is not appropriate.

Page 3-1, subparagraph 3-1c is amended by changing the phrase "obligated service" in line 7 to read: "statutorily obligated service."

Page 3-1, subparagraph 3-4b is amended by deleting the phrase "under the REP-63 Program."

Page 3-1, subparagraph 3-4c(2) is superseded as follows:

(2) AR 635-40 if on ADT pursuant to orders which specify a period of more than 30 days.

Page 3-1, subparagraph 3-4c(3) is superseded as follows:

(3) Paragraph 6-8, AR 40-3 and AR 635-40 if on ADT pursuant to orders which specify a period of 30 days or less.

Page 3-2, paragraph 3-6 is superseded as follows:

3-6. Failure or refusal of contractually obligated enlisted members to accept or comply with official orders or correspondence or to satisfactorily participate in required training. USAR contractually obligated enlisted members will be discharged when--

a. They fail to participate satisfactorily in required training (AR 135-91) or fail to earn sufficient retirement points (AR 140-10).

b. They refuse or fail to reply to or accept official correspondence; comply with official travel orders; or to complete and return forms required by pertinent regulations.

Page 4-2, subparagraph 4-5c is amended by changing the phrase "nonobligated individuals" to read: "contractually obligated individuals."

Page 4-2, subparagraph 4-9a is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-2, subparagraph 4-9b is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-3, subparagraph 4-11b(2)(3) is amended to read as subparagraph 4-11b(2)(a).

Page 4-3, subparagraph 4-11b(2)(a) is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-3, subparagraph 4-11b(2)(b) is amended by changing the phrase "military service obligation" to read "statutory service obligation."

Page 4-4, subparagraph 4-11.1c(1) is amended by changing "MSO" to read "statutory service obligation."

Page 4-4, subparagraph 4-11.1c(2) is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-6, subparagraph 4-17h(1) is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-6, subparagraph 4-17h(2) is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-9, paragraph 4-25 is amended by deleting the phrase "or involuntary active duty" in the first sentence and by deleting the phrase "involuntary active duty or active duty for training, or" in the second sentence.

Page 4-11, subparagraph 4-30c is amended by changing the parenthetical entry to read: (sec V, chap 1 and AR 140-10).

Page 4-12, subparagraph 4-31a is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 4-13, paragraph 8 of Figure 4-2 is amended by inserting the phrase "statutory service" immediately preceding the word "obligation."

Page 4-15, paragraph 7 of Figure 4-3 is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 5-2, subparagraph 5-8a is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 5-2, subparagraph 5-8b is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 6-1 and 6-2, subparagraph 6-5c(1) is amended by changing the phrases which read "military service obligation" to read: "statutory service obligation."

Page 6-2, subparagraph 6-5c(2) is amended by changing the phrase "military service obligation" to read: "statutory service obligation."

Page 7-1, paragraph 7-1 is amended by changing the word "discharge" to read "separation."

Page 7-1, paragraph 7-3 is superseded as follows:

7-3. Type of separation. An enlisted member separated for reasons indicated in paragraph 7-1 will normally be furnished a characterization of service of under other than honorable conditions. If warranted by the circumstances of the case, service of honorable or under honorable conditions may be furnished.

Page 7-1, subparagraph 7-4b is amended by changing the words "discharge" to read: "separation."

Page 7-1, subparagraph 7-4c is amended by changing the word "discharge" to read: "separation."

Page 7-1, paragraph 7-6 is amended by changing the word "discharges" to read: "separations."

Page 7-1, paragraph 7-8 is superseded as follows:

7-8. Medical evaluation. A unit commander who determines that an enlisted member assigned to his command is to be processed for separation under this chapter, will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

Page 7-9, section VII is added as follows:

Section VII. UNSATISFACTORY PARTICIPATION OF STATUTORILY
OBLIGATED MEMBERS

7-44. Purpose and scope. This section prescribes policy and procedures for processing cases of statutorily obligated enlisted members who fail to participate satisfactorily in unit training as required by AR 135-91. These instructions apply also to all nonprior service ARNG and USAR enlisted members who have not served 24 months active duty, and provide for transfer to the IRR or discharge.

7-45. Criteria for separation.

a. Except as indicated in b below, all members separated under this paragraph who have successfully completed BT (or 8 weeks of OSUT) and who have not completed their statutory military service obligation will be transferred to the IRR to complete that obligation.

b. Members whom the separation authority determines, for some specific reason which is made a matter of record, have no potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of a situation requiring a full mobilization and the positive motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years of age. The fact that a member has 9 or more unexcused absences within a 12 month period is not, by itself, sufficient reason for discharge. (See also paragraph 1-25.)

7-46. Action by unit commander.

a. When a member of a troop program unit has accrued 9 or more unexcused absences during a 12-month period (see AR 135-91), the unit commander will personally notify the member in writing of the proposed separation, his rights, and the proposed characterization of service (fig 8-1) allowing 45 days for reply. Reasonable effort should be made to furnish this notification to the member through personal contact by a member of the command, who will obtain a written acknowledgment of receipt from the member.

(1) If such effort is unsuccessful, the notification will be mailed to the member by certified mail (Return Receipt Requested) and a Receipt for Certified Mail (PS Form 3800) obtained.

(2) The individual who mails the notification will prepare a Sworn Affidavit of Service By Mail (fig 8-4) which will be inserted immediately together with the PS Form 3800, in the member's MPRJ. If the notice was properly and correctly mailed to the most recent address furnished by the member, it will constitute constructive notice to the member which will satisfy notice requirements for subsequent separation actions. If the mail is returned as undeliverable and no better address can be determined, action will proceed in the same manner as if a receipt had been obtained.

b. The unit commander will send his recommendation for separation through the intermediate commander(s), if any, to the separation authority. The recommendation will be in letter form and will include the following information:

(1) Name, grade, SSN, date and term of enlistment or obligated service.

(2) Justification for recommendation.

(3) Record of enforcement action taken.

(4) Report of medical evaluation (or documents required by para 1-15c).

(5) A statement by the member indicating that he has been advised of his rights. (If no reply is received or if notification was returned as undeliverable, include that evidence.)

7-47. Action by intermediate commander. Each intermediate commander will add his recommendation to that of the unit commander and forward the case to the convening authority.

7-48. Action by the convening authority. On receiving a recommendation for separation for unsatisfactory participation, the convening authority may--

a. Disapprove the recommendation and return the case to the originator for disposition by other means.

b. Direct that the case be processed through medical channels, if appropriate (para 7-34g).

c. When the board hearing has been properly and effectively waived, direct separation by--

(1) Transfer to the IRR with a tentative characterization of service, normally under other than honorable conditions, or

(2) Discharge. Service will normally be characterized as under other than honorable conditions.

d. Convene a board of officers to determine whether the member should be separated for misconduct (unsatisfactory participation -- see para 7-45) (chap 8).

7-49. Action by convening authority on board's recommendation.

a. The action will be as specified in paragraph 8-7. Also, on completion of the review the convening authority may, when the board has recommended separation for misconduct (unsatisfactory participation)--

(1) Approve transfer to the IRR of members considered to have mobilization potential.

(2) Approve discharge for misconduct of those members determined to have no mobilization potential (para 7-45).

b. The convening authority may not approve separation and suspend execution of the separation in these cases.

7-50. a. When transfer to the IRR has been approved, the separation authority will issue orders transferring the member to the USAR Control Group (Annual Training) with the approved tentative characterization of service shown under Additional Instructions. The reassignment orders should be delivered to the member by a member of the command and a written acknowledgment of receipt obtained. When these efforts are unsuccessful, the orders will be mailed to the member in the same manner as the initial notification letter (para 7-46).

b. If discharge is approved, the separation authority will issue orders directing discharge of the member with type of discharge certificate and characterization of service approved by the convening authority. Notification of discharge will be furnished the member as required by paragraph 1-22.

7-51. Provisions for upgrading characterization of service.

a. A member who is transferred to the IRR under this section with a tentative characterization of service of less than honorable normally will be discharged at the expiration of his statutory service obligation (ETS) with that characterization. However, he may earn a higher characterization of service at ETS (in accordance with the standards at section II, chapter 1) by--

(1) Rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of his/her statutory service obligation, but not less than 12 months; or

(2) Volunteering for and serving satisfactorily on a tour of at least 45 days active duty for training.

b. A member discharged with a characterization of service of less than honorable may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if he wishes review of his characterization of service. The act of consideration by either board does not imply that the characterization will be upgraded.

7-52. IRR members.

a. When a member of the IRR whose enlistment provides that his statutorily obligated service may be performed entirely in the IRR is identified as an unsatisfactory participant, the procedures outlined for unit members will be followed as nearly as possible.

b. A board of officers will be convened under chapter 8 to consider the circumstances and recommend appropriate disposition. When the member is retained in the IRR with a tentative characterization of service as a result of an approved board action, he will be discharged at expiration of his obligation with the same characterization unless he takes action to upgrade his characterization of service (para 7-51).

Page 8-1, paragraph 8-2 is superseded as follows:

8-2. Rights of the enlisted member. a. The enlisted member will be notified in writing of the specific allegations on which the proposed action is based, the type of separation that may be issued, the characterization of service that may be given, and the fact that action has been suspended to give the member an opportunity to exercise the rights listed in b(1) through (6) below (fig 8-1).

(1) This letter will be given to the member by his unit commander or a designated member of his command (in person), when possible. A signed receipt will be obtained. If this cannot be done, and the member's whereabouts are known or may be reasonably ascertained, the letter will be sent to the member by certified mail, Restricted Delivery, return receipt requested.

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(2) This letter will be sent to the nonunit member by the Cdr, RCPAC, using certified mail as in (1) above.

b. Rights of the enlisted member are--

(1) To consult with a consulting counsel (para 1-3b). This right may not be waived.

(2) To appear and present his case before an administrative separation board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3c); military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his own behalf.

(5) With the exception of (1) above, to waive the above rights in writing.

(6) To withdraw his waiver of his rights listed in (2), (3), and (4) above any time prior to the date the separation authority orders, directs, or approves his separation and request that his case be presented before a board of officers. The member will be required, within a reasonable time (not less than 30 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distance involved or other circumstances, a period in excess of 30 days may be allowed for the enlisted member to reply. If he elects to waive his rights, the member will personally sign a waiver (fig 8-2). His consulting counsel will advise him in accordance with paragraph 1-3b and will sign the written waiver as witness, indicating that he is a commissioned officer of the Judge Advocate General's Corps. If the member refuses to consult with a consulting counsel, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the member had consulted with a consulting counsel.

c. If a member waives his rights, the separation authority may disapprove the waiver and refer the case to an administrative separation board, or direct retention, or direct separation by reason of unsuitability or misconduct. If separation is directed, the type of certificate will be specified.

d. A member unable to appear in person before an administrative separation board by reason of confinement by civil authorities will be advised (by certified mail, Restricted Delivery, return receipt requested) of the proposed separation action, the characterization of service that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following rights.

(1) To consult by correspondence with a consulting counsel (para 1-3b). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his own expense to represent him and, in his absence, present his case before an administrative separation board.

(3) To submit statements in his own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 45 days from the date of receipt. If the reply is not received within 45 days of the date of receipt of the letter of notification, the recommendation for his separation, if approved by the separation authority, may be accomplished with the characterization of service or type of discharge determined to be appropriate.

Page 8-2, subparagraph 8-3a(4) is redesignated to read as subparagraph 8-3a(5) and a new subparagraph 8-3a(4) is added to read:

(4) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member an officer who is also a minority group member, if such officer is reasonably available. When requested, the appointed board member should normally be of the same minority group as the respondent; however, nonavailability of an officer of the same minority group will not preclude convening the board. In the event of nonavailability, the reason will be stated in the record of proceedings.

Page 8-5, subparagraph 8-8b is amended by changing the word "discharged" to read: "separated."

Page 8-5, subparagraph 8-8c is superseded as follows:

c. If a decision is made that a member should be administratively separated, section II, chapter 1 applies in determining the characterization of service and type of discharge certificate to be issued.

Page 8-5, subparagraph 8-9c(2) is amended by changing the word "discharge" to read: "separated."

Page 8-6, paragraph 8-10 is redesignated to read as subparagraph 8-10a and add a new subparagraph 8-10b to read:

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b. When the member is to be transferred to IRR for misconduct (unsatisfactory participation under the provisions of chap 7), the convening authority will direct the immediate reduction to Private E-2 or E-1, as appropriate, under the provisions of paragraph 3-38d, AR 140-158 and this regulation.

Page 8-6, subparagraph 8-11a is amended by changing the word "discharge" to read: "separation."

Page 8-6, paragraph 8-12 is superseded as follows:

8-12. Errors and discrepancies noted before accomplishing separation. The type of discharge and characterization of service directed by the convening authority may be changed only by CG, RCPAC. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case, the case will be referred for review before separation to RCPAC.

Page 8-6, subparagraph 8-13a is amended by changing "discharge" to read: "separation" and by changing "DA Form 201" to read: "MPRJ."

Page 8-6, subparagraph 8-13b is amended by changing "Fort Meade, MD" to read: "Fort George G. Meade, MD."

Page 8-7, Figure 8-1 is superseded by a new figure 8-1 as follows:

SUBJECT: Separation Under AR 135-178

TO: (Service Member)

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army)(US Army Reserve)(your USAR unit) for (Unsuitability, chap 6)(Misconduct, chap 7) under AR 135-178. If you are separated, your service may be characterized as (under honorable conditions)(under other than honorable conditions).

2. The reasons for my proposed action are:

3. I am suspending action for 45 days to give you an opportunity to exercise the following privileges:

a. To consult with consulting counsel.

Figure 8-1.

b. To appear and present your case before an administrative separation board.

c. To be represented at any hearing by appointed counsel for representation, military counsel of your own choice, if reasonably available, or civilian counsel at your own expense.

d. To submit statements in your own behalf.

e. With the exception of consulting with counsel, to waive the above rights in writing.

f. To withdraw your waiver of rights listed in b, c, and d above anytime before the date the separation authority orders, directs, or approves your separation, and request that your case be presented to a board of officers.

4. The final decision as to whether you will be separated (and, if so, whether by discharge or transfer to the IRR) and the character of service you will receive rests with the separation authority. If your service is characterized as less than honorable, you may expect to encounter substantial prejudice in civilian life and you have the right to consult with an officer of the Judge Advocate General's Corps (or civilian counsel at your own expense) before completing the inclosed acknowledgment. There is no automatic upgrading or review of the characterization of service.

a. If transferred to the IRR, it may be upgraded (in accordance with the standards of section II, chapter 1) by--

(1) Rejoining the same or another ARNG or USAR unit and participating satisfactorily for a period of 12 months; or

(2) Volunteering for and satisfactorily completing a tour of at least 45 days active duty for training. If neither of these actions is taken, the characterization of service at discharge will be the same as awarded on transfer to the IRR.

b. If you are discharged with a characterization of service which is less than honorable, you may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records for review of your characterization of service. Consideration by either board does not imply that the characterization of service will be upgraded.

Acknowledgment of this letter is required by _____ (45 days).

¹Delete as appropriate.

Figure 8-1--Continued.

Page 8-8, Figure 8-2 is redesignated as Figure 8-3 and add a new subparagraph 2c to read:

c. Unsatisfactory participation.

Page 8-8, Figure 8-2 is superseded by a new Figure 8-2 as follows:

Separation Under the Provisions of Chapter 6 or 7, AR 135-178

Data Required by the Privacy Act of 1974
(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgment from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process ARNGUS/USAR members recommended for separation under AR 135-178 because of (Unsuitability, chapter 6)(Misconduct, chapter 7)¹. If separation is approved, information is filed in the MPRJ. This personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Disclosure is voluntary. If service member refuses to provide information, separation may be accomplished using information available.

(Date member and counsel sign statement)

SUBJECT: Separation Under AR 135-178

TO: (Separation authority)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my separation for (Unsuitability, chapter 6)(Misconduct, chapter 7)¹ under AR 135-178 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.

Figure 8-2. Individual's statement.

- 2. I (request)(waive) consideration of my case by a board of officers.
- 3. I (request)(waive) personal appearance before a board of officers.
- 4. Statements in my own behalf (are)(are not) submitted herewith (incl _____).
- 5. I (request)(waive) representation by (counsel of representation) (_____)as my military counsel)(civilian counsel at my own expense).²
- 6. I understand that I may, up until the date the separation authority directs or approves my separation, withdraw this waiver and request that a board of officers hear my case.
- 7. I understand that I may expect to encounter substantial prejudice in civilian life if my service is characterized as under honorable conditions or under other than honorable conditions. (I further understand that as the result of a characterization of service of under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws. ³)
- 8. I understand that there is no automatic upgrading or review by any government agency of any characterization of service which is less than honorable. After discharge, I may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.
- 9. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my military service obligation. If so, I may upgrade my characterization of service by rejoining the same or another ARNG or USAR unit and participating satisfactorily for the remainder of my military service obligation, but not less than 12 months, or by volunteering for and satisfactorily completing a tour of at least 45 days active duty for training.⁴
- 10. I have retained a copy of this statement.

(Signature of individual)

(Typed name, SSN, grade)

Figure 8-2--Continued.

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights, _____ (name of individual), who appeared of sound mind, personally and knowingly made the choices indicated in the foregoing statement.

(Signature of counsel)

(Typed name, SSN, grade, branch)

¹Delete as appropriate.

²To be used only when the individual is in civil confinement.

³To be used if the individual has been recommended for a discharge under other than honorable conditions.

⁴To be used only when a member is recommended for separation for unsatisfactory participation under section VII, chapter 7.

Figure 8-2--Continued.

Page 8-11, add a new Figure 8-4 to read as follows:

Affidavit of Service by Mail

State of _____)
County of _____) ss

_____, being duly sworn, deposes and
(Name of individual who mailed notification)

says:

I AM THE _____ of _____
(Job Title, e.g., Personnel Officer) (Unit)

ON the _____ day of _____ 19 _____ I mailed notification dated _____,
subject: Separation Under AR 135-178, a true copy of which is attached hereto,

Figure 8-4.

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via Certified mail, Restricted Delivery, return receipt requested, to
at

(Name of Member on Orders) (Most recent address of member)
that being the last known address given to the _____
(Unit)

as the one at which official mail would be received by or forwarded to
him by depositing the same in an official depository of the US Postal
Service at _____ in a securely wrapped and

(Location of Postal Facility)
sealed US postage-and-fees-prepaid envelope addressed to him at said
address.

(Signature and Rank of Affiant)

Sworn and subscribed before me this _____ day of _____ 19____.
(Month)

(Signature and Rank of Officer Administering Oath)

Attachment

Copy of notification

The affidavit together with the receipt showing the certified mail
receipt number will be forwarded to the area commander or State adjutant
general for insertion in the member's MPRJ as an action pending document.

Figure 8-4--Continued

(AGUZ-RCC)

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for
AR, Army National Guard and Army Reserve.

Active Army: B

ARNG: A

USAR: A

ARMY REGULATION }
No. 135-178 }HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 July 1977ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL*Effective 15 August 1977*

★This regulation revises policies on separation of Army National Guard and Army Reserve enlisted personnel. Local supplementation of this regulation is permitted but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to Cdr, RCPAC, ATTN: AGUZ-RCC; other commands will furnish one copy of each to the next higher headquarters.

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*This regulation supersedes AR 135-178, 30 December 1969, including all changes.

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CHAPTER 1

GENERAL PROVISIONS

Section I. GENERAL

1-1. Scope. *a.* This regulation prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except as indicated below:

(1) Separation of enlisted members serving on active duty (AD) will be governed by appropriate Active component regulations.

(2) Separation of enlisted members serving on Initial Active Duty for Training (IADT) under the Reserve Enlistment Program of 1963 (REP-63) will be governed by appropriate Active component regulations.

(3) Enlisted members of the ARNGUS or USAR serving on 45-day ADT who demonstrate through their actions or traits that they should be discharged will be released and returned to their Reserve component unit or USAR control group for discharge action.

b. Discharge of an enlisted member from status held as a Reserve of the Army will also terminate membership in the ARNGUS or USAR. In the case of ARNGUS personnel, termination of status as a member of the ARNG of the State rests with State military authorities.

c. As used in this regulation, the masculine gender pronoun will be construed to include both male and female personnel, unless otherwise expressly so stated.

1-2. Conduct of separation process. The separation process will be conducted efficiently and in a manner which will afford each individual being separated the courtesy, recognition, and consideration deserved by the nature of service performed. Separation must be accomplished in a manner which will enhance the dignity of the individual and leave the former member with a favorable attitude toward the military service.

1-3. Explanation of terms. For the purpose of this regulation, the explanation of terms in AR 140-1 and the following will apply:

★ *a. Administrative discharge board.* A board of officers appointed by the convening authority to present findings based on evidence presented in a case and to recommend retention in the service or separation and reason therefor, and, if separation is recommended, the characterization of service to be furnished.

b. Appointed counsel for consultation. A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel, however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

c. Appointed counsel for representation. A counsel appointed to represent an individual who is being processed for separation during the course of any hearing before a board of officers. Such counsel will possess the qualifications in (1) or (2) below, as applicable. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

★(1) The appointed counsel for an individual being processed for separation which could result issuance of a characterization of service under other than honorable conditions under this regulation is a lawyer within the meaning of the Uniform Code of Military Justice (UCMJ), Article 27(b)(1), unless appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted nonlawyer counsel (app C).

(2) The appointed counsel for an individual being processed for separation by reason of unsuitability need not meet the qualifications described in (1) above; however, if he/she is not a lawyer, he/she must be a commissioned officer in the grade of first lieutenant or higher.

★*d. Convening authority.* The officer authorized by Army regulations to convene an administrative discharge board and take final action with respect to a specific type of separation.

e. Deferred obligated enlisted member. Individuals who have not served on active duty for at least 6 months (ADT is not creditable as active duty) and who are deferred from induction by reason of Reserve participation.

★*f. Separation authority.* The officer authorized to take final action with respect to specified types of separations.

g. Nonlocatee. An enlisted member who has failed to furnish an address through which personal contact is possible.

h. Reserves of the Army. Enlisted members of the ARNGUS and the USAR.

i. ROTC program. The Senior Reserve Officers' Training Corps of the Army.

j. Respondent. An enlisted member who has been notified that action has been initiated to separate the member under this regulation.

★*k. Separation.* Separation includes discharge, transfer from unit status to the Individual Ready Reserve (IRR), release from military control, and dropped from the rolls of the Army.

l. USAR enlisted members of the ROTC Program. A student who is participating in the ROTC Program and who is required to be an en-

listed member of the USAR (10 USC 2104 and 2107).

★*m. Basic training (BT).* Initial entry training which provides nonprior service personnel instruction in basic skills common to all soldiers and precedes advanced individual training (AIT).

★*. One station unit training (OSUT).* Initial entry training in which elements of BT and AIT are provided in the same unit, under one cadre throughout the total period of training. In OSUT, elements of BT and AIT are either integrated, i.e., provided simultaneously, or are nonintegrated, i.e., provided in distinct BT/AIT phases.

1-4. Statutory authority. The following provisions of law contained in title 10, USC, pertain to the separation of Reserves of the Army.

a. Section 1001 provides for regulatory directives pertaining to standards and qualifications for retention in the Reserve Components and for the disposition of those members who fail to comply with such standards and qualifications.

b. Section 1004 provides that members of the Ready Reserve not on active duty will undergo a medical examination every 4 years and execute and submit annually a certificate of physical fitness. This section also provides for the disposition of those members determined to be physically unfit for active duty.

c. Section 1162(a) provides that the Secretary of the Army will prescribe regulations for discharge of Reserves of the Army.

d. Section 1162(b) provides that Reserves of the Army who become regular or duly ordained ministers of religion may be discharged upon their request.

e. Section 1163(b) describes the circumstances under which Reserves of the Army may be dropped from the rolls of the Army.

f. Section 1163(c)(1) precludes discharge of Reserves of the Army for cause under other than honorable conditions unless such discharge is the result of an approved sentence of a court-martial or approved findings of a board of officers.

g. Section 1163(c)(2) provides that a Reserve

Board (AR 15-180) and the Army Board for Correction of Military Records (AR 15-185) will be explained concurrently with delivery of the discharge certificate under other than honorable conditions to the member. Such explanation may be furnished the member in written form.

★1-13. Periodic explanation. Commanders of troop program units will ensure that each member receives periodically an explanation of the types of discharge certificates explained herein, the basis for issuance, and the possible effects upon reenlistment and related matters. This regulation will be followed as a guide as to the extent and content of this explanation. This explanation will be given when determined by the commander to be essential. Commanders will ensure that the information is presented in a manner which will create a deep and lasting impression on each member who receives it. Failure on the part of the enlisted member to receive or to understand such explanation will not be considered as a defense in an administrative proceeding or a bar thereto. As appropriate, this explanation may be furnished to the member in written form.

★ 1-14. Limitations on administrative separations and board hearings. *a.* Administrative separation pursuant to this regulation should not be based upon conduct which has been considered at prior administrative or judicial proceedings and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separation under the provisions of this regulation are subject to the following limitations.

★(1) No member will be considered for administrative separation because of conduct which has been the subject of judicial proceedings resulting in acquittal or action having the effect thereof. Whether an action has the effect of an acquittal will be determined solely by CG, RCPAC in accordance with the exception procedure set forth in *b(3)* below.

★(2) No member will be considered for administrative separation because of conduct which has been the subject of administrative separation proceedings resulting in a final determination that the member should be retained in the service.

★(3) No member will be considered for administrative separation because of conduct which was considered by a general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate body or agency, and remains suspended.

b. The limitations set forth in *a* above are not applicable when—

(1) Substantial new evidence, fraud, or collusion is discovered, which was not known at the time of original proceedings, despite the exercise of due diligence, and which will probably produce a result significantly less favorable to the member at a new hearing.

★(2) Subsequent conduct by a member warrants considering him/her for separation. Such conduct need not independently justify the member's separation, but must be sufficiently serious to raise a question as to the member's potential for further useful military service. However, this exception does permit further consideration of conduct of which the member has been absolved in a prior final factual determination by an administrative or judicial body.

(3) An express exception has been granted by CG, RCPAC pursuant to a request by the convening authority through channels that, due to the unusual circumstances of the case, administrative separation should be accomplished.

★c. No convening authority will direct separation if a board recommends retention nor will a characterization of service of less favorable character than that recommended by the board be issued. However a convening authority may direct retention when separation is recommended, or may issue a characterization of service of a more favorable character than that recommended.

★d. A convening authority may forward a case to CG, RCPAC when a board of officers has recommended retention and he/she believes, due to the unusual circumstances of the case, that discharge, or transfer from a unit to the IRR, if appropriate, is warranted and in the Army's best interest. Prior to forwarding the case, however, the member will be advised of the convening authority's intentions in this regard, given the op-

portunity to review the proposed forwarding correspondence, and be permitted to present written matters in rebuttal thereto if desired. It is the policy of HQDA that when the proceedings of a duly constituted board of officers are proper, the recommendations of the board will be upheld unless compelling justification is provided that would warrant separation by the Secretary of the Army as an exception to policy and in the best interest of the Army. CG, RCPAC may grant separation authority. Separation, if granted, will be under honorable conditions and, if discharged, the member will be awarded an Honorable or General Discharge Certificate.

1-15. Medical evaluation. *a.* When an enlisted member is to be processed for discharge under the provisions of chapter 6 or 7 of this regulation, the member will be referred to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 for medical evaluation. The reason for considering the member for separation will be furnished the medical officer or civilian physician. The medical officer or civilian physician will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when—

(1) Specifically requested by the individual subject to separation action.

(2) Specifically requested by the commanding officer recommending separation action.

(3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.

(4) Requested by the board considering the separation action.

(5) Individual is being considered for discharge under the provisions of paragraph 6-5*b*, 6-5*d*, or 7-30*g*.

b. In all other cases, the physician performing the physical examination will accomplish the mental status evaluation. In exceptional cases in *a*(1) through (5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

c. When an individual is being considered for discharge under the provisions of paragraph 6-6*d* or 7-30*g*, the psychiatrist doing the psy-

chiatric portion of the medical evaluation will be furnished a copy of the documents on which the suspicion of homosexuality rests. In addition to SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History), the medical officer or civilian physician will prepare a report of mental status evaluation. The medical evaluation and the psychiatric study of the individual will include the following:

(1) Personal history, including, when appropriate, an opinion regarding the existence of homosexuality.

(2) Report of member's mental and physical condition in relation to the conduct under consideration, indicating whether the member meets the retention standards prescribed in chapter 3, AR 40-501, and recommend medical disposition if it is deemed appropriate.

(3) An opinion whether the member should be discharged under the provisions of this regulation or medical regulations, as appropriate, or be retained in service. If retention is recommended, and considered appropriate, a statement of the procedures likely to be of value in the member's rehabilitation may be included.

d. The medical officer or civilian physician will forward the original of the evaluation report to the member's commander. A copy will be filed in the member's health records.

e. Members being considered for discharge under the provisions of chapter 6 or 7 who refuse to undergo medical examination or psychiatric evaluation when required will be processed as follows:

(1) The member will be advised in writing that failure to undergo such examination or evaluation will be the basis for the board to proceed with its findings, and recommendations, notwithstanding the absence of such information. The member will also be advised in the same letter of notification that in the event a discharge by reason of misconduct is approved, the member may receive a discharge under other than honorable conditions.

(2) When an enlisted member has failed or refuses to comply after notification as provided in (1) above, or when the member's whereabouts are unknown or unascertained after following the actions prescribed in AR 135-133, discharge

action may be initiated without affording the privileges provided in paragraph 8-2a. Copies of communications remaining unanswered or returned unclaimed or the substance thereof with the dates and addresses will be included in the recommendation for discharge, together with a

brief description of any other means used to locate or communicate with the member concerned. These documents will be furnished to the board of officers, if a board is required, and will be made a part of the board proceedings.

Table 1-1. Types of Discharge Certificates

<i>DD Form No.</i>	<i>Type discharge</i>	<i>Character of discharge</i>
256A	Honorable	Honorable.
257A	General	Under honorable conditions.
794A	Under Other Than Honorable Conditions	Under conditions other than honorable.

Section II. PREPARATION OF DISCHARGE CERTIFICATES

1-16. General. *a. Number of copies.* Discharge certificates will be prepared in original only.

b. How prepared. Entries on discharge certificates will be typewritten or neatly printed in ink. Only black typewriter ribbon or permanent black or blue-black ink will be used.

c. Entries. Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the member's name in signature order, followed by the social security account number, grade, and "USAR." When discharge certificate is prepared by automated systems, the member's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) In the space between the lines in the lower right section of the certificate, type in capital letters, in signature order, the name of the commanding officer or designated officer, and in upper case letters, centered below the name, the officer's grade and branch. The desig-

nated officer will sign the discharge certificate in the space provided.

1-17. Amendments and corrections to discharge certificates. The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of errors therein will be made on written application of the individual to CG, RCPAC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the CG, RCPAC on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) (AR 15-180).

1-18. Orders. Orders directing discharge will be issued as prescribed in AR 310-10.

1-19. Notification of discharge to Selective Service System. (Not Used.)

1-20. Records disposition. Personnel records of discharged personnel will be disposed of in accordance with instructions contained in AR 635-10 or other appropriate regulations under which discharged.

Section IV. EFFECTIVE DATE OF DISCHARGE

1-21. Effective date of discharge. *a.* The effective date of discharge will be at 2400 hours of the date of notice of discharge unless—

(1) Discharged by reason of change of military status, in which case the effective date will be the day prior to the date of the member's

entry into new military status (see paras 3-2, 4-4, or 4-5a).

(2) Discharged under the provisions of paragraph 3-10, in which case the effective date will be the last day of the month during which maximum allowable age is attained.

(3) Otherwise provided by law.

b. Provided there is no evidence of fraud or manifest error and the member receives actual or constructive delivery, orders discharging a member from the USAR will not be revoked or effective date of separation changed after the effective date of discharge unless such revocation is in the form of written confirmation of oral orders actually issued prior to the effective date of separation. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation.

★c. After effective date of discharge, orders may be amended by the separation authority only to correct administrative errors, such as errors concerning rank, social security account number, or misspelled name.

1-22. Notification of discharge. a. Except as provided in paragraph 1-21, discharge is effective at the time of notice to the member of discharge.

b. Notice of discharge may be either—

(1) Actual, as by delivery to the member of the discharge certificate, or

★(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be dis-

charged. Receipt by the member's organization at the proper station of the order directing his discharge will be deemed sufficient notice. The date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to the Cdr, RCPAC, ATTN: AGUZ-RCM-R, 9700 Page Blvd., St. Louis, MO 63132. If the documents mailed to the individual are returned unclaimed or undeliverable, they will be destroyed.

1-23. Mentally incompetent. The effective date of discharge of a mentally incompetent member may also be constructive, as when the member has been placed in an institution (AR 635-40).

1-24. Nonlocatee or in hands of civil authorities. Discharge of an enlisted member who has been convicted by civil authority is governed by chapter 7. However, when discharge under the provisions of chapter 6, or section IV or V of chapter 7 has been ordered by competent authority, and the member is a nonlocatee or is absent in the hands of civil authorities subsequent to the date discharge is approved by the appropriate authority or subsequent to the issuance of the discharge orders, the discharge may be executed notwithstanding such absence.

★Section V. TRANSFER TO THE INDIVIDUAL READY RESERVE (IRR) IN LIEU OF DISCHARGE

1-25. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons prior to completion of their military service obligation will be screened to ensure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their mili-

tary service obligation. These criteria are based upon the probability that, under conditions of full mobilization, such members would be retained in the Service.

a. Expeditious Discharge Program (sec VII, chap. 4).

b. Dependency (sec II, chap. 5).

c. Hardship (sec II, chap. 5).

d. Inability to perform prescribed duties due to parenthood (para 4-11.1).

e. Pregnancy (para 4-11b.).

f. Secretarial authority (para 4-9).

g. Sole surviving sons/daughters and surviving family members (sec V, chap. 4).

h. Unsuitability—apathy (para 6-5c).

