Army Regulation 635–100

Personnel Separations

Officer Personnel

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Headquarters
Department of the Army
Washington, DC
1 May 1989

SUMMARY of CHANGE

AR 635-100
Officer Personnel

This revision--

- Supersedes AR 635-100 which was first published on 19 February 1969.

- Places AR 635-100 in the UPDATE format and implements DOD Directive 1315.15 (26 Sep 88) by deleting the "sole" qualifier in the separation policies for survivorship, thereby expanding the voluntary separation provision to any son or daughter in a family that meets the established criteria (chap 3, sec XXIV); and incorporates the following existing changes (for separating officers from active duty) in a permanent form.

- Establishes recoupment of Federal funds for officers that participated in certain advanced education programs who did not complete their active duty or Reserve service obligation.

- Implements Secretary of the Army policy (dtd 19 Feb 88), which enables the Army to meet congressionally mandated end strength limits (para 3-98).

- Implements the requirement for the preparation and distribution of DA Form 268 (Flagging Action) on officers who are to be considered by a Department of the Army Active Duty Board for release from active duty or elimination from the service; and changes the period of time to four months prior to the requested date that voluntary retirement applications must reach PERSCOM (paras 3-49 and 4-10).

- Implements change (eff 1 Mar 86), which requires spousal consent to the spouse's election for less than full coverage in the Survivor Benefit Plan (SBP) (chap 4).

- Implements policy changes reference voluntary retirement in lieu of PCS to include alerts or orders received for all PCS reassignments. Deletes the minimum period of six months in which an officer could participate in the Army Weight Control Program (AR 600-9) before being considered for separation for failure to meet satisfactory progress in the program (paras 4-10 and 5-10).

- Implements amendments to 10 USC 1181 and the revision of DOD Directive 1332.30 (12 Feb 86), which discontinues the statutory requirement for convening DA Selection Boards, which were used to determine if an officer should be required to show cause for retention on active duty; and streamlines the initiation and processing of elimination actions under chapter 5, including the creation of a general officer show cause authority (GOSCA) and the

elimination of the requirement to prepare a verbatim record of proceedings for a board of inquiry (chap 5).

- Implements changes for separating officers from active duty as directed by the Defense Officer Personnel Management Act (DOPMA), 14 September 1981.

- Implements policy change which required the initiation of elimination action on commissioned and warrant officers who have been involved in drug offenses (paras 5-13 and 5-32).

- Implements policy and procedures reference voluntary retirement in lieu of elimination (para 5-14).

Headquarters
Department of the Army
Washington, DC
1 May 1989

*Army Regulation 635–100

Effective 1 June 1989

Personnel Separations

Officer Personnel

This UPDATE printing publishes a revision of this publication. Because the publication has been revised the changed portions have not been highlighted.

By Order of the Secretary of the Army:

CARL E. VUONO
General, United States Army
Chief of Staff

Official:

MILTON H. HAMILTON
Administrative Assistant to the Secretary of the Army

Summary. This regulation provides policies and procedures for separating officers (to include non-disability retirement) from active duty. It also implements DOD Directive 1332.20 and DOD Directive 1332.30.

Applicability. This regulation is applicable to all Regular Army officer personnel and Reserve Component officer personnel on active duty, or, if specified by particular provisions of this regulation, active duty for training, United States Army Reserve (USAR), or the Army National Guard (ARNG). Unless otherwise specifically provided, the provisions of this regulation are binding on field commanders but not on Headquarters, Department of the Army (HQDA). Nonstatutory exceptions to the provisions of this regulation will be approved by the Assistant Secretary of the Army for Manpower and Reserve Affairs or his or her designated representative.

Impact on New Manning. This regulation does not contain information that affects the new manning system.

Internal control systems. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions but does not contain checklists for conducting internal control reviews. These checklists are being developed and will be published at a later date.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the U.S. Total Army Personnel Command (TAPC–OPP–M), Alexandria, VA 22332–0418.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

Suggested improvements. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Cdr, PERSCOM (TAPC–OPP–M), Alexandria, VA 22332–0418.

Distribution. Distribution of this publication is made in accordance with the requirements on DA 12–09–E, Block number 3569, intended for command level A for Active Army, B for ARNG, and A for USAR.

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RESERVED

Chapter 1
General

1–1. Purpose
This regulation provides the authority for the separation of commissioned and warrant officers from the Active Army.

1–2. References
Required and related publications and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities
Deputy Chief of Staff for Personnel (HQDA (DAPE–MPO)) WASH, DC 20310–0300 is the policy proponent and Commanding General, U.S. PERSCOM (TAPC–OPP–M) ALEX, VA 22332–0418 is the functional proponent for the Officer Separation Program.

1–5. Discharge certificates
Except as provided in subparagraph *a* and paragraph 5–52 below, discharge shall be characterized as "Honorable", "General (Under Honorable Conditions"), or "Under Other Than Honorable Conditions." The character of discharge shall be predicated on the officer's behavior and performance of duty while a member of a Military Service. Characterization normally shall be based on a pattern of behavior and duty performance rather than on an isolated incident. There are circumstances, however, in which conduct reflected by a single incident may provide the basis for characterization.

a. DD Form 256A (Honorable Discharge Certificate). A commissioned or warrant officer will normally be furnished an honorable discharge certificate unless conditions exist as indicated in *b* and *c* below, or as directed by the Secretary of the Army. Discharge shall be characterized as "Honorable" when substandard performance of duty (para 5–10) is the sole basis for discharge or when the discharge is based on preservice activities.

b. DD Form 257A (General Discharge Certificate)-under honorable conditions.

(1) Unqualified resignation in circumstances involving serious misconduct.

(2) Discharge because of serious misconduct, including misconduct for which punishment has been imposed, which renders the officer unsuitable for further service.

(3) Discharge for physical disability resulting from intentional misconduct or willful neglect, or which was incurred during a period of unauthorized absence.

(4) Discharge under the Military Personnel Security Program if directed by Headquarters, Department of the Army (AR 604–10).

c. Dishonorable Discharge. Warrant officers only as a result of sentence by a court-martial.

d. Circumstances preventing issuance of formal discharge certificate. No formal discharge certificate will be issued in the following circumstances.

(1) Removal of officers under the criminal code of the United States.

(2) Dropped from the rolls of the Army (10 USC 1161(b), 1163(b) or subchapter II, chapter 83, 5 USC 8319).

(3) Dismissal as a result of sentence of court-martial.

1–6. Character of service
a. The criteria outlined in paragraph 1–5 should be used as guidelines to determine the character of service for commissioned and warrant officers terminating a tour of duty by reason of resignation, discharge, retirement, or release from active duty.

b. Normally, an officer's service is characterized as honorable when the officer is released from active duty and returned to USAR or ARNG control unless circumstances exist as indicated in (1) or (2) below, or as directed by the Secretary of the Army or Headquarters, Department of the Army.

(1) An officer's service normally will be characterized as under honorable conditions or under other than honorable conditions when such a determination is made by a DA Active Duty Board for officers being released from active duty because of misconduct, moral or professional dereliction under paragraph 3–49*a*, or when an officer is being released from active duty under paragraph 3–49*g*.

(2) An officer's service will be characterized as "to be determined" when released from active duty while being processed for elimination action under chapter 5 or when undergoing investigation as an alleged security risk under AR 604–10.

1–7. Report of Separation from Active Duty (DD Form 214)
Officers who are discharged, released from active duty, or retired will be furnished a DD Form 214 (Certificate of Release or Discharge from Active Duty) as prescribed in AR 635–5.

1–8. Action required before the involuntary separation of officers with access to special intelligence, other compartmented information, or sensitive programs
As soon as involuntary separation is considered for an officer who has had access to the above information, the local commander will send the information listed below to HQDA (DAMI–CIS), WASH, DC 20310–1051. Classify it based on its content. Elimination action will not be completed until DAMI–CIS acknowledges receipt of this information.

a. Officer's name, grade, and SSN.

b. Date and place of birth.

c. Marital status.

d. Length of service.

e. Summary of circumstances leading to the consideration for involuntary separation.

f. Degree of sensitivity of classified information to which officer had access.

g. Type of discharge contemplated.

Chapter 2
Separation of Officers in Foreign Countries

2–1. Scope
a. This chapter prescribes rules governing the separation of commissioned officers and warrant officers in foreign countries. It governs only the place of separation and does not prescribe substantive rules for separation.

b. An officer eligible for separation who is serving in a foreign country may be separated, provided:

(1) He or she requests separation in that country.

(2) His or her separation in that country is not precluded by any provision of paragraphs 2–3*a* and *c* and 2–4.

(3) The foreign government concerned has either formally or informally; consented to the separation of the officer in its territory, or consented generally to the separation of an officer otherwise eligible for separation under the circumstances set forth in (1) or (2) above.

c. No officer will be separated in a foreign country until he or she has obtained all documents necessary to the officer's lawful presence in the country.

d. Requests for separation in an oversea command may be disapproved by the major Army oversea commander, when:

(1) Revocation action pursuant to AR 604–5, paragraph 4–5 has been taken against the officer concerned during his or her current term of active duty.

(2) The officer's access to defense information is suspended pursuant to AR 604–5, paragraph 3–1b at the time the decision is made whether or not to separate an officer in a foreign country.

(3) There is cogent reason to believe that the officer's presence in the oversea area in a nonmilitary status would endanger the national security.

(4) Other cogent reasons exist causing the commander to believe the officer should not be separated in the oversea command.

2–2. Officers confined pursuant to the sentence of a foreign court

a. Officers confined in a foreign penal institution pursuant to the sentence of a foreign court may be separated from the service during their period of confinement only:

(1) With the approval of HQDA.

(2) After final action (including final appellate action, if any) by the foreign authorities.

(3) Subject to the specific consent of the country concerned to his or her separation in its territory.

b. When the oversea commander considers separation of such officer prior to the completion of the sentence to confinement to be appropriate, he or she will forward request for approval for such separation to Cdr, PERSCOM (TAPC–OPP–M) with a report which will include the following information:

(1) Name, grade, SSN, branch of service.

(2) Last organization and assignment.

(3) Offense(s) alleged to have been committed and the facts and circumstances.

(4) Court before which tried.

(5) Date and place of trial.

(6) Offense(s) of which officer was convicted.

(7) Sentence pursuant to which the officer is confined.

(8) Matters in mitigation, extenuation, or aggravation.

(9) Appellate action, if any, and result thereof.

(10) Whether the action of the foreign courts is final or whether further appellate action is possible or contemplated.

(11) Place and condition of confinement.

(12) Possibility for parole and facts pertinent.

(13) Special facts and circumstances, including reasons supporting discharge during confinement.

(14) Whether consent for separation in the territory of the foreign country concerned has been obtained from that country.

c. The provisions of this paragraph will not be construed as prohibiting a commander, during the confinement in a foreign penal institution of an officer in his or her command, from initiating action with a view toward the discharge of such officer after release from confinement and return to the United States or its Territorial possessions.

2–3. Separation while under investigation or sentenced but not confined by foreign courts

a. Officers whose sentences to confinement by foreign courts are not suspended and who are not confined pending appellate action, and officers who are not confined but who are charged with or are under investigation for offenses subject to the jurisdiction of foreign authorities for which a sentence to confinement could be imposed, will not be considered for separation in the foreign country until the final action in the matter has been taken by the foreign authorities. After final action by the foreign authorities, such officers may be considered for separation in the foreign country under paragraph 2–2 and 2–3, whichever is appropriate.

b. Officers who were accepted for service in a foreign country, but who are not stationed in that country may be returned to the place of acceptance and there separated if paragraph 2–2 is complied with. If the officer concerned is in possession of appropriate documents entitling him or her to entry in the country of acceptance, specific consent of that country for his or her separation in its territory need not be obtained.

2–4. Personnel eligible for return from overseas for discharge or release from active duty

Individuals scheduled for return to the continental United States, its Territories, or possessions, for discharge or release from active duty will be processed for return according to AR 635–10.