1-26. Applicability. These policies apply to ARNGUS and USAR enlisted personnel to whom the referenced discharge policies apply.

1-27. Character of service. a. The service of members who are transferred to the IRR under the programs cited in paragraph 1-25 above will be characterized as honorable or under honorable conditions, based upon the member's behavior and performance of duty in the unit, in the same manner as set forth in paragraph 1-10b(1) and (2) for type of discharge.

b. Reassignment orders transferring the member to the appropriate control group of the IRR will show the character of service under Additional Instructions.

CHAPTER 3 DISCHARGE OF ENLISTED MEMBERS NOT QUALIFIED FOR RETENTION

Section I. CATEGORIES FOR WHICH DISCHARGE IS AUTHORIZED

3-1. Completion of terms of enlistment or period of obligated service. ★*a.* The period of military service required for all enlisted members of the Army will be in accordance with applicable laws. Periods for which enlistment is authorized are set forth in AR 140-111. Upon expiration of term of enlistment or period of obligated service, the enlisted member will be discharged. As an exception, unsatisfactory participants who are within 3 months of completing their statutory obligation may be retained and discharged under this paragraph at ETS if the commander determines that involuntary order to 45 days of active duty training is not appropriate (para 6-2b and 6-11a(2), AR 135-91).

b. A member retired under the provisions of 10 USC 3914 may be discharged from the Retired Reserve upon the member's request and upon completion of 30 years active and inactive service.

c. No enlisted person may be held in service beyond the normal expiration of a term of service unless expiration of term of service is extended by law. When through administrative error an enlisted member is not discharged on the actual date of completion of term of enlistment or date of completion of obligated service, or as provided in paragraph 1-21a(1) and (3), a remark will be included in the "Remarks" section of the individual's Enlisted Qualification Record (DA Form 2, 2-1) as follows: "Retained beyond normal discharge date for the convenience of the Government."

3-2. Appointment as a commissioned or warrant officer. An enlisted member will be discharged upon acceptance of an appointment as a--

a. Commissioned or warrant officer of any of the Armed Forces, or Reserve Components thereof. A formal discharge certificate will not be issued when member is discharged to accept appointment as a commissioned or warrant officer in the ARNG. Termination of enlistment will be made in accordance with paragraph 4-5.

b. Commissioned officer of the Public Health Service.

c. Commissioned officer of the Environmental Science Services Administration.

3-3. Nonavailability of member of Standby Reserve. An enlisted member of the Standby Reserve will be discharged when 12 months after general mobilization the member remains unavailable for active duty and the member's case has been reviewed and discharge determined to be appropriate because of extended nonavailability.

3-4. Medically unfit for retention. *a.* Discharge will be accomplished when it has been determined (AR 40-501) that an enlisted member is no longer qualified for retention by reason of medical unfitness (AR 140-120) unless the member requests and is--

(1) Granted a waiver under AR 140-120.

(2) Eligible for transfer to the Retired Reserve (AR 140-10).

b. Disposition of members on active duty or ADT under the REP-63 Program who were not medically qualified under procurement medical fitness standards at the time of initial enlistment will be accomplished as set forth in paragraph 4-10 of this regulation, and paragraph 6-6, AR 40-3.

c. When it has been determined that a hospitalized member is no longer medically qualified for retention (chap. 3, AR 40-501), and when a period of ADT has or will expire while the member is still a patient, the following, as appropriate, will apply:

★(1) Paragraph 1-5, AR 135-200 for amendment, attachment, or relief from attachment orders.

(2) AR 635-40 if on ADT pursuant to orders which specify a period of more than 30 days, other than those on ADT for 45 days pursuant to 10 USC 270(B) whose unfitness is due to disease.

(3) Paragraph 6-8, AR 40-3 and AR 635-40 if on ADT pursuant to orders which specify a period of 30 days or less and those on ADT for 45 days pursuant to 10 USC 270(b) whose unfitness is due to disease.

(4) If appropriate, a copy of amending or attaching orders, personnel records, or copies of board proceedings will be forwarded to the responsible headquarters having jurisdictional control over the member's records where necessary administrative actions will be accomplished.

3-5. For security reasons. The provisions of AR 604-10 apply.

3-6. Failure or refusal of nonobligated enlisted members to accept or comply with official orders or correspondence or to satisfactorily participate in required training. USAR nonobligated enlisted members will be discharged when—

★*a.* They fail to participate satisfactorily in required training (AR 135-91) or fail to earn sufficient retirement points (AR 140-10).

b. They refuse or fail to reply to or accept official correspondence; comply with official travel orders; or to complete and return forms required by pertinent regulations.

3-7. Noncitizens who are members of the USAR. A noncitizen who is a member of the USAR will be discharged under honorable conditions and given an Honorable Discharge Certificate (DD Form 256A) provided the member's military record so indicates, and upon qualifying under the following conditions:

a. At the time of release from active duty, the member fails or refuses to give a permanent mailing address within the United States or its territories, but gives only an address in a foreign country; or

b. Leaves the United States for permanent residence in a foreign country; or

c. Visits a foreign country of which the individual is a national for a continuous period of 6 months or more.

3-8. Unacceptable for induction. (Not Used.)

3-9. Ministers of religion and divinity students. An enlisted member may request discharge upon entering full-time training to become, or to engage in full-time employment as, a regular or duly ordained minister of religion.

a. A minister of religion is classified as either a duly ordained minister of religion or a regular minister of religion as follows:

(1) *Duly ordained minister of religion.* A person who has been ordained in accordance with the ceremonial ritual or discipline of a church, religious sect, or organization, established on the basis of the community's doctrine and practices of a religious

character, to preach and teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who, as a regular customary vocation, preaches and teaches the principles of religion and administers the ordinances of worship as embodied in the creed or principles of such church, sect, or organization.

(2) *Regular minister of religion.* A person who, as a customary vocation, preaches and teaches the principles of the religion of a church, religious sect, or an organization of which the individual is a member, without having been formally ordained as a minister of religion but who is recognized by such church, sect, or organization as a regular minister.

b. Requests will be substantiated by appropriate documentary evidence as follows:

(1) Statement from the appropriate authority of the church, religious sect, or organization that the enlisted member has met the requirements for recognition and has been appointed a regular or duly ordained minister of religion and is employed full-time in a religious occupation (*a* above).

(2) Statement from appropriate authority of the religious order that as a divinity student the military member—

(*a*) Is fully qualified and acceptable for further religious training.

(*b*) Must be separated from military status for further theological education or processing into the religious order or organization.

(*c*) If separated, will be eligible for ordination or recognition as a minister on or about a specified date.

(3) Statement from the seminary or other educational institution in which the religious training is now or will be received that the individual is now or will be, concurrent with discharge, a full-time divinity student preparing for the ministry.

3-10. Attainment of maximum allowable age. An enlisted member who attains age 60 as set forth in AR 140-10, unless granted a waiver, will be discharged or, if eligible and the member applies, be transferred to the Retired Reserve.

3-11. Approved exemption from involuntary order to active duty. An enlisted member will be discharged upon an approved recommendation of a board of officers appointed under the provisions of AR 601-25 that the member be exempt from reporting for involuntary call to active duty under emergency or mobilization circumstances.

Section II. SEPARATION FOR MINORITY

3-12. Separation because of minority. This section sets forth the criteria and procedures and

CHAPTER 4

**★SEPARATION OF ENLISTED MEMBERS OF THE USAR
FOR THE CONVENIENCE OF THE GOVERNMENT**

Section I. GENERAL

★4-1. Scope. This chapter sets forth the conditions under which enlisted members of the USAR may be separated for the convenience of the Government. In addition, only Section VII is applicable to enlisted members of the ARNG.

★4-2. Authority. The separation of enlisted members of the USAR for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by

this authority. Except as delegated by paragraph 1-6 or by special Department of the Army directives, the separation of any member of the USAR for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general characterization of service as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

★Section II. CATEGORIES FOR WHICH SEPARATION IS AUTHORIZED

4-3. Reduction in authorized strength. A reduction in authorized strength by an official order applicable to all members of a class of personnel so specified in the order.

4-4. Discharge for immediate reenlistment. Qualified enlisted members may be discharged to permit their reenlistment in accordance with AR 140-111, provided they apply for and are qualified for reenlistment. A formal discharge certificate is not required. Discharge may be accomplished—

a. During the last 90 days of current enlistment or period of obligated service for the purpose of immediate reenlistment in the USAR.

b. For the purpose of immediate reenlistment in the USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of immediate reenlistment in USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of reenlisting in the USAR in order to qualify for enrollment in the Advanced Course or the Scholarship Assistance Program, Senior Army ROTC Program.

d. Special instructions contained in the discharge orders will read as follows:

Your enlistment in the USAR on _____ was terminated on the effective date of this order as a result of your immediate reenlistment. No formal discharge will be issued by reason of this reenlistment.

4-5. Enlistment or appointment in any component of the Armed Forces. *a.* An enlisted member will be discharged upon enlistment in any component of the Armed Forces (other than appointment as a cadet or midshipman to one of the service academies). A formal discharge certificate will not be issued when a member is discharged to—

(1) Enlist in the Regular Army.

(2) Enlist in the Air Force or Navy Reserve.

(3) Enlist in the Army National Guard.

(4) Accept appointment as a commissioned or warrant officer.

b. Discharge to enlist in a regular component of any of the Armed Forces of the United States other than the Army is not authorized for enlisted members within the 60-day period im-

mediately preceding the effective date of order to active duty or ADT other than AT or during the performance of active duty, ADT, or AT.

c. A nonobligated individual who enlisted or reenlisted for the USAR dual status technician program will, upon application, be discharged—

(1) Upon failure to be employed as a technician.

(2) Upon separation from employment as a technician.

★d. Additional instructions contained in orders evidencing an individual's discharge under a(1) through (4) above to accept a different military status will be in the format below—

Additional Instructions (use as appropriate);

Your enlistment in the USAR on (date) was terminated on (date), preceding date of enlistment in (Regular Army), (ARNGUS) or in the (Air Force) or (Navy) Reserve. No formal discharge will be issued by reason of this termination.

Your enlistment in the USAR on (date) was terminated on (date), preceding date of appointment as a (commissioned) or (warrant officer) in any component of the Armed Forces. No formal discharge will be issued by reason of this termination.

★4-6. Women enlisted specifically for WAC College Junior Program. (Rescinded.)

4-7. USAR members enrolled in advanced course or receiving ROTC scholarship assistance. A USAR member enrolled in the advanced course or receiving scholarship assistance who leaves school or is disenrolled from the ROTC Program for reasons other than to evade accepting a commission or to willfully avoid the execution of any other aspect of the ROTC contract will be discharged unless the member voluntarily locates and accepts assignment with a USAR troop program unit within 30 days subsequent to leaving school or after being disenrolled from the ROTC.

4-7.1. ROTC/selected reserve simultaneous membership program (SMP). Individuals who enlist directly for participation in the SMP and who apply but are not accepted for enrollment in

the ROTC advanced course, may be discharged from the USAR at their request.

4-8. Failure or inability to obtain parental consent to enter into the Senior ROTC Program Advanced Training Phase. (Not Used.)

★4-9. For other good and sufficient reasons.

An enlisted member may be separated for other good and sufficient reasons when so determined by HQDA. Such separation will be as specified in a or b below.

a. Except as indicated in b below, members who *have* successfully completed BT or 8 weeks of OSUT, *have not* completed their military service obligation, and whose separation is approved by HQDA for reasons other than those in b below will be transferred to the IRR under the provisions of AR 140-10.

b. Members who *have not* completed BT or 8 weeks of OSUT, those who *have* completed their military service obligation, those whose discharge is approved by HQDA in lieu of retention based upon sustaining the recommendation of a convening authority (when a board of officers convened to consider discharging the member for misconduct or unsuitability recommends retention), and others as determined by HQDA, will be discharged (para 1-14c and d).

4-10. Discharge of members who did not meet the medical fitness standards. a. Commanders are authorized to discharge members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment, or who become medically disqualified under these standards prior to entry on IADT. Eligibility for discharge will be governed by the following:

(1) A medical finding of the Staff Surgeon that the member has a medical condition which—

(a) Would have permanently disqualified the member from entry in the military service had it been detected, or had it existed, at the time of enlistment.

(b) Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

(2) A member found to meet the requirements of (1) above will be discharged on the ear-

liest practicable date following such determination, and prior to entry on initial tour of ADT. As an exception, a member who elects to complete the period of service for which enlisted will not be discharged under this paragraph. Such member will be required to sign a statement acknowledging that he has been informed of his eligibility for separation but elects to complete his period of service. The statement will become a permanent part of the member's personnel records.

b. The provisions of paragraph 5-7, AR 635-200 apply to members on active duty or initial active duty for training at the time such medical disqualification is discovered and/or determined.

c. Members who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active duty training, or inactive duty training will be processed as specified in chapter 8, AR 635-40.

d. This paragraph is not to be used as a substitute for unsuitability separations in cases of character and behavior disorders. Such cases will be processed under the provisions of chapter 6 of this regulation.

4-11. Marriage, pregnancy and parenthood.

★a. *Marriage.* An enlisted member will not be either voluntarily or involuntarily, separated, solely by reason of marriage.

★b. *Pregnancy.*

(1) When it has been determined that an enlisted woman was pregnant upon enlistment, she will be involuntarily discharged under the provisions of paragraph 4-20a(5).

(2) When it has been determined that a member became pregnant subsequent to enlistment, she will be given the opportunity to elect one of the options applicable to her under the provisions of paragraph 4-8, AR 135-91. If she is eligible for and elects separation, action will be taken as follows:

(3) A member who *has* successfully completed BT or 8 weeks of OSUT and who *has not* completed her military service obligation will be transferred to the IRR under the provisions of section V, chapter 1, and AR 140-10.

(b) A member who *has not* completed BT or 8 weeks of OSUT or *has* completed her mili-

tary service obligation will be discharged or transferred to the Retired Reserve, if eligible.

(3) If the woman incurred an active duty obligation as a result of a federally subsidized program, she is ineligible for separation under the provisions of this paragraph unless the required period of active duty has been completed.

(4) Women who request separation for pregnancy may request a specific date, which will not be later than 30 days prior to the expected date of delivery. This date may be accelerated by the separation authority if the applicant cannot fully meet the performance requirements of her duty MOS.

(5) If, before separation is accomplished, a medical doctor determines that her pregnancy has terminated for any reason, the authority for separation contained in this section no longer applies.

(6) Enlisted women who remain in an active status after confirmation of pregnancy will be granted leave of absence as outlined in paragraph 4-8, AR 135-91.

★c. *Parenthood.* Members will not be discharged either voluntarily or involuntarily solely by reason of parenthood. This does not preclude the consideration of appropriate cases under the provisions of paragraph 4-11.1 or chapter 5.

★4-11.1. **Inability to perform prescribed duties due to parenthood.** a. *General.* This paragraph prescribed procedures for separation because of inability to perform prescribed duties, repetitive absences from scheduled training assemblies or failure to attend annual training as a result of parenthood.

b. *Procedures.* When it has been determined that separation is appropriate for any of the reasons indicated in a above, the member will be notified in writing by his immediate commander that his separation has been recommended pursuant to this paragraph and will be given the specific basis for the proposed action. If the characterization of service "under honorable conditions" is recommended, the member will be allowed not less than 10 days to consult with an appointed counsel for consultation (para 1-3b).

c. *Separation authority.* Commanders specified in paragraph 1-6 are authorized to order

separation under this paragraph when it is determined that the member has been unable to perform prescribed duties for one of the reasons indicated in *a* above.

(1) Members who *have* successfully completed BT or 8 weeks of OSUT and *have not* completed their MSO will be transferred to the IRR under the provisions of section V, chapter 1 and AR 140-10.

(2) Members who *have not* completed BT or

8 weeks of OSUT and those who *do not have* a military service obligation will be discharged.

d. Type of separation. The service of members separated under the provisions of this paragraph will be characterized as honorable or under honorable conditions, as appropriate (sec II, chap. 1).

4-12. Bona fide conscientious objectors. See AR 600-43.

Section III. ERRONEOUS ENLISTMENTS/EXTENSIONS

4-13. Erroneous enlistment/extension. ★a. When it is discovered that an individual's enlistment/extension is erroneous because he/she failed to meet the qualifications for enlistment or reenlistment (AR 140-111) and no intent to obtain enlistment/extension by fraud is evident, the unit commander will initiate action to obtain authority to retain the member, to discharge the member for erroneous enlistment/extension, or to void the enlistment/extension, as appropriate, under the provisions of this section. The unit commander will forward the case through channels to the appropriate separation authority listed in paragraph 1-6*a* with the following information:

(1) Facts relating to and circumstances surrounding the erroneous enlistment/extension.

(2) The desire of the member regarding retention or discharge.

(3) A statement by the immediate commander as to the member's conduct, efficiency, and overall value to the Army Reserve.

(4) A specific recommendation for retention or discharge, and the reasons therefor, by each commander in the chain of command.

b. The commander specified in paragraph 1-6*a* will take action as follows:

★(1) Direct discharge in all cases in which the disqualification was nonwaiverable. In an exceptionally meritorious case when, in the judgment of the commander having discharge authority, the retention of the member would definitely be in the best interest of the Govern-

ment, he may direct retention. The following statement will be entered in Item 27 of the member's Personnel Qualification Record (DA Form 2-1): "Discharge action based on erroneous enlistment/extension is waived and retention is authorized by _____."

The original copy of the approved document will be forwarded to Cdr, RCPAC, ATTN: AGUZ-RMC-R for inclusion in the member's OMPF.

(2) Direct discharge in those cases in which the disqualification was waiverable but separation is deemed to be in the best interest of the Government.

(3) Direct retention in those cases in which the disqualification was waiverable and retention is deemed to be in the best interest of the Government and the individual. The member's Personnel Qualification Record will be annotated and the original copy of the approved document will be processed as in (1) above.

c. This section is not applicable to individuals eligible for separation under the provisions of section II, chapter 3, or paragraph 4-10 of this regulation and individuals not meeting medical fitness standards for retention (AR 635-40).

★*d.* Upon establishment that an enlistment is erroneous and the individual is a nonlocatee or in the hands of civil authorities, the enlistment will be voided. The separation authority will issue orders releasing the individual from military control by reason of a void enlistment (Format 505, AR 310-10). No discharge certificate will be issued. The following entry will be made in Item 27, DA Form 2-1 (Enlisted Qualification Rec-

ord): "Released from military control by virtue of a void enlistment (cite order number and issuing headquarters)." A copy of the order releasing the individual from military control will be filed as a permanent document in his Military

Personnel Records Jacket and Official Military Personnel File.

4-14. Pay and allowances. For pay and allowances, see table 1-4-1, DODPM.

Section IV. NATIONAL OR COMMUNITY HEALTH, SAFETY, OR INTEREST

4-15. National or community health, safety, or interest. An enlisted member may apply for discharge on the basis of importance to national or community health, safety, or interest in those instances where the critical need for the services of an enlisted member in a civilian capacity from the viewpoint of health, safety, or general welfare outweighs the need of the Nation for the individual in an active military status were he involuntarily ordered to active duty. Normally, favorable action on requests for discharge under the provisions of this policy will be made only when it is clearly determined that the request meets each of the following requirements—

a. The application is motivated by a critical national or community interest and is not primarily for the personal benefit of the applicant.

b. The applicant's importance to the national or community health, safety, or interest in a civilian capacity has become significantly greater than it was at the time the individual became a member of the Reserves by reason of an unusual change in the employer's requirements for the member's services. This may be substantiated by, but is not necessarily limited to such factors as—

(1) A substantial increase in defense supporting activity.

(2) A significant reduction in effectiveness of the employer's defense supporting activity because of the loss of personnel capable of performing the functions of the applicant and the employer's inability to replace such personnel.

c. The applicant is not presently assigned to a critical MOS listed in AR 135-133, or, if assigned to a critical MOS, a qualified replacement is available.

4-16. Evidence required. *a.* All applications will contain the following information and material:

(1) Name of firm or agency or description of individual enterprise with which the member is connected.

(2) Product manufactured or service performed.

(3) Title and description of position filled.

(4) Applicant's connection with the activity prior to enlistment.

(5) Letters, affidavits, or other documentation from responsible officials of the firm, corporation, agency, or State substantiating the facts given above and setting forth the need for the services of the applicant.

b. Applications for discharge will be submitted as follows:

(1) An enlisted member of a USAR unit will submit his/her application to his/her unit commander who will immediately forward it, together with a recommendation and the member's records, through channels to the appropriate area commander for final action.

★(2) A nonunit member will submit application to Cdr, RCPAC, ATTN: AGUZ-RCA for final action.

Section V. SOLE SURVIVING SONS/DAUGHTERS

★**4-17. Separation of sole surviving sons/daughters.** *a.* Commanders specified in paragraph 1-6 are authorized upon approval of an application from an enlisted member who has been properly identified as a sole surviving son/

daughter to order separation for the convenience of the Government.

b. For the purpose of this section, a "sole surviving son/daughter" is defined as the only re-

maining son/daughter in a family in which a parent or one or more sons or daughters—

- (1) Was killed in action; or
- (2) Died as a result of wounds, accident, or disease incurred in line of duty while serving in the Armed Forces; or
- (3) Is in a captured or missing in action status as a result of such service; or
- (4) is permanently 100 percent physically or mentally disabled as determined by the Veterans Administration or one of the military services, is hospitalized on a continuing basis, and is not gainfully employed because of such disability.

Note: Neither the acquisition nor retention of sole surviving son status is dependent upon the existence of any other living family member (Supreme Court Decision, *McKart vs US*, 395 U.S. 185 (1969)). Thus the continued existence of a family unit is not required as a prerequisite for qualification as a "sole surviving son." The same is true for qualification as a "sole surviving daughter." This also applies to the existence of a sole surviving son having one or more surviving sisters, or to a sole surviving daughter having one or more surviving brothers.

★*c.* Members who are identified as sole surviving sons/daughters on the basis of 100 percent mental or physical disability of a parent or one or more sons or daughters and who have not served on active duty, exclusive of periods of ADT and AT for 6 months or more, are not eligible for separation under this paragraph.

★*d.* To be eligible to apply for separation the member must have become a sole surviving son/daughter subsequent to incurring his current statutory military service obligation or his current period of enlistment.

e. The date an enlisted member becomes a sole surviving son/daughter will be determined based upon the date of death or determination of 100 percent disability established by the Veterans' Administration or the military service, whichever is appropriate.

f. All applications submitted will include the following evidence:

(1) Name, grade, service number (when appropriate), social security account number, branch of service (i.e., Army, Navy, Marine Corps, Coast Guard, or Air Force), relationship, and date of death or disability of the family member upon which request is based.

(2) Veterans' Administration Claim Number, if appropriate.

(3) Name, age, and sex of other family members.

★*g.* Commanders authorized to approve separation are also authorized to verify status of deceased or disabled family members by forwarding a request, including name, grade, service number (when appropriate), social security number, approximate inclusive dates of service, and branch of the Armed Forces to the Records Center as indicated in appendix B.

★*h.* Separation under this section will be as follows:

(1) Members who *have* successfully completed BT or 8 weeks of OSUT and *have not* completed their military service obligation will be transferred to the IRR under the provisions of AR 140-10.

(2) Members who *have not* completed BT or 8 weeks of OSUT, and those who *have* completed their military service obligation will be discharged.

★**4-18. When separation is not authorized.** Separation under this section is not authorized—

a. During a period of war or national emergency declared by the Congress.

★*b.* A member who, having been advised of the provisions of this section, enlists, reenlists, or otherwise voluntarily extends the period of enlistment subsequent to the date of notification of the family casualty on which the status as a sole surviving son/daughter is based will have automatically waived his rights for separation.

Section VI. PRE-IADT DISCHARGE PROGRAM

4-19. Purpose. This section establishes the criteria for discharging nonprior service male and female members who are identified by their

unit commander prior to their entry on IADT as unsuitable for further service. This program is designed to improve overall quality and to re-

dorsement and statements or rebuttal through channels to the State adjutant general for ARNG members or for USAR members to the appropriate area commander for final decision.

e. Upon receipt of correspondence from the immediate commanders, authorities indicated in (b) above will take the following action.

(1) If retention is not approved, accomplish the member's discharge. ARNG members will be discharged from the ARNG and as a Reserve of the Army in accordance with NGR 600-200. USAR members will be discharged under the provisions of this section. The IADT reservation will be cancelled if it was not previously done.

(2) When retention is approved, return the correspondence to the immediate commander advising him of the decision.

Section VII. EXPEDITIOUS DISCHARGE PROGRAM (EDP)

★4-23. **General.** This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) because of existence of one or more of the following conditions, may be separated:

- a.* Poor attitude.
- b.* Lack of motivation
- c.* Lack of self-discipline.
- d.* Inability to adapt socially or emotionally.

e. Failure to participate satisfactorily (see limitation in para. 4-26a(2)).

4-24. **Scope.** This policy applies to all nonprior service ARNG and USAR troop program unit enlisted personnel who have completed at least six months but not more than 36 months of continuous unit service on their first enlistment at the time the member's immediate commander formally recommends separation under this program. For the purpose of this policy, a break in unit service (assignment to the inactive Army National Guard or USAR control group) of not more than 90 days does not interrupt continuity of unit service. This program does not apply to ARNG or USAR members on any type of FTTD or ADT.

f. The immediate commander upon receipt of the final decision will advise the member of the decision and if the member is retained, obtain a new IADT reservation if the previous one has been cancelled.

4-21. **Limitations.** It is contrary to the intent of this program for commanders to use this policy as a substitute for appropriate administrative action under paragraphs 4-10 and 4-13, or chapters 6, 7, and 9.

★4-22. **Type of discharge.** Members discharged under this program will be furnished an honorable discharge certificate.

★4-25. **Purpose.** This policy provides for the expeditious elimination of substandard, non-productive soldiers before board action or involuntary active duty becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative discharge boards by providing a means to separate such personnel expeditiously before they progress to the point where involuntary active duty or active duty for training, or elimination by board action becomes necessary. The program is not intended to be a panacea for solving normal personnel problems, or a relief from the professional obligation of commanders to exercise effective leadership and exert a sincere effort to produce good soldiers from seemingly poor ones.

4-26. **Limitations.** It is contrary to the intent of this policy for commanders to—

a. Use this policy as a substitute for the following appropriate administrative actions—

(1) Paragraphs 3-1; 4-10; 4-13; section II, chapter 3; or chapters 5, 6, or 7 of this regulation, or equivalent provision of NGR 600-200.

(2) AR 135-91 after a member has accumulated more than 8 unexcused absences within one year (12 consecutive months).

(3) Processing through medical channels because of physical or mental defects.

b. Make arbitrary or capricious use of this authority.

c. Force separation of members who—

- (1) Possess a potential for rehabilitation.
- (2) Decline separation under this policy.

★*d.* Effect separation of members who have not been evaluated for a period of at least 3 months in their current unit of assignment.

4-27. Identification and screening. *a.* Individual characteristics that will assist in identifying members who should not be retained include, but are not limited to, the following:

- (1) Quitter.
- (2) Hostility toward the Army.
- (3) Inability to accept instructions or directions.
- (4) Clearly substandard performance.
- (5) Evidence of social/emotional maladjustment.
- (6) Lack of cooperation with peers or superiors.

★(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least 3, but not more than 8, unexcused absences from unit training assemblies within a one-year period. In addition to this factor, one or more of the other characteristics must also apply to the member. The purpose of this requirement is to assure that a member who has been performing satisfactorily is not recommended for separation under this program solely on the basis of 8 or fewer unexcused absences, particularly if the reason for such absences bordered on being excusable. (Also, see para 4-26a(2).)

★*b.* Personnel identified as vulnerable for separation under this program are those who obviously cannot adjust to the ARNG or USAR unit environment.

★**4-28. Counseling and rehabilitation.** Commanders will ensure that before recommending
4-10

separation under this section, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action against him/her, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reason for counseling.

(2) The fact that continued behavior of similar nature may result in initiating action under this section or other provisions of this regulation.

★(3) The type of separation that may be accomplished, the characterization of service that may be furnished, and the effect of each type action if taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken—

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months' duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), the commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers.

(1) The counseling required by *a* above may not be waived.

★(2) The rehabilitation required by *b* above may be waived by the separation authority when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems or a hazard to the unit's mission or to the member.

★**4-29. Standards and criteria.** ★*a.* No member will be separated under this program unless he/she voluntarily consents to the proposed separation. The member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

b. The service of members separated under EDP may be characterized as honorable or under

honorable conditions, as appropriate (para 1-10).

c. No member's service will be characterized as under honorable conditions under this section unless he is given the opportunity to consult with an appointed counsel for consultation (para 1-3*b*).

d. No member will be given a characterization of service under honorable conditions by the separation authority unless it was recommended by the commander initiating the recommendation for separation. In cases in which the separation authority disagrees with the recommendation for an honorable characterization of service, the case will be returned to the initiating commander with comment to that effect. The initiating commander may initiate new proceedings under this section or take other appropriate action.

e. Separation authorities may characterize service as honorable if an under honorable conditions characterize service as honorable if an under honorable conditions characterization of service is recommended by the initiating commander.

★*f.* When a member being processed under this program moves and leaves no forwarding address, or is otherwise nonlocatable, he/she may be separated provided the relocation occurred subsequent to the date he/she consented to the separation and the date the initiating commander formally recommended approval of the case. This provision does not apply to members absent in civil confinement or for whom civil trial or charges are pending (see para 4-26*a*). Separation under this section will be approved by the separation authority before executed.

★*g.* Separation should be accomplished within 15 days following approval by the separation authority.

★4-30. **Procedures.** *a.* The member's immediate commander will personally notify the member in writing of the proposed separation, the reasons therefor, and the effect of the separation (See fig. 4-2 for notification letter, which is authorized for local reproduction.) In paragraph 2 of the letter covering reasons for the proposed action, state specific facts and incidents which are the basis for this action. The

date in paragraph 7 should allow the member at least 10 days to consult with counsel when a characterization of service under honorable conditions is recommended.

b. Acknowledgment by the affected member will be in the form of an indorsement returning the notification to his/her immediate commander. (See fig. 4-3 for the form indorsement, also authorized for local reproduction.) Necessary administrative support will be made available to assist the member in preparing the indorsement.

★*c.* If the member voluntarily consents to the proposed separation, the immediate commander will forward his letter and the acknowledgement, with the member's MPRJ, through channels to the commander exercising separation authority. The immediate commander's indorsement should include all pertinent information to justify the recommendation for separation, such as the number of times the member has been counseled and circumstances of contributing events. Intermediate commanders in the chain of command will forward recommendations for discharge with a recommendation for approval or disapproval. Each intermediate commander will verify that the recommendation is not in conflict with any provision of this section. The separation authority will ensure that the member has been fully counseled, that the recommendation is fully supported, and that such action is not contrary to any provisions of this program. Reassignment to another ARNG or USAR unit will be considered if warranted by the circumstances. If other unit assignments are not appropriate, and the member is considered to have mobilization potential, he will be transferred to the IRR (see V, Chap. 1 and AR 140-10).

★*s.* If the member does not consent to the separation, the immediate commander will not forward the recommendation to the separation authority, but will close the case and take other appropriate action.

★*e.* The separation authority may disapprove a recommendation for separation under this paragraph and return the case to the initiating commander with instructions for other disposition.

★*f.* Disposition of documents generated in the

course of processing such cases will be as follows:

(1) When discharge or transfer to IRR is approved, the notification letter, acknowledgment indorsement, and each forwarding indorsement, including the discharge authority's approval, will be made a permanent part of the MPRJ.

(2) When the member does not consent to such separation, or the recommended separation is not approved, the notification letter and acknowledgment indorsement, the forwarding indorsements and separation authority's disapproval will be retained in the member's MPRJ until he/she is reassigned or until ETS, at which time they will be destroyed.

★4-31. Separation authority. Authority to separate members under provisions of this section is delegated to State adjutants general for ARNG members, and to MUSARC commanders for members of the USAR. This authority may

not be further delegated. Separation will be as specified in *a* and *b* below.

★a. Except as indicated in *b* below, all members separated under this section will be transferred to the IRR under the provisions of AR 140-10 to complete their military service obligation.

★b. Members whom the separation authority determines, for some specific reason, have *no* potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of a situation requiring a full mobilization and the positive motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years in age. Also, see paragraph 1-25.

★4-32. Orders. The separation approving authority will issue orders directing separation under provisions of this section.

SUBJECT:

TO;

1. I am initiating action to separate you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178 (Expeditious Discharge Program). I am recommending that your service be characterized as (Honorable) (Under Honorable Conditions).

2. The reasons for my proposed actions are:

3. The final decision as to whether you will be separated and, if so, whether by discharge or transfer to the IRR and the character of service you will receive rests with the separation authority. If your service is characterized as Under Honorable Conditions, you may expect to encounter substantial prejudice in civilian life, and you have the right to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing the acknowledgment.¹

4. You have the right to decline this separation. If you so decline and your subsequent conduct indicates that such action is warranted, you may be subject to administrative separation procedures under other provisions of law or regulations.

5. You also have the right to submit a statement in your behalf, or you may waive this right.

6. You will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of your separation date.

7. There is no automatic upgrading nor review by any government agency of any discharge certificate/characterization of service which is Under Honorable Conditions.

8. You may be transferred to the Individual Ready Reserve (IRR) to complete your obligation.

9. Complete the attached acknowledgment and return it by _____

_____ (Signature) _____

_____ Name (Typed or Printed) _____

_____ Rank, Commanding, Branch _____

¹Applies only in cases where a Under Honorable Conditions characterization of service is recommended.

Figure 4-2

Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

(Expeditious Discharge Program)

Data Required by the Privacy Act of 1974

(5 USC 522a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgement from the member of notification of proposed separation and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process members recommended for separation because of inability to meet acceptable standards required of service members in the ARNG or USAR. If separation is approved, information is filed in the OMPF. If member does not consent to separation or if recommendation is disapproved, information will be filed in the MPRJ until reassignment or ETS, at which time it will be destroyed. So long as filed in the OMPF or MPRJ, this personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Separation is voluntary. Failure to acknowledge notification of separation may subject member to separation under other provisions of regulation or law.

(Date Individual Signs)

() 1st Ind

SUBJECT: Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

TO: Unit Commander

1. I hereby acknowledge notification of my proposed separation from the (ARNG of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178. I (do) (do not) voluntarily consent to this separation.

2. Statements in my own behalf (are) (are not) submitted herewith (as In-closure_____).

3. I understand that if my service is characterized as under honorable conditions, I may expect to encounter substantial prejudice in civilian life, and I hereby acknowledge that I have been provided the opportunity to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing this acknowledgment. I further understand that there is no automatic upgrading or review by any government agency of a characterization of service which is under honorable conditions, and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that the act of consideration by either board does not imply that my characterization of service will be upgraded.

4. I understand that I may, prior to the date the separation authority approves my discharge, withdraw my voluntary consent to this separation.

5. I further understand that if I decline to accept this separation voluntarily, I may at a future time, if my conduct so warrants, be subject to separation under other provisions of law or regulations.

6. I also understand that I will not be permitted to apply for enlistment in the United States, the Army National Guard, or the Army Reserve within 2 years from the date of my separation.

7. I understand that I may be transferred to the Individual Ready Reserve (IRR) to complete my military service obligation.

(Signature)

Name (Typed or Printed)

Grade, SSN

¹Applies only in cases where an Under Honorable Conditions characterization of service is recommended.

*Figure 4-3. Acknowledgment of Pending EDP Discharge

CHAPTER 5

SEPARATION BECAUSE OF DEPENDENCY OR HARDSHIP

Section I. GENERAL

5-1. Purpose. This chapter sets forth the criteria and procedures and provides authority for the separation of enlisted members of the USAR by reason of dependency or hardship.

★5-2. Authority to approve separation. The authority to approve separation, by authority of the Secretary of the Army, of enlisted personnel of the USAR for dependency or hardship is delegated to commanders specified in paragraph 1-6.

★ Section II. DEPENDENCY/HARDSHIP

5-3. Criteria. Enlisted members of the USAR may be separated when it is considered that continued participation in unit training or service on ADT would result in undue and genuine dependency or hardship.

a. Dependency. Dependency exists when because of death or disability of a member of an enlisted person's family, other members of his family become principally dependent upon him for care or support to the extent that service on active duty in the event of an emergency or continued participation in unit training would result in undue and genuine hardship.

b. Hardship. Hardship exists when in circumstances not involving death or disability of a member of an enlisted person's family his separation from the service would materially affect the care or support of his family by materially alleviating undue and genuine hardship.

c. Parenthood. Parenthood, either of a sole parent or married service member, may be a basis for separation under provisions of this paragraph. (A sole parent is defined as one who is single because of divorce or legal separation with award of custody by a court, death of spouse, or who has never been married.) The child/children must be under 18 years of age; must reside within the household; and evidence submitted (para 5-5c) must show that the roles of parent and service member are incompatible to the extent that the member cannot fulfill his military obligation without neglecting the children.

d. Members of the family. For the purpose of separation under dependency or hardship condi-

tions, the term "members of the family" includes *only* spouse, children, father, mother, brothers, sisters, and any person who stood *in loco parentis* to the enlisted member before enlistment. (The term "in loco parentis" as used herein is defined as "any person who has stood in the place of a parent to an enlisted member for 5 continuous years when the member was a child.")

5-4. Application of criteria. *a.* Separation may be approved when all of the following circumstances exist:

(1) Conditions have arisen or have been aggravated to an excessive degree since enlistment in the USAR.

(2) Conditions are not of a temporary nature.

(3) Every reasonable effort has been made by the enlisted member to ease the dependency or hardship conditions without success.

(4) Separation is the only readily available means of eliminating or materially alleviating the dependency or hardship condition.

b. Circumstances outlined in (1) and (2) below do not justify separation because of dependency or hardship. However, the existence of these circumstances does not preclude separation because of dependency or hardship, provided the application meets the criteria described in *a* above.

(1) Pregnancy of an enlisted man's wife is not a disability for which his separation is justified. However, this does not preclude separa-

tion because of a permanent medical disability occurring as a result of pregnancy.

(2) Undue and genuine hardship does not necessarily exist solely because of altered income or because the member is separated from his family, or must suffer the inconvenience normally incident to military service.

5-5. Evidence required. *a.* The evidence required for dependency or hardship separation normally will be in affidavit form. The evidence must substantiate dependency or hardship conditions upon which the application for separation is based.

b. The evidence required will include affidavits or statements submitted by or in behalf of the enlisted member's dependents and by at least two disinterested persons or agencies having first hand knowledge of the circumstances. If dependency or hardship is the result of disability of a member of the individual's family, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and prognosis for recovery. There also will be furnished the names, ages, occupations, home addresses, and monthly incomes of other members of the applicant's family. The affidavits of disinterested individuals and agencies should include reasons within their knowledge that these members of the family can or cannot aid in the financial or physical care of the dependents concerned for the period the enlisted member is to be ordered to active duty in the event of an emergency or continue participation in unit training. When the basis for the application is the death of a member of the enlisted person's family, a death certificate or other proof of death should be furnished.

c. When the basis for the application is parenthood of either a sole parent or a married service member, the supporting evidence will be in affidavit form and will substantiate the applicant's claim that unexpected circumstances, or circumstances beyond his/her control, have occurred since acquired parenthood which prevent fulfillment of military obligations without resultant neglect of the child. Affidavits from the service member's immediate commander and officer who is the job supervisor will be considered sufficient. Evidence in *b* above is not required for these applications; however, sole parenthood

resulting from divorce or legal separation will be substantiated by a judicial or court order awarding child custody to the service member.

5-6. Application for separation. Any enlisted member may submit a written application for separation because of dependency or hardship. Request for separation will be submitted as follows:

a. An enlisted member of a USAR unit will submit written application to the unit commander who will immediately forward it with recommendations and member's records through channels to the appropriate area commander for final action.

b. A nonunit enlisted member will submit a written request to the CG, RCPAC for final action.

5-7. Procedure. *a.* Upon receipt of a written application, with required supporting evidence, the commanders specified in paragraph 1-6 will perform the following:

(1) Consider carefully the facts upon which the request is based.

(2) Procure any other additional information that may be necessary to determine the validity of the request.

(3) Take final action to approve or disapprove the application.

b. All commanders taking final action on applications of individuals for dependency or hardship separation under this regulation will ensure the expeditious handling of applications.

c. Applications upon which final action has been taken will become a permanent part of the enlisted member's MPRJ and OMPF.

5-8. Type of separation. Members who meet the criteria specified in this chapter will be separated as indicated *a* or *b* below.

a. Members who *have* successfully completed BT or 8 weeks of OSUT and *have not* completed their military service obligation will be transferred to the IRR under the provisions of AR 140-10.

b. Members who *have not* completed BT or 8 weeks of OSUT and members who *have* completed their military service obligation will be discharged.

CHAPTER 6

UNSUITABILITY

Section I. GENERAL

6-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted members of the USAR who are found to be unsuitable for further military service.

6-2. Policy. Action will be taken to separate an enlisted member for unsuitability when it is clearly established that—

a. It is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier, and

b. The member meets retention medical standards (AR 40-501).

★6-3. Types of separation. The service of a member separated under this chapter will be characterized as honorable or under honorable conditions, as warranted by his military record.

6-4. Authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be separated.

★b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for consideration of unsuitability and to order separation except as specified in *a* above.

★c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve separation (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

★6-5. Applicability. An enlisted member is subject to separation under this chapter when one or more of the following conditions exist.

a. Inaptitude. Applicable to persons who are

best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

b. Personality disorders. As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM II) of Mental Disorders, 2d Edition, section on mental disorders, International Classification of Diseases and Injuries—8, American Psychiatric Association (reference(h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational adjustments.

★c. Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects, or mental, or organic diseases, including psychoneurosis, these traits are not necessarily produced by the physical or disease process. On the other hand, members considered for elimination may attempt to excuse immature, inadequate, and undisciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect-producing impairment of function insufficient to warrant separation under the provisions of AR 140-120 and related regulations is no bar to discharge for unsuitability. This provision is applicable to members who are pregnant and whose substandard performance of duty is not solely attributable to the condition of pregnancy; such as, failure to perform prescribed duties due to defective attitude rather than physical limitation or failure to report to duty without medical or military authorization. Separation for apathy will be as indicated in (1) or (2) below:

(1) Except as indicated in (2) below, all members separated under this paragraph who *have* successfully completed BT or 8 weeks of OSUT and who *have not* completed their military service obligation will be transferred to the

IRR to complete their military service obligation.

(2) Members who *have not* completed BT or 8 weeks of OSUT, members who *have* completed their military service obligation, and members whom the separation authority determines, for some specific reason, have *no* potential for useful service under conditions of full mobilization will be discharged. Before making this determination, the separation authority will give due consideration to the gravity of the situation requiring a full mobilization, and the positive motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years in age. (See, also, para 1-25.)

d. Homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). Applicable to personnel not engaged in a homosexual act during their period of military service but who have a verified record of pre-service homosexual acts. It is also applicable to other cases which do not fall within the purview of paragraph 7-30g.

e. Financial irresponsibility. Applicable to cases of individuals who have demonstrated a continuing inability to manage their financial affairs. Does not apply to cases warranting separation under the provisions of paragraph 7-30c or d.

Section II. COUNSELING AND REHABILITATION

★6-6. Requirements. Commanders will ensure that before taking separation action against an enlisted member under this chapter, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this chapter, the enlisted member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this chapter.

★(3) The characterization of service that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation required by *a* and *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6-5b or d.

(2) Commands which are under the normal command of general officers and colonels having judge advocates on their staff may waive the requirement of *a* and *b* above when it is determined that further duty will, in their best judgment, create serious disciplinary problems or a hazard to the military mission or the member.

Section III. PROCEDURE

6-7. Medical evaluation. When a unit commander determines that an enlisted member under his control is to be processed for separa-

tion under this chapter, he will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and re-

CHAPTER 7 MISCONDUCT

Section I. GENERAL

7-1. Purpose. This chapter prescribes the procedures for discharge of enlisted members of the USAR for misconduct by reason of the following:

- a. Fraudulent entry.
- b. Conviction by civil court.
- c. Other disqualifying patterns or acts of conduct.

7-2. Voidable enlistment. An enlistment procured through deliberate material misrepresentation, omission, or concealment of facts, which, if known at the time of enlistment, could have resulted in rejection of the individual, is voidable at the option of the Government. Discharge on the basis of fraudulent entry constitutes a voidance of the enlistment by the Government.

7-3. Type of discharge. An enlisted member discharged for reasons indicated in paragraph 7-1 will be furnished a Certificate of Discharge Under Other Than Honorable Conditions, except that an Honorable or General Discharge Certificate may be furnished if warranted by the particular circum-

stances of the case.

7-4. Authority. *a.* Approval of CG, RCPAC is required before a member who has completed 18 or more years of qualifying Federal service for retirement may be separated under this chapter.

b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for misconduct and to order discharge, except as specified in *a* above.

c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve discharge (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

7-5. Suspension of favorable personnel action. Suspension of favorable personnel action will be initiated in accordance with AR 600-31 when a member is being considered for elimination under this chapter.

Section II. RIGHTS OF THE ENLISTED MEMBER

7-6. Purpose. To prescribe the rights of enlisted members being considered for separation for misconduct under this chapter. For limitations on administrative discharges, board hearings and rehearing, provisions of paragraph 1-14 apply.

7-7. Notification to enlisted member. *a.* The unit commander will afford the member the opportunity to exercise the privileges as specified in para-

graph 8-2.

b. Waivers of board hearings will not be accepted in the case of enlisted members who have completed 18 or more years of qualifying Federal service for retirement. Such member appearing before a board of officers convened under the provisions of this regulation must be represented by counsel. They may not waive this requirement.

Section III. MEDICAL PROCESSING

7-8. Medical evaluation. A unit commander who determines that an enlisted member assigned to the control of that command is to be processed for discharge under this chapter, will initially refer the

member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

Section IV. FRAUDULENT ENTRY

7-9. Purpose. This section prescribes procedures for processing of fraudulent entry cases and pro-

vides for the administrative disposition of members found to have fraudulently entered the Armed

Forces. For the purposes of this section, fraudulent entry is defined as the procurement of enlistment through any deliberate material misrepresentation, omission, or concealment of facts which, if known at the time, might have resulted in rejection.

7-10. Action by unit commander. Upon discovery of information which creates a suspicion that there may have been a deliberate material misrepresentation, omission, or concealment of facts or conditions which, if known at the time, might have resulted in rejection, the unit commander will submit a recommendation for discharge or retention, as appropriate, through intermediate commanders, if applicable, to the convening authority. The commanding officer's recommendation will be in letter form and will include the following information:

- a. Name, grade, social security number, age, date and term of enlistment, and prior service.
- b. Justification as to reason for action recommended.
- c. Record of other disciplinary action, including nonjudicial punishment.
- d. Report of medical evaluation.
- e. A statement by the member indicating that he has been advised of his rights (para 8-2).
- f. Any other pertinent information.

7-11. Action by intermediate commanders. Intermediate commanders will indorse the commanding officer's report to the convening authority. The indorsement will include a recommendation for approval or disapproval of the recommended action and reasons therefor.

7-12. Action by the convening authority.
a. Initial action. Upon receipt of the recommended action, the convening authority will make a determination as to whether the fact of fraudulent entry has been completely verified and proven. If not, further substantiating facts and evidence will be obtained, or confirmed as unobtainable and final determination made accordingly. If the fraudulent entry is verified, action will be taken to suspend the individual's pay and allowances in accordance with Part One, chapter 4, DODPM. The convening authority will also—

- (1) Disapprove a recommendation for discharge and direct retention (retention constitutes waiver of fraudulent entry); or
- (2) Approve a recommendation for retention; or
- (3) Convene a board of officers to determine whether the member should be separated; or

(4) When the board hearing has been properly waived, approve separation of the member, except as provided in paragraph 7-4a; or

(5) When the board hearing has been properly waived, approve separation and suspend execution of the separation (para 8-9), except as provided in paragraph 7-4a.

b. After board hearing. The action of the convening authority will be as specified in paragraph 8-7. In addition, upon completion of review, the convening authority may direct separation of members, except for those referred to in paragraph 7-4a.

7-13. Concealment of prior service. *a.* Upon discovery of concealment by a member of prior separation from any of the Armed Forces of the United States under conditions barring reentry into the Army, the member will be considered for discharge under the provisions of this chapter.

b. Complete verification of the facts concerning the alleged concealment will be made prior to initiating elimination action, including a thorough examination of pertinent records prepared at time of, or prior to, entry into the Army and, if appropriate, records of draft boards regarding statements or admissions made by the person concerned.

(1) *Suspected prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records by the custodian thereof, upon receipt of the name and social security number of the member involved. Accordingly, commanders will not request field investigations in order to establish evidence of prior military service. Where facts indicating fraudulent entry as a result of concealment of prior service are disclosed, a report which will include the name and social security number of the member, with a brief statement of the nature of the suspected fraud and, when appropriate, a complete set of the member's fingerprints will be submitted to the Cdr, RCPAC, ATTN: AGUZ-PAD for verification prior to elimination action being taken.

(2) *Evidence required to verify prior service for administrative disposition.* Reproduction of documents pertaining to prior period of service, or the immediate availability of such documents is unnecessary when administrative disposition is to be made under this regulation. A statement of service, as distinguished from a certificate of service furnished by The Adjutant General is sufficient basis

(2) Direct discharge for unsuitability (except for members referred to in para 7-4a); or

(3) Disapprove the recommendation and direct retention of the member; or

(4) Approve discharge for misconduct and suspend execution of the discharge (para 8-9).

b. When the board has recommended discharge for unsuitability—

(1) Direct discharge of the member for unsuitability (except for members referred to in para 7-4a); or

(2) Disapprove the recommendation and direct retention of the member; or

(3) Approve discharge for unsuitability and suspend execution of the discharge (para 8-9).

7-39. Suspension of execution of approved discharge. The provisions of paragraph 8-9 apply concerning suspension of execution of approved discharge.

7-40. Reduction in grade. Reduction in grade on

approval of an undesirable discharge will be as specified in paragraph 8-10.

7-41. Disposition of proceedings. Disposition of proceedings will be as specified in paragraph 8-11.

7-42. Errors and discrepancies noted before accomplishing discharge. Correction of errors and discrepancies noted before accomplishing discharge will be as specified in paragraph 8-12.

7-43. Disposition of case. Disposition of case when discharge has been accomplished will be as set forth in paragraph 8-13.

CHAPTER 8

BOARDS OF OFFICERS

8-1. General. ★a. This chapter sets forth the general provisions governing boards of officers convened under the provisions of this regulation to make recommendations to the convening authority concerning separation action pertaining to enlisted members of the USAR and, where appropriate, to members of the ARNGUS.

b. Appointment of boards of officers under this regulation will be accomplished by letters issued by area commanders, or higher headquarters. Procedure for boards is prescribed in AR 15-6. One officer on a board (which consists of more than one member) will be from the same Reserve Component as the member whose case is referred for board action.

c. When sufficient basis exists to initiate separation action pertaining to USAR members assigned under jurisdiction of the CG, RCPAC, the procedures set forth in paragraph 8-2 will apply. If an investigation and/or appointment of a board of officers is required, the case will be referred for necessary action to the commander in whose geographical area the member resides.

(1) Cases referred to area commanders by CG, RCPAC will include, to the extent possible, correspondence, statements, MPRJ, and similar related documentation.

(2) In those instances where circumstances indicate the need for Army investigative processes, as set forth in AR 195-2, the CG, RCPAC will request such investigation from the appropriate area commander. Upon completion of the investigation, area commander will initiate continuing action.

(3) Except for those types of cases where final action is restricted to HQDA, area commanders are authorized to take final action on board recommendations.

(4) Upon completion of final action, area commanders will forward the original of the board proceedings with approved disposition to the CG, RCPAC, who will accomplish discharge action, if appropriate, and file the board proceedings in the enlisted member's OMPF.

d. Area commanders will appoint boards of officers upon request from a PMS to act upon cases involving USAR members of the Senior ROTC Program.

8-2. Privileges of the enlisted member. ★a. The appointing authority will notify the enlisted member, in writing (by registered mail), if the member's whereabouts are known or may be reasonably ascertained, of the specific allegations on which the proposed action is based, the type of separation that may be issued, and the fact that action has been suspended to give the member an opportunity to exercise the following privileges:

(1) To consult with a consulting counsel (para 1-3*b*).

(3) To appear and present his case before an administrative discharge board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3*c*); military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his own behalf.

(5) With the exception of (1) above, to waive the above rights in writing.

(6) To withdraw his waiver of his rights listed in (2), (3), and (4) above any time prior to the date the discharge authority orders, directs, or approves his discharge and request that his case be presented before a board of officers. The member will be required, within a reasonable time (not less than 15 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distances involved or other circumstances, a period in excess of 15 days may be allowed for the enlisted member to reply. If he elects to waive his rights, the member will personally sign a waiver (fig. 8-1). His consulting counsel will advise him in accordance with paragraph 1-3*b* and will sign the written waiver as witness, indicating that he is a commissioned officer of the Judge Advocate General's Corps. If

the member refuses to consult with a consulting counsel, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the member had consulted with a consulting counsel.

★*b.* If a member waives his rights, the separation authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct separation by reason of unsuitability or misconduct. If discharge is directed, the type of certificate will be specified.

c. A member unable to appear in person before an administrative discharge board by reason of confinement by civil authorities will be advised (by registered mail) of the proposed separation action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following rights.

(1) To consult by correspondence with a consulting counsel (para 1-3*b*). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employe civilian council at his own expense to represent him and, in his absence, present his case before an administrative discharge board.

(3) To submit statements in his own behalf.

★(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 30 days from the date of receipt. If the reply is not received within 30 days of the date of receipt of the letter of notification, the recommendation for his separation, if approved by the separation authority, may be accomplished with the characterization of service or type of discharge certificate determined to be appropriate.

8-3. Board of officers. ★*a. Organization.* Boards of officers convened to determine whether a member should be separated under the provisions of this regulation will consist of not less than three commissioned officers, except as authorized by paragraph 8-1*b*, at least one of

whom is the grade of major or higher; nonvoting recorder may be appointed. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

★(3) In the case of a female enlisted member, the board will include a female officer, if reasonably available. In the case of non-availability, the reason will be stated in the record of proceedings.

(4) The officer initiating the action under this regulation or any intervening officer who had direct knowledge of the case is not a member of the board.

b. General. The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the member and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement on the data at hand so that further rehabilitation data may be secured.

c. Availability of witnesses.

(1) The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, a deposition or affidavit will be obtained, as appropriate.

(2) The member will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any avail-

able witness the member desires to call ((1) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.

d. Board procedures.

(1) Except as modified herein, the board will conform to the provisions of AR 15-6. As an exception to paragraph 3-7b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence he is entitled to have witnesses appear in person, if they are reasonably available (c(1) above).

(2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as possible and will contain a verbatim record of the findings and recommendations (fig. 8-2).

(3) A minimum of 15 days' written notice before date of hearing will be given a member who is to appear before a board of officers so that he or his counsel may prepare his case. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will ensure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 30 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to ensure that the respondent receives a full and fair hearing.

(4) A member who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the member by the president of the board:

(a) The member may appear in person, with or without counsel, at all open proceedings of the board. The member may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When a member appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board ac-

tion, the effects of such discharge, and that he may request counsel. The record will reflect the respondent's response.

(b) The member may challenge any voting member of the board for cause only.

(c) Member may request the appearance before the board of any witness whose testimony he believes to be pertinent to the case. The member will specify in the request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that the witness is reasonably available, and that the testimony can add materially to the case. The appearance of a witness will be under conditions set forth in c(1) above.

(d) Member may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(e) The member and his counsel may question any witness who appears before the board.

(f) Member may or may not submit to examination by the board. The provisions of Article 31, UCMJ will apply.

(g) Failure of the member to invoke any of the above rights, after having been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(5) For rules of procedures and evidence, and swearing of witnesses, see AR 15-6.

(6) The president of the board will ensure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the member. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(7) When the board is considering a case in which the respondent has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent or of the type of discharge which had been recommended in his case. When it has come to the attention of the respondent or his counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having

such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

8-4. Board findings. *a.* Each finding of a board of officers must be a clear and concise statement of facts or facts evidenced in the record or a conclusion which can be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions."

8-5. Recommendations. *a.* Recommendation of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army in consonance with the policies outlined in this and other pertinent regulations and guided by their conception of justice both to the Government and the member concerned.

★c. Recommendations: Unsuitability. The board convened to determine whether a member should be separated for unsuitability will recommend that the member be—

★(1) Separated because of unsuitability (indicating characterization of service—honorable or under honorable conditions-to be awarded).

(2) Retained in service. The recommendation will indicate that type of duty which it is believed the member can perform satisfactorily.

d. Recommendations: Misconduct (fraudulent entry, misrepresentation of facts, conviction by civil court, or other disqualifying patterns or acts of conduct). The board will recommend that the member be—

(1) Retained in the service; or

(2) Discharged; if discharge is recommended, the reason for discharge (misconduct or unsuitability) and the type of discharge to be issued will be specified (para 7-3).

8-6. Forwarding report of proceedings. The completed report of proceedings will be forwarded to the convening authority for final determination and disposition. When board action

has been completed on members referred to in paragraphs 6-4*a* and 7-4*a*, the findings and recommendations of the board with complete documentation and the recommendation of the convening authority will be forwarded to Cdr, RCPAC for final determination in cases where the convening authority recommends discharge.

8-7. Convening authority action. **★a.** When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative discharge proceedings. When the board recommends a discharge under other than honorable conditions be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

b. The convening authority's deputy or other officer with that headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases (including cases in which the enlisted member has waived his/her right to a board hearing under the provisions of para 8-2) except to direct a discharge under other than honorable conditions. The convening authority is required to personally sign any action directing a discharge under other than honorable conditions of a member under his command. The convening authority may direct other appropriate disposition of the case.

★c. No convening authority will direct separation if a board recommends retention, nor authorize the issuance of a separation of less favorable character than that recommended by the board. However, a convening authority may direct retention when separation is recommended or may issue a discharge or characterization of service of a more favorable character than that recommended.

d. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *c* above. With respect to substantial defects, he may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board to include extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than the action of the first board.

(5) No more than one rehearing may be directed without approval from CG, RCPAC.

★ 8-8. Retention, separation, or suspension. In determining whether a member should be retained or be administratively separated, consideration should be given to members' entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishment would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

a. Cases in which the circumstances may warrant use of such records ordinarily will be limited to those involving patterns of conduct which

would become manifest only over an extended period of time.

b. When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time, or have no probative value in determining whether the member should be retained or discharged, will have minimum influence on the final determination.

c. If a decision is made that a member should be administratively discharged, section II, chapter 1 applies in determining the type of discharge certificate to be issued.

★ 8-9. Suspension of execution of approved separation.

★a. In order to afford a highly deserving member a probationary period to demonstrate successful rehabilitation prior to expiration of the member's enlistment or period of obligated service, the convening or higher authority may suspend execution of an approved separation for a period not to exceed 6 months. During the period of suspension the member will be afforded an opportunity to demonstrate the capability of behaving properly under varying conditions during the probationary period and that the member can perform assigned duties efficiently.

★b. Upon satisfactory completion of the probationary period, the authority who suspended the separation will cancel execution of the approved separation.

c. If there is additional misconduct on the part of the member during the probationary period or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability, the commander concerned or the convening authority, whichever is appropriate, will take one of the following actions:

★(1) Initiate punitive or new administrative action notwithstanding the suspension of the execution of the approved separation, or

★(2) Vacate suspension of the approved separation when the member has been beyond military control for 15 days or more and discharge the member in absentia; or

(3) Advise the member in writing that vacation action is being considered and the reasons which warrant such consideration. The member will be given an opportunity to furnish information in his own behalf or decline to make any statements. The convening authority will consider any information the member submits and will—

★(a) Vacate suspension of approved separation and execute separation or

★(b) Continue to suspend execution of the approved separation.

8-10. Reduction in grade. When a member is to be discharged with a discharge under other than honorable conditions, the convening authority will direct the immediate reduction to the pay grade of Private E-1 under the provisions of paragraph 3-38c, AR 140-158 and this regulation.

8-11. Disposition of proceedings. ★a. When separation is ordered by the convening authority, or his designee, he will so note on the proceedings and forward them as authority for separation the appropriate commander for execution of the separation (see para 8-13 for disposition of the case when discharge is accomplished).

★b. When separation is not ordered by convening authority, the proceedings will be filed at the headquarters of the convening authority and the member's commanding officer will be notified of the final action in the case. When deemed appropriate, consideration will be given to the member's transfer to a different organization. Ultimate disposition of the board proceedings will be governed by AR 340-18-7.

c. A member who is to be separated will be furnished a copy of the board proceedings, less written medical testimony and reports which would prove injurious to the member's physical or mental health.

(1) The respondent's copy of the proceedings will be marked "copy for (name and social security number of the member)" and furnished the member or his counsel. A signed receipt will be obtained from the member or the member's counsel to whom the copy is furnished and filed with the original board proceedings. If the member refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the member or the member's counsel does not desire a copy of the board proceedings or if for any other reason a copy is not furnished, a notation will be made on the member's copy to accompany the original. Release of this copy thereafter may be made only by the CG, RCPAC.

8-12. Errors and discrepancies noted before accomplishing discharge. The type of discharge directed by the convening authority may be changed only by CG, RCPAC. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case, the case will be referred for review before discharge to RCPAC.

8-13. Disposition of the case. a. When discharge of the member has been accomplished by appropriate authority under this regulation, the complete file of the case together with the member's DA Form 201 will be disposed of in accordance with the instructions contained in AR 640-10.

b. A notification of final action will be prepared on each enlisted member processed under paragraph 6-5d or 7-30g. This notification will include the name, grade, social security number, date and place of birth, and action taken on the case. Such notification will be forwarded to the Commander, US Army Investigative Records Repository, Fort Meade, MD 20755.

.....
(Date individual and counsel sign statement)

SUBJECT: Separation Under AR 135-178

TO: (Separation authority)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my separation for (Unsuitability, chap. 6) (Misconduct, chap. 7) under AR 135-178 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officers.
4. Statements in my own behalf (are) (are not) submitted herewith (incl . . .).
5. I (request) (waive) (consulting counsel) representation by (counsel of representation) (.) as my military counsel) (civilian counsel at my own expense).²
6. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. (I further understand that, as the result of issuance of a discharge under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.)³
7. I understand that I may, up until the date the separation authority directs or approves my separation withdraw this waiver and request that a board of officers hear my case.
8. I have retained a copy of this statement.

.....
(Signature of individual)

.....
(Typed name, SSN, grade)

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights, (name of individual), who appeared of sound mind, personally and knowingly made the choices indicated in the foregoing statement.

.....
(Signature of counsel)

.....
(Typed name, SSN, grade, branch)

¹Delete as appropriate.

²To be used only when the individual is in civil confinement.

³To be used if the individual has been recommended for a discharge under other than honorable conditions.

★Figure 8-1. Individual's statement.

.....
(Date)

FINDINGS: In the board proceedings concerning Private E-2 John A. Doe, (111 11 1111), the board carefully considered the evidence before it and finds:

1. Private Doe is undesirable for further retention in the military service because of unsuitability (chap. 6, AR 135-178).

- a. Apathy.
- b. His rehabilitation is not deemed possible.

2. Private Doe is undesirable for further retention in the military service because of misconduct (chap. 7, AR 135-178).

- a. Conviction by civil court.
- b. Conviction of offenses involving moral turpitude.

RECOMMENDATION: In view of the findings, the board recommends that Private Doe be separated from the service because of (Unsuitability, with a characterization of service of (Honorable) (Under Honorable Conditions)) or (Misconduct, with issuance of an (Honorable) (General) (Under Other Than Honorable Conditions) (Discharge Certificate).

.....
President

.....
Member

.....
Member

.....
Recorder

¹Delete as appropriate

²This character of discharge can never be used in a separation for Unsuitability (chapter 6, AR 135-178).

★Figure 8-2. Verbatim findings and recommendations.

1 Feb 79 - QUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC 31 July 1979

A
AR 135-178
INTERIM CHANGE
NO. 101
Expires 31 July 1980

S/S

Immediate Action
INTERIM CHANGE

by Ch. 2

15 Oct 79

ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL

This interim change is necessitated due to a change in policies and procedures having a direct and immediate impact on the individual service member. It expires 1 year from date of publication and will be destroyed at that time unless sooner superseded by a formal change; it is being distributed by 1st class mail through the publications pinpoint distribution system to all holders of AR 135-178.

Page 4-2, Chapter 4, Section II. Add new paragraph 4-7.1 as follows:

4-7.1. ROTC/Selected Reserve Simultaneous Membership Program (SMP). Individuals who enlist directly for participation in the SMP and who apply but are not accepted for enrollment in the ROTC advanced course, may be discharged from the USAR at their request.

(AGUZ-RCC)

1

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

DISTRIBUTION:

To be distributed in accordance with DA Form 12-9A requirements for AR, Army National Guard and Army Reserve.

Active Army: B
ARNG: A
USAR: A

1 February 1979

S/S CH-2 15 July 77

C 1, AR 135-178

*AR 135-178

ARMY REGULATION

No. 135-178

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 July 1977

**ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL**

Effective 15 August 1977

This regulation revises policies on separation of Army National Guard and Army Reserve enlisted personnel. Local supplementation of this regulation is permitted but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to Cdr, RCPAC, ATTN: AGUZ-RCPD-PRO; other commands will furnish one copy of each to the next higher headquarters.

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CHAPTER 1 GENERAL PROVISIONS

Section I. GENERAL

1-1. Scope. *a.* This regulation prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except as indicated below:

(1) Separation of enlisted members serving on active duty (AD) will be governed by appropriate Active component regulations.

(2) Separation of enlisted members serving on Initial Active Duty for Training (IADT) under the Reserve Enlistment Program of 1963 (REP-63) will be governed by appropriate Active component regulations.

(3) Enlisted members of the ARNGUS or USAR serving on 45-day ADT who demonstrate through their actions or traits that they should be discharged will be released and returned to their Reserve component unit or USAR control group for discharge action.

b. Discharge of an enlisted member from status held as a Reserve of the Army will also terminate membership in the ARNGUS or USAR. In the case of ARNGUS personnel, termination of status as a member of the ARNG of the State rests with State military authorities.

c. As used in this regulation, the masculine gender pronoun will be construed to include both male and female personnel, unless otherwise expressly so stated.

1-2. Conduct of separation process. The separation process will be conducted efficiently and in a manner which will afford each individual being separated the courtesy, recognition, and consideration deserved by the nature of service performed. Separation must be accomplished in a manner which will enhance the dignity of the individual and leave the former member with a favorable attitude toward the military service.

1-3. Explanation of terms. For the purpose of this regulation, the explanation of terms in AR 140-1 and the following will apply:

a. Administrative discharge board. A board of officers appointed by the convening authority to present findings based on evidence presented in a case and to recommend retention in the service or

discharge and reason therefor, and, if discharge is recommended, the type of discharge certificate to be furnished.

b. Appointed counsel for consultation. A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel, however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

c. Appointed counsel for representation. A counsel appointed to represent an individual who is being processed for separation during the course of any hearing before a board of officers. Such counsel will possess the qualifications in (1) or (2) below, as applicable. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

(1) The appointed counsel for an individual being processed for separation which could result issuance of a discharge under other than honorable conditions under this regulation is a lawyer within the meaning of the Uniform Code of Military Justice (UCMJ), Article 27(b)(1), unless appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted nonlawyer counsel (app C).