Chapter 3
Release from Active Duty of Non-Regular Commissioned and Warrant Officers

Section I
General

3–1. Scope

a. This chapter sets forth the criteria, procedures, and authority for the release of Reserve officers on the active duty list from active duty or active duty for training of officers of the Reserve components, including Active Guard Reserve.

b. This chapter applies to non-Regular Army commissioned officers and warrant officers, including those assigned to other than Department of the Army agencies. Navy, Air Force, and Marine Corps officers assigned to the Army will be released from active duty or active duty for training under instructions of their respective departments.

3–2. Statutory authority

a. 10 USC 681 provides that the Secretary concerned may at any time release a reserve (officer) under his or her jurisdiction from active duty except in time of war or of national emergency declared by Congress or the President, after 1 January 1953.

b. 10 USC 603(b) provides that the President may vacate at any time a temporary appointment in a commissioned grade which is made in time of war or national emergency (10 USC 603(a)).

c. 10 USC 602 provides authority for the Secretary of the Army to govern, by regulations, temporary warrant officer promotions which are, therefore, determined to be at the pleasure of the Secretary of the Army.

d. 10 USC 1162 provides that reserve commissioned officers may be discharged at the pleasure of the President, subject to the procedural requirements applicable to officers with three years of service as a commissioned officer, as provided in 10 USC 1163; and that reserve warrant officers may be discharged under regulations prescribed by the Secretary concerned.

e. 10 USC 3380 provides for the voluntary release from active duty of commissioned officers promoted to a reserve grade higher than the grade in which currently serving.

f. 10 USC 3846 provides for discharge or transfer to the Retired Reserve, if eligible, of reserve officers in grades of first lieutenant, captain, and major who are considered but not recommended for promotion to the next higher reserve grade by two selection boards.

g. 10 USC 1006 provides for retaining on active duty for a period of not more than two years a reserve commissioned officer who has failed twice to be selected for promotion to the permanent grade of captain, major, or lieutenant colonel, and who, on the date he or she would otherwise be removed from an active status, is within two years of qualifying for retirement under 10 USC 3911.

h. 10 USC 1006, 1007, 3843–3845, 3848, 3851, 3852 and 3855; section 328 and subsection 339(d), Reserve Officer Personnel Act of 1954 (63 Stat. 1163, 1166); 50 USC 1265, 1279(d), and section 21, act of 2 September 1958 (Public Law 85–861; 72 Stat. 1560), provide the maximum ages and maximum service, and exceptions, for retention in an active status in the reserve.

i. Subsection 4(1)(3), Military Selective Service Act of 1967 (50 USC App. 454(1)(3)), provides for optional resignation of certain medical, dental, or allied specialist category personnel who are commissioned members of a reserve component of the Armed Forces.

j. 10 USC 3911 provides for the voluntary retirement of commissioned officers after completion of 20 years of active Federal service, at least 10-years of which have been active service as a commissioned officer.

k. 10 USC 1164 provides the maximum ages for retention of warrant officers after 20 years of active Federal service.

l. 10 USC 1293 provides for the voluntary retirement of warrant officers after 20 years of active Federal service.

m. 10 USC 1174 provides for payment of separation pay to certain officers involuntarily released or discharged from active duty.

n. 10 USC 672(d) provides authority for retention on active duty of members of the reserve components.

o. 10 USC 676 provides that the Secretary concerned may, with his or her consent, retain on active duty a reserve officer who is qualified for retired pay under 10 USC 1331 (AR 135–180).

3–3. Separation approval authority

Subject to the limitation imposed by paragraph 3–6 and except as otherwise expressly provided in this chapter, authority is granted to the following commanders to approve release from active duty under the provisions of this chapter. These commanders are referred to in this chapter as "Separation Approval Authorities." This authority will not be further delegated without prior approval of the Secretary of the Army.

a. Commanders of all units and installations which are commanded by, or are under the normal command of, a general officer.

b. Commanders of the following medical treatment facilities:

(1) Brooke Army Medical Center.
(2) Walter Reed Army Medical Center.
(3) Fitzsimons Army Medical Center.
(4) Letterman Army Medical Center.
(5) Madigan Army Medical Center.
(6) William Beaumont Army Medical Center.
(7) Dwight David Eisenhower Army Medical Center.
(8) Tripler Army Medical Center, Hawaii.

c. Commanders of personnel centers, training centers, oversea placement depots, transportation terminal commands, and all active Army installations having an authorized strength of 4,000 or more personnel.

3–4. Years of service

a. For the purpose of this chapter, "years of service" is the greater of the sum of the periods the officer:

(1) Had held an appointment as commissioned officer in any component of the Armed Forces of the United States or the Army of the United States without component; has been credited with constructive service under 10 USC 3353 or section 22 of Public Law (PL) 85–861; or

(2) The period of time by which the age of the officer exceeds 25 years.

b. This means that if the sum of all periods during which a Reserve officer has held an appointment as a commissioned officer, including any constructive service credit based on education or professional experience, when subtracted from the current date results in a date prior to the 25th anniversary of his or her birth, the officer must count service under (1) above. All others must count service under (2) above.

3–5. Adverse matters

All information considered for action under this chapter, including that considered by a board of officers, must qualify for such consideration under AR 600–37.

3–6. Officers under investigation

An officer under investigation on whom a DA Form 268 (Report of Suspension of Favorable Personnel Actions) has been submitted according to AR 600–8–2 will not be released from active duty without approval of HQDA. The separation authority delegated to commanders by this regulation shall not include the authority to separate an officer under court-martial sentence to dismissal or dishonorable discharge, prior to the completion of appellate review, unless the separation authority intends such separation action to act as a remission of the conviction.

3–7. Travel

a. An officer who has commenced travel in connection with release from active duty orders will not be permitted to withdraw a request for separation.

b. 37 USC, Section 204(b) provides that the case of a member of the uniformed services called or ordered to active duty to excess of 30 days, active duty will include the time required to perform travel from home to first duty station and from last duty station to home by mode of transportation authorized in orders.

3–8. Medical/dental care required, or sick in hospital when period of service expires

a. An officer undergoing release from active duty (voluntary or involuntary) or completion of expiration of term of service, may only be considered for retention past the established release date when continued hospitalization is required and/or physical disability processing is required, or has been initiated. The request for retention will be submitted to HQDA according to paragraph *d* below. Officers determined medically fit for retention/separation will not be retained past established release date.

b. An officer undergoing retirement (voluntary or involuntary) under chapter 4 due to length of service or maximum age will not be retained on active duty unless the medical condition requires referral of the case to a physical evaluation board (para 4–37). When retention is required the hospital commander will notify Cdr, PERSCOM (TAPC–PDT–RR) ALEX, VA 22332–0478 and request the officer's retirement orders to be rescinded. The request will include—

(1) The medical diagnosis(es).

(2) A certification by the medical facility commander that the case will be referred to a physical disability evaluation board.

(3) Expected date or date case was transmitted to a physical evaluation board.

(4) Certification that the officer consents to the revocation of retirement orders. (Revocation of retirement orders requires Cdr, PERSCOM (TAPC–PDT–RR) approval.)

c. Officers will not be retained on active duty beyond their scheduled release or retirement date without written consent which must be signed by the individual concerned. (See fig 3–1.) If the officer is mentally incompetent or otherwise unable to sign, the next-of-kin or legal representative will be requested to sign in behalf of the offieer. The consent affidavit will be attached to the request for retention or request for revocation of retirement orders. A copy of this action will be filed in the officer's DA Form 201 (Military Personnel Records Jacket). (If the officer is unable to sign and the next-of-kin or legal representative cannot be located or will not indicate whether or not the officer will be retained, the officer will be retained and the hospital commander will notify Cdr, PERSCOM (TAPC–PDT–RS) ALEX, VA 22332–0478 for separation cases and Cdr, PERSCOM (TAPC–PDT–RR) for retirement cases with the full details including actions taken to secure consent for retention.)

d. Commanders of Medical Treatment Facilities (MTF) will forward an application for retention, endorsed by the officer's unit commander to Cdr, PERSCOM (TAPC–OPP–M). A request for retention requires approval by HQDA and will include the following information:

(1) Officer's name, rank, and SSN.
(2) Reason for release (for example: non-selection for promotion, budgetary constraints).
(3) Scheduled release date.
(4) A copy of the retention affidavit.
(5) Medical reason for retention.
(6) A point of contact at the medical facility.

e. The officer will be furnished the following list of retention advantages:

(1) Advantages while remaining on active duty for completion of hospitalization or while being processed for disability benefits are—

(a) Medical care and/or hospitalization provided.

(b) Receipt of normal benefits such as pay and allowances, to include exchange and commissary privileges.

(c) Eligibility for dependent medical care if officer is on active duty or active duty for training under orders which do not specify a period of 30 days or less.

(d) Accumulation of additional active service creditable for longevity and retirement for length of service.

(e) State income tax benefit where allowed by the laws of the state concerned.

(2) Advantages if processed and found eligible for disability separation are—

(a) If permanently retired, election of retired pay most favorable to the officer computed under the methods prescribed for retired pay. If temporarily retired, the same selection of pay is authorized, but the minimum pay will not be less than 50 percent of basic pay while temporarily retired.

(b) If retired, a former officer and his or her authorized dependents would be eligible for certain medical care when facilities and staffing permit at uniformed services facilities and certain medical care in civilian facilities (see AR 40–3 and AR 40–121).

(c) If discharged for disability, the officer may be entitled to severance pay.

(d) To the extent retired pay is based on the percent of disability involved, such pay is excluded in the computation of gross income reportable for taxation.

3–9. Officers on active duty for training (ADT)

Officers ordered to active duty for training (ADT) who are subsequently hospitalized during their period of ADT will be processed under AR 135–200.

3–10. Investigation of court-martial charges or trial by court-martial pending

An officer who is under court-martial charges or on whom an investigation is pending which may lead to preferral of court-martial charges will be retained on active duty until final disposition of the charges or investigation.

3–11. Indebtedness

No officer will be retained on active duty to satisfy an indebtedness to the Government or for the collection of forfeitures adjudged by court-martial. The total amount of unpaid indebtedness and forfeitures due the Government on date of release from active duty will be shown in final release orders. (See DOD Military Pay and Allowances Entitlements Manual (DODPM).)

3–12. Dual status officers

a. A commissioned officer serving in a dual status automatically reverts to his or her Regular Army warrant officer status on the day immediately following his or her release from active duty.

b. Instructions for orders effecting release of these officers from commissioned officer status under any provisions of this regulation, and reversion to Regular Army warrant officer status, will be issued by HQDA.

c. These officers will be reported to Cdr, PERSCOM (TAPC–PDT–RS) 60 days prior to scheduled date of release.

3–13. Medical examination

a. The immediate commander of each officer undergoing separation will ensure that procedures are followed pertaining to medical examination as stated in AR 40–501.

b. If the officer is hospitalized or physical disability processing is required prior to separation, paragraph 3–8 applies.

3–14. Leave

At the discretion of the local commander, an officer may be granted leave under AR 630–5, and processed for separation according to AR 635–10, paragraph 3–2*a*.

3–15. Status on and after separation

a. Except when discharged, an officer holding an appointment in the ARNG or the USAR will resume his or her current permanent grade, except as provided in AR 135–155.

b. Temporary appointments in the Army of the United States held by officers of the ARNG or USAR are automatically terminated on release from active duty.

c. An officer holding only a temporary appointment in the Army of the United States will be released from active duty by discharge from the Army of the United States.

d. AR 135–91 defines the various service obligations (for ARNG and USAR officers) incurred by military personnel on initial entry in military service and prescribe the methods of fulfillment. Officers who will not continue, or reenter on active duty in another status, will be released by separation orders to the ARNG or to the USAR as set forth in AR 635–10, paragraph E–1 (under Separation orders, pages E5 and E6).