(2) The appointed counsel for an individual being processed for separation by reason of unsuitability need not meet the qualifications described

in (1) above; however, if he/she is not a lawyer, he/she must be a commissioned officer in the grade of first lieutenant or higher.

d. Convening authority. The officer authorized by Army regulations to convene an administrative discharge board and take final action with respect to a specific type of discharge.

e. Deferred obligated enlisted member. Individuals who have not served on active duty for at least 6 months (ADT is not creditable as active duty) and who are deferred from induction by reason of Reserve participation.

f. Discharge authority. The officer authorized to take final action with respect to specified types of discharges.

g. Nonlocatee. An enlisted member who has failed to furnish an address through which personal contact is possible.

h. Reserves of the Army. Enlisted members of the ARNGUS and the USAR.

i. ROTC program. The Senior Reserve Officers' Training Corps of the Army.

j. Respondent. An enlisted member who has been notified that action has been initiated to separate the member under this regulation.

k. Separation. Separation includes discharge, release from military control, and dropped from the rolls of the Army.

l. USAR enlisted members of the ROTC Program. A student who is participating in the ROTC Program and who is required to be an enlisted member of the USAR (10 USC 2104 and 2107).

1-4. Statutory authority. The following provisions of law contained in title 10, USC, pertain to the separation of Reserves of the Army.

a. Section 1001 provides for regulatory directives pertaining to standards and qualifications for retention in the Reserve Components and for the disposition of those members who fail to comply with such standards and qualifications.

b. Section 1004 provides that members of the Ready Reserve not on active duty will undergo a medical examination every 4 years and execute and submit annually a certificate of physical fitness. This section also provides for the disposition of those members determined to be physically unfit for active duty.

c. Section 1162(a) provides that the Secretary of the Army will prescribe regulations for discharge of Reserves of the Army.

d. Section 1162(b) provides that Reserves of the Army who become regular or duly ordained ministers of religion may be discharged upon their request.

e. Section 1163(b) describes the circumstances under which Reserves of the Army may be dropped from the rolls of the Army.

f. Section 1163(c)(1) precludes discharge of Reserves of the Army for cause under other than honorable conditions unless such discharge is the result of an approved sentence of a court-martial or approved findings of a board of officers.

g. Section 1163(c)(2) provides that a Reserve of the Army may waive the right to proceedings of a court-martial or a board of officers.

h. Section 3260 provides that an enlisted member of the ARNGUS who is not concurrently discharged as a Reserve of the Army automatically becomes a member of the USAR.

★1-5. Service obligation. AR 135-91 defines the various service obligations incurred by military personnel upon initial entry into military service and prescribes the method of fulfillment.

1-6. Authority to approve discharge. *a.* The authority to approve discharge of enlisted members of the USAR is delegated to area commanders, the Commanding General, US Army Reserve Components Personnel and Administration Center (CG, RCPAC), and professors of military science (PMS)(app A).

b. Except for cases in which approval of Headquarters Department of the Army (HQDA) is required, area commanders may delegate authority to discharge individuals, for reasons for which a discharge under other than honorable conditions may be given, to a general officer in command having a staff judge advocate for cases arising in that command. Action taken pursuant to such a delegation will cite this paragraph as authority. Cases requiring approval at HQDA will be furnished to CG, RCPAC.

c. The discharge authority delegated to commanders by this regulation will not include the authority to discharge a member under court-martial sentence to dishonorable or bad conduct discharge, prior to the completion of appellate review, unless the discharge authority intends such discharge action as a remission of the conviction.

★1-7. Appeals. *a. General.* An enlisted member who has been denied a requested discharge may appeal such adverse action. The member's im-

mediate commander will inform the member in writing of the adverse decision, the reasons for the action, that he/she has the right to appeal the action, and the appeal procedures. The written notice will be delivered to the member either by personal contact or by certified mail (restricted delivery) with return receipt requested. If delivered by personal contact the member's signature will be obtained on the file copy of the notice. The appeal will be submitted in writing within 15 days of the member's receipt of the notice. The appeal will explain those facts pertinent to the member's case which he/she feels were not fully considered and may include any additional appropriate evidence which the appellant may wish to present.

b. How submitted. Appeals will be submitted to the unit commander, who will forward through

channels to the discharge authority who denied the request for discharge. Each level of command will recommend approval or disapproval and state reasons if disapproval is recommended.

c. Authority to act on appeals. The discharge authority or higher authority may act on the appeal when the decision is favorable to the member concerned. When disapproval is recommended, the authority to take final action will be—

(1) CG, RCPAC in all cases in which the State adjutant general or area commander was the final authority for the original action.

(2) The Adjutant General, HQDA, in all cases in which the CG, RCPAC was the final authority for the original action.

Section II. FACTORS GOVERNING ISSUANCE OF CERTIFICATES OF DISCHARGE UNDER HONORABLE, GENERAL, AND OTHER THAN HONORABLE CONDITIONS

1-8. General. As the type of discharge certificate furnished the enlisted member is very important, it is essential that all pertinent factors be considered so that the type of discharge certificate issued will reflect accurately the nature of the service rendered.

1-9. Discharge certificates. Discharge certificates are furnished to all enlisted members when they are separated from the United States Army except as otherwise provided in this regulation. Instructions for the completion of discharge certificates are contained in paragraph 1-16. The issuance of discharge certificates as the result of administrative action is governed by this regulation. The three types of discharge certificates which may be issued under this regulation are listed in table 1-1.

1-10. Character of discharge. *a.* The characterization of the discharge certificate issued upon administrative discharge will be based solely upon the enlisted member's behavior and performance of duty during the current period of service, when the member was either—

(1) Actually performing active duty, AT, ADT, or IDT; or

(2) Actively participating in or under an obligation to participate in Reserve activities, and the behavior relates directly to the member's Reserve status.

b. Under honorable conditions.

(1) *Honorable Discharge Certificate (DD Form 256A).* An honorable discharge is a separation from the United States Army with honor. The issuance of an honorable discharge is conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the grade held and the capabilities of the member concerned.

(2) *General Discharge Certificate (DD Form 257A).* A general discharge is a separation from the United States Army under honorable conditions of an enlisted member whose military record is not sufficiently meritorious to warrant an honorable discharge. When an enlisted member's service is characterized as general, except when discharge by reason of misconduct or unsuitability, the specific basis for such discharge will be included in the enlisted member's military personnel records.

c. Under other than honorable conditions.

(1) *Discharge Certificate Under Other Than Honorable Conditions (DD Form 794A).* This type of discharge is an administrative separation from the United States Army under conditions other than honorable. It may be issued for misconduct.

(2) *Special consideration.* In any case in which a discharge under other than honorable conditions is authorized by regulation, a member may be awarded an honorable or general discharge, as appropriate, if during the current or a prior enlistment or period of service the member has been

awarded a personal decoration, or if warranted by the particular circumstances of his/her case.

(3) *Consideration required.* Commanders and members of boards of officers responsible for recommending discharges to be furnished, and commanders having responsibility for determining finally the type of discharge certificate to be issued, are urged to consider all facets of a particular case involving discharge in order that a fair decision will result. Mental status evaluations or other similar medical evaluations given during the period of service which is being characterized will not be considered in determining the type and character of separation.

1-11. Issuance of a discharge certificate under other than honorable conditions. *a.* A discharge certificate under other than honorable conditions will be issued only on the approval of the convening authority, a general officer in command who has a judge advocate officer on his/her staff (if authority has been delegated to him/her pursuant to para 1-6b for cases arising in his/her command), or by higher authority, based upon the approved recommendation of a board of officers appointed pursuant to the provisions of chapter 8, unless the member waives the board. Prior to such action, the procedures and safeguards indicated in paragraph 8-2 must be observed.

b. If a member waives his/her rights, the discharge authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct discharge by reason of misconduct. If discharge is directed, the type of certificate will be specified.

1-12. Separation counseling of members being discharged with a discharge certificate under other than honorable conditions. The purpose and functions of the Army Discharge Review Board (AR 15-180) and the Army Board for Correction of Military Records (AR 15-185) will be explained concurrently with delivery of the discharge certificate under other than honorable conditions to the member. Such explanation may be furnished the member in written form.

1-13. Periodic explanation. Commanders of troop program units will ensure that each member receives periodically an explanation of the types of discharge certificates explained herein, the basis for issuance, and the possible effects upon reenlistment and related matters. This regulation will be followed as a guide as to the extent and content of

this explanation. This explanation will be given when determined by the commander to be essential. Commanders will ensure that the information is presented in a manner which will create a deep and lasting impression on each member who receives it. Failure on the part of the enlisted member to receive or to understand such explanation will not be considered as a defense in an administrative discharge proceeding or a bar thereto. As appropriate, this explanation may be furnished to the member in written form.

1-14. Limitations on administrative discharges and board hearings. *a.* Administrative discharges pursuant to this regulation should not be based upon conduct which has been considered at prior administrative or judicial proceedings and disposed of in a manner indicating that discharge was not warranted. Accordingly, administrative discharges under the provisions of this regulation are subject to the following limitations.

(1) No member will be considered for administrative discharge because of conduct which has been the subject of judicial proceedings resulting in acquittal or action having the effect thereof. Whether an action has the effect of an acquittal will be determined solely by CG, RCPAC in accordance with the exception procedure set forth in *b*(3) below.

(2) No member will be considered for administrative discharge because of conduct which has been the subject of administrative discharge proceedings resulting in a final determination that the member should be retained in the service.

(3) No member will be considered for administrative discharge because of conduct which was considered by a general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate body or agency, and remains suspended.

b. The limitations set forth in *a* above are not applicable when—

(1) Substantial new evidence, fraud, or collusion is discovered, which was not known at the time of the original proceedings, despite the exercise of due diligence, and which will probably produce a result significantly less favorable to the member at a new hearing.

(2) Subsequent conduct by a member warrants considering him/her for discharge. Such conduct need not independently justify the member's

discharge, but must be sufficiently serious to raise a question as to the member's potential for further useful military service. However, this exception does permit further consideration of conduct of which the member has been absolved in a prior final factual determination by an administrative or judicial body.

(3) An express exception has been granted by CG, RCPAC pursuant to a request by the convening authority through channels that, due to the unusual circumstances of the case, administrative separation should be accomplished.

c. No convening authority will direct discharge if a board recommends retention nor will a discharge of less favorable character than that recommended by the board be issued. However a convening authority may direct retention when discharge is recommended, or may issue a discharge of a more favorable character than that recommended.

d. A convening authority may forward a case to CG, RCPAC when a board of officers has recommended retention and he/she believes, due to the unusual circumstances of the case, that discharge is warranted and in the Army's best interest. Prior to forwarding the case, however, the member will be advised of the convening authority's intentions in this regard, given the opportunity to review the proposed forwarding correspondence, and be permitted to present written matters in rebuttal thereto if desired. It is the policy of HQDA that when the proceedings of a duly constituted board of officers are proper, the recommendations of the board will be upheld unless compelling justification is provided that would warrant separation by the Secretary of the Army as an exception to policy and in the best interest of the Army. CG, RCPAC may grant discharge authority. Discharge, if granted, will be under honorable conditions and the member will be awarded an Honorable or General Discharge Certificate.

1-15. Medical evaluation. ★a. When an enlisted member is to be processed for discharge under the provisions of chapter 6 or 7 of this regulation, the member will be referred to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 for medical evaluation. The reason for considering the member for separation will be furnished the medical officer or civilian physician. The medical officer or civilian physician will accomplish the

final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when—

(1) Specifically requested by the individual subject to separation action.

(2) Specifically requested by the commanding officer recommending separation action.

(3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.

(4) Requested by the board considering the separation action.

(5) Individual is being considered for discharge under the provisions of paragraph 6-5b, 6-5d, or 7-30g.

b. In all other cases, the physician performing the physical examination will accomplish the mental status evaluation. In exceptional cases in a(1) through (5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

c. When an individual is being considered for discharge under the provisions of paragraph 6-5d or 7-30g, the psychiatrist doing the psychiatric portion of the medical evaluation will be furnished a copy of the documents on which the suspicion of homosexuality rests. In addition to SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History), the medical officer or civilian physician will prepare a report of mental status evaluation. The medical evaluation and the psychiatric study of the individual will include the following:

(1) Personal history, including, when appropriate, an opinion regarding the existence of homosexuality.

(2) Report of member's mental and physical condition in relation to the conduct under consideration, indicating whether the member meets the retention standards prescribed in chapter 3, AR 40-501, and recommend medical disposition if it is deemed appropriate.

(3) An opinion whether the member should be discharged under the provisions of this regulation or medical regulations, as appropriate, or be retained in service. If retention is recommended, and considered appropriate, a statement of the proce-

dures likely to be of value in the member's rehabilitation may be included.

d. The medical officer or civilian physician will forward the original of the evaluation report to the member's commander. A copy will be filed in the member's health records.

e. Members being considered for discharge under the provisions of chapter 6 or 7 who refuse to undergo medical examination or psychiatric evaluation when required will be processed as follows:

(1) The member will be advised in writing that failure to undergo such examination or evaluation will be the basis for the board to proceed with its findings and recommendations, notwithstanding the absence of such information. The member will also be advised in the same letter of notification that in the event a discharge by reason of miscon-

duct is approved, the member may receive a discharge under other than honorable conditions.

(2) When an enlisted member has failed or refuses to comply after notification as provided in (1) above, or when the member's whereabouts are unknown or unascertained after following the actions prescribed in AR 135-133, discharge action may be initiated without affording the privileges provided in paragraph 8-2a. Copies of communications remaining unanswered or returned unclaimed or the substance thereof with the dates and addresses will be included in the recommendation for discharge, together with a brief description of any other means used to locate or communicate with the member concerned. These documents will be furnished to the board of officers, if a board is required, and will be made a part of the board proceedings.

Table 1-1. Types of Discharge Certificates

<i>DD Form No.</i>	<i>Type of discharge</i>	<i>Character of discharge</i>
256A	Honorable	Honorable.
257A	General	Under honorable conditions.
794A	Under Other Than Honorable Conditions	Under conditions other than honorable.

Section III. PREPARATION OF DISCHARGE CERTIFICATES

1-16. General. a. *Number of copies.* Discharge certificates will be prepared in original only.

b. *How prepared.* Entries on discharge certificates will be typewritten or neatly printed in ink. Only black typewriter ribbon or permanent black or blue-black ink will be used.

c. *Entries.* Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the member's name in signature order, followed by the social security account number, grade, and "USAR." When discharge certificate is prepared by automated systems, the member's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) In the space between the lines in the lower right section of the certificate, type in capital letters, in signature order, the name of the commanding officer or designated officer, and in upper case

letters, centered below the name, the officer's grade and branch. The designated officer will sign the discharge certificate in the space provided.

1-17. Amendments and corrections to discharge certificates. The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of errors therein will be made on written application of the individual to CG, RCPAC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the CG, RCPAC on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) (AR 15-18C).

★**1-18. Orders.** Orders directing discharge will be issued as prescribed in AR 310-10.

1-19. Notification of discharge to Selective Service System. (Not Used.)

1-20. Records disposition. Personnel records of discharged personnel will be disposed of in accordance with instructions contained in AR 635-10 or other appropriate regulations under which discharged.

Section IV. EFFECTIVE DATE OF DISCHARGE

1-21. Effective date of discharge. ★*a.* The effective date of discharge will be at 2400 hours of the date of notice of discharge unless—

(1) Discharged by reason of change of military status, in which case the effective date will be the day prior to the date of the member's entry into new military status (see paragraphs 3-2, 4-4, or 4-5*a*).

(2) Discharged under the provisions of paragraph 3-10, in which case the effective date will be the last day of the month during which maximum allowable age is attained.

(3) Otherwise provided by law.

b. Provided there is no evidence of fraud or manifest error and the member receives actual or constructive delivery, orders discharging a member from the USAR will not be revoked or effective date of separation changed after the effective date of discharge unless such revocation is in the form of written confirmation of oral orders actually issued prior to the effective date of separation. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation.

c. After effective date of discharge, orders may be amended by the discharge authority only to correct administrative errors, such as errors concerning rank, social security account number, or misspelled name.

1-22. Notification of discharge. *a.* Except as provided in paragraph 1-21, discharge is effective at the time of notice to the member of discharge.

★*b.* Notice of discharge may be either—

(1) Actual, as by delivery to the member of the discharge certificate, or

(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be discharged. Receipt by the member's organization at the proper station of the order directing his discharge will be deemed sufficient notice. The date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to the Cdr, RCPAC, ATTN: AGUZ-DCD-RS, 9700 Page Blvd., St. Louis, MO 63132. If the documents mailed to the individual are returned unclaimed or undeliverable, they will be destroyed.

1-23. Mentally incompetent. The effective date of discharge of a mentally incompetent member may also be constructive, as when the member has been placed in an institution (AR 635-40).

★**1 21. Nonlocatee or in hands of civil authorities.** Discharge of an enlisted member who has been convicted by civil authority is governed by chapter 7. However, when discharge under the provisions of chapter 6, or section IV or V of chapter 7 has been ordered by competent authority, and the member is a nonlocatee or is absent in the hands of civil authorities subsequent to the date discharge is approved by the appropriate authority or subsequent to the issuance of the discharge orders, the discharge may be executed notwithstanding such absence.

CHAPTER 4

DISCHARGE OF ENLISTED MEMBERS OF THE USAR FOR THE CONVENIENCE OF THE GOVERNMENT

Section I. GENERAL

★4-1. **Scope.** This chapter sets forth the conditions under which enlisted members of the USAR may be discharged for the convenience of the Government. In addition, only Section VII is applicable to enlisted members of the ARNG.

4-2. **Authority.** The separation of enlisted members of the USAR for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by this au-

thority. Except as delegated by paragraph 1-6 or by special Department of the Army directives, the discharge of any member of the USAR for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general discharge certificate as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

Section II. CATEGORIES FOR WHICH DISCHARGE IS AUTHORIZED

4-3. **Reduction in authorized strength.** A reduction in authorized strength by an official order applicable to all members of a class of personnel so specified in the order.

★4-4. **Discharge for immediate reenlistment.** Qualified enlisted members may be discharged to permit their reenlistment in accordance with AR 140-111, provided they apply for and are qualified for reenlistment. A formal discharge certificate is not required. Discharge may be accomplished—

a. During the last 90 days of current enlistment or period of obligated service for the purpose of immediate reenlistment in the USAR.

b. For the purpose of immediate reenlistment in the USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of reenlisting in the USAR in order to qualify for enrollment in the Advanced Course or the Scholarship Assistance Program, Senior Army ROTC Program.

★*d.* Special instructions contained in the discharge orders will read as follows:

Your enlistment in the USAR on _____ was terminated on the effective date of this order as a result of your immediate reenlistment. No formal discharge will be issued by reason of this reenlistment.

4-5. **Enlistment or appointment in any component of the Armed Forces.** *a.* An enlisted member will be discharged upon enlistment in any component of the Armed Forces (other than appointment as

a cadet or midshipman to one of the service academies). A formal discharge certificate will not be issued when a member is discharged to—

- (1) Enlist in the Regular Army.
- (2) Enlist in the Air Force or Navy Reserve.
- (3) Enlist in the Army National Guard.
- (4) Accept appointment as a commissioned or warrant officer.

b. Discharge to enlist in a regular component of any of the Armed Forces of the United States other than the Army is not authorized for enlisted members within the 60-day period immediately preceding the effective date of order to active duty or ADT other than AT or during the performance of active duty, ADT, or AT.

★*c.* A nonobligated individual who enlisted or reenlisted for the USAR dual status technician program will, upon application, be discharged—

- (1) Upon failure to be employed as a technician.
- (2) Upon separation from employment as a technician.

d. Special instructions contained in orders evidencing an individual's discharge under *a*(1) through (4) above to accept a different military status will be in the format below—

Special Instructions:

Your enlistment in the USAR on (date) was terminated on (date), preceding date of enlistment in (Regular Army), (ARNGUS) or in the (Air Force) or (Navy) Reserve. No formal

discharge will be issued by reason of this termination.*

Your enlistment in the USAR on (date) was terminated on (date), preceding date of appointment as a (commissioned) or (warrant officer) in any component of the Armed Forces. No formal discharge will be issued by reason of this termination.*

4-6. Women enlisted specifically for WAC College Junior Program. Women enlisted specifically for the WAC College Junior Program will be discharged upon—

a. Failure to qualify as a potential officer for any reason during the 4-week period of ADT.

b. Failure to be selected for appointment after attaining eligibility therefor and submission of application.

c. Declination of appointment or failure to apply for appointment within a reasonable period of time after attaining eligibility.

d. Application of the WAC College Junior Program member at any time following period of ADT.

4-7. USAR members enrolled in advanced course or receiving ROTC scholarship assistance. A USAR member enrolled in the advanced course or receiving scholarship assistance who leaves school or is disenrolled from the ROTC Program for reasons other than to evade accepting a commission or to willfully avoid the execution of any other aspect of the ROTC contract will be discharged unless the member voluntarily locates and accepts assignment with a USAR troop program unit within 30 days subsequent to leaving school or after being disenrolled from the ROTC.

4-8. Failure or inability to obtain parental consent to enter into the Senior ROTC Program Advanced Training Phase. (Not Used.)

4-9. For other good and sufficient reasons. An enlisted member may be discharged for other good and sufficient reasons when so determined by HQDA.

4-10. Discharge of members who do not meet the medical fitness standards. a. Commanders are authorized to discharge members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment, or who become medically disqualified under these

standards prior to entry on IADT. Eligibility for discharge will be governed by the following:

(1) A medical finding of the Staff Surgeon that the member has a medical condition which—

(a) Would have permanently disqualified the member from entry in the military service had it been detected, or had it existed, at the time of enlistment.

(b) Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

(2) A member found to meet the requirements of (1) above will be discharged on the earliest practicable date following such determination, and prior to entry on initial tour of ADT. As an exception, a member who elects to complete the period of service for which enlisted will not be discharged under this paragraph. Such member will be required to sign a statement acknowledging that he has been informed of his eligibility for separation but elects to complete his period of service. The statement will become a permanent part of the member's personnel records.

★b. The provisions of paragraph 5-7, AR 635-200, apply to members on active duty or initial active duty for training at the time such medical disqualification is discovered and/or determined.

c. Members who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active duty training, or inactive duty training will be processed as specified in chapter 8, AR 635-40.

d. This paragraph is not to be used as a substitute for unsuitability separations in cases of character and behavior disorders. Such cases will be processed under the provisions of chapter 6 of this regulation.

4-11. Marriage, pregnancy, and parenthood. a. *Marriage.* An enlisted member will not be discharged, either voluntarily or involuntarily, solely by reason of marriage.

★b. *Pregnancy.*

(1) When it has been determined that an enlisted woman is pregnant, she will be afforded the opportunity to request discharge (or transfer to Retired Reserve, if qualified), except—

(a) if it is determined she was pregnant prior to enlistment she will be involuntarily discharged;

*Delete as appropriate.

(b) if a woman incurred an active duty obligation as a result of a Federally subsidized program she is ineligible for discharge (or transfer to Retired Reserve) under provisions of this paragraph unless the required period of active duty has been completed.

(2) Women who request discharge for pregnancy may request a specific date which will be not later than 30 days prior to expected date of delivery. This date may be accelerated by the discharge authority if the applicant cannot fully meet the performance requirements of her duty MOS.

(3) If, before discharge is accomplished, a medical officer determines that a pregnancy has

terminated for any reason, the authority for separation contained in this section no longer applies.

(4) Enlisted women who remain in an active status after confirmation of pregnancy will be granted leave of absence as outlined in paragraph 4-8, AR 135-91.

c. Parenthood. Members will not be discharged either voluntarily or involuntarily solely by reason of parenthood. This does not preclude the consideration of appropriate cases under the provisions of chapter 5.

4-12. Bona fide conscientious objectors. See AR 600-43.

★Section III. ERRONEOUS ENLISTMENTS, EXTENSIONS

4-13. Erroneous enlistment/extension. *a.* When it is discovered that an individual's enlistment/extension is erroneous because he/she failed to meet the qualifications for enlistment or reenlistment (AR 140-111) and no intent to obtain enlistment/extension by fraud is evident, the unit commander will initiate action to obtain authority to retain the member, to discharge the member for erroneous enlistment/extension, or to void the enlistment/extension, as appropriate, under the provisions of this section. The unit commander will forward the case through channels to the appropriate discharge authority listed in paragraph 1-6a with the following information:

(1) Facts relating to and circumstances surrounding the erroneous enlistment/extension.

(2) The desire of the member regarding retention or discharge.

(3) A statement by the immediate commander as to the member's conduct, efficiency, and overall value to the Army Reserve.

(4) A specific recommendation for retention or discharge, and the reasons therefor, by each commander in the chain of command.

b. The commander specified in paragraph 1-6a will take action as follows:

(1) Direct discharge in all cases in which the disqualification was nonwaiverable. In an exceptionally meritorious case when, in the judgment of the commander having discharge authority, the retention of the member would definitely be in the best interest of the Government, he may direct

retention. The following statement will be entered in Item 27 of the member's Personnel Qualification Record (DA Form 2-1): "Discharge action based on erroneous enlistment/extension is waived and retention is authorized by _____." The original copy of the approved

(date) document will be forwarded to Cdr, RCPAC, ATTN: AGUZ-DCD-RS, for inclusion in the member's OMPF.

(2) Direct discharge in those cases in which the disqualification was waiverable but separation is deemed to be in the best interest of the Government.

(3) Direct retention in those cases in which the disqualification was waiverable and retention is deemed to be in the best interest of the Government and the individual. The member's Personnel Qualification Record will be annotated and the original copy of the approved document will be processed as in (1) above.

c. This section is not applicable to individuals eligible for separation under the provisions of section II, chapter 3, or paragraph 4-10 of this regulation and individuals not meeting medical fitness standards for retention (AR 635-40).

d. Upon establishment that an enlistment is erroneous and the individual is a nonlocatee or in the hands of civil authorities, the enlistment will be voided. The discharge authority will issue orders releasing the individual from military control by reason of a void enlistment (Format 505, AR 310-10). No discharge certificate will be issued. The fol-

lowing entry will be made in Item 27, DA Form 2-1 (Enlisted Qualification Record): "Released from military control by virtue of a void enlistment (cite order number and issuing headquarters)." A copy of the order releasing the individual from mil-

itary control will be filed as a permanent document in his Military Personnel Records Jacket and Official Military Personnel File.

4-14. Pay and allowances. For pay and allowances, see table 1-4-1, DODPM.

Section IV. NATIONAL OR COMMUNITY HEALTH, SAFETY, OR INTEREST

4-15. National or community health, safety, or interest. An enlisted member may apply for discharge on the basis of importance to national or community health, safety, or interest in those instances where the critical need for the services of an enlisted member in a civilian capacity from the viewpoint of health, safety, or general welfare outweighs the need of the Nation for the individual in an active military status were he involuntarily ordered to active duty. Normally, favorable action on requests for discharge under the provisions of this policy will be made only when it is clearly determined that the request meets each of the following requirements—

a. The application is motivated by a critical national or community interest and is not primarily for the personal benefit of the applicant.

b. The applicant's importance to the national or community health, safety, or interest in a civilian capacity has become significantly greater than it was at the time the individual became a member of the Reserves by reason of an unusual change in the employer's requirements for the member's services. This may be substantiated by, but is not necessarily limited to such factors as—

(1) A substantial increase in defense supporting activity.

(2) A significant reduction in effectiveness of the employer's defense supporting activity because of the loss of personnel capable of performing the functions of the applicant and the employer's inability to replace such personnel.

c. The applicant is not presently assigned to a critical MOS listed in AR 135-133, or, if assigned to a critical MOS, a qualified replacement is available.

4-16. Evidence required. *a.* All applications will contain the following information and material:

(1) Name of firm or agency or description of individual enterprise with which the member is connected.

(2) Product manufactured or service performed.

(3) Title and description of position filled.

(4) Applicant's connection with the activity prior to enlistment.

(5) Letters, affidavits, or other documentation from responsible officials of the firm, corporation, agency, or State substantiating the facts given above and setting forth the need for the services of the applicant.

b. Applications for discharge will be submitted as follows:

(1) An enlisted member of a USAR unit will submit his/her application to his/her unit commander who will immediately forward it, together with a recommendation and the member's records, through channels to the appropriate area commander for final action.

(2) A nonunit member will submit application to Cdr, RCPAC, ATTN: AGUZ-PAD, for final action.

Section V. SOLE SURVIVING SONS/DAUGHTERS

★4-17. Discharge of sole surviving sons/daughters. *a.* Commanders specified in paragraph 1-6 are authorized upon approval of an application from an enlisted member who has been properly identified as a sole surviving son/daughter to order discharge for the convenience of the Government.

b. For the purpose of this section, a "sole surviving son/daughter" is defined as the only remaining

son/daughter in a family in which a parent or one or more sons or daughters—

(1) was killed in action; or

(2) died as a result of wounds, accident, or disease incurred in line of duty while serving in the Armed Forces; or

(3) is in a captured or missing in action status as a result of such service; or

(4) is permanently 100 percent physically or mentally disabled as determined by the Veterans Administration or one of the military services, is hospitalized on a continuing basis, and is not gainfully employed because of such disability.

Note: Neither the acquisition nor retention of sole surviving son status is dependent upon the existence of any other living family member (Supreme Court Decision, *McKart vs US*, 395 U.S. 185 (1969)). Thus the continued existence of a family unit is not required as a prerequisite for qualification as a "sole surviving son." The same is true for qualification as a "sole surviving daughter." This also applies to the existence of a sole surviving son having one or more surviving sisters, or to a sole surviving daughter having one or more surviving brothers.

c. Members who are identified as sole surviving sons/daughters on the basis of 100 percent mental or physical disability of a parent or one or more sons or daughters and who have not served on active duty, exclusive of periods of ADT and AT for 6 months or more, are not eligible for discharge under this paragraph.

d. To be eligible to apply for discharge, the member must have become a sole surviving son/daughter subsequent to incurring his current statutory military service obligation or his current period of enlistment.

e. The date an enlisted member becomes a sole surviving son/daughter will be determined based upon the date of death or determination of 100 percent disability established by the Veterans' Administration or the military service, whichever is appropriate.

Section VI. PRE-IADT DISCHARGE PROGRAM

4-19. Purpose. This section establishes the criteria for discharging nonprior service male and female members who are identified by their unit commander prior to their entry on IADT as unsuitable for further service. This program is designed to improve overall quality and to reduce future adverse losses by the early and expeditious elimination of such members.

4-20. Procedures. *a.* Members of units who have not entered on IADT and all applicants for enlistment will be counseled that they may be discharged should it be determined that they lack the aptitude, attitude, motivation, or self-discipline to become a useful member of the unit prior to their entry on IADT tour. Indicators of quality that will assist in identifying enlistees who

f. All applications submitted will include the following evidence:

(1) Name, grade, service number (when appropriate), social security account number, branch of service (i.e., Army, Navy, Marine Corps, Coast Guard, or Air Force), relationship, and date of death or disability of the family member upon which request is based.

(2) Veterans' Administration Claim Number, if appropriate.

(3) Name, age, and sex of other family members.

g. Commanders authorized to approve discharge are also authorized to verify status of deceased or disabled family members by forwarding a request, including name, grade, service number (when appropriate), social security number, approximate inclusive dates of service, and branch of the Armed Forces to the Records Center as indicated in appendix B.

4-18. When discharge is not authorized. Discharge under this section is not authorized—

a. During a period of war or national emergency declared by the Congress.

b. A member who, having been advised of the provisions of this section, enlists, reenlists, or otherwise voluntarily extends the period of enlistment subsequent to the date of notification of the family casualty on which the status as a sole surviving son/daughter is based will have automatically waived his rights for discharge.

should not be retained in the Army include, but are not limited to the following:

(1) Inability to accept instructions or directions.

★(2) History of drugs or alcohol abuse, which was not discovered prior to enlistment. Disqualifying drug use is defined by paragraph 2-34, AR 40-501; AR 601-210; NGR 600-200 (ARNG) or AR 140-111 (USAR).

(3) Social/emotional maladjustment patterns.

(4) Inability to cooperate with peers and supervisors.

★(5) Pregnant enlisted women who are found to have been pregnant upon enlistment will be discharged under this paragraph. Pregnancy is a disqualifying medical condition for enlistment

under table 2-1, AR 601-210; paragraph 2-8, NGR 600-200; table 2-2, AR 140-111; and paragraph 2-14b, AR 40-501. Women who are discharged under the Pre-IADT Discharge Program for pregnancies which occurred prior to enlistment (EPTS pregnancies) are not entitled to maternity care as provided in paragraph 4-46, AR 40-3.

b. When it is determined during the course of the pre-IADT training program that a member is untrainable, his immediate commander will personally notify him in writing of the proposed discharge and reasons therefor. Notification will be in the format as shown in figure 4-1 and will be furnished to the member as follows:

(1) It will be presented to the member during a training assembly for completion of the indorsement section of the letter.

(2) If the member cannot be personally notified of the proposed discharge, the notification letter will be mailed to the member's last known address by certified mail (For Delivery to Addressee Only) and return receipt requested. The letter should be mailed in time to reach the member at least 10 days prior to the date of the training assembly entered in paragraph 3 of the letter of notification.

(3) The following documentation will be placed in the member's MPRJ:

(a) A copy of the indorsement completed by the member, or

(b) A copy of the letter of notification and the post office receipt, or

(c) The original letter and envelope marked "unclaimed" or other designation indicating that it was not delivered.

1. Under the provisions of (cite this letter), I am initiating action to discharge you from the (Army National Guard of the State of and as a Reserve of the Army) or (US Army Reserve).
2. The reasons for my proposed action are: (state specific factual details which constitute the basis for this action).
3. You have the right to present at the next monthly assembly on (insert date of next monthly assembly) any rebuttal or statements in your behalf or you may waive these rights by indorsement hereon.
4. If you are discharged under this program, you will receive an honorable discharge certificate.