3–16. Processing applications

a. Each application for release from active duty will be forwarded through channels to the commander having final authority to act on the application or to HQDA. Normally, applications will be submitted not earlier than six months or less than 90 days prior to desired release date. To reduce processing time, the following procedures apply:

(1) Applications submitted by officers temporarily in the United States from oversea commands will be forwarded direct to Cdr, PERSCOM (TAPC–(appropriate career management division)) ALEX VA 22332–04XX.

(2) Applications submitted by officers in a replacement stream status or assigned as patients to medical holding units will be forwarded through the commander of the personnel center of medical holding unit to Cdr, PERSCOM (TAPC–(appropriate career management division)).

(3) Applications initiated on behalf of an officer by other individuals will be referred to the officer concerned without action.

b. The first endorsement will contain a statement that counseling required (para 3–63) has been accomplished, a brief resume of the consultation, and the reason(s) given by the officer for submitting a voluntary request for release from active duty. This endorsement will include:

(1) Approval or disapproval. If approval is recommended and the officer has not fulfilled a service obligation, complete justification will be included. Similarly, recommendation for disapproval will state reasons.

(2) Date officer reported on current tour of active duty; type, effective date, and date of termination of current active duty commitment.

(3) Whether services of officer have been such as to entitle him or her to release from active duty under "honorable" conditions.

(4) Whether officer is occupying a "key" position and a replacement will be required.

(5) Whether medical board or physical evaluation board proceedings are pending or appropriate.

(6) Whether responsible for public property or funds.

(7) Whether under investigation; charges; awaiting result of trial; absent without leave; indebted to the Government; or elimination proceedings (chap 5) are pending or appropriate.

(8) Whether the individual is currently undergoing a course of instruction or period of training which will, on completion, result in an active duty service obligation, or whether officer has an incompleted active duty service obligation incurred through attendance at service schools or civilian educational institutions (including training received through ROTC or by attendance at an officer candidate school) or through receipt of partial Government tuition assistance for off-duty training or through receipt of Continuation Pay.

(9) Date officer departed CONUS or other area of residence for oversea assignment.

(10) Date of arrival oversea of dependents, if applicable; whether at Government or personal expense and whether logistical support furnished.

(11) Rotation date.

c. Subsequent endorsements will include information required by *b*(1) and (3) above.

d. If an application has been disapproved by the commander having final authority, or the CG, PERSCOM, as appropriate, a new application will not be submitted under the same authority, unless there is new material evidence to support reapplication.

3–17. Assignment of personnel to transfer activities

a. Officers stationed in CONUS who must be reassigned to a transfer activity will be processed as prescribed by AR 635–10.

b. Oversea commanders will issue orders returning officers to a CONUS or other area of residence transfer activity according to AR 635–10, unless otherwise directed by HQDA. Consistent with availability of transportation, officers will be returned only in sufficient time to permit transfer processing for separation and normal travel time. Individuals serving in oversea commands who desire and are eligible for release from active duty in the command in which serving may be released from active duty by the oversea commander as provided in chapter 2.

3–18. Release from active duty of Reserve Component officers who are within two years of retirement eligibility

a. This does not apply to officers on annual training (AT), active duty training (ADT), special active duty training (SADT), and full time training duty (FTTD). (See AR 135–200, para 1–6*a*(11).)

b. Officers on active duty who are within two years of eligibility for military retirement will ordinarily not be involuntarily released from active duty until eligible for such retirement (also see para 3–49*k* and 3–98*d*). However, the Secretary of the Army may approve the release from active duty of officers when there are unusual circumstances and their retention on active duty is not considered to be in the best interest of the Army.

Section II
Release from Active Duty and Termination of Reserve Commissions of Student Officers Attending Branch Orientation or Familiarization Courses

3–19. General

Officers of the ARNG and the USAR having less than three years commissioned service who fail to meet standards of service schools while attending Branch Orientation or Familiarization courses of their basic or detailed branch, or a course to provide initial branch or specialty qualification, due to misconduct, moral or professional dereliction, or academic or leadership deficiencies may be released from active duty or active duty for training and may be discharged from their Reserve commissions. (See NGR 635–100 in cases involving ARNG officers.) This includes officers whose basic branch is Military Intelligence and are detailed in other branches for strength accounting only, and who are attending courses of instruction at the Infantry School as part of their branch course.

3–20. Authority

a. Officers exercising general court-martial jurisdiction over individual service schools and The Judge Advocate General for JAGC officer students attending The Judge Advocate General's School are delegated final authority to approve or disapprove release from active duty (ARNG and USAR officers) and discharge (USAR officers only) under this section. (See para 3–21*b* below in cases involving discharge of ARNG officers.) This authority will not be further delegated.

b. The appropriate general court-martial authority or The Judge Advocate General will—

(1) Approve or disapprove the findings and recommendations of the faculty board.

(2) If release from active duty and discharge, or other action within authority of the school commandant, is directed, return the proceedings to the school commandant for action.

(3) If retention with branch transfer is approved, forward the proceedings to Cdr, PERSCOM (TAPC–OPP–M).

(4) Forward to Cdr, PERSCOM (TAPC–OPP–M) proceedings in which the final approved action must be considered or executed by HQDA.

c. The following will be cited in final release orders and in separation forms:

(1) For ARNG officers, see AR 635–100, chapter 3, section II and SPD shown in AR 635–5–1, unless officer is released under self-executing orders.

(2) For USAR officers. See AR 635–100, chapter 3, section II and SPD shown in AR 635–5–1, and Title 10, USC, Section 1162, unless officer is released under self-executing orders.

3–21. Procedures

a. School commandants will—

(1) At start of each course, advise each officer who may be affected by this section of the contents herein.

(2) Refer to a school faculty board for consideration and recommendation, the case of each officer who fails to meet the standards of the school and whom he or she recommends for processing under this section. The board will consider and include in its findings all circumstances surrounding the failure, and the attitude, application and leadership potentialities of the officer, who will be permitted to present to the board any circumstances he or she considers extenuating.

(3) Forward the faculty board proceedings, with his or her recommendations, to the officer exercising general court-martial jurisdiction over the school. The Commandant, TJAGSA will forward such proceedings to HQDA (DAJA–PT), WASH DC 20310–2206.

(4) Authorize the return home in time to arrive by termination date of self-executing orders officers serving on active duty for training for whom final decision has not been received.

(5) Separate those officers whose release from active duty is directed by the general court-martial authority or TJAG or whose release from active duty for training and discharge are directed, except USAR officers on active duty for training who have been returned home under self-executing orders and all officers of the ARNG on full-time training duty. Withdrawal of Federal recognition of all ARNG officers is the responsibility of the Chief, National Guard Bureau. Discharge of officers of the USAR who have been released from active duty for training under self-executing orders will be effected as directed by HQDA. The latter two actions will be taken subsequent to receipt in HQDA, of the documents listed under (6) below.

(6) Forward to Cdr, PERSCOM (TAPC–PDT–RS) one copy of release orders, a report of the student's academic performance, a copy of the faculty board proceedings and action directed by general court-martial authority, or TJAG, in the case of each officer separated under this section. For ROTC graduates, the name of the school at which the officer participated in the ROTC Program will also be furnished.

(7) For purposes of this paragraph, the term "School Commandants" shall also include the Commanders of U.S. Army Medical Treatment Facilities (MEDDAC/MEDCEN) when a branch's specialty qualifying course is conducted in such a facility.

b. The CG, PERSCOM will forward reports pertaining to ARNG officers to the Chief, National Guard Bureau, for actions under NGR 635–100.

Section III
Essentiality to National Interest

3–22. General

a. An officer of the firm conviction he or she can render more valuable service to the Nation in a civilian capacity and that his or her release from active duty is essential from a national standpoint may apply for release from active duty. The application must be motivated by national interest and not personal desire.

b. Officers elected or appointed to the Congress will be released without application.

c. Except as indicated below, officers appointed to a Federal Court, Federal or State public office, or elected to a public office of a State may be released from active duty on their written request provided the evidence required by paragraph 3–24*b* establishes that the office to which appointed or elected required full-time service. The following officers will not be released from active duty under this subparagraph:

(1) Officers serving initial obligated tours of active duty, including those serving initial service agreements imposed by special procurement programs under which ordered to active duty.

(2) Officers serving on tours of active duty that agreed to perform as a condition to receiving schooling, instruction, or other training wholly or partly at the expense of the United States.

3–23. Authority

a. Applications submitted under this section will be forwarded through Cdr, PERSCOM (TAPC–(appropriate career management division)); HQDA (DAJA–PT) WASH DC 20310–2206; or HQDA (DACH–PER) WASH, DC 20310–2700; as applicable, to Cdr, PERSCOM (TAPC–OPP–M) for final action. Commanders specified in paragraph 3–3 are authorized to forward such requests to PERSCOM.

b. Final release orders and separation forms will cite AR 635–100, chapter 3, section III and SPD shown in AR 635–5–1.

3–24. Evidence

a. Requests submitted under paragraph 3–22*a* will include—

(1) Name of firm or agency or enterprise with which applicant will be associated.

(2) Product manufactured or services provided.

(3) Title and description of position to be filled, and applicant's qualifications for the position.

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

(5) Documentation from appropriate officials substantiating the above and the need for applicant's services and indicating latest date position must be filled.

b. Request submitted under paragraph 3–22*c* must be supported by certification from appropriate civil official. The certification will include the office which the officer has been elected or appointed and whether the office required full-time service.

3–25. Procedures

Provisions of paragraph 3–16 apply.

Section IV
Hardship

3–26. General

Officers may be released from active duty because of undue personal or family hardship greater than that being experienced by other officers and families of officers of the Armed Forces.

3–27. Authority

a. Applications submitted under this section will be forwarded through Cdr, PERSCOM (TAPC–(appropriate career management division)); HQDA (DAJA–PT); HQDA (DACH–PER), as appropriate, to Cdr, PERSCOM (TAPC–OPP–M) for final action. Commanders specified in paragraph 3–3 are authorized to forward such requests to Cdr, PERSCOM.

b. Final release orders and separation forms will cite AR 635–100, chapter 3, Section IV and SPD shown in AR 635–5–1.

3–28. Evidence

Each applicant must clearly establish by appropriate documentation that:

a. The hardship is permanent and did not exist prior to entry on active duty or, if it did so exist, it has been aggravated since his or her entrance on active duty, and the condition cannot be alleviated other than by release from active duty.

b. On release the officer will be able to eliminate or materially alleviate the condition.

3–29. Procedures

Provisions of paragraph 3–16 apply as appropriate.

Section V
Maximum Service

3–30. General

a. Commissioned officers will be mandatorily released from active duty on completion of the service specified in (1) and (2) below, whichever occurs first. Officers retained as an exception under (1) *(a)*, *(b)*, *(c)*, *(f)*, or *(g)* below will not be retained beyond the service specified in (2) below. Officers who are qualified for retirement under chapter 4 may apply for voluntary retirement to be effective not later than the first day of the month following the scheduled release date specified below.

(1) On completion of 20 years active Federal service, on the last day of the month following the month in which such service is completed. Exceptions are as follows:

(a) Those retained by HQDA under voluntary retention programs. Such officers will be retained until extended release date, unless earlier release is required to meet current needs of the Active Army. In no event shall officers be trained beyond 30 years active Federal service if serving in a grade of lieutenant colonel.

(b) Those selected for and promoted to the grades 06, 07 or 08 by an active duty list (ADL) promotion board will be retained until completion of three years active service in that grade (10 USC 1370). These provisions apply unless—

1. The officer requests earlier release from active duty or retirement.

2. The officer held that grade or had been selected for promotion to that grade in the Reserves on or before 14 September 1981.

3. Earlier release is required to meet current needs of the Active Army.

4. The officer is removed from the approved promotion list and is not subsequently selected for promotion to that grade.

(c) Those serving in or who are on an approved active duty promotion list or an active duty list to the grades of 04 or below will be retained until completion of six months in grade (10 USC 1370(a)(1)) unless one of the conditions in *(b)1* through *4* above exists.

(d) United States Property and Fiscal Officers and those assigned to Selective Service System.

(e) Officers of the Army National Guard of the United States assigned as Chief, National Guard Bureau.

(f) Those who are selected prior to completion of 20 years active Federal service for attendance at staff college level school or a senior service college listed in paragraph 4–16*a*(2) will be allowed to remain on active duty following graduation or termination of attendance at the designated school.

(g) Those who are selected for a command position by a DA Command Selection Board will be allowed to remain on active duty to report to the designated assignment and will be retained on active duty up to 90 days after completion of assignment to the designated command position.

(2) On completion of the following service:

(a) If holding permanent grade of major general or brigadier general in a Reserve Component: On the fifth anniversary of the date of his or her appointment in that grade or 30 days after the date which he or she completes 35 or 30 "years of service", respectively, whichever is later.

(b) If holding permanent grade of colonel in a Reserve Component: 30 days after the date which he or she completes 30 "years of service".

(c) If holding permanent grade of lieutenant colonel or below in a Reserve component: 30 days after the date which he or she completes 28 "years of service".

(d) Officers whose retention in active status (Reserve) is authorized beyond the removal date specified in AR 140–10 (USAR officers) or NGR 635–100 (ARNG officers), but who do not qualify for retention on active duty under *(e)* below, will be released from active duty under applicable criteria in *(a)* through *(c)* above.

(e) Exceptions are as follows:

1. Any member of the Army Nurse Corps or the Army Medical Specialist Corps holding permanent grade of lieutenant colonel in a Reserve Component, may, at the discretion of the Secretary,

be retained on active duty and in an active status until that date which is 30 days after the date on which he or she completes 30 "years of service".

2. Those who are within 2 years of qualifying for retirement under chapter 4 (Title 10 USC, Section 3911 20 years active Federal service including 10 years commissioned officer service) on completion of the service in *(a)* through *(c)* above, and who can so qualify prior to attaining maximum ages specified in section VI, this chapter, will be retained on active duty and in an active status until the end of the month following the month which eligibility for retirement is attained.

3. Officers of the Army Medical Department (except MSC) and chaplains who cannot qualify for retirement under chapter 4 on completion of service prescribed in *(a)* through *(e) 3.* above, but who can attain such eligibility by age 60, will be retained with their consent on active duty and in an active status until they qualify for retirement under chapter 4 (Title 10, USC, Section 3911—20 years active Federal service including 10 years commissioned officers service), but not later than age 60.

4. Officers of the ARNG assigned to a headquarters or headquarters detachment of a State, the Canal Zone, Puerto Rico, Virgin Islands, or the District of Columbia as United States Property and Fiscal Officers and officers assigned to the Selective Service System may be retained on active duty and in an active status until further retention is considered inappropriate by HQDA or the agency concerned, or age 60, whichever is earlier.

5. Officers of the ARNG assigned as Chief, National Guard Bureau.

6. Officers whose retention is approved on an individual basis by the Secretary of the Army.

7. Those who on attainment of age 58 are within two years of qualifying for retired pay under AR 135–180 (Title 10, USC, Sections 1331 through 1337—completion of 20 years of qualifying service and attainment of age 60) will be retained, if otherwise qualified, until the end of the month which age 60 is reached.

b. Warrant officers will be mandatorily released from active duty on the last day of the month following the month which they complete 20 years active Federal service. Warrant officers are qualified for retirement under chapter 4 (Title 10, USC, Section 1293—20 years active Federal service). They may apply for voluntary retirement to be effective not later than scheduled release date.

(1) Exceptions are—

(a) Those retained by HQDA under voluntary retention programs.

(b) Those serving on a promotion lock-in as provided in paragraph 4–16*b*, unless earlier release is required to meet current needs of the Active Army, but in no event will officers be released prior to completion of six months active service in new grade.

(c) Those who are on a recommended AUS promotion list to W4 or W3 will be allowed to remain on active duty until promoted and completion of the lock-in period, unless earlier release is required to meet current needs of the Active Army.

(d) Those serving initial terms of obligated service (OBV), unless release is required to meet current needs of the active Army, will be retained on active duty until expiration of OBV.

(2) Warrant officers who were previously retained beyond 20 years active Federal service under the Long-Range Active Duty Programs will be released from active duty 60 days after completion of 30 years active Federal service or age 62, whichever is earlier, unless earlier release is required to meet the current needs of the Active Army.

(3) Warrant officers who were previously retained beyond 20-years active Federal service under the managed tenure program will be retained on active duty until their established mandatory release date, unless earlier release is required to meet the current needs of the Active Army.

3–31. Authority

a. Commanders specified in paragraph 3–3 will establish controls ensuring separation of officers under this section according to individual instructions issued by the CG, PERSCOM unless affected officers request voluntary retirement to be effective not later than their scheduled release date. Separation will not be delayed beyond the scheduled release date due to nonsubmission or late submission of a request for voluntary retirement under chapter 4.

b. The authority for separation will cite AR 635–100, chapter 3, section V and the appropriate SPD shown in AR 635–5–1.

3–32. Procedures

a. Officers to be released under paragraph 3–30*a*(1) and *b* will be notified directly by PERSCOM normally not later than six months prior to scheduled release date. A copy of this notification will be forwarded to the appropriate separation approval authority and the immediate commander for inclusion in the officer's DA Form 201.

b. Officers to be released under paragraph 3–30a(2) will be notified through channels, by PERSCOM, not later than 90 days prior to scheduled release date, unless release is to be effected because of expiration of service agreement, in which case provisions of this chapter, section X, apply.

c. See paragraph 3–13, and chapter 4, section V, concerning medical examination for REFRAD/retirement. If an officer is scheduled for release under this section, and is not eligible for retirement or does not apply for retirement, becomes hospitalized, the determination will be made and action taken as required by paragraph 4–37. (For the purpose of this section, the words "retired on his or her mandatory/voluntary retirement date" in paragraph 4–37 will be construed to read "separated on his or her scheduled release date".) The information required by paragraph 4–37*b* will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS) to reach that office not later than five workdays prior to the officer's scheduled release date.

d. Commanders will counsel all retirement eligible officers on the requirement that, if they wish to retire coincident with their release from active duty, or earlier, they must submit an application for retirement in time to meet the requirements of paragraph 4–10*b*. This counseling will be given at the time notification of scheduled release by reason of maximum service is received from Cdr, PERSCOM (TAPC–PDT–RS), and will include the information in paragraph 3–13*b, e* below, and chapter 4, section V.

e. Requests for retention initiated by commanders because of proven cogent military necessity must be fully documented. The officer will continue to process for separation as scheduled so as to preclude any unnecessary hardship if retention is not approved. Evaluation of these requests will include the period of the requested retention and the advance release notice given commanders for planning.

Section VI
Maximum Age

3–33. General

a. Officers will be released from active duty on the last day of the month in which they attain the following maximum ages, unless their release is sooner required by this chapter, section V, or unless their retention is authorized on an individual basis by the Secretary of the Army under the provisions of Title 10 USC, Section 676 (grades shown are permanent grades).

(1) Officers of the Army National Guard of the United States assigned as Chief, National Guard Bureau—64.

(2) Major general (or brigadier general recommended for permanent promotion to major general)—62.

(3) All other commissioned officers—60.

(4) Warrant officer—62. As an exception, warrant officers qualified for retired pay under AR 135–180 at age 60 and prior to age 62, will be released from active duty on attainment of age or completion of 20 years of qualifying service for retired pay, whichever is later. Warrant officers who have not completed 20 years of qualifying service prior to attainment of age 62 and who, on scheduled release date, are within two years of qualifying for retired pay may be retained on active duty until they complete 20 years of qualifying service for retired pay under AR 135–180.

b. Officers indicated in *a*(3) above who cannot qualify for retirement under chapter 4 prior to attainment of age 60 will be released from active duty as prescribed by *a* above, except those on scheduled release date that are within two years of qualifying for retirement under chapter 4 or for retired pay under AR 135–180. These officers, if otherwise qualified, may be retained on active duty until eligible for such retirement or retired pay, whichever occurs first.

c. Officers included in *a*(3) above who are retained by the Secretary of the Army in an active status under the provisions of 10 USC 1003(2) as implemented by AR 140–10 may also be retained on active duty by the Secretary of the Army for the period of retention in an active status, or any lesser period.

3–34. Authority

a. Commanders specified in paragraph 3–3 will establish procedures ensuring separation of officers under this section according to individual instructions issued by PERSCOM unless affected officers request voluntary retirement to be effective not later than their scheduled release date. Separation will not be delayed beyond the scheduled release date due to nonsubmission or late submission of request for voluntary retirement under chapter 4.

b. Final release orders and separation forms will cite AR 635–100, chapter 3, section VI, and SPD shown in AR 635–5–1.

3–35. Procedures

a. Officers to be released under this section will be notified, through channels, by PERSCOM not later than 90 days prior to scheduled release date, unless release is to be effective because of expiration of service agreement in which case, provisions of paragraph 3–47 and 3–48 apply.

b. The provisions of paragraph 3–32*c* and *d* apply, also, to scheduled release for maximum age, except for the reference to paragraph 3–31*a*. Paragraph 3–35*a* applies in cases of release due to maximum age.

Section VII
Enlistment in the Regular Army for Purpose of Retirement

3–36. General

Officers having prior service in the RA may be released from active duty and reenlisted in the RA for the purpose of retirement under AR 635–200, chapter 12.

3–37. Authority

a. Commanders specified in paragraph 3–3 will take final action on these requests.

b. Final release orders and separation forms will cite AR 635–100, chapter 3, section VII and SPD shown in AR 635–5–1.

3–38. Procedures

a. Applications may be submitted not earlier than six months prior to the desired release date and will be forwarded through channels to the appropriate retirement approval authority to arrive not less than 60 days prior to desired release date. The following will be included in these requests:

(1) Date of entry on active duty in current tour.

(2) Permanent enlisted grade, SSN.

(3) Grade determination according to AR 601–210, if appropriate.

(4) DA Form 2339 (Application for retirement) under AR 635–200, chapter 12.

(5) Statement whether remaining obligatory service in the USAR until completion of 30 years service is desired in enlisted or officer status. Include present Reserve grade and home address on retirement.

(6) Medical examination. See AR 40–501.

b. On determining eligibility for retirement, the retirement approval authority will—

(1) Direct the release of officer from active duty on the third day prior to the first day of the month which retirement is desired.

(2) Authorize enlistment in the RA on the day following release in the grade determined according to *a*(3) above.

(3) Forward retirement orders, forms, and instructions in time to effect release from active duty on the last day of the month and retirement effective the first day of the following month.

c. Records will be disposed of according to AR 640–10 and AR 635–10.

Section VIII
Selection for Entrance to a Service Academy

3–39. General

An officer selected for appointment to a service academy may be released from active duty.

3–40. Authority

a. Commanders specified in paragraph 3–3 will accomplish separation of officers who receive notification of a desire to accept appointment to cadet or midshipman status.

b. Final release orders and separation forms will cite AR 635–100, chapter 3, section VIII, and SPD shown in AR 635–5–1.

3–41. Procedures

a. CG, PERSCOM will notify officers selected for appointment to a service academy.

b. Officers released from active duty under this section will be discharged from appointment held as a reserve commissioned or reserve warrant officer. Medical examination will not be required.

Section IX
Release from Active Duty of Army Medical Department Personnel who Receive Unfavorable Background Investigation and/or National Agency Check or who Fail to Meet Procurement Medical Standards

3–42. General

Army Medical Department personnel who are commissioned in the USAR and called to active duty, and subsequently do not receive favorable background investigation and/or National Agency Check, or who fail to meet procurement medical standards will be released from active duty for concurrent discharge from their reserve commissions.

3–43. Authority

a. CG, PERSCOM will direct the appropriate commander to accomplish release from active duty and discharge under this section.

b. The authority for separation is AR 635–100, chapter 3, section IX and SPD shown in AR 635–5–1 will be used.