Signature of commander

Typed name, grade, and branch
of commander

1st Ind

1. I hereby acknowledge notification of my proposed discharge.
2. a. I desire to make statements or rebut the reasons for my proposed discharge and will submit them at the next monthly assembly.
b. I do not desire to make statements or rebut the reasons for my proposed discharge.

Signature of individual

Typed name, SSN, grade

Figure 4-1

c. When the letter of notification is furnished the member, the IADT reservation made through the REQUEST system will be cancelled, if the beginning date of IADT is within 30 days.

d. Upon receipt of the completed indorsement from the member, the immediate commander will—

(1) If the member has indicated he does not desire to make statements or rebut reasons for the proposed discharge, forward the case to authorities specified in (3)(b) below for action in accordance with e below.

(2) If the member has indicated he desires to make statements or rebut the reason for discharge, he will be afforded the opportunity at the assembly indicated in the notification. (For the purpose of this program, the term assembly refers to any assembly within a multiple unit assembly.)

(3) After consideration of the member's statement or rebuttal, immediate commanders take the following action.

(a) If member is accepted for retention, file notification letter in unit file and make a new reservation for IADT through the REQUEST system if previous reservation was cancelled.

(b) If the member is not approved for retention, forward the notification letter with indorsement and statements or rebuttal through channels

to the State adjutant general for ARNG members or for USAR members to the appropriate area commander for final decision.

e. Upon receipt of correspondence from the immediate commanders, authorities indicated in (b) above will take the following action.

(1) If retention is not approved, accomplish the member's discharge. ARNG members will be discharged from the ARNG and as a Reserve of the Army in accordance with NGR 600-200. USAR members will be discharged under the provisions of this section. The IADT reservation will be cancelled if it was not previously done.

(2) When retention is approved, return the correspondence to the immediate commander advising him of the decision.

f. The immediate commander upon receipt of the final decision will advise the member of the decision and if the member is retained, obtain a new IADT reservation if the previous one has been cancelled.

★4-21. **Limitations.** It is contrary to the intent of this program for commanders to use this policy as a substitute for appropriate administrative action under paragraphs 4-10 and 4-13, or chapters 6, 7, and 9.

★4-22. **Type of discharge.** Members discharged under this program will be furnished an honorable discharge certificate.

★Section VII. EXPEDITIOUS DISCHARGE PROGRAM (EDP)

4-23. **General.** This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) because of existence of one or more of the following conditions, may be discharged:

- a. Poor attitude.
- b. Lack of motivation.
- c. Lack of self-discipline.
- d. Inability to adapt socially or emotionally.
- e. Failure to participate satisfactorily (see limitation in paragraph 4-25a(2)). *S/b 26a 2)*

4-24. **Scope.** This policy applies to all nonprior service ARNG and USAR troop program unit enlisted personnel who have completed at least six months but not more than 36 months of continuous unit service on their first enlistment at the time the member's immediate commander formally recommends discharge under this program.

For the purpose of this policy, a break in unit service (assignment to the inactive Army National Guard or USAR control group) of not more than 90 days does not interrupt continuity of unit service. This program does not apply to ARNG or USAR members on any type of FTTD or ADT.

4-25. **Purpose.** This policy provides for the expeditious elimination of substandard, nonproductive soldiers before board action or involuntary active duty becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative discharge boards by providing a means to discharge such personnel expeditiously before they progress to the point where involuntary active duty or active duty for training, or elimination by board action becomes necessary. The program is not intended to be a panacea for solving normal personnel problems, or a relief from the profes-

sional obligation of commanders to exercise effective leadership and exert a sincere effort to produce good soldiers from seemingly poor ones.

4-26. Limitations. It is contrary to the intent of this policy for commanders to—

a. Use this policy as a substitute for the following appropriate administrative actions—

(1) Paragraphs 3-1; 4-10; 4-13; section II, chapter 3; or chapters 5, 6, or 7 of this regulation, or equivalent provision of NGR 600-200.

(2) AR 135-91 (25 Jul 77) after a member has accumulated more than 8 unexcused absences within one year (12 consecutive months).

(3) Processing through medical channels because of physical or mental defects.

b. Make arbitrary or capricious use of this authority.

c. Force separation of members who—

(1) Possess a potential for rehabilitation.

(2) Decline discharge under this policy.

d. Effect discharge of members who have not been evaluated for a period of at least 3 months in their current unit of assignment.

4-27. Identification and screening. *a.* Individual characteristics that will assist in identifying members who should not be retained include, but are not limited to, the following:

(1) Quitter.

(2) Hostility toward the Army.

(3) Inability to accept instructions or directions.

(4) Clearly substandard performance.

(5) Evidence of social/emotional maladjustment.

(6) Lack of cooperation with peers or superiors.

(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least 3, but not more than 8, unexcused absences from unit training assemblies within a one-year period. In addition to this factor, one or more of the other characteristics must also apply to the member. The purpose of this requirement is to assure that a member who has been performing satisfactorily is not recommended for discharge under this program solely on the basis of 8 or fewer unexcused absences, particularly if the reason for such absences bordered on being excusable. (Also, see para 4-25a(2).)

b. Personnel identified as vulnerable for discharge under this program are those who obviously cannot adjust to the ARNG or USAR environment.

4-28. Counseling and rehabilitation. Commanders will ensure that before recommending discharge under this section, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action against him/her, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reason for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this section or other provisions of this regulation.

(3) The type of discharge that may be issued and the effect of each type is such action if taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken—

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months' duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), the commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers.

(1) The counseling required by *a* above may not be waived.

(2) The rehabilitation required by *b* above may be waived by the discharge authority when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems or a hazard to the unit's mission or to the member.

4-29. Standards and criteria. *a.* No member will be discharged under this program unless he/she voluntarily consents to the proposed discharge. The member's acceptance of discharge may not be withdrawn after the date the discharge authority approves the discharge.

b. Members discharged under EDP may be awarded an honorable or a general discharge certificate, as appropriate (see para 1-10).

c. No member will be awarded a general discharge under this paragraph unless advised that he/she may consult with an appointed counsel for consultation (para 1-3b) or civilian counsel at no cost to the Government.

d. No member will be given a general discharge by the discharge authority unless it was recommended by the commander initiating the recommendation for discharge. In cases in which the discharge authority disagrees with the recommendation for an honorable discharge, the case will be returned to the initiating commander with comment to that effect. The initiating commander may initiate new proceedings under this section or take other appropriate action.

e. Discharge authorities may award an honorable discharge if a general discharge is recommended by the initiating commander.

f. When a member being processed under this program moves and leaves no forwarding address, or is otherwise nonlocatable, he/she may be discharged provided the relocation occurred subsequent to the date he/she consented to the discharge and the date the initiating commander formally recommended approval of the case. This provision does not apply to members absent in civil confinement or for whom civil trial or charges are pending (see para 4-25a). Discharges under this section will be approved by the discharge authority before executed.

g. Discharge should be accomplished within 15 days following approval by discharge authority.

4-30. Procedures. a. The member's immediate commander will personally notify the member in writing of the proposed discharge, the reasons therefor, and the effect of the discharge. (See figure 4-2 for notification letter, which is authorized for local reproduction.) In paragraph 2 of the letter covering reasons for the proposed action, state specific facts and incidents which are the basis for this action. The date in paragraph 7 should allow the member at least 10 days to consult with counsel when a general discharge is recommended.

b. Acknowledgment by the affected member will be in the form of an indorsement returning the notification to his/her immediate commander. (See figure 4-3 for the form indorsement, also authorized for local reproduction.) Necessary administrative support will be made available to assist the member in preparing the indorsement.

c. If the member voluntarily consents to the proposed discharge, the immediate commander will forward his letter and the acknowledgment, with the member's MPRJ, through channels to the commander exercising discharge authority. The immediate commander's indorsement should include all pertinent information to justify the recommendation for discharge, such as the number of times the member has been counseled and circumstances of contributing events. Intermediate commanders in the chain of command will forward recommendations for discharge with a recommendation for approval or disapproval. Each intermediate commander will verify that the recommendation is not in conflict with any provision of this section. The discharge authority will ensure that the member has been fully counseled, that the recommendation is fully supported, and that such action is not contrary to any provisions of this program. Reassignment to another ARNG or USAR unit will be considered if warranted by the circumstances.

d. If the member does not consent to the discharge, the immediate commander will not forward the recommendation to the discharge authority, but will close the case and take other appropriate action.

e. The discharge authority may disapprove a recommendation for discharge under this paragraph and return the case to the initiating commander with instructions for other disposition.

f. Disposition of documents generated in the course of processing such cases will be as follows:

(1) When discharge is approved, the notification letter, acknowledgment indorsement, and each forwarding indorsement, including the discharge authority's approval, will be made a permanent part of the MPRJ.

(2) When the member does not consent to such discharge, or the recommended discharge is not approved, the notification letter and acknowledgment indorsement, the forwarding indorsements and discharge authority's disapproval will be retained in the member's MPRJ until he/she is reassigned or until ETS, at which time they will be destroyed.

4-31. Discharge authority. Authority to discharge members under provisions of this section is delegated to State adjutants general, who will discharge ARNG members from the Army National Guard and as Reserves of the Army, and to

MUSARC commanders who will discharge members of the USAR. This authority may not be further delegated.

4-32. Orders. The discharge approving authority will issue orders directing discharge under provisions of this section.

(DATE)

SUBJECT:

TO:

1. I am initiating action to discharge you from the (Army National Guard of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178 (Expeditious Discharge Program). I am recommending that you be furnished an (Honorable) (General) Discharge Certificate.

2. The reasons for my proposed action are:

3. The final decision as to whether you will be discharged and if so, the type of discharge you will be issued rests with the discharge authority. (If you are furnished a General Discharge, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing the acknowledgment.)¹

4. You have the right to decline this discharge. If you so decline and your subsequent conduct indicates that such action is warranted, you may be subject to administrative separation procedures under other provisions of law or regulations.

5. You also have the right to submit a statement in your behalf, or you may waive this right.

6. You will not be permitted to apply for enlistment in the United States Army, the Army National Guard, or the Army Reserve within 2 years from the date of your discharge date.

7. Complete the attached acknowledgment and return it by _____

(Signature)

Name (Typed or Printed)

Rank, Commanding Branch

¹Applies only in cases where a General Discharge is recommended.

Figure 4-2. Notification of Pending EDP Discharge.

Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

(Expeditious Discharge Program)

Data Required by the Privacy Act of 1974

(5 USC 552a)

Authority: Section 301, Title 5, USC and Section 3012, Title 10 USC.

Purpose: To obtain acknowledgment from the member of notification of proposed discharge and statement of understanding pertaining thereto.

Routine uses: Used by commanders to process members recommended for discharge because of inability to meet acceptable standards required of service members in the ARNG or USAR. If discharge is approved, information is filed in the OMPF. If member does not consent to discharge or if recommendation is disapproved, information will be filed in the MPRJ until reassignment or ETS, at which time it will be destroyed. So long as filed in the OMPF or MPRJ, this personal information may be used by other appropriate Federal agencies and State and local Government authorities where use of the information is compatible with the purpose for which the information was collected. Discharge is voluntary. Failure to acknowledge notification of discharge may subject member to separation under other provisions of regulation or law.

(Date Individual Signs)

() 1st Ind

SUBJECT: Separation Under the Provisions of Section VII, Chapter 4,
AR 135-178TO: Unit Commander

1. I hereby acknowledge notification of my proposed discharge from the (ARNG of the State of _____ and as a Reserve of the Army) (US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178. I (do) (do not) voluntarily consent to this discharge.
2. Statements in my own behalf (are) (are not) submitted herewith (as Inclosure ____).
3. I understand that if I am issued a General Discharge under honorable conditions I may expect to encounter substantial prejudice in civilian life, and I hereby acknowledge I have been advised that I may consult with an officer of the Judge Advocate General's Corps or with civilian counsel at no expense to the Government.¹
4. I understand that I may, prior to the date the discharge authority approves my discharge, withdraw my voluntary consent to this discharge.
5. I further understand that if I decline to accept this discharge voluntarily, I may at a future time, if my conduct so warrants, be subject to separation under other provisions of law or regulation.
6. I also understand that I will not be permitted to apply for enlistment in the United States, the Army National Guard, or the Army Reserve within 2 years from the date of my discharge.

(Signature)

Name (Typed or Printed)

Grade, SSN

¹ Applies only in cases where a General Discharge is recommended*Figure 4-3. Acknowledgement of Pending EDP Discharge.*

CHAPTER 5

SEPARATION BECAUSE OF DEPENDENCY OR HARDSHIP

Section I. GENERAL

5-1. Purpose. This chapter sets forth the criteria and procedures and provides authority for the separation of enlisted members of the USAR by reason of dependency or hardship.

5-2. Authority to approve discharge. The author-

ity to approve discharge, by authority of the Secretary of the Army, of enlisted personnel of the USAR for dependency or hardship is delegated to commanders specified in paragraph 1-6.

Section II. DEPENDENCY/HARDSHIP

5-3. Discharge. Discharge of enlisted personnel by reason of dependency or hardship may be approved when the following exists:

a. Dependency.

(1) When four or more family members are dependent upon the member for 50 percent or more of their support.

(2) When by reason of death or disability of a member of his family, members of the enlisted person's family become principally dependent upon him for care or support to the extent that service on active duty in the event of an emergency or continued participation in unit training would result in undue and genuine hardship, provided—

(a) Such dependency exists as a result of the death or disability of a member of the enlisted person's family occurring after enlistment, or conditions resulting from the death or disability of a member of the enlisted person's family occurring prior to entry into the service have been aggravated to such an extent as to necessitate the member's care or support of a member of the family. Pregnancy of an enlisted man's wife is not a disability for which separation is authorized. However, this does not preclude separation on account of a disability of the enlisted member's wife occurring as a result of pregnancy.

(b) Dependency is not of a temporary nature.

(c) Every reasonable effort made by the enlisted person to alleviate the dependency condition has been without success.

(d) Discharge is the only readily available means of eliminating or materially alleviating the hardship created by the dependency conditions.

★b. Hardship.

(1) Discharge may be approved when service on active duty in the event of an emergency or

continued participation in unit training would result in undue and genuine hardship, provided—

(a) Such hardship conditions affecting members of the enlisted person's family have arisen after enlistment, or conditions existing in the enlisted person's family prior to enlistment have been aggravated to such an extent as to constitute undue and genuine hardship. Undue and genuine hardship does not necessarily exist solely because of altered income or because of separation from the enlisted member's family, or because the member must suffer the inconvenience normal to military service.

(b) The hardship conditions are not of a temporary nature.

(c) The enlisted member has made every reasonable effort to alleviate hardship conditions without success.

(d) Discharge is the only readily available means of eliminating or alleviating hardship conditions.

(2) Parenthood, either of a sole parent or married service member, may be a basis for discharge under provisions of this paragraph. (A sole parent is defined as one who is single because of divorce, death of spouse, or who has never been married.) The child/children must be under 18 years of age; must reside within the household; and evidence submitted (para 5-4c) must show that the roles of parent and service member are incompatible to the extent that the member cannot fulfill his/her military obligation without neglecting the children.

c. Members of the family. For the purpose of separation under dependency or hardship conditions, the term "members of the family" includes *only* spouse, children, father, mother, brothers, sisters, and any person who stood *in loco parentis* to

the enlisted member prior to enlistment. (The term "in loco parentis" as used herein is defined as "any person who has stood in the place of a parent to an enlisted member for 5 continuous years when the member was a minor child".)

5-4. Evidence required. *a.* The evidence required for dependency or hardship discharge normally will be in affidavit form. The evidence must substantiate dependency or hardship conditions upon which the application for discharge is based.

b. The evidence required will include affidavits or statements submitted by or in behalf of the enlisted member's dependents and by at least two disinterested persons or agencies having first hand knowledge of the circumstances. If dependency or hardship is the result of disability of a member of the individual's family, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and prognosis for recovery. There also will be furnished the names, ages, occupations, home addresses, and monthly incomes of other members of the applicant's family. The affidavits of disinterested individuals and agencies should include reasons within their knowledge that these members of the family can or cannot aid in the financial or physical care of the dependents concerned for the period the enlisted member is to be ordered to active duty in the event of an emergency or continue participation in unit training.

★*c.* When the basis for the application is parenthood of either a sole parent or a married service member, the supporting evidence will be in affidavit form and will substantiate the applicant's claim that unexpected circumstances, or circumstances beyond his/her control, have occurred since acquired parenthood which prevent fulfillment of military obligations without resultant neglect of the child. Affidavits from the service member's immediate commander and officer who is the job supervisor will be considered sufficient. Evidence in *b* above is not required for these applications.

5-5. Application for discharge. Any enlisted member may submit a written application for discharge because of dependency or hardship. Request for discharge will be submitted as follows:

a. An enlisted member of a USAR unit will submit written application to the unit commander who will immediately forward it with recommendations and member's records through channels to the appropriate area commander for final action.

b. A nonunit enlisted member will submit a written request to the CG, RCPAC for final action.

5-6. Procedure. *a.* Upon receipt of a written application, with required supporting evidence, the commanders specified in paragraph 1-6 will perform the following:

(1) Consider carefully the facts upon which the request is based.

(2) Procure any other additional information that may be necessary to determine the validity of the request.

(3) Take final action to approve or disapprove the application.

b. All commanders taking final action on applications of individuals for dependency or hardship discharge under this regulation will ensure the expeditious handling of applications.

c. Applications upon which final action has been taken will become a permanent part of the enlisted member's MPRJ and OMPF.

5-7. Form of discharge certificate. An Honorable Discharge Certificate (DD Form 255A) or a General Discharge Certificate (DD Form 257A) will be furnished in accordance with section II, chapter 1.

5-8. Personnel not qualified for discharge. Personnel who do not qualify for discharge because of dependency or hardship may be, if appropriate, screened to the Standby Reserve in accordance with AR 135-133.

CHAPTER 6 UNSUITABILITY

Section I. GENERAL

6-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted members of the USAR who are found to be unsuitable for further military service.

6-2. Policy. Action will be taken to separate an enlisted member for unsuitability when it is clearly established that—

a. It is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier, and

b. The member meets retention medical standards (AR 40-501).

6-3. Types of separation. An enlisted member will be furnished an honorable or general discharge certificate as warranted by his military record.

6-4. Authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be separated.

b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for consideration of unsuitability and to order discharge, except as specified in *a* above.

c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve discharge (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

6-5. Applicability. An enlisted member is subject

to discharge under this chapter when one or more of the following conditions exist.

a. Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

b. Personality disorders. As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM II) of Mental Disorders, 2d Edition, section on mental disorders, International Classification of Diseases and Injuries—8, American Psychiatric Association (reference(h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational adjustments.

c. Apathy. Apathy, defective attitudes, and inability to expend effort constructively.

d. Homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). Applicable to personnel not engaged in a homosexual act during their period of military service but who have a verified record of preservice homosexual acts. It is also applicable to other cases which do not fall within the purview of paragraph 7-30g.

e. Financial irresponsibility. Applicable to cases of individuals who have demonstrated a continuing inability to manage their financial affairs. Does not apply to cases warranting separation under the provisions of paragraph 7-30c or d.

Section II. COUNSELING AND REHABILITATION

6-6. Requirements. Commanders will ensure that before taking discharge action against an enlisted member under this chapter, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this chapter, the enlisted member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this chapter.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation required by *a* and *b* above may be waived by the convening

authority when separation is being considered under the provisions of paragraph 6-5*b* or *d*.

(2) Commands which are under the normal command of general officers and colonels having judge advocates on their staff may waive the requirement of *a* and *b* above when it is determined that further duty will, in their best judgment, create serious disciplinary problems or a hazard to the military mission or the member.

Section III. PROCEDURE

6-7. Medical evaluation. When a unit commander determines that an enlisted member under his control is to be processed for discharge under this chapter, he will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

6-8. Action by commanding officer. The unit commander of the member will—

a. Afford the member the opportunity to exercise the privileges as specified in paragraph 8-2*a*.

b. Not accept waivers of board hearings in the case of enlisted members who have completed 18 or more years of qualifying Federal service for retirement. Such members appearing before a board of officers convened under the provisions of this chapter must be represented by counsel. They may not waive this requirement.

c. Include report of medical examination according to standards prescribed in chapter 3, AR 40-501.

d. Forward the case with a recommendation that elimination proceedings pursuant to this chapter be initiated (para 6-10).

6-9. Suspension of favorable personnel action. Suspension of favorable personnel action will be initiated in accordance with AR 600-31 when a member is being considered for elimination under the provisions of this chapter.

6-10. Commanding officer's report. When the immediate commander determines that the best interest of the service will be met by separation action for unsuitability, a recommendation in letter form will be forwarded to the convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

a. Name, grade, social security number, age date of enlistment of current period of service, length of term for which enlisted, if applicable, and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General, nondescriptive terms will not be used.

c. Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and Duty Military Occupational Specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to effect other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

6-11. Action by intermediate commander. Intermediate commander may take the following action:

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's

Report will be forwarded to the new organization commander for information.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising discharge jurisdiction over the member.

6-12. Action by the convening authority on unit commander's recommendation. On receiving a recommendation for discharge for unsuitability, the convening authority may—

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the organization for disposition by other means; or

c. Convene a board to determine whether the member should be separated for unsuitability; or

d. When the board hearing has been properly and effectively waived, direct separation of the member for unsuitability except as provided in paragraph 6-4a; or

e. When the board hearing has been properly and effectively waived, approve discharge, except as provided in paragraph 6-4a, and suspend execution of the discharge (para 8-9); or

f. Direct the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating

physical or mental illness which was the direct or substantial contributing cause of the conduct for which the action under this chapter is being considered.

6-13. Appointment of counsel. Appointed counsel for consultation and counsel for representation will be as specified in paragraph 1-3b and c.

6-14. Board of officers. See chapter 8.

6-15. Limitations on administrative discharges and board hearing. See paragraphs 1-14 and 8-7.

6-16. Action by convening authority on board's recommendation. The action of the convening authority will be as specified in paragraph 8-7. In addition, upon completion of the review, the commander may when the board recommends separation:

a. Direct separation of the member for unsuitability (except for members referred to in para 6-4a); or

b. Disapprove the recommendation and direct retention of the member; or

c. Approve separation for unsuitability and suspend execution of the separation (para 8-9).

6-17. Suspension of execution of approved discharge. See paragraph 8-9.

6-18. Disposition of proceedings. See paragraph 8-11.

6-19. Errors and discrepancies noted before accomplishing discharge. See paragraph 8-12.

6-20. Disposition of case. See paragraph 8-13.

CHAPTER 8

BOARDS OF OFFICERS

8-1. General. a. This chapter sets forth the general provisions governing boards of officers convened under the provisions of this regulation to make recommendations to the convening authority concerning discharge action pertaining to enlisted members of the USAR and, where appropriate, to members of the ARNGUS.

★b. Appointment of boards of officers under this regulation will be accomplished by letters issued by area commanders, or higher headquarters. Procedure for boards is prescribed in AR 15-6. One officer on a board (which consists of more than one member) will be from the same Reserve Component as the member whose case is referred for board action.

c. When sufficient basis exists to initiate separation action pertaining to USAR members assigned under jurisdiction of the CG, RCPAC, the procedures set forth in paragraph 8-2 will apply. If an investigation and/or appointment of a board of officers is required, the case will be referred for necessary action to the commander in whose geographical area the member resides.

(1) Cases referred to area commanders by CG, RCPAC will include, to the extent possible, correspondence, statements, MPRJ, and similar related documentation.

(2) In those instances where circumstances indicate the need for Army investigative processes, as set forth in AR 195-2, the CG, RCPAC will request such investigation from the appropriate area commander. Upon completion of the investigation, the area commander will initiate continuing action.

(3) Except for those types of cases where final action is restricted to HQDA, area commanders are authorized to take final action on board recommendations.

(4) Upon completion of final action, area commanders will forward the original of the board proceedings with approved disposition to the CG, RCPAC, who will accomplish discharge action, if appropriate, and file the board proceedings in the enlisted member's OMPF.

d. Area commanders will appoint boards of officers upon request from a PMS to act upon cases

involving USAR members of the Senior ROTC Program.

8-2. Privileges of the enlisted member. a. The appointing authority will notify the enlisted member, in writing (by registered mail), if the member's whereabouts are known or may be reasonably ascertained, of the specific allegations on which the proposed action is based, the type of discharge certificate that may be issued and the fact that action has been suspended to give the member an opportunity to exercise the following privileges:

(1) To consult with a consulting counsel (para 1-3b).

(2) To appear and present his case before an administrative discharge board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3c); military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his own behalf.

(5) With the exception of (1) above, to waive the above rights in writing.

(6) To withdraw his waiver of his rights listed in (2), (3), and (4) above any time prior to the date the discharge authority orders, directs, or approves his discharge and request that his case be presented before a board of officers. The member will be required, within a reasonable time (not less than 15 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distances involved or other circumstances, a period in excess of 15 days may be allowed for the enlisted member to reply. If he elects to waive his rights, the member will personally sign a waiver (fig. 8-1). His consulting counsel will advise him in accordance with paragraph 1-3b and will sign the written waiver as witness, indicating that he is a commissioned officer of the Judge Advocate General's Corps. If the member refuses to consult with a consulting counsel, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then pro-

ceed as if the member had consulted with a consulting counsel.

b. If a member waives his rights, the discharge authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct discharge by reason of unsuitability or misconduct. If discharge is directed, the type of certificate will be specified.

c. A member unable to appear in person before an administrative discharge board by reason of confinement by civil authorities will be advised (by registered mail) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following rights.

(1) To consult by correspondence with a consulting counsel (para 1-3b). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his own expense to represent him and, in his absence, present his case before an administrative discharge board.

(3) To submit statements in his own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 30 days from the date of receipt. If the reply is not received within 30 days of the date of receipt of the letter of notification, the recommendation for his discharge, if approved by the discharge authority, may be accomplished with type of discharge certificate determined to be appropriate.

8-3. Board of officers. a. *Organization.* Boards of officers convened to determine whether a member should be discharged under the provisions of this regulation will consist of not less than three commissioned officers, except as authorized by paragraph 8-1b, at least one of whom is the grade of major or higher; nonvoting recorder may be appointed. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

★(3) In the case of a member of the Women's Army Corps, the board will include an officer of the Women's Army Corps if reasonably available.

In case of non-availability, the reason will be stated in the record of proceedings.

(4) The officer initiating the action under this regulation or any intervening officer who had direct knowledge of the case is not a member of the board.

b. *General.* The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the member and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement on the data at hand so that further rehabilitation data may be secured.

c. *Availability of witnesses.*

(1) The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, a deposition or affidavit will be obtained, as appropriate.

(2) The member will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any available witness the member desires to call ((1) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.

d. *Board procedures.*

★(1) Except as modified herein, the board will conform to the provisions of AR 15-6. As an exception to paragraph 3-7b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence he is entitled to have witnesses appear in person, if they are reasonably available (c(1) above).

(2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as possible and

will contain a verbatim record of the findings and recommendations (fig. 8-2).

(3) A minimum of 15 days' written notice before date of hearing will be given a member who is to appear before a board of officers so that he or his counsel may prepare his case. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will ensure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 30 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

(4) A member who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the member by the president of the board:

(a) The member may appear in person, with or without counsel, at all open proceedings of the board. The member may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When a member appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board action, the effects of such discharge, and that he may request counsel. The record will reflect the respondent's response.

(b) The member may challenge any voting member of the board for cause only.

(c) Member may request the appearance before the board of any witness whose testimony he believes to be pertinent to the case. The member will specify in the request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that the witness is reasonably available, and that the testimony can add materially to the case. The appearance of a witness will be under conditions set forth in c(1) above.

(d) Member may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses

not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(e) The member and his counsel may question any witness who appears before the board.

(f) Member may or may not submit to examination by the board. The provisions of Article 31, UCMJ will apply.

(g) Failure of the member to invoke any of the above rights, after having been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(5) For rules of procedures and evidence, and swearing of witnesses, see AR 15-6.

(6) The president of the board will ensure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the member. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(7) When the board is considering a case in which the respondent has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent, or of the type of discharge which had been recommended in his case. When it has come to the attention of the respondent or his counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

8-4. Board findings. a. Each finding of a board of officers must be a clear and concise statement of facts or facts evidenced in the record or a conclusion which can be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions."

8-5. Recommendations. a. Recommendation of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army in consonance with the policies outlined in this and other pertinent regulations and guided by their conception of justice both to the Government and the member concerned.

c. Recommendations: Unsuitability. The board convened to determine whether a member should

be discharged for unsuitability will recommend that the member be—

(1) Discharged because of unsuitability (indicating type of discharge certificate—honorable or general—to be furnished); or

(2) Retained in service. The recommendation will indicate that type of duty which it is believed the member can perform satisfactorily.

d. Recommendations: Misconduct (fraudulent entry, misrepresentation of facts, conviction by civil court, or other disqualifying patterns or acts of conduct). The board will recommend that the member be—

(1) Retained in the service; or

(2) Discharged; if discharge is recommended, the reason for discharge (misconduct or unsuitability) and the type of discharge to be issued will be specified (para 7-3).

8-6. Forwarding report of proceedings. The completed report of proceedings will be forwarded to the convening authority for final determination and disposition. When board action has been completed on members referred to in paragraphs 6-4*a* and 7-4*a*, the findings and recommendations of the board with complete documentation and the recommendation of the convening authority will be forwarded to Cdr, RCPAC for final determination in cases where the convening authority recommends discharge.

8-7. Convening authority action. *a.* When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative discharge proceedings. When the board recommends an undesirable discharge be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

★*b.* The convening authority's deputy or other officer with that headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases (including cases in which the enlisted member has waived his/her right to a board hearing under the provisions of para 8-2) except to direct a discharge under other than honorable conditions. The convening authority is required to personally sign any action directing a discharge under other than honorable conditions of a member under his com-

mand. The convening authority may direct other appropriate disposition of the case.

c. No convening authority will direct discharge if a board recommends retention, nor authorize the issuance of a discharge of less favorable character than that recommended by the board. However, a convening authority may direct retention when discharge is recommended or may issue a discharge of a more favorable character than that recommended.

d. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *c* above. With respect to substantial defects, he may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board, to include extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than the action of the first board.

(5) No more than one rehearing may be directed without approval from CG, RCPAC.

8-8. Retention, separation, or suspension. In

1 February 1979

C 1, AR 135-178

determining whether a member should be retained or be administratively discharged, consideration should be given to the member's entire military rec-

ord, including records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishment would have,

under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative discharge is appropriate.

a. Cases in which the circumstances may warrant use of such records ordinarily will be limited to those involving patterns of conduct which would become manifest only over an extended period of time.

b. When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time, or have no probative value in determining whether the member should be retained or discharged, will have minimum influence on the final determination.

c. If a decision is made that a member should be administratively discharged, section II, chapter 1 applies in determining the type of discharge certificate to be issued.

8-9. Suspension of execution of approved discharge. a. In order to afford a highly deserving member a probationary period to demonstrate successful rehabilitation prior to expiration of the member's enlistment or period of obligated service, the convening or higher authority may suspend execution of an approved discharge for a period not to exceed 6 months. During the period of suspension the member will be afforded an opportunity to demonstrate the capability of behaving properly under varying conditions during the probationary period and that the member can perform assigned duties efficiently.

b. Upon satisfactory completion of the probationary period, the authority who suspended the discharge will cancel execution of the approved discharge.

c. If there is additional misconduct on the part of the member during the probationary period or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability, the commander concerned or the convening authority, whichever is appropriate, will take one of the following actions:

(1) Initiate punitive or new administrative action notwithstanding the suspension of the execution of the approved discharge; or

(2) Vacate suspension of the approved discharge when the member has been beyond military control for 15 days or more and discharge the member in absentia; or

(3) Advise the member in writing that vacation action is being considered and the reasons which warrant such consideration. The member will be given an opportunity to furnish information in his own behalf or decline to make any statements. The convening authority will consider any information the member submits and will—

(a) Vacate suspension of approved discharge and execute discharge; or

(b) Continue to suspend execution of the approved discharge.

8-10. Reduction in grade. When a member is to be discharged with a discharge under other than honorable conditions, the convening authority will direct the immediate reduction to the pay grade of Private E-1 under the provisions of paragraph 3-38c, AR 140-158 and this regulation.

8-11. Disposition of proceedings. a. When discharge is ordered by the convening authority, or his designee, he will so note on the proceedings and forward them as authority for discharge to the appropriate commander for execution of the discharge (see para 8-13 for disposition of the case when discharge is accomplished).

b. When discharge is not ordered by convening authority, the proceedings will be filed at the headquarters of the convening authority and the member's commanding officer will be notified of the final action in the case. When deemed appropriate, consideration will be given to the member's transfer to a different organization. Ultimate disposition of the board proceedings will be governed by AR 340-18-7.

c. A member who is to be separated will be furnished a copy of the board proceedings, less written medical testimony and reports which would prove injurious to the member's physical or mental health.

(1) The respondent's copy of the proceedings will be marked "copy for (name and social security number of the member)" and furnished the member or his counsel. A signed receipt will be obtained from the member or the member's counsel to whom the copy is furnished and filed with the original board proceedings. If the member refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the member or the member's counsel does not desire a copy of the board proceedings, or if for any other reason a copy is not furnished, a notation will be made on the member's copy to accompany

the original. Release of this copy thereafter may be made only by the CG, RCPAC.

8-12. Errors and discrepancies noted before accomplishing discharge. The type of discharge directed by the convening authority may be changed only by CG, RCPAC. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case, the case will be referred for review before discharge to RCPAC.