Section X
Early Release due to Disapproved Request for Extension of Service

3–44. General

An officer whose request for extension of service has been disapproved by HQDA, may apply for release from active duty to be effective prior to termination of current service agreement provided he or she has completed 24-months active duty on current tour and he or she is not eligible for earlier release under other directives or regulations.

3–45. Authority

a. Commanders specified in paragraph 3–3 are authorized to take final actions on these requests, except for applications from officers serving in dual status which will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS), as required by paragraph 3–12. This authority may not be further delegated.

b. The authority for separation is section X and XI; and SPD shown in AR 635–5–1.

3–46. Procedures

a. Provisions of paragraph 3–16 apply as appropriate.

b. Applications from officers otherwise eligible to receive readjustment pay will include the following statement: "I understand that this request for early release from active duty, if approved will constitute release under voluntary conditions and will preclude my entitlement to readjustment pay."

Section XI
Expiration of Active Duty Commitment

3–47. General

Officers who decline to request extension of service under AR 135–215 and officers whose requests for extension of service have been disapproved by HQDA, will be released from active duty in sufficient time to arrive at their home not later than 2400 hours on the day of completion of their tours of service. This section is also applicable to six months active duty for training personnel.

3–48. Authority

a. Separation approval authorities will ensure that officers under their jurisdiction are released as scheduled except officers serving in dual status who will be reported to Cdr, PERSCOM (TAPC–PDT–RS) according to paragraph 3–14.

b. Officers not under the jurisdiction of a commander having separation approval authority will be reported to Cdr, PERSCOM (TAPC–PDT–RS) not later than 60 days prior to scheduled date of release from active duty for issuance of orders for assignment to a transfer activity according to paragraph 3–17.

c. The authority for separation will be cited as follows:

(1) Officers serving with their consent, who decline further service: AR 635–100, para 3–48*c*(1) and SPD in AR 635–5–1.

(2) Officers serving without their consent, who decline further service: AR 635–100, para 3–48*c*(2) and SPD in AR 635–5–1.

(3) Expiration of active duty commitment due to disapproval of voluntary indefinite service: AR 635–100, para 3–48*c*(3) and SPD in AR 635–5–1.

Section XII
Involuntary Release from Active Duty

3–49. General

Officers will be involuntarily released from active duty on the recommendation of the DA Active Duty Board (DAADB) for misconduct, moral or professional dereliction and/or when their degree of efficiency and manner of performance or the needs of the service require such action. The CG, PERSCOM will operate the DAADB.

a. Whenever evidence reveals that—

(1) An officer has committed a significant act of misconduct or moral or professional dereliction.

(2) The officer's degree of efficiency and manner of performance require release from active duty or elimination from the service, action will be taken as stated in *b* and *c* below.

b. The records of the officers together with all available evidence, will be obtained by the CG, PERSCOM, The Judge Advocate General, or the Chief of Chaplains, as appropriate, and forwarded without recommendation to Cdr, PERSCOM (TAPC–OPP–M).

c. The CG, PERSCOM (TAPC–OPP–M) will forward these records and evidence, without recommendation, to the DAADB for consideration for release from active duty and elimination from the service, in the prescribed guidance and criteria.

d. Officer records will be screened annually by the CG, PERSCOM, The Judge Advocate, or the Chief of Chaplains, as appropriate, to determine whether any officers other than those referred to in *b* and *c* above should be considered for release from active duty, or elimination from the service for the reasons stated in *a* above.

(1) If it is determined that any officers should be considered by a DAADB, the records and evidence will be forwarded, without recommendation, by the CG, PERSCOM, The Judge Advocate or the Chief of Chaplains, as appropriate, to the CG, PERSCOM (TAPC–OPP–M).

(2) The CG, PERSCOM (TAPC–OPP–M) will forward these records and evidence, without recommendation, to the DAADB for consideration for release from active duty or elimination from the service, in the prescribed guidance and criteria.

e. On initiation of an action by an agency (*b, c* or *d* above) a DA Form 268 (Report to Suspend Favorable Personnel Actions) will be prepared and distributed according to AR 600–8–2.

f. Actions on officers in *a* through *c* above which are recommended by the DAADB for release from active duty and elimination from the service will be released from active duty by HQDA, and will be processed for consideration for elimination under the provisions of AR 135–175 or NGR 635–101, as appropriate.

g. When budgetary or authorization limitations require a reduction of officer strength, a DAADB will be convened to determine which officers will be released from active duty. The CG, PERSCOM, The Judge Advocate General, Chief of Chaplains, or any of these offices, using prescribed criteria may be required to forward officer records, without recommendation, for consideration by the Board. Officers designated for release under this paragraph are not considered ineffective or substandard in duty performance. Their release is dictated by the needs of the Service.

h. Each officer considered under *a* through *c* above will be notified in writing that his or her records and any other available evidence are being transmitted to the DAADB for consideration and will be informed of the criteria which his or her records were submitted. The letter of notification will outline the criteria furnished the Board for guidance in selecting officers for separation. Each officer will have the right to submit appropriate written material for the DAADB's consideration regarding his or her case, and the officer concerned or a designee will be afforded the opportunity to review all of the officer's personnel records and any other written material which will be submitted to the DAADB for evaluation.

i. The decisions of these boards are final.

j. Officers designated for release under this section may be released from active duty on any date between the date of notification and the 90th day after receipt of notification by the officer concerned. The officer will not be released prior to the 90th day without his or her consent. Notwithstanding the foregoing, any officer designated for release by reason of a finding which includes misconduct, moral or professional dereliction will be released not earlier than five days nor later than 14 days after receipt by the command of the notification that the officer is to be released. The statement in figure 3–2 will be completed and signed by the officer concerned and placed in his or her DA Form 201 (US Army Military Personnel Records Jacket) as a permanent document.

k. Officers who will complete 18 of more years of active Federal service on their scheduled release date will not be processed under this section, unless such action is approved by the Secretary of the Army, but will be retained on active duty until the last day of the month following the month they complete 20 years of active Federal service.

l. Release from active duty under this section is involuntary; therefore, release prior to the 90th day after notification will have no effect on entitlement to separation pay.

m. Notwithstanding the above provisions, an officer who is found guilty, or action is taken which is tantamount to a finding of guilty, by any Federal or State court may be released by the Secretary of the Army from active duty immediately when the offense—

(1) Is punishable under the Uniform Code of Military Justice by a maximum penalty of death or confinement for one year or more. If the offense is not listed in the Manual for Courts-Martial, 1984, Table of Maximum Punishments, 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, applies; or

(2) Involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code. The release of officers under this provision who have completed 18 or more years of active Federal service on the date the officer is

found guilty, must be approved by the Secretary of the Army. If the finding of guilty is subsequently set aside, the officer may, with his or her consent and the approval of the Secretary of the Army, be returned to active duty.

3–50. Action by commanding officers

a. Commanders at all echelons will submit actions on officers, whose manner of performance of duty when compared with their contemporaries, indicates a lack of justification for retention on active duty, through channels to Cdr, PERSCOM (TAPC–OPP–M), The Judge Advocate General, the Chief of Chaplains, as appropriate. An action may be submitted at any time and will be accompanied with details of the reasons for recommendation of the officer for release from active duty.

b. On initiation of an action, the commander will prepare and distribute DA Form 268 according to AR 600–8–2.

c. On receipt in PERSCOM, actions will be processed according to paragraph 3–49*d*(2) or (3), as appropriate.

d. Prior to forwarding a recommendation, the initiating commander will refer the action for comment or rebuttal to the officer being recommended for release from active duty. (See AR 600–37.) Specific reasons for the recommendation will be presented in writing to the officer concerned. No reasons will be added after the officer's review, without further referral to the officer.

e. Heads of staff agencies may when appropriate, initiate a recommendation for an officer's release from active duty under this section. On initiation of an action, a DA Form 268 will be prepared according to AR 600–8–2. This provision also applies to officers who are pregnant and whose substandard performance of duty is not solely attributable to the condition of pregnancy; for example:

(1) Failure to perform prescribed duties due to defective attitude rather than physical limitation.

(2) Failure to report to duty without medical or military authorization.

(3) Refusal of CONUS reassignment during the first six months of pregnancy.

3–51. Authority

a. Commanders specified in paragraph 3–3 are responsible to effect the timely separation of officer notified of involuntary release from active duty under this section.

b. Separation approval authorities are authorized to effect earlier release, with the consent of the officer concerned. This authority may not be further delegated.

c. The authority for separation is AR 635–100, paragraph 3–49*a, b,* and *g,* as applicable and SPD shown in AR 635–5–1 will be cited.

3–52. Procedures

Officers to be released from active duty under this section will be notified through appropriate commander by PERSCOM (TAPC–PDT–RS).

Section XIII
Failure of Selection for Permanent Reserve Promotion

3–53. General

a. The provisions of this section do not apply to commissioned officers on the active duty list (AR 624–100 and 10 USC 620). Except as indicated in *b* through *e* below, the following officers will be released from active duty and discharged on the 120th day after receipt of involuntary release notification, unless earlier release is voluntarily requested, or transferred to the Retired Reserve, if requested and eligible under AR 140–10. Officers with a remaining service obligation will be transferred to the Ready Reserve.

(1) Reserve commissioned officers serving on active duty as commissioned officers, who fail a second time to be selected for promotion to permanent Reserve grade of captain, major, or lieutenant colonel.

(2) Reserve warrant officers serving on active duty as warrant officers who fail a second time to be selected for promotion to permanent grade of W3 or W4.

b. Reserve commissioned officers holding the permanent Reserve grade of second lieutenant and serving on active duty as commissioned officers who are not promoted to the permanent Reserve grade of first lieutenant on or before date of completion of three years promotion service will be released from active duty and discharged on date of completion of such service unless they have a service obligation. Those serving an obligated period of active duty will be retained on active duty until completion of this obligation.

c. Reserve warrant officers holding the permanent Reserve grade of W1 and serving on active duty as warrant officers who are not promoted to the permanent grade of W1 and serving on active duty as warrant officers who are not promoted to the permanent Reserve grade of W2 on or before date of completion of three years promotion service, will be released from active duty and discharged on date of completion of such service unless they have a service obligation. Those serving an obligated period of active duty will be retained on active duty until completion of obligation.

d. Officers who are within two years of qualifying for retirement under chapter 4 (20 years active Federal commissioned service) on their scheduled release date, and who can so qualify prior to attaining maximum ages specified in this chapter, section VI, will be retained on active duty until the last day of the month following the month they qualify for such retirement.

e. An officer eligible for retirement under chapter 4 may apply for retirement to be effective not later than the first day of the month following the month which release is directed.

3–54. Authority

a. Commanders specified in paragraph 3–3 will ensure necessary action is taken to effect release from active duty and discharge or transfer to the Ready or Retired Reserve, on scheduled date of release, of officers notified of mandatory release under this section. Dual status officers will be reported to Cdr, PERSCOM (TAPC–PDT–RS) according to paragraph 3–12.

b. Separation approval authorities are authorized to take final action on requests for earlier release, except on requests from officers serving in dual status will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS) as required by paragraph 3–12. This authority may not be further delegated.

c. The authority for separation will be cited as follows:

(1) Officers released and transferred to Ready or Retired Reserve; AR 635–100, chapter 3, section XIII and SPD shown in AR 635–5–1.

(2) Officers released and discharged: AR 635–100, chapter 3, section XIII and SPD shown in AR 635–5–1.

3–55. Procedures

Letters of notification will be dispatched by PERSCOM, to appropriate commanders. The statement will be completed by the officer concerned and dispatched immediately to the addresses indicated. One copy of the statement will be filed in the officer's DA Form 201 until his or her release from active duty or retirement, as applicable, has been effected.

Section XIV
Failure of Selection for Promotion of Warrant Officers on the Active List

3–56. General

a. Except as indicated in *b* through *g* below, the following warrant officers will be released from active duty on the 90th day after receipt of involuntary release notification unless earlier release is requested:

(1) Reserve warrant officers serving on active duty as warrant officers who are twice reported by a DA Promotion Selection Board as not recommended for promotion to temporary AUS

grade of chief warrant officer W3 or W4 provided there are at least nine months between the adjournment dates.