8-13. Disposition of the case. *a.* When discharge of the member has been accomplished by ap-

propriate authority under this regulation, the complete file of the case together with the member's DA Form 201 will be disposed of in accordance with the instructions contained in AR 640-10.

b. A notification of final action will be prepared on each enlisted member processed under paragraph 6-5*d* or 7-30*g*. This notification will include the name, grade, social security number, date and place of birth, and action taken on the case. Such notification will be forwarded to the Commander, US Army Investigative Records Repository, Fort Meade, MD 20755.

.....
(Date individual and counsel sign statement)

SUBJECT: Discharge Under AR 135-178

TO: (Discharge authority)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my discharge for *(Unsuitability, chap. 6) (Misconduct, chap. 7) under AR 135-178 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officers.
4. Statements in my own behalf (are) (are not) submitted herewith (incl).
5. I (request) (waive) **(consulting counsel) representation by (counsel of representation) (.) as my military counsel) (civilian counsel at my own expense).
6. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. *** (I further understand that, as the result of issuance of a discharge under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.)
7. I understand that I may, up until the date the discharge authority directs or approves my discharge, withdraw this waiver and request that a board of officers hear my case.
8. I have retained a copy of this statement.

.....
(Signature of individual)

.....
(Typed name, SSN, grade)

Having been advised by me of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights, (name of individual), who appeared of sound mind, personally and knowingly made the choices indicated in the foregoing statement.

.....
(Signature of counsel)

.....
(Typed name, SSN, grade, branch)

* Delete as appropriate.

** To be used only when the individual is in civil confinement.

*** To be used if the individual has been recommended for a discharge under other than honorable conditions.

Figure 8-1. Individual's statement.

.....
(Date)

FINDINGS: In the board proceedings concerning Private E-2 John A. Doe, (111 11 1111), the board carefully considered the evidence before it and finds:

1. Private Doe is undesirable for further retention in the military service because of unsuitability (chap. 6, AR 135-178).*

- a. Apathy.
- b. His rehabilitation is not deemed possible.

2. Private Doe is undesirable for further retention in the military service because of misconduct (chap. 7, AR 135-178).*

- a. Conviction by civil court.
- b. Conviction of offenses involving moral turpitude.

RECOMMENDATION: In view of the findings, the board recommends that Private Doe be discharged from the service because of (Unsuitability) (Misconduct) with issuance of a Discharge Certificate Under Other Than Honorable Conditions (DD Form 794A).**

.....
President

.....
Member

.....
Member

.....
Recorder

*Delete as appropriate

**This character of discharge can never be used in a separation for Unsuitability (chapter 6, AR 135-178).

Figure 8-2. Verbatim findings and recommendations.

★APPENDIX A
AUTHORITY TO APPROVE DISCHARGE
OF USAR ENLISTED MEMBERS

<i>Reason for discharge</i>	<i>AR 135-178</i>	<i>HQDA</i>	<i>Area Cdr</i>	<i>CG RCPAC</i>	<i>PMS</i>
Completion of ETS or period of obl svc.....	3-1	X	X	X	.....
Appointment as commissioned or warrant officer.....	3-2	X	X	X	X
Nonavailability of member of Standby Reserve.....	3-3	X	.....	X	.....
Medically unfit for retention.....	3-4	X	X	X	.....
Failure to reply to official correspondence or to satisfactorily participate in training.....	3-6	X	X	X	.....
Noncitizens who are members of the USAR.....	3-7	X	X	X	.....
Minister of religion and divinity students.....	3-9	X	X	X	.....
Maximum allowable age.....	3-10	X	X	X	.....
Approved exemption from invol order to AD.....	3-11	X	X	X	.....
Minority.....	3-12	X	X	X	X
Enlistment or appointment in other component of Armed Forces.....	4-5	X	X	X	.....
National or Community Health, Safety, or Interest.....	4-15	X	X	X	.....
Convenience of the Government.....	Chap. 4	X	X	X	X
Dependency or hardship.....	Chap. 5	X	X	X	.....
Unsuitability.....	Chap. 6	X	X	Note 1	.....
Misconduct.....	Chap. 7	X	X	Note 1	.....

Notes

1. Area commanders will appoint boards of officers upon request of CG, RCPAC and will take final action on board recommendations (para 8-1c). CG, RCPAC may approve discharge in those instances where individual waives right to appear before the board and agrees to accept discharge under other than honorable conditions (para 8-2b).
2. Except as otherwise provided in this regulation, and when such authority has been delegated by proper authority, commanders indicated above may accomplish discharge action without referral to higher headquarters (para 1-6).
3. Approval of discharge of Retired Reserve enlisted members entitled to receive pay must be obtained from Headquarters, Department of the Army (para 10-2).
4. Board proceedings for enlisted men who have completed 18 or more years of qualifying Federal service for retirement must be forwarded to CG, RCPAC for final determination (para 8-6).

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5/5 CH 1 / FEB 79 *AR 135-178

ARMY REGULATION

No. 135-178

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 July 1977

ARMY NATIONAL GUARD AND ARMY RESERVE
SEPARATION OF ENLISTED PERSONNEL

Effective 15 August 1977

This regulation revises policies on separation of Army National Guard and Army Reserve enlisted personnel. Local supplementation of this regulation is permitted but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to Cdr, RCPAC, ATTN: AGUZ-RPP-PR; other commands will furnish one copy of each to the next higher headquarters.

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*This regulation supersedes AR 135-178, 30 December 1969, including all changes.

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CHAPTER 1 GENERAL PROVISIONS

Section I. GENERAL

1-1. Scope. *a.* This regulation prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except as indicated below:

(1) Separation of enlisted members serving on active duty (AD) will be governed by appropriate Active component regulations.

(2) Separation of enlisted members serving on Initial Active Duty for Training (IADT) under the Reserve Enlistment Program of 1963 (REP-63) will be governed by appropriate Active component regulations.

(3) Enlisted members of the ARNGUS or USAR serving on 45-day ADT who demonstrate through their actions or traits that they should be discharged will be released and returned to their Reserve component unit or USAR control group for discharge action.

b. Discharge of an enlisted member from status held as a Reserve of the Army will also terminate membership in the ARNGUS or USAR. In the case of ARNGUS personnel, termination of status as a member of the ARNG of the State rests with State military authorities.

c. As used in this regulation, the masculine gender pronoun will be construed to include both male and female personnel, unless otherwise expressly so stated.

1-2. Conduct of separation process. The separation process will be conducted efficiently and in a manner which will afford each individual being separated the courtesy, recognition, and consideration deserved by the nature of service performed. Separation must be accomplished in a manner which will enhance the dignity of the individual and leave the former member with a favorable attitude toward the military service.

1-3. Explanation of terms. For the purpose of this regulation, the explanation of terms in AR

140-1 and the following will apply:

a. Administrative discharge board. A board of officers appointed by the convening authority to present findings based on evidence presented in a case and to recommend retention in the service or discharge and reason therefor, and, if discharge is recommended, the type of discharge certificate to be furnished.

b. Appointed counsel for consultation. A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps who is appointed to consult with and advise, at the outset of any initiated elimination proceedings, an individual being processed for separation under chapters 6 and 7 of this regulation. This officer will advise the individual concerning the basis for his/her contemplated separation and its effect, the rights available to him/her, and the effect of any action taken by him/her in waiving such rights. Consulting counsel may advise the individual regarding the merits of the contemplated separation action when, in his/her professional judgment, such advice is appropriate. Consulting counsel, however, should inform the individual that he/she cannot represent him/her before a board of officers unless also appointed as counsel for representation. Communications between the individual and his/her consulting counsel regarding the merits of the separation action are privileged communications between the attorney and his/her client.

c. Appointed counsel for representation. A counsel appointed to represent an individual who is being processed for separation during the course of any hearing before a board of officers. Such counsel will possess the qualifications in (1) or (2) below, as applicable. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

(1) The appointed counsel for an individual being processed for separation which could result in issuance of a discharge under other than honorable

conditions under this regulation is a lawyer within the meaning of the Uniform Code of Military Justice (UCMJ), Article 27(b)(1), unless appropriate authority certifies in the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted nonlawyer counsel (app C).

(2) The appointed counsel for an individual being processed for separation by reason of unsuitability need not meet the qualifications described in (1) above; however, if he/she is not a lawyer, he/she must be a commissioned officer in the grade of first lieutenant or higher.

d. Convening authority. The officer authorized by Army regulations to convene an administrative discharge board and take final action with respect to a specific type of discharge.

e. Deferred obligated enlisted member. Individuals who have not served on active duty for at least 6 months (ADT is not creditable as active duty) and who are deferred from induction by reason of Reserve participation.

f. Discharge authority. The officer authorized to take final action with respect to specified types of discharges.

g. Nonlocatee. An enlisted member who has failed to furnish an address through which personal contact is possible.

h. Reserves of the Army. Enlisted members of the ARNGUS and the USAR.

i. ROTC program. The Senior Reserve Officers' Training Corps of the Army.

j. Respondent. An enlisted member who has been notified that action has been initiated to separate the member under this regulation.

k. Separation. Separation includes discharge, release from military control, and dropped from the rolls of the Army.

l. USAR enlisted members of the ROTC Program. A student who is participating in the ROTC Program and who is required to be an enlisted member of the USAR (10 USC 2104 and 2107).

1-4. Statutory authority. The following provisions of law contained in title 10, USC, pertain to the separation of Reserves of the Army.

a. Section 1001 provides for regulatory directives pertaining to standards and qualifications for retention in the Reserve Components and for the disposition of those members who fail to comply with such standards and qualifications.

b. Section 1004 provides that members of the Ready Reserve not on active duty will undergo a medical examination every 4 years and execute and submit annually a certificate of physical fitness. This section also provides for the disposition of those members determined to be physically unfit for active duty.

c. Section 1162(a) provides that the Secretary of the Army will prescribe regulations for discharge of Reserves of the Army.

d. Section 1162(b) provides that Reserves of the Army who become regular or duly ordained ministers of religion may be discharged upon their request.

e. Section 1163(b) describes the circumstances under which Reserves of the Army may be dropped from the rolls of the Army.

f. Section 1163(c)(1) precludes discharge of Reserves of the Army for cause under other than honorable conditions unless such discharge is the result of an approved sentence of a court-martial or approved findings of a board of officers.

g. Section 1163(c)(2) provides that a Reserve of the Army may waive the right to proceedings of a court-martial or a board of officers.

h. Section 3260 provides that an enlisted member of the ARNGUS who is not concurrently discharged as a Reserve of the Army automatically becomes a member of the USAR.

1-5. Service obligation. AR 135-90 defines the various service obligations incurred by military personnel upon initial entry into military service and prescribes the method of fulfillment.

1-6. Authority to approve discharge. *a.* The authority to approve discharge of enlisted members of the USAR is delegated to area commanders, the Commanding General, US Army Reserve Components Personnel and Administration Center (CG, RCPAC), and professors of military science (PMS) (app A).

b. Except for cases in which approval of Headquarters Department of the Army (HQDA) is required, area commanders may delegate authority to discharge individuals, for reasons for which a discharge under other than honorable conditions may be given, to a general officer in command having a staff judge advocate for cases arising in that command. Action taken pursuant to such a delegation will cite this paragraph as authority. Cases requiring approval at HQDA will be furnished to CG, RCPAC.

c. The discharge authority delegated to commanders by this regulation will not include the authority to discharge a member under court-martial sentence to dishonorable or bad conduct discharge, prior to the completion of appellate review, unless the discharge authority intends such discharge action as a remission of the conviction.

1-7. Appeals. *a. General.* An enlisted member who has been denied a requested discharge or who is recommended for involuntary discharge, may appeal such adverse action. The member's immediate commander will inform the member in writing of the adverse decision, the reasons for the action, that he/she has the right to appeal the action, and the appeal procedures. The written notice will be delivered to the member either by personal contact or by certified mail (for delivery to addressee only) with return receipt requested. If delivered by personal contact the member's signature will be obtained on the file copy of the notice. The appeal will be submitted in writing within 15 days of the member's receipt of the notice of denial. The appeal will explain those facts

pertinent to the member's case which he/she feels were not fully considered and may include any additional appropriate evidence which the appellant may wish to present.

b. How submitted. Appeals will be submitted to the unit commander, who will forward through channels to the discharge authority who denied the request for discharge. Each level of command will recommend approval or disapproval and state reasons if disapproval is recommended.

c. Authority to act on appeals. The authority which disapproved the member's request for discharge, or higher authority, may act on the appeal when the decision is favorable to the individual concerned. When disapproval is recommended, the authority to take final action will be—

(1) CG, RCPAC in all cases in which the request for discharge was disapproved by a CONUS Army commander or a State adjutant general.

(2) The Adjutant General, HQDA, in all cases in which the request for discharge was disapproved by the CG, RCPAC.

Section II. FACTORS GOVERNING ISSUANCE OF CERTIFICATES OF DISCHARGE UNDER HONORABLE, GENERAL, AND OTHER THAN HONORABLE CONDITIONS

1-8. General. As the type of discharge certificate furnished the enlisted member is very important, it is essential that all pertinent factors be considered so that the type of discharge certificate issued will reflect accurately the nature of the service rendered.

1-9. Discharge certificates. Discharge certificates are furnished to all enlisted members when they are separated from the United States Army except as otherwise provided in this regulation. Instructions for the completion of discharge certificates are contained in paragraph 1-16. The issuance of discharge certificates as the result of administrative action is governed by this regulation. The three types of discharge certificates which may be issued under this regulation are listed in table 1-1.

1-10. Character of discharge. *a.* The characterization of the discharge certificate issued upon administrative discharge will be based solely upon the enlisted member's behavior and performance of duty during the current period of service, when the member was either—

(1) Actually performing active duty, AT, ADT, or IDT; or

(2) Actively participating in or under an obligation to participate in Reserve activities, and the behavior relates directly to the member's Reserve status.

b. Under honorable conditions.

(1) *Honorable Discharge Certificate (DD Form 256A).* An honorable discharge is a separation from the United States Army with honor. The issuance of an honorable discharge is conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the grade held and the capabilities of the member concerned.

(2) *General Discharge Certificate (DD Form 257A).* A general discharge is a separation from the United States Army under honorable conditions of an enlisted member whose military record is not sufficiently meritorious to warrant an honorable discharge. When an enlisted member's service is characterized as general, except when discharge by reason of misconduct or unsuitability, the specific basis for such discharge will be included in the enlisted member's military personnel records.

c. Under other than honorable conditions.

(1) *Discharge Certificate Under Other Than*

Honorable Conditions (DD Form 794A). This type of discharge is an administrative separation from the United States Army under conditions other than honorable. It may be issued for misconduct.

(2) *Special consideration.* In any case in which a discharge under other than honorable conditions is authorized by regulation, a member may be awarded an honorable or general discharge, as appropriate, if during the current or a prior enlistment or period of service the member has been awarded a personal decoration, or if warranted by the particular circumstances of his/her case.

(3) *Consideration required.* Commanders and members of boards of officers responsible for recommending discharges to be furnished, and commanders having responsibility for determining finally the type of discharge certificate to be issued, are urged to consider all facets of a particular case involving discharge in order that a fair decision will result. Mental status evaluations or other similar medical evaluations given during the period of service which is being characterized will not be considered in determining the type and character of separation.

1-11. Issuance of a discharge certificate under other than honorable conditions. *a.* A discharge certificate under other than honorable conditions will be issued only on the approval of the convening authority, a general officer in command who has a judge advocate officer on his/her staff (if authority has been delegated to him/her pursuant to para 1-6b for cases arising in his/her command), or by higher authority, based upon the approved recommendation of a board of officers appointed pursuant to the provisions of chapter 8, unless the member waives the board. Prior to such action, the procedures and safeguards indicated in paragraph 8-2 must be observed.

b. If a member waives his/her rights, the discharge authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct discharge by reason of misconduct. If discharge is directed, the type of certificate will be specified.

1-12. Separation counseling of members being discharged with a discharge certificate under other than honorable conditions. The purpose and functions of the Army Discharge Review Board (AR 15-180) and the Army Board for Correction of Military Records (AR 15-185) will be explained concurrently with delivery of the discharge certificate

under other than honorable conditions to the member. Such explanation may be furnished the member in written form.

1-13. Periodic explanation. Commanders of troop program units will ensure that each member receives periodically an explanation of the types of discharge certificates explained herein, the basis for issuance, and the possible effects upon reenlistment and related matters. This regulation will be followed as a guide as to the extent and content of this explanation. This explanation will be given when determined by the commander to be essential. Commanders will ensure that the information is presented in a manner which will create a deep and lasting impression on each member who receives it. Failure on the part of the enlisted member to receive or to understand such explanation will not be considered as a defense in an administrative discharge proceeding or a bar thereto. As appropriate, this explanation may be furnished to the member in written form.

1-14. Limitations on administrative discharges and board hearings. *a.* Administrative discharges pursuant to this regulation should not be based upon conduct which has been considered at prior administrative or judicial proceedings and disposed of in a manner indicating that discharge was not warranted. Accordingly, administrative discharges under the provisions of this regulation are subject to the following limitations.

(1) No member will be considered for administrative discharge because of conduct which has been the subject of judicial proceedings resulting in acquittal or action having the effect thereof. Whether an action has the effect of an acquittal will be determined solely by CG, RCPAC in accordance with the exception procedure set forth in b(3) below.

(2) No member will be considered for administrative discharge because of conduct which has been the subject of administrative discharge proceedings resulting in a final determination that the member should be retained in the service.

(3) No member will be considered for administrative discharge because of conduct which was considered by a general court-martial if a sentence to a punitive discharge was authorized but not adjudged, or was disapproved or suspended on review by the convening authority or any appellate body or agency, and remains suspended.

b. The limitations set forth in *a* above are not applicable when—

(1) Substantial new evidence, fraud, or collusion is discovered, which was not known at the time of the original proceedings, despite the exercise of due diligence, and which will probably produce a result significantly less favorable to the member at a new hearing.

(2) Subsequent conduct by a member warrants considering him/her for discharge. Such conduct need not independently justify the member's discharge, but must be sufficiently serious to raise a question as to the member's potential for further useful military service. However, this exception does permit further consideration of conduct of which the member has been absolved in a prior final factual determination by an administrative or judicial body.

(3) An express exception has been granted by CG, RCPAC pursuant to a request by the convening authority through channels that, due to the unusual circumstances of the case, administrative separation should be accomplished.

c. No convening authority will direct discharge if a board recommends retention nor will a discharge of less favorable character than that recommended by the board be issued. However a convening authority may direct retention when discharge is recommended, or may issue a discharge of a more favorable character than that recommended.

d. A convening authority may forward a case to CG, RCPAC when a board of officers has recommended retention and he/she believes, due to the unusual circumstances of the case, that discharge is warranted and in the Army's best interest. Prior to forwarding the case, however, the member will be advised of the convening authority's intentions in this regard, given the opportunity to review the proposed forwarding correspondence, and be permitted to present written matters in rebuttal thereto if desired. It is the policy of HQDA that when the proceedings of a duly constituted board of officers are proper, the recommendations of the board will be upheld unless compelling justification is provided that would warrant separation by the Secretary of the Army as an exception to policy and in the best interest of the Army. CG, RCPAC may grant discharge authority. Discharge, if granted, will be under honorable conditions and the member will be awarded an Honorable or General Discharge Certificate.

1-15. Medical evaluation. a. When an enlisted member is to be processed for discharge under the

provisions of chapter 6 or 7 of this regulation, the member will be referred to a medical officer or civilian physician as specified in paragraph 9, AR 140-120 for medical evaluation. The reason for considering the member for separation will be furnished the medical officer or civilian physician. The medical officer or civilian physician will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when—

(1) Specifically requested by the individual subject to separation action.

(2) Specifically requested by the commanding officer recommending separation action.

(3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.

(4) Requested by the board considering the separation action.

(5) Individual is being considered for discharge under the provisions of paragraph 6-5b, 6-5d, or 7-30g.

b. In all other cases, the physician performing the physical examination will accomplish the mental status evaluation. In exceptional cases in a(1) through (5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

c. When an individual is being considered for discharge under the provisions of paragraph 6-5d or 7-30g, the psychiatrist doing the psychiatric portion of the medical evaluation will be furnished a copy of the documents on which the suspicion of homosexuality rests. In addition to SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History), the medical officer or civilian physician will prepare a report of mental status evaluation. The medical evaluation and the psychiatric study of the individual will include the following:

(1) Personal history, including, when appropriate, an opinion regarding the existence of homosexuality.

(2) Report of member's mental and physical condition in relation to the conduct under consideration, indicating whether the member meets the retention standards prescribed in chapter 3, AR 40-501, and recommend medical disposition if it is deemed appropriate.

(3) An opinion whether the member should be discharged under the provisions of this regulation

or medical regulations, as appropriate, or be retained in service. If retention is recommended, and considered appropriate, a statement of the procedures likely to be of value in the member's rehabilitation may be included.

d. The medical officer or civilian physician will forward the original of the evaluation report to the member's commander. A copy will be filed in the member's health records.

e. Members being considered for discharge under the provisions of chapter 6 or 7 who refuse to undergo medical examination or psychiatric evaluation when required will be processed as follows:

(1) The member will be advised in writing that failure to undergo such examination or evaluation will be the basis for the board to proceed with its findings and recommendations, notwithstanding the absence of such information. The member will also be advised in the same letter of notification

that in the event a discharge by reason of misconduct is approved, the member may receive a discharge under other than honorable conditions.

(2) When an enlisted member has failed or refuses to comply after notification as provided in (1) above, or when the member's whereabouts are unknown or unascertained after following the actions prescribed in AR 135-133, discharge action may be initiated without affording the privileges provided in paragraph 8-2a. Copies of communications remaining unanswered or returned unclaimed or the substance thereof with the dates and addresses will be included in the recommendation for discharge, together with a brief description of any other means used to locate or communicate with the member concerned. These documents will be furnished to the board of officers, if a board is required, and will be made a part of the board proceedings.

Table 1-1. Types of Discharge Certificates

<i>DD Form No.</i>	<i>Type of discharge</i>	<i>Character of discharge</i>
256A	Honorable	Honorable.
257A	General	Under honorable conditions.
794A	Under Other Than Honorable Conditions	Under conditions other than honorable.

Section III. PREPARATION OF DISCHARGE CERTIFICATES

1-16. General. a. *Number of copies.* Discharge certificates will be prepared in original only.

b. *How prepared.* Entries on discharge certificates will be typewritten or neatly printed in ink. Only black typewriter ribbon or permanent black or blue-black ink will be used.

c. *Entries.* Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the members's name in signature order, followed by the social security account number, grade, and "USAR." When discharge certificate is prepared by automated systems, the member's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) In the space between the lines in the lower

right section of the certificate, type in capital letters, in signature order, the name of the commanding officer or designated officer, and in upper case letters, centered below the name, the officer's grade and branch. The designated officer will sign the discharge certificate in the space provided.

1-17. Amendments and corrections to discharge certificates. The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of errors therein will be made on written application of the individual to CG, RCPAC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the CG, RCPAC on DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) (AR 15-180).

1-18. Orders. Orders directing discharge will be

issued as prescribed in AR 310-10. The order will identify the enlisted member's eligibility for reenlistment by appropriate code as provided in AR 635-5.

1-19. Notification of discharge to Selective Service System. (Not Used.)

Section IV. EFFECTIVE DATE OF DISCHARGE

1-21. Effective date of discharge. *a.* The effective date of discharge will be the date of discharge shown in the discharge orders. Such orders may be issued prior to the effective date of discharge; however, the discharge date shown in the orders will be as provided below:

(1) Discharge by reason of completion of enlisted or service obligation (ETS) — 2400 hours on the date of completion of the obligation. Discharge orders for personnel whose ETS will occur while their units are at annual training and who do not intend to reenlist/extend may be issued prior to or during annual training. Such personnel will be shown on all strength accounting reports as "awaiting discharge" until the actual date of discharge as shown in the discharge orders.

(2) Discharge by reason of change of military status — the day prior to the date of the member's entry into new status (see para 3-2, 4-4*d*, or 4-5).

(3) Discharge by reason of attaining maximum allowable age — the last day of the month during which maximum allowable age is attained.

(4) Discharge by reason of approval — of member's application or involuntary removal for cause actions — as soon as possible following approval.

b. Provided there is no evidence of fraud or manifest error and the member receives actual or constructive delivery, orders discharging a member from the USAR will not be revoked or effective date of separation changed after the effective date of discharge unless such revocation is in the form of written confirmation of oral orders actually issued prior to the effective date of separation. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation.

c. After effective date of discharge, orders may be amended by the discharge authority only to correct administrative errors, such as errors concerning rank, social security account number, or misspelled name.

1-22. Notification of discharge. *a.* Except as provided in paragraph 1-21, discharge is effective

1-20. Records disposition. Personnel records of discharged personnel will be disposed of in accordance with instructions contained in AR 635-10 or other appropriate regulations under which discharged.

at the time of notice to the member of discharge.

b. Notice of discharge may be either—

(1) Actual, as by delivery to the member of the discharge certificate, or

(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be discharged. Receipt by the member's organization at the proper station of the order directing the discharge will be deemed sufficient notice. If delivery of the discharge certificate cannot be made, it will be forwarded for file in the member's personnel records, to the CG, RCPAC with a statement of the reasons therefor. In those cases pertaining to personnel assigned to RCPAC when delivery of the discharge certificate cannot be accomplished, it will be retained on file in the enlisted member's personnel record together with a statement of the reasons therefor.

1-23. Mentally incompetent. The effective date of discharge of a mentally incompetent member may also be constructive, as when the member has been placed in an institution (AR 635-40).

1-24. Nonlocatee or in hands of civil authorities. Discharge of an enlisted member who has been convicted by civil authority is governed by chapter 7. However, when discharge under the provisions of chapter 6, or section IV or V of chapter 7 has been ordered by competent authority, and the member is a nonlocatee or is absent in the hands of civil authorities subsequent to the date discharge is approved by the appropriate authority or subsequent to the issuance of the discharge orders, the discharge may be executed notwithstanding such absence. Discharge certificate and orders will be dispatched by certified mail, with return receipt requested, to member to the address provided for that purpose. If the forms are returned unclaimed, or for any reason prove undeliverable, they will be forwarded, along with report of action, to the Cdr, RCPAC, ATTN: AGUZ-PRD-E for file with the member's personnel records.

CHAPTER 3 DISCHARGE OF ENLISTED MEMBERS NOT QUALIFIED FOR RETENTION

Section I. CATEGORIES FOR WHICH DISCHARGE IS AUTHORIZED

3-1. Completion of terms of enlistment or period of obligated service. *a.* The period of military service required for all enlisted members of the Army will be in accordance with applicable laws. Periods for which enlistment is authorized are set forth in AR 140-111. Upon expiration of term of enlistment or period of obligated service, the enlisted member will be discharged.

b. A member retired under the provisions of 10 USC 3914 may be discharged from the Retired Reserve upon the member's request and upon completion of 30 years active and inactive service.

c. No enlisted person may be held in service beyond the normal expiration of a term of service unless expiration of term of service is extended by law. When through administrative error an enlisted member is not discharged on the actual date of completion of term of enlistment or date of completion of obligated service, or as provided in paragraph 1-21a(1) and (3), a remark will be included in the "Remarks" section of the individual's Enlisted Qualification Record (DA Form 2, 2-1) as follows: "Retained beyond normal discharge date for the convenience of the Government."

3-2. Appointment as a commissioned or warrant officer. An enlisted member will be discharged upon acceptance of an appointment as a—

a. Commissioned or warrant officer of any of the Armed Forces, or Reserve Components thereof. A formal discharge certificate will not be issued when member is discharged to accept appointment as a commissioned or warrant officer in the ARNG. Termination of enlistment will be made in accordance with paragraph 4-5.

b. Commissioned officer of the Public Health Service.

c. Commissioned officer of the Environmental Science Services Administration.

3-3. Nonavailability of member of Standby Reserve. An enlisted member of the Standby Re-

serve will be discharged when 12 months after general mobilization the member remains unavailable for active duty and the member's case has been reviewed and discharge determined to be appropriate because of extended nonavailability.

3-4. Medically unfit for retention. *a.* Discharge will be accomplished when it has been determined (AR 40-501) that an enlisted member is no longer qualified for retention by reason of medical unfitness (AR 140-120) unless the member requests and is—

(1) Granted a waiver under AR 140-120.

(2) Eligible for transfer to the Retired Reserve (AR 140-10).

b. Disposition of members on active duty or ADT under the REP-63 Program who were not medically qualified under procurement medical fitness standards at the time of initial enlistment will be accomplished as set forth in paragraph 4-10 of this regulation, and paragraph 6-6, AR 40-3.

c. When it has been determined that a hospitalized member is no longer medically qualified for retention (chap. 3, AR 40-501), and when a period of ADT has or will expire while the member is still a patient, the following, as appropriate, will apply:

(1) Paragraph 15, AR 135-200 for amendment, attachment, or relief from attachment orders.

(2) AR 635-40 if on ADT pursuant to orders which specify a period of more than 30 days, other than those on ADT for 45 days pursuant to 10 USC 270(B) whose unfitness is due to disease.

(3) Paragraph 6-8, AR 40-3 and AR 635-40 if on ADT pursuant to orders which specify a period of 30 days or less and those on ADT for 45 days pursuant to 10 USC 270(b) whose unfitness is due to disease.

(4) If appropriate, a copy of amending or attaching orders, personnel records, or copies of board proceedings will be forwarded to the responsible headquarters having jurisdictional control over the member's records where necessary

administrative actions will be accomplished.

3-5. For security reasons. The provisions of AR 604-10 apply.

3-6. Failure or refusal of nonobligated enlisted members to accept or comply with official orders or correspondence or to satisfactorily participate in required training. USAR non-obligated enlisted members will be discharged when—

a. They fail to participate satisfactorily in required training (AR 135-90) or fail to earn sufficient retirement points (AR 140-10).

b. They refuse or fail to reply to or accept official correspondence; comply with official travel orders; or to complete and return forms required by pertinent regulations.

3-7. Noncitizens who are members of the USAR. A noncitizen who is a member of the USAR will be discharged under honorable conditions and given an Honorable Discharge Certificate (DD Form 256A) provided the member's military record so indicates, and upon qualifying under the following conditions:

a. At the time of release from active duty, the member fails or refuses to give a permanent mailing address within the United States or its territories, but gives only an address in a foreign country; or

b. Leaves the United States for permanent residence in a foreign country; or

c. Visits a foreign country of which the individual is a national for a continuous period of 6 months or more.

3-8. Unacceptable for induction. (Not Used.)

3-9. Ministers of religion and divinity students. An enlisted member may request discharge upon entering full-time training to become, or to engage in full-time employment as, a regular or duly ordained minister of religion.

a. A minister of religion is classified as either a duly ordained minister of religion or a regular minister of religion as follows:

(1) *Duly ordained minister of religion.* A person who has been ordained in accordance with the ceremonial ritual or discipline of a church, religious sect, or organization, established on the basis of the community's doctrine and practices of a religious character, to preach and teach the doctrines of such church, sect, or organization and to administer the

rites and ceremonies thereof in public worship, and who, as a regular customary vocation, preaches and teaches the principles of religion and administers the ordinances of worship as embodied in the creed or principles of such church, sect, or organization.

(2) *Regular minister of religion.* A person who, as a customary vocation, preaches and teaches the principles of the religion of a church, religious sect, or an organization of which the individual is a member, without having been formally ordained as a minister of religion but who is recognized by such church, sect, or organization as a regular minister.

b. Requests will be substantiated by appropriate documentary evidence as follows:

(1) Statement from the appropriate authority of the church, religious sect, or organization that the enlisted member has met the requirements for recognition and has been appointed a regular or duly ordained minister of religion and is employed full-time in a religious occupation (a above).

(2) Statement from appropriate authority of the religious order that as a divinity student the military member—

(a) Is fully qualified and acceptable for further religious training.

(b) Must be separated from military status for further theological education or processing into the religious order or organization.

(c) If separated, will be eligible for ordination or recognition as a minister on or about a specified date.

(3) Statement from the seminary or other educational institution in which the religious training is now or will be received that the individual is now or will be, concurrent with discharge, a full-time divinity student preparing for the ministry.

3-10. Attainment of maximum allowable age. An enlisted member who attains age 60 as set forth in AR 140-10, unless granted a waiver, will be discharged or, if eligible and the member applies, be transferred to the Retired Reserve.

3-11. Approved exemption from involuntary order to active duty. An enlisted member will be discharged upon an approved recommendation of a board of officers appointed under the provisions of AR 601-25 that the member be exempt from reporting for involuntary call to active duty under emergency or mobilization circumstances.

Section II. SEPARATION FOR MINORITY

3-12. Separation because of minority. This section sets forth the criteria and procedures and

CHAPTER 4

DISCHARGE OF ENLISTED MEMBERS OF THE USAR FOR THE CONVENIENCE OF THE GOVERNMENT

Section I. GENERAL

4-1. Scope. This chapter sets forth the conditions under which enlisted members of the USAR may be discharged for the convenience of the Government.

4-2. Authority. The separation of enlisted members of the USAR for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by this authority. Except as delegated by paragraph 1-6 or by

special Department of the Army directives, the discharge of any member of the USAR for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general discharge certificate as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

Section II. CATEGORIES FOR WHICH DISCHARGE IS AUTHORIZED

4-3. Reduction in authorized strength. A reduction in authorized strength by an official order applicable to all members of a class of personnel so specified in the order.

4-4. Discharge for immediate reenlistment. Qualified enlisted members may be discharged to permit their reenlistment in accordance with AR 140-111, provided they apply for and are qualified for reenlistment. Discharge may be accomplished—

a. During the last 90 days of current enlistment or period of obligated service for the purpose of immediate reenlistment in the USAR.

b. For the purpose of immediate reenlistment in the USAR to meet the length of service requirement for active duty tour, including ADT.

c. For the purpose of reenlisting in the USAR in order to qualify for enrollment in the Advanced Course or the Scholarship Assistance Program, Senior Army ROTC Program.

4-5. Enlistment or appointment in any component of the Armed Forces. a. An enlisted member will be discharged upon enlistment in any component of the Armed Forces (other than appointment as a cadet or midshipman to one of the service academies). A formal discharge certificate will not be issued when a member is discharged to—

- (1) Enlist in the Regular Army.
- (2) Enlist in the Air Force or Navy Reserve.
- (3) Enlist in the Army National Guard.
- (4) Accept appointment as a commissioned or warrant officer.

b. Discharge to enlist in a regular component of any of the Armed Forces of the United States other than the Army is not authorized for enlisted members within the 60-day period immediately preceding the effective date of order to active duty or ADT other than AT or during the performance of active duty, ADT, or AT.

c. A nonobligated individual who enlisted for the USAR dual status technician program will, upon application, be discharged—

(1) Upon failure to be employed as a technician.

(2) Upon separation from employment as a technician.

d. Special instructions contained in orders evidencing an individual's discharge under a(1) through (4) above to accept a different military status will be in the format below—

Special Instructions:

Your enlistment in the USAR on (date) was terminated on (date), preceding date of enlistment in (Regular Army), (ARNGUS) or in the (Air Force) or (Navy) Reserve. No formal discharge will be issued by reason of this termination.*

Your enlistment in the USAR on (date) was terminated on (date), preceding date of appointment as a (commissioned) or (warrant officer) in any component of the Armed Forces. No formal discharge will be issued by reason of this termination.*

* Delete as appropriate.

4-6. Women enlisted specifically for WAC College Junior Program. Women enlisted specifically for the WAC College Junior Program will be discharged upon--

a. Failure to qualify as a potential officer for any reason during the 4-week period of ADT.

b. Failure to be selected for appointment after attaining eligibility therefor and submission of application.

c. Declination of appointment or failure to apply for appointment within a reasonable period of time after attaining eligibility.

d. Application of the WAC College Junior Program member at any time following period of ADT.

4-7. USAR members enrolled in advanced course or receiving ROTC scholarship assistance. A USAR member enrolled in the advanced course or receiving scholarship assistance who leaves school or is disenrolled from the ROTC Program for reasons other than to evade accepting a commission or to willfully avoid the execution of any other aspect of the ROTC contract will be discharged unless the member voluntarily locates and accepts assignment with a USAR troop program unit within 30 days subsequent to leaving school or after being disenrolled from the ROTC.

4-8. Failure or inability to obtain parental consent to enter into the Senior ROTC Program Advanced Training Phase. (Not Used.)

4-9. For other good and sufficient reasons. An enlisted member may be discharged for other good and sufficient reasons when so determined by HQDA.

4-10. Discharge of members who do not meet the medical fitness standards. a. Commanders are authorized to discharge members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment, or who become medically disqualified under these standards prior to entry on IADT. Eligibility for discharge will be governed by the following:

(1) A medical finding of the Staff Surgeon that the member has a medical condition which--

(a) Would have permanently disqualified the member from entry in the military service had it been detected, or had it existed, at the time of enlistment.

(b) Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

(2) A member found to meet the requirements

of (1) above will be discharged on the earliest practicable date following such determination, and prior to entry on initial tour of ADT. As an exception, a member who elects to complete the period of service for which enlisted will not be discharged under this paragraph. Such member will be required to sign a statement acknowledging that he has been informed of his eligibility for separation but elects to complete his period of service. The statement will become a permanent part of the member's personnel records.

b. The provisions of paragraph 5-9, AR 635-200, apply to members on active duty or initial active duty for training at the time such medical disqualification is discovered and/or determined.

c. Members who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active duty training, or inactive duty training will be processed as specified in chapter 8, AR 635-40.

d. This paragraph is not to be used as a substitute for unsuitability separations in cases of character and behavior disorders. Such cases will be processed under the provisions of chapter 6 of this regulation.

4-11. Marriage, pregnancy, and parenthood. a. *Marriage.* An enlisted member will not be discharged, either voluntarily or involuntarily, solely by reason of marriage.

b. *Pregnancy.*

(1) When it has been determined that an enlisted woman is pregnant, she will be afforded the opportunity to:

(a) Request discharge under the provisions of this section. Women who request discharge for pregnancy may request a specific date for discharge. The specific date will not be later than 60 days prior to expected date of confinement. This date may be accelerated by the discharge authority if the applicant cannot fully meet the performance requirements of her duty MOS.

(b) Request transfer to the Retired Reserve, if qualified.

(2) When it is determined that a woman was pregnant prior to enlistment, she will be involuntarily discharged.

(3) Enlisted women who after confirmation of pregnancy remain in an active status will be granted leave of absence as outlined in paragraph 1-10e, AR 135-90.

c. *Parenthood.* Members will not be discharged either voluntarily or involuntarily solely by reason

of parenthood. This does not preclude the consideration of appropriate cases under the provisions of chapter 5.

4-12. Bona fide conscientious objectors. See AR 600-43.

Section III. ERRONEOUS ENLISTMENTS

4-13. Erroneous enlistment. *a.* When it is discovered that an individual's enlistment was erroneous because he/she failed to meet the qualifications for enlistment or reenlistment (AR 140-111) and no intent to obtain enlistment by fraud is evident, the unit commander will initiate action to obtain authority to retain the member, to discharge the member for erroneous enlistment, or to void the enlistment, as appropriate, under the provisions of this section. The unit commander will forward the case through channels to the appropriate discharge authority listed in paragraph 1-6a with the following information:

- (1) Facts relating to and circumstances surrounding the erroneous enlistment.
- (2) The desire of the member regarding retention or discharge.
- (3) A statement by the immediate commander as to the member's conduct, efficiency, and overall value to the Army Reserve.
- (4) A specific recommendation for retention or discharge, and the reasons therefor, by each commander in the chain of command.

b. The commander specified in paragraph 1-6a will take action as follows:

(1) Direct discharge in all cases in which the disqualification was nonwaiverable. In an exceptionally meritorious case when, in the judgment of the commander having discharge authority, the retention of the member would definitely be in the best interest of the Government, he may direct retention.

(2) Direct discharge in those cases in which the disqualification was waiverable but separation is

deemed to be in the best interest of the Government.

(3) Direct retention in those cases in which the disqualification was waiverable and retention is deemed to be in the best interest of the Government and the individual. In such cases, the following statement will be entered in Item 27 of the member's Qualification Record (DA Form 2-1): "Discharge action based on erroneous enlistment is waived and retention is authorized on date"

c. This section is not applicable to individuals eligible for separation under the provisions of section II, chapter 3, or paragraph 4-10 of this regulation and individuals not meeting medical fitness standards for retention (AR 635-40).

d. Upon establishment that an enlistment is erroneous and the individual is a nonlocatee or in the hands of civil authorities, the enlistment will be voided. The Discharge Authority will not issue a discharge certificate. Such individuals will be released from military control by virtue of a void enlistment by special orders. The following entry will be made in Item 27, DA Form 2-1 (Enlisted Qualification Record): "Released from military control by virtue of a void enlistment (cite special order number and issuing headquarters)." A copy of the special order releasing the individual from military control will be filed as a permanent document in his DA Form 201 (Military Personnel Records Jacket, US Army) and Official Military Personnel File.

4-14. Pay and allowances. For pay and allowances, see table 1-4-1, DODPM.

Section IV. NATIONAL OR COMMUNITY HEALTH, SAFETY, OR INTEREST

4-15. National or community health, safety, or interest. An enlisted member may apply for discharge on the basis of importance to national or community health, safety, or interest in those instances where the critical need for the services of an enlisted member in a civilian capacity from the viewpoint of health, safety, or general welfare outweighs the need of the Nation for the individual in an active military status were he involuntarily ordered to active duty. Normally, favorable action

on requests for discharge under the provisions of this policy will be made only when it is clearly determined that the request meets each of the following requirements—

a. The application is motivated by a critical national or community interest and is not primarily for the personal benefit of the applicant.

b. The applicant's importance to the national or community health, safety, or interest in a civilian capacity has become significantly greater than it

was at the time the individual became a member of the Reserves by reason of an unusual change in the employer's requirements for the member's services. This may be substantiated by, but is not necessarily limited to such factors as—

(1) A substantial increase in defense supporting activity.

(2) A significant reduction in effectiveness of the employer's defense supporting activity because of the loss of personnel capable of performing the functions of the applicant and the employer's inability to replace such personnel.

c. The applicant is not presently assigned to a critical MOS listed in AR 135-133, or, if assigned to a critical MOS, a qualified replacement is available.

4-16. Evidence required. a. All applications will contain the following information and material:

(1) Name of firm or agency or description of individual enterprise with which the member is connected.

(2) Product manufactured or service per-

formed.

(3) Title and description of position filled.

(4) Applicant's connection with the activity prior to enlistment.

(5) Letters, affidavits, or other documentation from responsible officials of the firm, corporation, agency, or State substantiating the facts given above and setting forth the need for the services of the applicant.

b. Applications for discharge will be submitted as follows:

(1) An enlisted member of a USAR unit will submit his application to his unit commander who will immediately forward it, together with a recommendation and the member's records, through channels to the appropriate area commander for final action.

(2) A nonunit member will submit application to Cdr, RCPAC, ATTN: AGUZ-PAD, for final action.

Section V. SOLE SURVIVING SONS/DAUGHTERS

4-17. Discharge of sole surviving sons/daughters. a. Commanders specified in paragraph 1-6 are authorized upon approval of an application from an enlisted member who has been properly identified as a sole surviving son/daughter to order discharge for the convenience of the Government.

b. For the purpose of this section, a "sole surviving son/daughter" is defined as the only remaining son/daughter in a family in which the father of one or more sons or daughters—

(1) was killed in action; or

(2) died as a result of wounds, accident, or disease incurred in line of duty while serving in the Armed Forces; or

(3) is in a captured or missing in action status as a result of such service; or

(4) is permanently 100 percent physically or mentally disabled as determined by the Veterans Administration or one of the military services, is hospitalized on a continuing basis, and is not gainfully employed because of such disability.

Note Neither the acquisition nor retention of sole surviving son status is dependent upon the existence of any other living family member (Supreme Court Decision, *McKart vs U.S.* 395 U.S. 185 (1969)). Thus the continued existence of a family unit is not required as a prerequisite for qualification as a "sole surviving son." The same is true for qualification as a "sole surviving daughter." This also applies to the existence of a sole surviving

son having one or more surviving sisters, or to a sole surviving daughter having one or more surviving brothers.

c. Members who are identified as sole surviving sons/daughters on the basis of 100 percent mental or physical disability of the father or one or more sons or daughters and who have not served on active duty, exclusive of periods of ADT and AT for 6 months or more, are not eligible for discharge under this paragraph.

d. To be eligible to apply for discharge, the member must have become a sole surviving son subsequent to incurring his current statutory military service obligation or his current period of enlistment.

e. The date an enlisted member becomes a sole surviving son/daughter will be determined based upon the date of death or determination of 100 percent disability established by the Veterans' Administration or the military service, whichever is appropriate.

f. All applications submitted will include the following evidence:

(1) Name, grade, service number (when appropriate), social security account number, branch of service (i.e., Army, Navy, Marine Corps, Coast Guard, or Air Force), relationship, and date of death or disability of the family member upon which request is based.

(2) Veterans' Administration Claim Number, if appropriate.

(3) Name, age, and sex of other family members.

g. Commanders authorized to approve discharge are also authorized to verify status of deceased or disabled family members by forwarding a request, including name, grade, service number (when appropriate), social security number, approximate inclusive dates of service, and branch of the Armed Forces to the Records Center as indicated in appendix B.

Section VI. PRE-IADT DISCHARGE PROGRAM

4-19. Purpose. This section establishes the criteria for discharging nonprior service male and female members who are identified by their unit commander prior to their entry on IADT as unsuitable for further service. This program is designed to improve overall quality and to reduce future adverse losses by the early and expeditious elimination of such members.

4-20. Procedures. a. Members of units who have not entered on IADT and all applicants for enlistment will be counseled that they may be discharged should it be determined that they lack the aptitude, attitude, motivation, or self-discipline to become a useful member of the unit prior to their entry on IADT tour. Indicators of quality that will assist in identifying enlistees who should not be retained in the Army include, but are not limited to the following:

- (1) Inability to accept instructions or directions.
- (2) History of drugs or alcohol abuse, which was not discovered prior to enlistment.
- (3) Social/emotional maladjustment patterns.
- (4) Inability to cooperate with peers and supervisors.
- (5) Possession of a physical disqualification which was not discovered prior to enlistment.

b. When it is determined during the course of the pre-IADT training program that a member is untrainable, his immediate commander will personally notify him in writing of the proposed discharge and reasons therefor. Notification will be in the format as shown in figure 4-1 and will be furnished to the member as follows:

(1) It will be presented to the member during a training assembly for completion of the indorsement section of the letter.

4-18. When discharge is not authorized. Discharge under this section is not authorized—

a. During a period of war or national emergency declared by the Congress.

b. A member who, having been advised of the provisions of this section, enlists, reenlists, or otherwise voluntarily extends the period of enlistment subsequent to the date of notification of the family casualty on which the status as a sole surviving son/daughter is based will have automatically waived his rights for discharge.

(2) If the member cannot be personally notified of the proposed discharge, the notification letter will be mailed to the member's last known address by certified mail (For Delivery to Addressee Only) and return receipt requested. The letter should be mailed in time to reach the member at least 10 days prior to the date of the training assembly entered in paragraph 3 of the letter of notification.

(3) The following documentation will be placed in the member's MPRJ:

(a) A copy of the indorsement completed by the member, or

(b) A copy of the letter of notification and the post office receipt, or

(c) The original letter and envelope marked "unclaimed" or other designation indicating that it was not delivered.

c. When the letter of notification is furnished the member, the IADT reservation made through the REQUEST system will be cancelled, if the beginning date of IADT is within 30 days.

d. Upon receipt of the completed indorsement from the member, the immediate commander will—

(1) If the member has indicated he does not desire to make statements or rebut reasons for the proposed discharge, forward the case authorities specified in (3) (b) below for action in accordance with e below.

(2) If the member has indicated he desires to make statements or rebut the reason for discharge, he will be afforded the opportunity at the assembly indicated in the notification. (For the purpose of this program, the term assembly refers to any assembly within a multiple unit assembly.)

(3) After consideration of the member's statement or rebuttal, immediate commanders take the following action.

(a) If member is accepted for retention, file notification letter in unit file and make a new reservation for IADT through the REQUEST system if previous reservation was cancelled.

(b) If the member is not approved for retention, forward the notification letter with indorsement and statements or rebuttal through channels to the State adjutant general for ARNG members or for USAR members to the appropriate area commander for final decision.

e. Upon receipt of correspondence from the immediate commanders, authorities indicated in (b) above will take the following action.

(1) If retention is not approved, accomplish the member's discharge. ARNG members will be dis-

charged from the ARNG and as a Reserve of the Army in accordance with NGR 600-200. USAH members will be discharged under the provisions of this section. The IADT reservations will be cancelled if it was not previously done.

(2) When retention is approved, return the correspondence to the immediate commander advising him of the decision.

f. The immediate commander upon receipt of the final decision will advise the member of the decision and if the member is retained, obtain a new IADT reservation if the previous one has been cancelled.

4-21. Type of discharge. Members discharged under this program will be furnished an honorable discharge certificate.

1. Under the provisions of (cite this letter), I am initiating action to discharge you from the (Army National Guard of the State of and as a Reserve of the Army) or (US Army Reserve).

2. The reasons for my proposed action are: (state specific factual details which constitute the basis for this action).

3. You have the right to present at the next monthly assembly on (insert date of next monthly assembly) any rebuttal or statements in your behalf or you may waive these rights by indorsement hereon.

4. If you are discharged under this program, you will receive an honorable discharge certificate.

.....
Signature of commander

.....
Typed name, grade, and branch
of commander

1st Ind

1. I hereby acknowledge notification of my proposed discharge.

2. a. I desire to make statements or rebut the reasons for my proposed discharge and will submit them at the next monthly assembly.

b. I do not desire to make statements or rebut the reasons for my proposed discharge.

.....
Signature of individual

.....
Typed name, SSN, grade

Figure 4-1

CHAPTER 5 SEPARATION BECAUSE OF DEPENDENCY OR HARDSHIP

Section I. GENERAL

5-1. Purpose. This chapter sets forth the criteria and procedures and provides authority for the separation of enlisted members of the USAR by reason of dependency or hardship.

5-2. Authority to approve discharge. The

authority to approve discharge, by authority of the Secretary of the Army, of enlisted personnel of the USAR for dependency or hardship is delegated to commanders specified in paragraph 1-6.

Section II. DEPENDENCY/HARDSHIP

5-3. Discharge. Discharge of enlisted personnel by reason of dependency or hardship may be approved when the following exists:

a. Dependency.

(1) When four or more family members are dependent upon the member for 50 percent or more of their support.

(2) When by reason of death or disability of a member of his family, members of the enlisted person's family become principally dependent upon him for care or support to the extent that service on active duty in the event of an emergency or continued participation in unit training would result in undue and genuine hardship, provided—

(a) Such dependency exists as a result of the death or disability of a member of the enlisted person's family occurring after enlistment, or conditions resulting from the death or disability of a member of the enlisted person's family occurring prior to entry into the service have been aggravated to such an extent as to necessitate the member's care or support of a member of the family. Pregnancy of an enlisted man's wife is not a disability for which separation is authorized. However, this does not preclude separation on account of a disability of the enlisted member's wife occurring as a result of pregnancy.

(b) Dependency is not of a temporary nature.

(c) Every reasonable effort made by the enlisted person to alleviate the dependency condition has been without success.

(d) Discharge is the only readily available means of eliminating or materially alleviating the hardship created by the dependency conditions.

b. Hardship

(1) Undue and genuine hardship conditions affecting members of the enlisted person's family have arisen after enlistment, or conditions existing in the enlisted person's family prior to enlistment have been aggravated to such an extent as to constitute undue and genuine hardship. Undue and genuine hardship does not necessarily exist solely because of altered income or because of separation from the enlisted member's family, or because the member must suffer the inconvenience normally incident to military service.

(2) The hardship conditions are not of a temporary nature.

(3) The enlisted member has made every reasonable effort to alleviate hardship conditions without success.

(4) Discharge is the only readily available means of eliminating or alleviating hardship conditions.

(5) A married servicewoman who becomes a parent by birth, adoption, or marriage (stepparent) and whose child/children under 18 years of age reside within the household, may apply for discharge for hardship upon submission of supporting evidence that her roles of mother and servicewoman are incompatible to the extent that she is unable to fulfill her military obligation without neglecting the child/children. Supporting evidence will be provided in accordance with paragraph 5-4c.

(6) Service members who are "sole parents" and whose child/children under 18 years of age reside within the household, may apply for discharge under hardship. A "sole parent" is defined as a

parent who is single by reason of never having been married, or is divorced, or is a widow/widower. Supporting evidence will be provided in accordance with paragraph 5-4c.

c. Members of the family. For the purpose of separation under dependency or hardship conditions, the term "members of the family" includes *only* spouse, children, father, mother, brothers, sisters, and any person who stood *in loco parentis* to the enlisted member prior to enlistment. (The term "in loco parentis" as used herein is defined as "any person who has stood in the place of a parent to an enlisted member for 5 continuous years when the member was a minor child".)

5-4. Evidence required. *a.* The evidence required for dependency or hardship discharge normally will be in affidavit form. The evidence must substantiate dependency or hardship conditions upon which the application for discharge is based.

b. The evidence required will include affidavits or statements submitted by or in behalf of the enlisted member's dependents and by at least two disinterested persons or agencies having first hand knowledge of the circumstances. If dependency or hardship is the result of disability of a member of the individual's family, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and prognosis for recovery. There also will be furnished the names, ages, occupations, home addresses, and monthly incomes of other members of the applicant's family. The affidavits of disinterested individuals and agencies should include reasons within their knowledge that these members of the family can or cannot aid in the financial or physical care of the dependents concerned for the period the enlisted member is to be ordered to active duty in the event of an emergency or continue participation in unit training.

c. When the basis for the application is sole parenthood of a service member or parenthood of a married servicewoman, the supporting evidence will be in affidavit form and will substantiate the applicant's claim that unexpected circumstances, or circumstances beyond his/her control, have occurred since acquired parenthood which prevent

fulfillment of military obligations without resultant neglect of the child. Affidavits from the service member's immediate commander and officer who is the job supervisor will be considered sufficient. Evidence in above is not required for these applications.

5-5. Application for discharge. Any enlisted member may submit a written application for discharge because of dependency or hardship. Request for discharge will be submitted as follows:

a. An enlisted member of a USAR unit will submit written application to the unit commander who will immediately forward it with recommendations and member's records through channels to the appropriate area commander for final action.

b. A nonunit enlisted member will submit a written request to the CG, RCPAC for final action.

5-6. Procedure. *a.* Upon receipt of a written application, with required supporting evidence, the commanders specified in paragraph 1-6 will perform the following:

(1) Consider carefully the facts upon which the request is based.

(2) Procure any other additional information that may be necessary to determine the validity of the request.

(3) Take final action to approve or disapprove the application.

b. All commanders taking final action on applications of individuals for dependency or hardship discharge under this regulation will ensure the expeditious handling of applications.

c. Applications upon which final action has been taken will become a permanent part of the enlisted member's MPRJ and OMPF.

5-7. Form of discharge certificate. An Honorable Discharge Certificate (DD Form 256A) or a General Discharge Certificate (DD Form 257A) will be furnished in accordance with section II, chapter 1.

5-8. Personnel not qualified for discharge. Personnel who do not qualify for discharge because of dependency or hardship may be, if appropriate, screened to the Standby Reserve in accordance with AR 135-133.

CHAPTER 6 UNSUITABILITY

Section I. GENERAL

6-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted members of the USAR who are found to be unsuitable for further military service.

6-2. Policy. Action will be taken to separate an enlisted member for unsuitability when it is clearly established that—

a. It is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier, and

b. The member meets retention medical standards (AR 40-501).

6-3. Types of separation. An enlisted member will be furnished an honorable or general discharge certificate as warranted by his military record.

6-4. Authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be separated.

b. Commanders exercising discharge jurisdiction are authorized to convene boards of officers for consideration of unsuitability and to order discharge, except as specified in *a* above.

c. When separation is ordered, the case file of an individual will be reviewed by the commander having authority to approve discharge (para 1-6) to determine whether the reporting requirements set forth in AR 190-10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190-10 will be submitted.

6-5. Applicability. An enlisted member is subject

to discharge under this chapter when one or more of the following conditions exist.

a. Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

b. Personality disorders. As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM II) of Mental Disorders, 2d Edition, section on mental disorders, International Classification of Diseases and Injuries — 8, American Psychiatric Association (reference (h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational adjustments.

c. Apathy. Apathy, defective attitudes, and inability to expend effort constructively.

d. Homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). Applicable to personnel not engaged in a homosexual act during their period of military service but who have a verified record of preservice homosexual acts. It is also applicable to other cases which do not fall within the purview of paragraph 7-30g.

e. Financial irresponsibility. Applicable to cases of individuals who have demonstrated a continuing inability to manage their financial affairs. Does not apply to cases warranting separation under the provisions of paragraph 7-30c or d.

Section II. COUNSELING AND REHABILITATION

6-6. Requirements. Commanders will ensure that before taking discharge action against an enlisted member under this chapter, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this chapter, the enlisted member will be counseled by a re-

sponsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this chapter.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be

waived as follows:

(1) Counseling and rehabilitation required by *a* and *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6-5*b* or *d*.

(2) Commands which are under the normal command of general officers and colonels having judge advocates on their staff may waive the requirement of *a* and *b* above when it is determined that further duty will, in their best judgment, create serious disciplinary problems or a hazard to the military mission or the member.

Section III. PROCEDURE

6-7. Medical evaluation. When a unit commander determines that an enlisted member under his control is to be processed for discharge under this chapter, he will initially refer the member to a medical officer or civilian physician as specified in paragraph 8, AR 140-120 and request a medical evaluation. The request for and contents of the report will be as provided in paragraph 1-15.

6-8. Action by commanding officer. The unit commander of the member will--*a.* Afford the member the opportunity to exercise the privileges as specified in paragraph 8-2*a*.

b. Not accept waivers of board hearings in the case of enlisted members who have completed 18 or more years of qualifying Federal service for retirement. Such members appearing before a board of officers convened under the provisions of this chapter must be represented by counsel. They may not waive this requirement.

c. Include report of medical examination according to standards prescribed in chapter 3, AR 40-501.

d. Forward the case with a recommendation that elimination proceedings pursuant to this chapter be initiated (para 6-10).

6-9. Suspension of favorable personnel action. Suspension of favorable personnel action will be initiated in accordance with AR 600-31 when a member is being considered for elimination under the provisions of this chapter.

6-10. Commanding officer's report. When the intermediate commander determines that the best interest of the service will be met by separation action for unsuitability, a recommendation in letter form will be forwarded to the convening authority, through the appropriate intermediate commander,

if applicable, furnishing the following.

a. Name, grade, social security number, age, date of enlistment of current period of service, length of term for which enlisted, if applicable, and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General, non-descriptive terms will not be used.

c. Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and Duty Military Occupational Specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to effect other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

6-11. Action by intermediate commander. Intermediate commander may take the following action:

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's

Army, a report of circumstances will be made to the commander of the Army area, or comparable major command beyond the continental United States in which the member is located. The report should include as a minimum the name, grade, and social security number. If available, the date of absence, organization and station from which absent, and the current address of member will also be furnished. If information is received from the Army commander that return to Active Army control is desired, the member will be dropped from the fraudulent enlistment and will not be furnished a discharge certificate (c below). If return to Active Army control is not desired, the unit commander will submit a recommendation for discharge or retention, through intermediate commanders, to the convening authority as outlined in paragraph 7-10.

c. When a member is dropped from a fraudulent enlistment, an appropriate entry will be made in the Enlisted Qualification Record (DA Form 2, 2-1) for the period of service from which dropped, showing why so dropped and to which period of service held.

7-20. Concealment of other disqualifications. Upon discovery that a member has procured entry into the Army by assuming the identity of another individual through the use of a discharge certificate or other military documents belonging to the true member or by concealment of any fact, circumstances, or condition that existed prior to entry which would have made the member ineligible for acceptance, other than concealment of minority or true name, the member will be considered for discharge under the provisions of this regulation. However, the convening authority may, upon the

request of the member's unit commander, direct retention if the member's general qualifications are such that the member is an asset to the service. A member's retention constitutes waiver of fraudulent entry.

7-21. Recording and effect of retention action. When a decision has been made to retain a member in the service, a notation will be made in the member's Enlisted Qualification Record (DA Form 2, 2-1) indicating the retention and that such retention constitutes waiver of fraudulent entry. After such action, no further cognizance of, or action with respect to the fraudulent entry will be taken.

7-22. Character of discharge. Normally a member discharged under this section will be given a discharge under other than honorable conditions unless the particular circumstances of the case warrant an honorable or general discharge. The following factors will be considered in determining the character of a discharge:

a. The character of discharge will be based on in-service records and activities.

b. False pre-enlistment records will not be used as a basis for characterizing a discharge.

c. The offense of fraudulent enlistment (10 USC 843, Art. 83, UCMJ) occurs when the member accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment as to the member's qualifications. Thus, upon receipt of pay and allowances, it becomes an in-service activity by the member and may be considered in characterizing a discharge, even though the member is not tried for the offense.

Section V. CONVICTION BY CIVIL COURT

7-23. Scope. This section prescribes procedures for processing cases of enlisted members who, during their current term of military service, have been initially convicted or adjudged juvenile offenders.

7-24. Conditions which subject member to discharge. A member will be considered for discharge when it is determined that one or more of the following apply:

a. *Conviction by civil court.* When initially convicted by civil authorities (foreign or domestic), or action taken against the member which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of 1 year. If the offense is not

listed in the Table of Maximum Punishments, Manual for Courts-Martial, or is not closely related to an offense listed therein, the maximum punishment authorized by the United States Code or the District of Columbia Code, whichever is lesser, will apply.

b. *Conviction of offense involving moral turpitude.* When initially convicted by civil authorities (foreign or domestic) of an offense which involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code. The terms "moral turpitude," though normally applied to many offenses, herein applies only to members convicted by civil court or

disposed of as juvenile offenders whose offense involves narcotics violations, or sexual perversions, including, but not limited to—

- (1) Lewd acts.
- (2) Homosexual acts.
- (3) Sodomy.
- (4) Indecent exposure.
- (5) Indecent acts with, or assault upon, a child.
- (6) Other offenses which are considered related acts of sexual perversion.

c. Adjudication as juvenile offender. When initially adjudged a juvenile delinquent, wayward minor, or youthful offender, or placed on probation, or punished in any way, as the result of an offense involving moral turpitude.

7-25. Appeals. An enlisted member will be considered as having been convicted, or adjudged a juvenile offender, even though an appeal is pending or is subsequently filed. The discharge or recommendation for discharge, however, will not be accomplished or submitted until the member has indicated in writing that he does not intend to appeal the conviction or the adjudication as a juvenile offender, or until the time in which an appeal may be made has expired, whichever is earlier; or if an appeal has been made, until final action has been taken thereon. If the execution of the discharge is considered appropriate without waiting for final action of the appeal, approval of HQDA must be obtained.

7-26. Retention in the service. *a.* Cases often arise which warrant consideration with a view toward retention of the member in the service. In determining whether retention should be recommended or approved, full consideration should be given to the gravity of the offense involved, the circumstances relating thereto, and any matters in extenuation. Additionally, the military record of the member prior to the commission of the offense should be considered as well as prospects for rehabilitation. As a general rule, those involved in an offense of moral turpitude will not be recommended nor approved for retention.

b. Enlisted members who have been convicted by domestic or foreign courts of offenses which do not involve moral turpitude or which do not provide for punishment by confinement in excess of 1 year

under the cited codes (para 7-24a), and those adjudged juvenile offenders (by domestic courts) for offenses not involving moral turpitude, will, as a general rule, be retained in service.

c. Elimination action as an exception to the above may be authorized by HQDA if the offense is indicative of an established pattern of frequent difficulty with civil authorities, and if the member's military record is not exemplary.

7-27. Type of discharge. For type of discharge, see paragraph 7-3.

7-28. Authority for discharge or retention.

a. The convening authority is authorized to order discharge or direct retention in military service when disposition of an individual has been made by a foreign or domestic court of the United States or its territorial possessions (para 8-7).

b. Upon determination that an individual is to be separated with a discharge under other than honorable conditions, the convening authority will direct reduction as provided in paragraph 8-10.

c. The convening authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving member a probationary period to demonstrate successful rehabilitation (para 8-9).

7-29. Action following disposition by foreign or domestic courts.

a. When discharge is contemplated. The enlisted member will be notified in writing of the basis for the proposed discharge action (para 8-2).

b. Board hearing waived or completed. The convening authority may—

(1) Disapprove recommendation for discharge and approve retention.

(2) Approve recommendation for retention.

(3) Approve recommendation for discharge and approve the issuance of the type of discharge certificate recommended by the board or one of a more favorable character than that recommended. He may not direct the issuance of a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined in accordance with paragraph 7-3.

(4) Approve recommendation for discharge and suspend execution of the discharge (para 8-9).

Section VI. OTHER DISQUALIFYING PATTERNS OR ACTS OF CONDUCT

7-30. Applicability. An enlisted member is subject to discharge under the provisions of this

section when one or more of the following conditions exist:

a. Frequent incidents of a discreditable nature with civil or military authorities.

b. An established pattern for shirking.

c. An established pattern showing dishonorable failure to pay just debts.

d. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

e. Sexual perversion, including but not limited to—

(1) Lewd and lascivious acts.

(2) Homosexual acts (*g* below).

(3) Sodomy.

(4) Indecent exposure.

(5) Indecent acts with or assault upon a child.

(6) Other indecent acts or offenses.

f. Drug offense(s), defined as the use or incidental possession of any controlled substance or other drug in violation of law or regulation, where such use or possession is not covered by the exempt policy; or the sale, possession for other than personal use, or transfer of any controlled substance, or the introduction of any controlled substance onto an Army installation or other government property under Army jurisdiction. Controlled substances are those substances or immediate precursors listed in the current schedule of Title 21, US Code, Section 812. A drug is any substance which by its chemical nature alters structure or function in the living organism.

g. Homosexual acts are bodily contact between persons of the same sex, actively undertaken or passively permitted by either or both, with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act. Individuals who have been involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication normally will not be processed for discharge because of homosexual acts. If other conduct is involved, individuals may be considered for discharge for other reasons set forth in this chapter or chapter 6.

7-31. Counseling and rehabilitation. Commanders will ensure that before taking discharge action against an enlisted member under this section that adequate counseling and rehabilitation

have been taken as follows:

a. *Counseling.* When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action under this section, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but is not limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this section.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. *Rehabilitation.* As a minimum, one of the following measures will be taken:

(1) Members will be reassigned at least once if within commuting distance, with a minimum of 2 months duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), commander will ensure that appropriate alternate rehabilitation measures are taken.

c. *Waivers.* Counseling and rehabilitation may be waived as follows:

(1) Counseling and rehabilitation may be waived by the convening authority when separation is being considered under the provisions of paragraph 7-30e, f, and g.

(2) The convening authority may waive the requirements of a and b above when it is determined that further duty of the member will, in his best judgement, create serious disciplinary problems or a hazard to the military mission or to the member.

7-32. Commanding officer's report. When the immediate commander determines that the best interest of the service will be met by separation action because of misconduct, he will report the fact, in letter form, to the convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

a. Name, grade, social security number, age, date of enlistment of current period of service, length of term for which enlisted (if applicable), and total qualifying years of Federal service for retirement. (Reduction in grade is not a prerequisite to board action.)

b. Reason for action recommended. General non-

descriptive terms will not be used.

c. Armed Forces Qualification Test (AFQT) score, Aptitude Area score, and duty military occupational specialty (DMOS).

d. Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

e. Record of counseling.

f. Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment.)

g. Statement indicating why it is not considered feasible or appropriate to recommend elimination for unsuitability or to accomplish other disposition.

h. Record of other disciplinary action. (Include any record of nonjudicial punishment.)

i. Report of psychiatrist or, if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)

j. A statement by the member indicating advisement of rights (para 8-2).

k. Any other information pertinent to the case.