(2) AUS warrant officers who are twice reported by a DA Promotion Selection Board as not recommended for promotion to temporary AUS grade of chief warrant officer W3 or W4 provided there are at lease nine months between the adjournment dates.

(3) Reserve warrant officer W1, who are considered by promotion authorities (AR 624–100, para 3–2) for temporary promotion to chief warrant officer, CW2, and are nonselected (AR 624–100, para 3–7).

b. Officers having 90 days or less remaining to serve on active duty as reflected by a current service agreement due to denial or declination of further active duty, and officers who have been notified of their impending involuntary release from active duty under any other provisions of laws or regulations, are not subject to this section.

c. An officer eligible for retirement under chapter 4 may apply for retirement, to be effective not later than the first day of the month following the month which release is directed.

d. Officers who will complete 18 or more years of active Federal service on their scheduled release date will not be processed under this section, unless such action is approved by the Secretary of the Army. They will be retained on active duty until the last day of the month following the month which they complete 20 years Active Federal service.

e. An officer whose case is referred by a DA Special Selection Board for reconsideration for promotion under AR 624–100, paragraph 2–8c will continue to be processed for separation as scheduled. If the reconsideration by the board has not been completed by the scheduled separation date, PERSCOM (TAPC–PDT–RS) will direct the temporary suspension of the officer's separation pending receipt of the results of the reconsideration. If after the originally scheduled release date the board's decision is unfavorable, the officer will be designated for release no later than 30 days from receipt of notification by the officer concerned.

f. Warrant officers in the grade of CW2 or CW3 who are selected for continuation on active duty by a DA Selective Continuation Board are not subject to release from active duty under this section.

3–57. Authority

a. Separation approval authorities (para 3–3 or AR 624–100) (para 3–2 (for nonselect Reserve warrant officers W1 to temporary CW2)) will ensure that necessary action is taken to effect the separation on the scheduled date of release from active duty of officers notified of promotion failure under this section or AR 624–100, paragraph 3–7.

b. Separation approval authorities (para 3–3, or AR 624–100, para 3–2 (for nonselect Reserve warrant officers W1 to temporary CW2)) are authorized to take final action on requests for earlier release, except for dual status officers. Requests from dual status officers will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS) as required by paragraph 3–12. These authorities may not be further delegated.

c. The authority for separation is this chapter, section XIV and SPD shown in AR 635–5–1 will be used.

3–58. Procedures

Letters of notification, (except for nonselected Reserve warrant officers W1), and if applicable, "Acknowledgement of Notification of Second Nonselection for Temporary Promotion" statement will be dispatched by Cdr, PERSCOM (TAPC–PDT–RS) to commanders specified in paragraph 3–3. The statement will be completed by the officer concerned and dispatched immediately to the address indicated. One copy of the statement will be filed in the officer's OMPF until the officer's release from active duty or retirement, as appropriate, has been effected. For Reserve warrant officers W1 who are nonselected for promotion to temporary CW2, letters of notification will be dispatched by authorities stated in AR 624–100, paragraph 3–2.

Section XV
Release from Active Duty Pending Appellate Review

3–59. General

a. An officer holding a current appointment in the ARNG or the USAR which will not expire on release from active duty who is sentenced to dismissal (commissioned officer) or dishonorable discharge (warrant officer) without confinement may be released from active duty on approval of the sentence by the reviewing authority and prior to completion of appellate review. Officers may be placed on excess leave in lieu of release from active duty according to AR 630–5.

b. An officer holding a current appointment in the ARNG or USAR which will not expire on release from active duty who is sentenced to dismissal (commissioned officer) or dishonorable discharge (warrant officer) and confinement has been served prior to completion of appellate review will be released from active duty on completion of confinement.

c. Any officer or warrant officer released from active duty under provisions of paragraph 3–59*a* or *b* above, in whose case final action does not include execution of the dismissal or dishonorable discharge, will be returned to active duty with his or her consent in the grade held at the time of release and with the same service commitment the officer had at the time of release.

3–60. Authority

a. Release from active duty will be effected according to instructions issued by Cdr, PERSCOM (TAPC–PDT–RS).

b. The authority for separation is AR 635–100, chapter 3, section XV and SPD shown in AR 635–5–1 will be used.

3–61. Procedures

a. Immediately on approval of a sentence to dismissal or dishonorable discharge and no confinement in the case of an ARNG or USAR commissioned or warrant officer, the general court-martial reviewing authority will notify CDR, PERSCOM, ALEX VA//TAPC–PDT–RS// by electrical means. When the officer is to be returned to continental United States under *d* below, the appropriate CONUS transfer activity will be included as information addressee.

b. Not later than two weeks prior to completion of confinement in the case of an ARNG or USAR commissioned or warrant officer sentenced to dismissal or dishonorable discharge and confinement, but whose sentence has not been finally approved, commanders of confinement facilities will notify CDR PERSCOM by electrical means.

c. The above notifications are exempt from reports control under AR 335–15, chapter 7 and will include the following:

(1) Name, grade, SSN, branch and assignment.

(2) Date and source of general court-martial order, and sentence as approved.

(3) Date of release from confinement.

(4) Date of departure, mode of travel, transportation terminal and estimated time of arrival, if being returned from oversea command under *d* below.

d. Following transmission of required reports, affected officers stationed oversea may be returned to the appropriate CONUS transfer activity to await receipt of instruction from CG PERSCOM.

e. A letter of instructions directing the release from active duty in each case will be dispatched by PERSCOM to the appropriate commander. The following statement will be included in reassignment orders directing an individual to report to a transfer activity for separation: "Pursuant to the provision of the Uniform Code of Military Justice, Manual for Court-Martial, 1984", officer could be retained in the service pending final action on the court-martial charges under which he or she stands convicted. The fact that he or she is being released from active duty shall not effect or be construed to effect, constructively or impliedly, any condonation or pardon of the offense or offenses under which he or she stands convicted, or remission, in whole or in part, of the sentence adjudged against him or her. The period of service from which he or

she is being released from active duty will be characterized according to the final action on said sentence.

f. As an exception to AR 635–5, DD Form 214 will not be prepared on release from active duty, DD Form 214WS (Worksheet for Certificate of Release for Discharge from Active Duty) will be completed and forwarded by letter of transmittal to Cdr, PERSCOM (TAPC–PDT–RS) with five copies of final release order. Appropriate separation forms will be completed and issued by PERSCOM on final disposition of the case.

g. Transportation in kind will be furnished. Lump sum payment for unused leave, reimbursement for travel of dependents, and shipment of household goods are not authorized. The officer will be advised that, in the event his or her appeal results in a final characterization of the release as under honorable conditions, he or she may file a claim with the U.S. Army Finance and Accounting Center for benefits withheld on release.

h. PERSCOM (TAPC–PDT–RS) will be advised by electrical means the date the officer is released from active duty and the permanent home address at which he or she can be reached.

i. Commanders specified in paragraph 3–3 will ensure that the commissions or warrants of officers released from active duty under this section are not terminated prior to receipt of final instructions from the CG PERSCOM.

j. When and as appropriate, unit commanders will ensure that action is taken as required by AR 190–47, paragraph 5–2 and AR 635–10, paragraph 3–17.

Section XVI
Voluntary Release from Active Duty

3–62. General

An officer may, if eligible under conditions prescribed below, submit an application for release from active duty whenever such action is considered appropriate. The application will include information pertaining to accrued leave as shown in AR 635–120, figure 3–1, paragraph 8.

3–63. Counseling

a. The first colonel (06) in the chain of command or supervision will counsel those commissioned officers (except for chaplains, judge advocates and AMEDD personnel) who submit a request for release from active duty if—

(1) They are serving in a voluntary indefinite status and have less than 10-years active commissioned service.

(2) None of the circumstances set forth in paragraph 3–16*b*(7) exist.

b. This counseling will include—

(1) Advice regarding the opportunities rendered a military service careerist.

(2) A discussion of the officer's previously achieved investment in the Army.

(3) Advice concerning the USAR. The officer will be advised to send requests for detailed information on the USAR to the proper address listed in table 3–1.

Table 3–1
USAR addresses

Officers assigned to: CONUS (and other areas not specifically identified below)
Send request to: Commander, PERSCOM
ATTN: TAPC–OPP–A
9700 Page Boulevard
St. Louis, MO 63132–5200
Telephone: 1–800–325–4898

Officers assigned to: USAREUR
Send request to: Commander, First PERSCOM
ATTN: AEUPE–PSSD–PSR
APO New York 09081
Telephone:
COM 2136–7776/6334
ETS 379–7776/6334

Officers assigned to: Eighth U.S. Army (Korea)
Send request to: Commander, Eighth Personnel Command
ATTN: EAPC–PM–R
APO San Francisco 96301
Telephone:
Yongsan 294–3724/8934
Autovon 315–724–6833

Officers assigned to: US Army Japan
Send request to: Commander, US Army Japan/IX Corps
ATTN: AJ–AG–RE
APO San Francisco 96343
Telephone:
A–0462–51–1520
(Mil) 233–3418–3057

Officers assigned to: WESTCOM (all Pacific areas except Japan and Korea)
Send request to: Commander, WESTCOM
ATTN: APAG–R
Fort Shafter, HI 96858
Telephone: 808–438–2395

c. The first general officer in the individual officer's chain of command or supervision may counsel officer as stated above when such is practicable.

d. Judge advocates, AMEDD and chaplain officers will be counseled as described in *b* above, by a senior member of their branch in their chain of technical supervision or specifically designated by their branch.

e. This requirement for counseling is waived for OTRA officers one time nonselect for promotion.

3–64. Eligibility

a. To be eligible for release under this section an officer must have—

(1) Completed—

(a) The current period of service required by law or the minimum period required by the program which placed the officer on active duty as a commissioned officer or warrant officer.

(b) One year of his or her current active duty commitment, unless such commitment was submitted and approved with stipulations authorized by AR 135–215.

(2) Fulfilled the following additional service requirements, as applicable.

(a) Officers who have departed the continental United States normally will be required to complete the current prescribed tour for the areas of assignment as specified in AR 614–30, unless returned earlier under existing policies.

(b) Officers who have attended service schools or civilian educational institutions or participated in special training which a utilization tour is required, or who have received Continuation Pay, normally will complete the period of service specified by AR 350–100 and other appropriate regulations which officers applied for or received such schooling or benefits.

(c) Officers on order for assignment to a military mission, a Military Assistance Advisory Group, or attache office must complete their training and the oversea tour of duty prescribed by AR 614–30.

(d) All other officers who receive a permanent change of station will be required to serve one year at their new station.

b. In all other cases, DA reserves the right to require compliance with orders to a course of instruction which will result in an active duty service obligation, or reassignment orders in CONUS, or to any oversea assignment, if such orders are announced prior to submission of application for release from active duty. However, exceptions will be considered on an individual basis provided the application for release from active duty is received by the appropriate commander referred to in paragraph 3–65 in 30 days of receipt of the alert or assignment order, whichever is earlier, and further provided the requested effective date is not more than six months subsequent to date of application. On an individual basis,

as determined by HQDA, officers who are service obligated beyond six months, may submit their application for release from active duty, as an exception to policy, more than six months in advance of the requested effective date. Ultimately, however, the non-statutory criteria in this paragraph may be waived by HQDA on a case by case basis.

3–65. Authority

a. Applications submitted under this section will be forwarded by commanders exercising general court-martial jurisdiction and commanders at a comparable level of command through Cdr, PERSCOM (TAPC–appropriate career management division) or HQDA (DAJA–PT); HQDA (DACH–PER), as applicable, to PERSCOM (TAPC–OPP–M) for final action.

b. The authority for separation in this chapter, section XVI and SPD shown in AR 635–5–1 will be cited.

3–66. Procedures

Provisions of paragraph 3–16 apply, as appropriate.