7-33. Action by intermediate commander. Intermediate commander may take the following action on misconduct cases under this section:

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

b. Approve the commanding officer's recommendation and forward the report to the commander exercising discharge jurisdiction over the member.

c. Recommend discharge for unsuitability rather than misconduct.

7-34. Action by the convening authority on unit commander's recommendation. On receiving a recommendation for discharge for misconduct, the convening authority may—

a. Disapprove the recommendation and direct reassignment of the member to another organization, if applicable, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Disapprove the recommendation relating to misconduct and convene a board of officers to deter-

mine whether the member should be separated for unsuitability; or

d. Convene a board of officers to determine whether the member should be separated for misconduct; or

e. When the board hearing has been properly and effectively waived, direct separation of the member for misconduct (para 7-3); except as provided in paragraph 7-4a; or

f. When the board hearing has been properly and effectively waived, approve discharge of the member for misconduct, except as provided in paragraph 7-4a, and suspend execution of the discharge (para 8-9); or

g. Direct that the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered.

7-35. Appointment of counsel. Appointed counsel for consultation and counsel for representation for enlisted members being considered for separation because of misconduct will be as specified in paragraph 1-3b and c.

7-36. Board of officers. Composition, procedure, review, and disposition of the proceedings will be as specified in chapter 8. The proceedings of the board will contain a verbatim record of the findings and recommendations.

7-37. Limitations on administrative discharges, board hearings, and rehearings. See paragraph 1-14 and 8-7.

7-38. Action by convening authority on board's recommendation. The action will be as specified in paragraph 8-7. In addition, upon completion of the review, the convening authority may—

a. When the board has recommended discharge for misconduct—

(1) Direct discharge of the member for misconduct (except for members referred to in para 7-4a); or

(2) Direct discharge for unsuitability (except for members referred to in para 7-4a); or

(3) Disapprove the recommendation and direct retention of the member; or

(4) Approve discharge for misconduct and suspend execution of the discharge (para 8-9).

b. When the board has recommended discharge for unsuitability—

CHAPTER 8 BOARDS OF OFFICERS

8-1. General. *a.* This chapter sets forth the general provisions governing boards of officers convened under the provisions of this regulation to make recommendations to the convening authority concerning discharge action pertaining to enlisted members of the USAR and, where appropriate, to members of the ARNGUS.

b. Appointment of boards of officers under this regulation will be accomplished by orders issued by area commanders, or higher headquarters. Procedure for boards is prescribed in AR 15-6. One officer on a board (which consists of more than one member) will be from the same Reserve Component as the member whose case is referred for board action.

c. When sufficient basis exists to initiate separation action pertaining to USAR members assigned under jurisdiction of the CG, RCPAC, the procedures set forth in paragraph 8-2 will apply. If an investigation and/or appointment of a board of officers is required, the case will be referred for necessary action to the commander in whose geographical area the member resides.

(1) Cases referred to area commanders by CG, RCPAC will include, to the extent possible, correspondence, statements, MPRJ, and similar related documentation.

(2) In those instances where circumstances indicate the need for Army investigative processes, as set forth in AR 195-2, the CG, RCPAC will request such investigation from the appropriate area commander. Upon completion of the investigation, the area commander will initiate continuing action.

(3) Except for those types of cases where final action is restricted to HQDA, area commanders are authorized to take final action on board recommendations.

(4) Upon completion of final action, area commanders will forward the original of the board proceedings with approved disposition to the CG, RCPAC, who will accomplish discharge action, if appropriate, and file the board proceedings in the enlisted member's OMPF.

d. Area commanders will appoint boards of officers upon request from a PMS to act upon cases involving USAR members of the Senior ROTC Program.

8-2. Privileges of the enlisted member. *a.* The appointing authority will notify the enlisted member, in writing (by registered mail), if the member's whereabouts are known or may be reasonably ascertained, of the specific allegations on which the proposed action is based, the type of discharge certificate that may be issued and the fact that action has been suspended to give the member an opportunity to exercise the following privileges:

(1) To consult with a consulting counsel (para 1-3b).

(2) To appear and present his case before an administrative discharge board.

(3) To be represented at any hearing by appointed counsel for representation (para 1-3c); military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(4) To submit statements in his own behalf.

(5) With the exception of (1) above, to waive the above rights in writing.

(6) To withdraw his waiver of his rights listed in (2), (3), and (4) above any time prior to the date the discharge authority orders, directs, or approves his discharge and request that his case be presented before a board of officers. The member will be required, within a reasonable time (not less than 15 days), to consult with a consulting counsel ((1) above) prior to waiving the rights listed in (2), (3), and (4) above. When warranted by distances involved or other circumstances, a period in excess of 15 days may be allowed for the enlisted member to reply. If he elects to waive his rights, the member will personally sign a waiver (fig. 8-1). His consulting counsel will advise him in accordance with paragraph 1-3b and will sign the written waiver as witness, indicating that he is a commissioned officer of the Judge Advocate General's Corps. If the member refuses to consult with a consulting counsel, he will

be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the member had consulted with a consulting counsel.

b. If a member waives his rights, the discharge authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention, or direct discharge by reason of unsuitability or misconduct. If discharge is directed, the type of certificate will be specified.

c. A member unable to appear in person before an administrative discharge board by reason of confinement by civil authorities will be advised (by registered mail) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following rights:

(1) To consult by correspondence with a consulting counsel (para 1-3b). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his own expense to represent him and, in his absence, present his case before an administrative discharge board.

(3) To submit statements in his own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 30 days from the date of receipt. If the reply is not received within 30 days of the date of receipt of the letter of notification, the recommendation for his discharge, if approved by the discharge authority, may be accomplished with type of discharge certificate determined to be appropriate.

8-3. Board of officers. *a. Organization.* Boards of officers convened to determine whether a member should be discharged under the provisions of this regulation will consist of not less than three commissioned officers, except as authorized by paragraph 8-1b, at least one of whom is the grade of major or higher; a nonvoting recorder may be appointed. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

(3) In the case of a member of the Women's Army Corps, the board will include an officer of the Women's Army Corps.

(4) The officer initiating the action under this regulation or any intervening officer who had direct knowledge of the case is not a member of the board.

b. General. The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the member and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement on the data at hand so that further rehabilitation data may be secured.

c. Availability of witnesses.

(1) The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, a deposition or affidavit will be obtained, as appropriate.

(2) The member will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any available witness the member desires to call ((1) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.

d. Board procedures.

(1) Except as modified herein, the board will conform to the provisions of AR 15-6. As an exception to paragraph 13b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence he is entitled to have witnesses appear in person, if they are reasonably available (c(1) above).

(2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as possible and

will contain a verbatim record of the findings and recommendations (fig. 8-2).

(3) A minimum of 15 days' written notice before date of hearing will be given a member who is to appear before a board of officers so that he or his counsel may prepare his case. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will ensure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 30 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

(4) A member who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the member by the president of the board:

(a) The member may appear in person, with or without counsel, at all open proceedings of the board. The member may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When a member appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board action, the effects of such discharge, and that he may request counsel. The record will reflect the respondent's response.

(b) The member may challenge any voting member of the board for cause only.

(c) Member may request the appearance before the board of any witness whose testimony he believes to be pertinent to the case. The member will specify in the request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that the witness is reasonably available, and that the testimony can add materially to the case. The appearance of a witness will be under conditions set forth in c(1) above.

(d) Member may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses un-

willing to appear voluntarily.

(e) The member and his counsel may question any witness who appears before the board.

(f) Member may or may not submit to examination by the board. The provisions of Article 31, UCMJ will apply.

(g) Failure of the member to invoke any of the above rights, after having been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(5) For rules of procedures and evidence, and swearing of witnesses, see AR 15-6.

(6) The president of the board will ensure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the member. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(7) When the board is considering a case in which the respondent has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent, or of the type of discharge which had been recommended in his case. When it has come to the attention of the respondent or his counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

8-4. Board findings. a. Each finding of a board of officers must be a clear and concise statement of facts or facts evidenced in the record or a conclusion which can be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions."

8-5. Recommendations. a. Recommendation of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army in consonance with the policies outlined in this and other pertinent regulations and guided by their conception of justice both to the Government and the member concerned.

c. Recommendations: Unsuitability. The board convened to determine whether a member should be discharged for unsuitability will recommend that

the member be—

(1) Discharged because of unsuitability (indicating type of discharge certificate—honorable or general—to be furnished); or

(2) Retained in service. The recommendation will indicate that type of duty which it is believed the member can perform satisfactorily.

d. Recommendations: Misconduct (fraudulent entry, misrepresentation of facts, conviction by civil court, or other disqualifying patterns or acts of conduct). The board will recommend that the member be—

(1) Retained in the service; or

(2) Discharged; if discharge is recommended, the reason for discharge (misconduct or unsuitability) and the type of discharge to be issued will be specified (para 7-3).

8-6. Forwarding report of proceedings. The completed report of proceedings will be forwarded to the convening authority for final determination and disposition. When board action has been completed on members referred to in paragraphs 6-4a and 7-4a, the findings and recommendations of the board with complete documentation and the recommendation of the convening authority will be forwarded to CG, RCPAC for final determination in cases where the convening authority recommends discharge.

8-7. Convening authority action. *a.* When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative discharge proceedings. When the board recommends an undesirable discharge be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

b. The convening authority's deputy or other officer with that headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases except to direct a discharge under other than honorable conditions. The convening authority is required to personally sign any action directing a discharge under other than honorable conditions of a member under his command. The convening authority may direct other appropriate disposition of the case.

c. No convening authority will direct discharge if a board recommends retention, nor authorize the issuance of a discharge of less favorable character

than that recommended by the board. However, a convening authority may direct retention when discharge is recommended or may issue a discharge of a more favorable character than that recommended.

d. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *c* above. With respect to substantial defects, he may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board, to include extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than the action of the first board.

(5) No more than one rehearing may be directed without approval from CG, RCPAC.

8-8. Retention, separation, or suspension. In determining whether a member should be retained or be administratively discharged, consideration should be given to the member's entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishment would have,

CHAPTER 9 ALCOHOL OR OTHER DRUG ABUSE

9-1. Scope. *a.* This chapter provides the authority and outlines the procedures for discharge of USAR enlisted personnel based on alcohol or other drug abuse (e.g., the illegal, wrongful, or improper use of any controlled substance, alcohol, or other drugs) when the member is entitled to exemption under the policy as expressed in columns B and C, table 3-1, AR 600-85.

b. Offenses of alcohol or other drug abuse which are not exempt may properly be the basis for discharge proceedings under chapter 6 or 7; however, the evidentiary aspect of the exemption policy as expressed in table 3-1, column D, AR 600-85 is applicable to discharge under chapter 6, 7, or other separation authority.

9-2. Procedures. The immediate commander will:

a. Prepare a letter to the discharge authority including:

(1) A history of the member's alcohol or other drug abuse; and

(2) A complete explanation of how the criteria in paragraph 9-1 are met, and

(3) A résumé of the member's military record.

b. Advise the member that he has the right to consult with consulting counsel as provided in paragraph 2-3*b*.

c. Notify the member in writing of the proposed discharge and reasons therefor, requiring acknowledgment within 48 hours (figs. 9-1 and 2).

d. Forward the case with the member's acknowledgment and any statements submitted by the member, to the discharge authority.

e. Notify the member of the final decision.

9-3. Type of discharge. Members discharged under this chapter receive honorable discharge certificates.

9-4. Discharge authority. *a.* Approval of CG, RCPAC is required before an enlisted member who has completed 18 or more years of qualifying Federal service for retirement may be discharged under this chapter.

b. Except as provided in *a* above, the commanders specified in paragraph 1-6*a* are authorized to take final action on cases processed under this chapter.

(Date)

SUBJECT: Letter of Notification

TO:

1. Under the provisions of chapter 9, AR 135-178, I am initiating action to discharge you from the Army Reserve. If my recommendation is approved, you will receive an honorable discharge certificate.
2. The reasons for my proposed action are: (State specific, factual details which constitute the basis for the determination that the soldier should be discharged for personal abuse of drugs, explaining how the criteria of para 9-1 are met.)
3. If you wish to be retained in the United States Army Reserve, you may submit statements in support of your desire and they will be considered by the discharge authority along with my recommendation for your elimination. If requested, military legal counsel will be made available to assist you in preparation of your comments. My recommendation, with your reply, will be submitted to (cite the appropriate discharge authority).
4. You are entitled to and must undergo a complete medical examination in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to (location)
at (time) on (date)*
5. Execute the attached acknowledgment and return it within 48 hours. Any comment you desire to submit requesting retention must reach me within 3 days after you receive this letter, unless you request and receive an extension for good cause shown.

.....
 (Commander's Signature)
 (Typed Name, Grade)

.....
 * Not required when enlisted physical is still valid.

Figure 9-1

CHAPTER 10

DROPPING USAR MEMBERS FROM THE ROLLS OF THE ARMY

10-1. General. This chapter prescribes the criteria and procedures whereby a member of the USAR may be dropped from the rolls of the Army.

10-2. Authority to drop from the rolls of the Army. *a.* Authority is delegated to the following commanders to drop members of the USAR from the rolls of the Army, except for Retired Reserve members entitled to receive retired pay in which case HQDA approval is required (para 10-3*d*).

(1) Area commanders.

(2) CG, RCPAC as concerns those USAR members under jurisdictional control of that center.

b. The authority and procedures for dropping members of the USAR ordered to AD, initial ADT, or ADT are contained in AR 630-10.

10-3. Criteria for dropping from the rolls of the Army. Members of the USAR may be dropped from the rolls of the Army for the following

reasons:

a. Sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a civil court and whose sentence is final, whether or not actually confined.

b. Members of the Retired Reserve entitled to retired pay will be dropped from the rolls of the Army only if their retired pay is withheld under the provisions of Title 5, USC, sections 2281 through 2288.

10-4. Procedures. *a.* The appropriate commander will issue orders dropping the member from the rolls of the Army. The format of the order will be as prescribed in AR 310-10.

b. The member will be reduced to the grade of Private E-1 as prescribed in AR 140-158.

c. Disposition of personnel records will be accomplished as set forth in AR 640-10.

**APPENDIX A
AUTHORITY TO APPROVE DISCHARGE
OF USAR ENLISTED MEMBERS**

Reason for discharge	AR 135-178	HQDA	Area Cdr	CG RCPAC	PMS
Completion of ETS or period of obl svc	3-1	X	X	X	.....
Appointment as commissioned or warrant officer	3-2	X	X	X	X
Nonavailability of member of Standby Reserve	3-3	X	.....	X	.....
Medically unfit for retention	3-4	X	X	X	.....
Failure to reply to official correspondence or to satisfactorily participate in training	3-6	X	X	X	.....
Noncitizens who are members of the USAR	3-7	X	X	X	.....
Minister of religion and divinity students	3-9	X	.....	.....	.....
Maximum allowable age	3-10	X	X	X	.....
Approved exemption from invol order to AD	3-11	X	X	X	.....
Minority	3-12	X	X	X	X
Enlistment or appointment in other component of Armed Forces	4-5	X	X	X	.....
National or Community Health, Safety, or Interest	4-15	X	X	X	.....
Inconvenience of the Government	Chap. 4	X	X	X	X
Dependency or hardship	Chap. 5	X	X	X	.....
Unsuitability	Chap. 6	X	X	Note 1	.....
Misconduct	Chap. 7	X	X	Note 1	.....

Notes

1. Area commanders will appoint boards of officers upon request of CG, RCPAC and will take final action on board recommendations (para 8-1c). CG, RCPAC may approve discharge in those instances where individual waives right to appear before the board and agrees to accept discharge under other than honorable conditions (para 8-2b).

2. Except as otherwise provided in this regulation, and when such authority has been delegated by proper authority, commanders indicated above may accomplish discharge action without referral to higher headquarters (para 1-6).

3. Approval of discharge of Retired Reserve enlisted members entitled to receive pay must be obtained from Headquarters, Department of the Army (para 10-2).

4. Board proceedings for enlisted men who have completed 18 or more years of qualifying Federal service for retirement must be forwarded to CG, RCPAC for final determination (para 8-6).

APPENDIX B LOCATION OF MILITARY PERSONNEL RECORDS

Note. The term "separated" includes deceased personnel.

Service	Category of military personnel records	Where to write
Air Force	All military personnel on active duty. All military personnel on the temporary disability retired list (TDRL). General officers on a retired (pay) status.	Directorate of Administrative Service Military Personnel Randolph AFB, TX 78148
Army	<p>All active duty commissioned (including general officers) and warrant officer personnel (including members of Reserve Components on active duty and members on TDRL).</p> <p>All active duty enlisted personnel (including members of Reserve Components on active duty).</p> <p>All retired personnel (including retired Regular Army general officers).</p> <p>US Army Reserve — Non Unit personnel (also see AR 140-241). US Army Reserve — Unit personnel (also see AR 140-241).</p> <p>Army National Guard — Officer and enlisted personnel.</p> <p>Officers and warrant officers completely separated on and after 1 July 1917, and enlisted personnel completely separated on and after 1 November 1912.</p> <p>Officers and warrant officers' papers prior to 1 July 1917.</p> <p>Enlisted personnel separated prior to 1 November 1912.</p>	<p>US Army Military Personnel Center ATTN: Personnel Records Division Hoffman Building 200 Stovall Street Alexandria, VA 22332</p> <p>Same as above.</p> <p>US Army Enlisted Records Center Ft Benjamin Harrison, IN 46249</p> <p>US Army Reserve Components Personnel and Administrative Center (RCPAC) 9700 Page Boulevard St. Louis, MO 63132</p> <p>Same as above. Army Area in which the member's unit is located (e.g., First, Fifth, Sixth Army).</p> <p>Chief, National Guard Bureau Washington, DC or adjutant general of the State in which member is serving.</p> <p>Center Manager National Personnel Records Center, GSA 9700 Page Boulevard St. Louis, MO 63132</p> <p>Chief, Army and Air Corps Branch, Reference Division</p> <p>Office of Military Archives National Archives Records Service Washington, DC 20408</p>

Service	Category of military personnel records	Where to write
Coast Guard	Enlisted personnel separated less than 6 months. Officer personnel separated less than 3 months. All active Coast Guard personnel and members of the Reserve. Officer personnel completely separated before 1 January 1929.	Chief, Office of Personnel U.S. Coast Guard 1300 "E" St., N.W. Washington, DC 20226
Marine Corps	Officer personnel on active duty or in Reserves. Enlisted personnel on active duty or in organized active Reserve. All personnel completely separated less than 4 months.	Director of Personnel U.S. Marine Corps Washington, DC 20380
Navy	Officers on active duty and those separated less than 1 year and all officers with rank of admiral. Enlisted personnel on active duty and those separated less than 4 months. Active Reservists and inactive Reservists with 18 or more months remaining in 1st term of enlistment.	Chief, Bureau of Naval Personnel Department of the Navy Washington, DC 20370
All Branches	If your request does not pertain to any of the categories listed above, address your inquiry to:	Center Manager, National Personnel Records Center, GSA 9700 Page Boulevard St. Louis, MO 63132

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AR 135-178

JOINT MESSAGEFORM						SECURITY CLASSIFICATION UNCLASSIFIED			
PAGE	DRAFTER OR RELEASER TIME	PRECEDENCE ACT INFO		LMF	CLASS	CIC	FOR MESSAGE CENTER/COMMUNICATIONS CENTER ONLY		
01 OF 1		RR	RR		UUUU		DATE - TIME	MONTH	YR
BOOK NO	MESSAGE HANDLING INSTRUCTIONS								
<p>FROM: DA STL MO //AGUZ-RCPD-PRO//</p> <p>TO: ALL HOLDERS OF ID OF <u>AR 135-178</u></p> <p>UNCLAS</p> <p>SUBJECT: Interim Change 1-2 to AR 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel)</p> <p>1. This interim change is being distributed through the publications pinpoint distribution system to all holders of AR 135-178, in accordance with DA Form 12-9A. Pending revision of AR 135-178, dated 15 July 1977, and by order of the Secretary of the Army, subject regulation is changed as follows and is effective 1 June 1978.</p> <p>2. This change establishes the Expeditious Discharge Program for the Army National Guard (ARNG) and US Army Reserve (USAR).</p> <p>3. Page 4-1. Add the following statement to paragraph 4-1: In addition, only Section VII is applicable to enlisted members of the ARNG.</p> <p>4. Section VII, Chapter 4, is added as follows:</p> <p style="padding-left: 40px;">Section VII. Expeditious Discharge Program (EDP)</p> <p>4-22. <u>General</u>. This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) because of the existence of one or more of the following conditions, may be discharged:</p> <ul style="list-style-type: none"> a. Poor attitude. b. Lack of motivation. c. Lack of self-discipline. <p style="text-align: right; padding-right: 20px;">RETURN TO THE ARMY LIBRARY ROOM 1A518 PENTAGON WASHINGTON, D.C. 20310</p>									
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d. Inability to adapt socially or emotionally.

e. Failure to participate satisfactorily (see limitation in paragraph 4-25a(2)).

4-23. Scope. This policy applies to all nonprior service ARNG and USAR troop program unit enlisted personnel who have completed at least six months but not more than 36 months of continuous unit service on their first enlistment at the time the member's immediate commander formally recommends discharge under this program. For the purpose of this policy, a break in unit service (assignment to the inactive Army National Guard or USAR control group) of not more than 90 days does not interrupt continuity of unit service. This program does not apply to ARNG or USAR members on any type of FTTD or ADT.

4-24. Purpose. This policy provides for the expeditious elimination of sub-standard, nonproductive soldiers before board action or involuntary active duty becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative discharge boards by providing a means to discharge such personnel expeditiously before they progress to the point where involuntary active duty or active duty for training, or elimination by board action becomes necessary. The program is not intended to be a panacea for solving normal personnel problems, or a relief from the professional obligation of commanders to exercise effective leadership and exert a sincere effort to produce good soldiers from seemingly poor ones.

4-25. Limitations. It is contrary to the intent of this policy for commanders to:

a. Use this policy as a substitute for the following appropriate administrative actions---

(1) Paragraphs 3-1; 4-10; 4-13; Sec II, Chapter 3; or Chapters 5, 6, or 7 of this regulation, or equivalent provision of NGR 600-200.

(2) AR 135-91 (25 Jul 77) after a member has accumulated five or more unexcused absences within one year (12 consecutive months).

(3) Processing through medical channels because of physical or mental defects.

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b. Make arbitrary or capricious use of this authority.

c. Force separation of members who:

(1) Possess a potential for rehabilitation.

(2) Decline discharge under this policy.

d. Effect discharge of members who have not been evaluated for a period of at least 3 months in their current unit of assignment.

4-26. Identification and screening. a. Individual characteristics that will assist in identifying members who should not be retained include, but are not limited to, the following:

(1) Quitter.

(2) Hostility toward the Army.

(3) Inability to accept instructions or directions.

(4) Clearly substandard performance.

(5) Evidence of social/emotional maladjustment.

(6) Lack of cooperation with peers or superiors.

(7) Failure to meet the requirements of AR 135-91 for participation in unit training assemblies. The use of this factor as a reason for EDP action is limited to cases in which the member has at least 3, but not more than 4, unexcused absences from unit training assemblies within a one-year period. In addition to this factor, one or more of the other characteristics should also apply to the member. The purpose of this requirement is to assure that a member who has been performing satisfactorily is not recommended for discharge under this program solely on the basis of 3 or 4 unexcused absences from one MUTA-4, particularly if the reason for such absences bordered on being excusable. (Also, see para 4-25a(2).)

b. Personnel identified as vulnerable for discharge under this program are those who obviously cannot adjust to the ARNG or USAR environment.

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4-27. Counseling and rehabilitation. Commanders will ensure that before recommending discharge under this section, adequate counseling and rehabilitation measures have been taken.

a. Counseling. When an enlisted member's behavior has been such that continued behavior of a similar nature may warrant action against him/her, the member will be counseled by a responsible person or persons. Each counseling session will be recorded in writing (to include date and by whom counseled). Counseling will include but not be limited to the following:

(1) Reason for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating action under this section or other provisions of this regulation.

(3) The type of discharge that may be issued and the effect of each type if such action is taken and separation accomplished.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) Enlisted members will be reassigned at least once if within commuting distance, with a minimum of 2 months' duty in each unit.

(2) In case reassignment is precluded by restriction (e.g., small independent and/or isolated unit), the commander will ensure that appropriate alternate rehabilitation measures are employed.

c. Waivers.

(1) The counseling required by a above may not be waived.

(2) The rehabilitation required by b above may be waived by the discharge authority when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems or a hazard to the unit's mission or to the member.

4-28. Standards and criteria. a. No member will be discharged under this program unless he/she voluntarily consents to the proposed discharge. The member's acceptance of discharge may not be withdrawn after the date the discharge authority approves the discharge.

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b. Members discharged under EDP may be awarded an honorable or a general discharge certificate, as appropriate (see para 1-10).

c. No member will be awarded a general discharge under this paragraph unless advised that he/she may consult with an appointed counsel for consultation (para 1-3b) or civilian counsel at no cost to the Government.

d. No member will be given a general discharge by the discharge authority unless it was recommended by the commander initiating the recommendation for discharge. In cases in which the discharge authority disagrees with the recommendation for an honorable discharge, the case will be returned to the initiating commander with comment to that effect. The initiating commander may initiate new proceedings under this section or take other appropriate action.

e. Discharge authorities may award an honorable discharge if a general discharge is recommended by the initiating commander.

f. When a member being processed under this program moves and leaves no forwarding address, or is otherwise nonlocatable, he/she may be discharged provided the relocation occurred subsequent to the date he/she consented to the discharge and the date the initiating commander formally recommended approval of the case. This provision does not apply to members absent in civil confinement or for whom civil trial or charges are pending (see para 4-25a). Discharges under this section will be approved by the discharge authority before executed.

g. Discharge should be accomplished within 15 days following approval by discharge authority.

4-29. Procedures. a. The member's immediate commander will personally notify the member in writing of the proposed discharge, the reasons therefor, and the effect of the discharge. (See Figure 4-2 for notification letter, which is authorized for local reproduction.) In paragraph 2 of the letter covering reasons for the proposed action, state specific facts and incidents which are the basis for this action. The date in paragraph 7 should allow the member at least 10 days to consult with counsel when a general discharge is recommended.

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b. Acknowledgment by the affected member will be in the form of an indorsement returning the notification to his/her immediate commander. (See Figure 4-3 for the form indorsement, also authorized for local reproduction.) Necessary administrative support will be made available to assist the member in preparing the indorsement.

c. If the member voluntarily consents to the proposed discharge, the immediate commander will forward his letter and the acknowledgment, with the member's MPRJ, through channels to the commander exercising discharge authority. The immediate commander's indorsement should include all pertinent information to justify the recommendation for discharge, such as the number of times the member has been counseled and circumstances of contributing events. Intermediate commanders in the chain of command will forward recommendations for discharge with a recommendation for approval or disapproval. Each intermediate commander will verify that the recommendation is not in conflict with any provision of this section. The discharge authority will insure that the member has been fully counseled, that the recommendation is fully supported, and that such action is not contrary to any provisions of this program. Reassignment to another ARNG or USAR unit will be considered if warranted by the circumstances.

d. If the member does not consent to the discharge, the immediate commander will not forward the recommendation to the discharge authority, but will close the case and take other appropriate action.

e. The discharge authority may disapprove a recommendation for discharge under this paragraph and return the case to the initiating commander with instructions for other disposition.

f. Disposition of documents generated in the course of processing such cases will be as follows:

(1) When discharge is approved, the notification letter, acknowledgment indorsement, and each forwarding indorsement, including the discharge authority's approval, will be made a permanent part of the MPRJ.

(2) When the member does not consent to such discharge, or the recommended discharge is not approved, the notification letter and acknowledgment indorsement, the forwarding indorsements and discharge authority's disapproval will be retained in the member's MPRJ until he/she is reassigned or until ETS, at which time they will be destroyed.

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4-30. Discharge authority. Authority to discharge members under provisions of this section is delegated to State adjutants general, who will discharge ARNG members from the Army National Guard and as Reserves of the Army, and to MUSARC commanders who will discharge members of the USAR. This authority may not be further delegated.

4-31. Orders. The discharge approving authority will issue orders directing discharge under provisions of this section.

(DATE)

SUBJECT:

TO:

1. I am initiating action to discharge you from the (Army National Guard of the State of _____ and as a Reserve of the Army)(US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178 (Expeditious Discharge Program). I am recommending that you be furnished an (Honorable) (General) Discharge Certificate.

2. The reasons for my proposed action are:

3. The final decision as to whether you will be discharged and if so, the type of discharge you will be issued rests with the discharge authority. *(If you are furnished a General Discharge, you may expect to encounter substantial prejudice in civilian life. You have the right to consult with an officer of the Judge Advocate General's Corps or civilian counsel at no expense to the Government prior to completing the acknowledgment.)

4. You have the right to decline this discharge. If you so decline and your subsequent conduct indicates that such action is warranted, you may be subject to administrative separation procedures under other provisions of law or regulations.

5. You also have the right to submit a statement in your behalf, or you may waive this right.

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Disclosure is voluntary. Failure to acknowledge notification of discharge may subject member to separation under other provisions of regulation or law.

(Date Individual Signs)

() 1st Ind

SUBJECT: Separation Under the Provisions of Section VII, Chapter 4, AR 135-178

TO: Unit Commander

- _____
- _____
1. I hereby acknowledge notification of my proposed discharge from the (ARNG of the State of _____ and as a Reserve of the Army)(US Army Reserve) under the provisions of Section VII, Chapter 4, AR 135-178. I (do)(do not) voluntarily consent to this discharge.
 2. ~~Statements~~ in my own behalf (are)(are not) submitted herewith (as Inclosure _____).
 3. *I understand that if I am issued a General Discharge under honorable conditions I may expect to encounter substantial prejudice in civilian life, and I hereby acknowledge I have been advised that I may consult with an officer of the Judge Advocate General's Corps or with civilian counsel at no expense to the Government..
 4. I understand that I may, prior to the date the discharge authority approves my discharge, withdraw my voluntary consent to this discharge.

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Procedures-----4-29
Discharge authority-----4-30
Orders-----4-31

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AR 135-178

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BOOK NO	MESSAGE HANDLING INSTRUCTIONS
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FROM: DA STL MO //AGUZ-RCPD-PRO//

TO: ALL HOLDERS OF ID OF AR 135-178

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S/S

UNCLAS.

SUBJECT: Interim Change 1-3 to AR 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel)

1. This interim change is being distributed through the publications pinpoint distribution system to all holders of AR 135-178, in accordance with DA Form 12-9A. Pending revision of AR 135-178, dated 15 July 1977, and by order of the Secretary of the Army. Interim Change 1-2 of subject regulation is changed as follows and is effective 1 November 1978.
2. Paragraph 4-25a(2). Change "five or more" to read "more than 8".
3. Paragraph 4-26a(7). In second sentence change "3, but not more than 4" to read "3, but not more than 8". In third sentence change the word "should" to "must". In fourth sentence delete "3 or 4 ... MUTA-4" and insert the following: "8 or fewer unexcused absences. ..."

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<i>R. C. Jones</i>			

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S/S Ch. 7

AR 135-178

JOINT MESSAGEFORM					SECURITY CLASSIFICATION UNCLASSIFIED				
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		ACT PP	INFO PP				DATE - TIME 071330Z	MONTH Dec	YR 77
BOOK	MESSAGE HANDLING INSTRUCTIONS								
<p>FROM: DA STL MO //AGUZ-RPP-PR//</p> <p>TO: ALL HOLDERS OF ID COPIES OF <u>AR 135-178</u> <i>Rec'd 2/1/78</i> S/S</p> <p>UNCLAS</p> <p>SUBJECT: Interim Change 1-1 to AR 135-178, Army National Guard and Army Reserve Separation of Enlisted Personnel</p> <p>1. This interim change is being distributed through the publications pinpoint distribution system to all holders of AR 135-178, in accordance with DA Form 12-9A. Pending revision of AR 135-178, dated 15 July 1977, and by order of the Secretary of the Army, subject regulation is changed as follows and is effective immediately.</p> <p>2. This change clarifies effective date of discharge, establishes requirement for annotating discharge order and certificate, and provides authority for destruction of unclaimed or undeliverable discharge certificates.</p> <p>3. Page 1-7. Paragraph 1-21a is superseded as follows:</p> <p style="margin-left: 40px;">a. The effective date of discharge will be at 2400 hours of the date of notice of discharge unless--</p> <p style="margin-left: 80px;">(1) Discharged by reason of change of military status, in which case the effective date will be the day prior to the date of the member's entry into new military status (see paragraphs 3-2, 4-4, or 4-5a).</p> <p style="margin-left: 80px;">(2) Discharged under the provisions of paragraph 3-10, in which case the effective date will be the last day of the month during which maximum allowable age is attained.</p> <p style="margin-left: 80px;">(3) Otherwise provided by law.</p> <p>4. Page 1-7. Paragraph 1-22b(2) is superseded as follows:</p>									
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(2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to the absence of the member to be discharged. Receipt by the member's organization at the proper station of the order directing his discharge will be deemed sufficient notice. The date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to the Cdr RCPAC, ATTN: AGUZ-DCD-RS, 9700 Page Blvd., St. Louis, MO 63132. If the documents mailed to the individual are returned unclaimed or undeliverable, they will be destroyed.

5. Page 1-7. Paragraph 1-24 is changed as follows: Delete last two sentences, beginning at "Discharge certificates . . ."

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