Section XVII
Release from Active Duty for Purpose of Reverting to Regular Army Warrant Officer Status

3–67. General

Commissioned officers (dual status officers) may request release from active duty for the purpose of reverting to RA warrant officers status.

3–68. Authority

a. CG, PERSCOM will issue instructions of final action to be taken on these applications.

b. The authority for separation is AR 635–100, this chapter, section XVII and SPD shown in AR 635–5–1.

3–69. Procedures

a. Provisions of paragraph 3–16 apply, as appropriate.

b. Unused leave will be carried forward to new status.

c. Applications, including reasons for the request, will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS) to arrive 60 days prior to desired release date.

d. Applicants stationed oversea will not be returned to CONUS prior to HQDA approval.

Section XVIII
Release from Active Duty for Purpose of Enlistment/ Reenlistment in the Regular Army

3–70. General

Officers may request voluntary release from active duty for the purpose of enlistment/reenlistment in the RA.

3–71. Authority

a. Commanders specified in paragraph 3–3 are authorized to approve these applications. This authority may not be further delegated. Separation approval authorities will forward requests when disapproval is recommended to Cdr, PERSCOM (TAPC–PDT–RS) with reasons.

b. The authority for separation is this chapter, section XVIII and SPD shown in AR 635–5–1 will be cited.

3–72. Procedures

a. Provisions of paragraph 3–16 apply, as appropriate.

b. Unused leave will be carried forward to new status.

c. Applications, including reasons for the request, will be accompanied by a statement as follows: "I will enlist in the Regular Army at place of separation on day following effective date of my release from active duty. Further, I understand that if for any reason I fail to enlist in the Regular Army I may be discharged from my Reserve commission and be barred from further appointment in the AUS or Reserve of the Army."

d. Separation approval authorities effecting these separations will report to Cdr, PERSCOM (TAPC–PDT–RS) names of officers failing to enlist.

Section XIX
Early Release Due to Inactivation of Installation or Permanent Change of Station or Demobilization of Units

3–73. General

a. Officers assigned to units scheduled for permanent change of station, inactivation or demobilization, or to installations scheduled for inactivation, having less than 90 days to serve beyond the effective date of permanent change of station, demobilization or inactivation, and who cannot be effectively utilized in other units at the same station, may request voluntary release from active duty to be effective during the 30-day period preceeding scheduled dates, but not earlier than 90 days prior to normal separation. Officers whose normal terms of service expire during the 90-day period preceeding the effective date of permanent change of station or inactivation may request voluntary release to be effective at any time during the 90-day period.

b. Oversea commanders returning officers to CONUS for separation under this section may add return travel time but will ensure that on arrival in CONUS officers will not have more than 90 days remaining to serve.

c. Immediate replacements will not be furnished.

d. The provisions of this section are not applicable to:

(1) Officers to whom the provisions of AR 600–8–2 apply.

(2) Army Medical Department Officers (Except Medical Service Corps).

3–74. Authority

a. Commanders specified in paragraph 3–3 are authorized to take final action on these requests. This authority may not be further delegated.

b. The authority for separation is this chapter, section XIX and the SPD shown in AR 635–5–1 and will be included in orders directing individuals to report to the appropriate transfer processing activity for separation.

3–75. Procedures

The provisions of paragraph 3–16 apply, as appropriate.

Section XX
Early Release of Obligated Officers to Attend School

3–76. General

Officers serving initial obligated tours of active duty, whose services are not essential to the mission of their assigned organization and who meet the requirements of this section, may request release from active duty to attend a recognized institution of higher education. Officers who extended their initial active duty tours under AR 135–215 are ineligible for release under this section.

a. Release to attend school.

(1) The requested release must be for the purpsoe of entering or returning to a recognized institution of higher education with the course of instruction leading to an Associate, Baccalaureate, or higher degree. A recognized institution of higher education is one listed in the Education Directory, Part 3, Higher Education, published by the Office of Education, U.S. Department of Health, Education, and Welfare, or has been determined by that office to be eligible for such listing.

(2) An application for release to attend school will include the following information:

(a) Documentary evidence from an appropriate school official (Registrar, Dean of Admissions, etc) that the applicant has been accepted for enrollment, without qualification, commencing with a specific school term in a full-time resident course of instruction leading to an Associate, Baccalaureate or higher degree. If the school is not currently listed in the Education Directory, Part 3 ((1) above), the statement of the school official must include

whether the school has been determined by the Office of Education to be eligible for such listing. The statement will include the latest date which the applicant must report to the school in person for registration in order to meet the school's requirements for attendance, must state the school's specific accreditation status and the date the status was acquired, and must include the name of the accrediting agency or association granting such accreditation. The words "without qualification" mean that the individual must be accepted for admission without being subject to any further approval by the school prior to his or her entrance. A statement that an applicant is admissible, subject to a review of his or her records or subject to passing an entrance examination, does not meet the requirements for early release. On the other hand, an individual who is accepted on probation does meet the requirements for early release as he or she will be permitted to begin the specified course of instruction at the school. The term "Full-Time Resident Course of Instruction" means that the individual must take the minimum number of credit hours for the semester, quarter, or term that the school considers to be a full-time course of instruction.

(b) Applicant must clearly establish that the specific school term for which he or she seeks enrollment is academically the most opportune time for him or her to begin or resume his or her education. A statement to the effect that "This is the most opportune time for me to begin/resume my education" is not sufficient. Specific reasons why further delay would cause personal hardship must be included.

(3) Early release of Medical Corps and Dental Corps officers to accept residency training or fellowship positions leading to a specialty board eligibility and/or internship is not in the purview of this regulation unless the officer is enrolled in a degree program. (If the officer is enrolled in a degree program, the officer may submit the application for early release with the appropriate evidence of enrollment from the educational institution.) Officers should not seek residency positions with reporting dates prior to the expiration of active duty tour. If unable to secure a residency appointment on expiration of term of service and to ensure employment until acceptance into a program, Medical Corps and Dental Corps officers serving on initial tours may extend their period of active duty for any period of time as outlined in AR 135–215. Applications for early release for this purpose will be returned by the intermediate commander without action and will not be forwarded to the Department of the Army.

b. Effective date of separation. The date which the applicant must report to school must fall within the last three months of remaining service. The effective date of early separation under this section normally will not be earlier, than 10 days prior to the class starting date. Accrued leave will not be added to extend this period. The following exceptions may be made when appropriate:

(1) On submitting specific evidence that the period between the separation date is clearly insufficient, officers may be separated up to 30 days prior to the day the class convenes. This is not intended as authority to grant release a full 30 days prior to class starting date in every case, but to provide a reasonable latitude in justifiable cases to authorize separation on a date which will give the officer adequate time to register and enter the school on time. Examples of circumstances which meet this criterion are:

(a) Officer is returning from oversea.

(b) Officer must move his or her family to the location of the educational institution.

(c) The school's latest registration date, in relation to the class starting date, will work an undue hardship on the officer.

(2) In the event late registration is permitted by the school, officers who are ineligible for separation under the foregoing criteria may be separated on the first day in the last three months of service they become eligible for separation.

3–77. Authority

a. Commanders specified in paragraph 3–3 are authorized to take final action on requests meeting the above conditions, with the following exceptions which will be forwarded through Cdr, PERSCOM (TAPC–(appropriate career management division)), HQDA (DAJA–PT) or HQDA (DACH–PER) as appropriate, to Cdr, PERSCOM (TAPC–OPP–M) for final action. This authority may not be further delegated.

(1) Army Medical Department officers.

(2) Judge Advocate General's Corps officers.

(3) Requests to attend foreign schools.

(4) Request to attend theological schools which are not listed, and are not eligible for listing, in the Educational Directory, Part 3, Higher Education.

b. Authority for separation is this chapter, section XX and the SPD shown in AR 635–5–1 will be included in orders directing individuals to report to the appropriate transfer processing activity for separation.

3–78. Procedures

Provisions of paragraph 3–16 apply, as appropriate.

Section XXI
Release from Active Duty of United States Army Reserve Warrant Officers for Entry on Active Duty as United States Army Reserve Commissioned Officers

3–79. General

This section applies to those USAR warrant officers serving on active duty whose appointments as USAR warrant officers are vacated under the provisions of AR 135–100 on their acceptance of appointments as commissioned officers in the USAR with concurrent active duty in the latter status.

3–80. Authority

a. Commanders specified in paragraph 3–3 are authorized to effect separation under this section. This authority may not be further delegated.

b. Appropriate separation forms pertaining to the individual's release from active duty and vacation of appointment as a warrant officer, USAR, will cite this section and SPD shown in AR 635–5–1.

3–81. Procedures

a. The release from active duty of such personnel as USAR warrant officers will be announced in the orders (AR 310–10, app A, format 156) announcing the vacation of their appointments as USAR warrant officers and ordering them to active duty as commissioned officers. The date of release from active duty will be the day prior to the date of entry on active duty as commissioned officers.

b. A DD Form 214 will be prepared to cover the period of active duty as a USAR warrant officer. However, a discharge certificate will not be prepared.

Section XXII
Separation of Members of Medical Holding Detachments

3–82. General

Officers serving initial obligated tours of active duty, including those serving initial service agreements imposed by special procurement programs which ordered to active duty, or those who decline further retention in the service or request voluntary release, are assigned to medical holding detachments may be released from active duty for the convenience of the Government as set forth below.

a. Any officer assigned to a medical holding detachment, including those returned to CONUS from a short-tour area for hospitalization, may be released from active duty on completion of hospitalization provided he or she has three months or less remaining to serve on the active duty commitment at the time of the officer's release from the medical facility.

b. Any officer medically evacuated from a hostile fire area for hospitalization in a long-tour area and assigned to a medical holding detachment may be returned to CONUS and released from active duty provided he or she has three months or less remaining to serve on his or her active duty commitment at the time of the officer's release from the medical facility.

3–83. Authority

a. Commanders specified in paragraph 3–3 are authorized to take action as specified in paragraph 3–82, except for officers serving in a dual status who will be reported to Cdr, PERSCOM (TAPC–PDT–RS) according to paragraph 3–12. This authority may not be further delegated.

b. Appropriate separation forms will cite this chapter, section XXII and SPD shown in AR 635–5–1.

Section XXIII
Release Because of Pregnancy

3–84. General

A Reserve officer, other than as described in paragraph 3–87, who is pregnant may request to be released from active duty.

3–85. Counseling

a. When it has been determined that an officer is pregnant she will be counseled by the immediate commanding officer or executive officer according to the Pregnancy Counseling List, figure 3–3. The counselor will explain to the officer that the purpose of the counseling is to provide her with complete information concerning her rights, entitlements and responsibilities with respect to continued active duty or separation.

b. A Statement of Counseling (fig 3–4) will be signed by the counselor. This counseling is a command responsibility. A copy of the complete Statement of Counseling will be filed in the MPRJ of the officer concerned.

3–86. Authority

a. Commanders specified in paragraph 3–3 are authorized to take final action on requests submitted under this section. This authority may not be further delegated.

b. Final release orders and separation documents will be prepared according to AR 310–10 and AR 635–5.

3–87. Funded commissioning programs

a. Officers who receive commissions through funded programs, including AMEDD programs and ROTC scholarship programs, may not be released from active duty under this section until completion of initial service obligation incurred through participation in such programs.

b. If circumstances warrant, officers may request release from active duty under section IV.

c. Officers who remain on active duty will not be assigned to an area where concurrent travel of dependents is not authorized until completion of initial service obligation.

3–88. Terminated pregnancies

If, before release from active duty 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.

3–89. Leave

A pregnant member may request leave of absence according to AR 630–5.

3–90. Maternity care

Officers released under honorable conditions who are pregnant at time of release are entitled to maternity care as provided in AR 40–3. These medical benefits are limited to care in military hospitals and do not, regardless of circumstances, include care obtained in civilian hospitals.

Section XXIV
Surviving Sons and Surviving Family Members

3–91. General

This section sets forth the policy for and the conditions which those officers who were inducted in the Army under the provisions of the Military Selective Service Act of 1967, as amended, and who qualify as surviving sons or surviving family members may be released from active duty and be discharged from their commissions in the United States Army Reserve.

a. Separation under this section is not authorized:

(1) During a period of war or national emergency hereafter declared by the Congress.

(2) When an officer who qualified under the provisions of this section waives his or her status under the provisions of AR 614–75, paragraph 6. Although an officer who has waived his or her status as a surviving son or surviving family member may request reinstatement of that status, reinstatement shall not provide a basis for separation under this section.

(3) An officer who, having been advised of the provisions of this section, voluntarily extends his or her period of active duty subsequent to the date of notification of the family casualty on which the surviving sonship or status as a surviving family member is based (and subsequent to enactment of PL 92–129, 92d Congress (28 September 1971)) shall be considered as having automatically waived his or her rights for separation under PL 92–129.

(4) When the individual has court-martial charges pending against him or her; or has been tried and convicted by court-martial and the case is being reviewed or appealed; or is serving a sentence (or otherwise satisfying punishment) imposed by court-martial, has been completed with respect to such charges, review, or appeal, or until the sentence has been served (or until any other punishment imposed has been satisfied), as appropriate.

b. The following definitions apply to these terms as used in this section:

(1) A "surviving son" is a son in a family whose father (or one or more sons or daughters) served in the Armed Forces of the United States and—

(a) Was killed in action.

(b) Died as a result of wounds, accident, or disease.

(c) Is 100 percent physically disabled (including 100 percent mental disability) as determined by the Veterans Administration or one of the military services and is hospitalized on a continuing basis and not gainfully employed by virtue of such disability.

(2) "Family members" include a husband and wife, or the father, mother, sons and daughters, and all sisters and brothers as defined in 37 USC 401(a) (2), (3) or (4).

(3) "Armed Forces" or "Armed Forces of the United States" denoted collectively all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(4) "Inducted" refers to those medical specialist registrants who are liable for induction in the Armed Forces under the Military Selective Service Act of 1967, as amended, and those inducted under that Act, who are appointed in the USAR (MC, DC, VC, MSC and ANC) and ordered to active duty.

(5) Neither the acquisition or retention of surviving son or surviving family member status is dependent on the existence of any other living family member (Supreme Court Decision, MCKart v. US, 395 US 185 (1969)). Thus, the continued existence of a family unit is not required as a prerequisite for qualification as a "surviving son" or "surviving family member".

c. In determining eligibility, the death or 100 percent disability under *b*(1) above must have been incurred in line of duty (or resulted from wounds, accident, or disease which was incurred in line of duty) as determined under the provisions of AR 600–10 or comparable regulations of other services.

d. Request for separation may be submitted only by the military members concerned and must be in writing. All applications submitted will include the following evidence:

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

(2) Veterans Administration Claim Number, if appropriate.

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

e. See AR 614–75, table 1, for offices to contact to obtain verification of status of other family members, when appropriate.

3–92. Separation of surviving sons

a. Except as provided in *b* below, officers who become surviving sons subsequent to their induction in the Armed Forces under the provisions of the Military Selective Service Act of 1967, as amended, and whose applications meet the criteria in paragraph 3–91 may apply for and be separated from the Army.

b. An officer who qualified as a surviving son on the basis of the 100 percent physical disability of a father, brother, or sister as defined in paragraph 3–91*b*(1)*(c)* which occurred either prior or subsequent to induction, may apply for and be separated unless he or she has voluntarily extended the period of active duty. In order to qualify for a veteran's exemption under the provisions of 50 App USC 456 (b) (3), he or she will be required to complete at least six months of active duty prior to separation.

3–93. Separation of surviving family members

Except as provided in paragraph 3–91*a*, a surviving family member may apply for and be separated if he or she—

a. Has been inducted in the Armed Forces under the Military Selective Service Act of 1967, as amended.

b. Is serving on active duty with the Armed Forces on or after 28 September 1971.

c. Has not voluntarily extended his or her period of active duty in the Armed Forces.

d. If the father, brother or sister, while serving in the Armed Forces after 31 December 1959—

(1) Was killed in action.

(2) Died in line of duty.

(3) Died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service.

(4) Is in a captured or missing status as a result of such service.

3–94. Authority

a. Commanders specified in paragraph 3–3 are authorized to take final action on these requests. This authority may not be further delegated.

b. Final release orders and separation forms will cite this chapter, section XXIV and appropriate SPD from AR 635–5–1.

c. Officers separated under this section will be released from active duty and discharged from their commissions in the USAR.

Section XXV
Declination of Regular Army Integration

3–95. General

Reserve commissioned officers who enter active duty after 30 September 1981 and who decline integration in the RA as established by AR 601–100 will be released from active duty on the 90th day after signing such declination unless earlier release is requested, or retention on active duty in a Reserve status is approved by the Secretary of the Army or his or her designee. Officers with a service obligation will be released at the end of their obligated service.

3–96. Authority

a. Separation approval authorities will ensure that necessary action is taken to effect the release on the scheduled release date of officers who sign declination statements.

b. Separation approval authorities are authorized to take final action on requests for earlier release. This authority may not be further delegated.

c. The authority for separation is this chapter, Section XXV and SPD shown in AR 635–5–1 will be used.

3–97. Procedures

Separation approval authorities will inform Cdr PERSCOM (TAPC–PDT–RS) when an officer declines and when the separation has been completed.

Section XXVI
Failure of Selection for Active Duty List Promotion

3–98. General

a. Except as indicated in *b* through *f* below, Active Duty List (ADL) reserve component commissioned officers will be released from active duty as indicated in (1) and (2) below when not promoted on the ADL.

(1) Reserve commissioned officers twice failed of selection for active duty list promotion to major, or lieutenant colonel will be released from active duty on the first day of the seventh month after approval of the report of the second board which did not recommend these officers for promotion, unless earlier release is voluntarily requested, or retention on active duty in a Reserve status is approved by the Secretary of the Army or his or her designee.

(2) Reserve Commissioned officers twice failed of selection for active duty list promotion to captain will be released from active duty on the first day of the fourth month after approval of the report of the second board which did not recommend these officers for promotion unless—

(a) Earlier release is voluntarily requested.

(b) The officer has an earlier release date established under other criteria.

(c) The Secretary of the Army, or designated representative, has approved a different date.

(3) OTRA officers who are one time failed of selection for active duty list promotion to captain may apply for release from active duty under the provisions of this chapter, section XVI.

(4) Reserve Component ADL second lieutenants who are found unqualified for promotion to first lieutenant (AR 624–100, para 3–6*b* and *d*), and—

(a) Because retention would be inconsistent with good order and discipline are not retained on active duty for a minimum of six months after the date which the promotion would have occurred, will be released from active duty not later than the 90th day after receipt of notification (para 3–100 or AR 624–100, para 3–6*b*(1)). (Second lieutenants with promotion eligibility dates of 1 February 1983 and later will be processed for separation by the authorities stated in AR 624–100, paragraph 3–2; and according to AR 624–100, paragraph 3–6*b* and this section.)

(b) Are retained on active duty for six months at the end of which period they are again found unqualified for promotion, shall be released from active duty not later than the 90th day after receipt of notification.

b. Officers having a previously established mandatory release date due to:

(1) Denial of further active duty.

(2) Declination of further active duty.

(3) Notification of impending involuntary release from active duty under any other provisions of law or regulation, are not subject to the provisions of this section if the established mandatory release date occurs prior to the mandatory release date established in paragraph *a* above.

c. An officer eligible for retirement under chapter 4 may apply for retirement, to be effective not later than the first day of the month following the month release is directed.

d. Officers who will complete 18 or more years of active Federal service on their scheduled release date will not be processed under this section, unless such action is approved by the Secretary of the Army, but will be retained on active duty until the last day of the month following the month they complete 20 years active Federal service.

e. An officer whose case is referred to a DA Special Selection Board for reconsideration for promotion under AR 624–100, paragraph 2–8c will continue to be processed for separation as scheduled. If the reconsideration by the board has not been completed by the scheduled separation date, Cdr PERSCOM (TAPC–PDT–RS) will direct the temporary suspension of the officer's separation pending receipt of the results of the reconsideration. If after the originally scheduled release date the board's decision is

unfavorable, the officer will be designated for release no later than 30 days from receipt of such notification by the officer concerned.

f. ADL officers in the grades of captain or major who are selected for continuation on active duty (AR 624–100, para 2–15) by a DA Selective Continuation Board are not subject to release under this section.

3–99. Authority

a. Separation approval authorities (para 3–3 or (AR 624–100, para 3–2 for nonselect ADL second lieutenants)) will ensure that necessary action is taken to effect the separation on the scheduled date of release from active duty of officers notified of promotion failure under this section or AR 624–100, para 3–6. Dual status officers will be reported to Cdr, PERSCOM (TAPC–PDT–RS) according to paragraph 3–12.

b. Separation approval authorities are authorized to take final action on requests for earlier release, except on requests from dual status officers, which will be forwarded to Cdr, PERSCOM (TAPC–PDT–RS) as required by paragraph 3–12. These authorities may not be further delegated.

c. The authority for separation is this chapter, section XXVI and SPD shown in AR 635–5–1 will be cited.

3–100. Procedures

a. Letters of notification and, if applicable, "Acknowledgement of Notification of Second Failure of Selection for Active Duty List Promotion" statement will be dispatched by Cdr, PERSCOM (TAPC–PDT–RS) to commanders specified in paragraph 3–3, (except for nonselected ADL second lieutenants). The statement will be completed by the officer concerned and dispatched immediately to the address indicated. One copy of the statement will be filed in the officer's OMPF until the officer's release from active duty or retirement, as appropriate, has been effected.

b. For ADL second lieutenants nonselected for promotion or retained for six months and nonselected for promotion, letters of notification will be dispatched by authorities stated in AR 624–100, paragraph 3–2.

Section XXVII
Release from Active Duty of United States Army Reserve Officers for Entry on Active Duty as Army Guard Reserve Officers in the Active Transfer/Conversion–Army Reserve Program

3–101. General

USAR commissioned and warrant officers may request release from active duty for the purpose of entering on active duty as Army Guard Reserve (AGR) officers for participation in Active Transfer/Conversion–Army Reserve Program (ATCAR).

3–102. Orders

a. Orders releasing these officers from active duty will be issued simultaneously with the orders which order the officers to active duty as AGR officers. The date of release from active duty will be the day prior to the date of entry on active duty as AGR officers for entry in ATCAR.

b. A DD Form 214 and a discharge certificate will be prepared to cover the period of active duty from which released.

3–103. Processing applications

a. Each application will be forwarded through channels and through the appropriate career management division to Cdr, PERSCOM (TAPC–PDT–RS).

b. The first endorsement will include the information, as appropriate, stated in paragraphs 3–16*b*(1) through (11).

c. Subsequent endorsements will include information required by paragraph 3–16*b*(1) and (3).

3–104. Authority

a. Cdr, PERSCOM (TAPC–PDT–RS) will furnish separation instructions to authorized commanders to effect separation of officers under this section.

b. Appropriate separation forms will cite AR 635–100, chapter 3, section XXVII and related SPD in AR 635–5–1.

c. Character of service will be honorable.

The Army of the United States Affidavit

At *(location)*, Personally appeared before me, the undersigned, authorized by law to administer oaths pursuant to the Uniform Code of Military Justice, Article 136, one *(name)* who, after being advised by me of the rights and advantages of remaining in an active duty status in the Army beyond the scheduled date of separation for the purpose of completion of hospital care and/or physical disability evaluation under the provisions of 10 USC, chapter 61 and after being duly sworn, deposes and says:

I, *(name)* have been fully advised by the undersigned officer of the rights and advantages that may accrue to me by voluntarily remaining on active duty in the Army beyond the scheduled date of my separation for the purpose of completing hospital care and/or physical disability evaluation under the provisions of 10 USC, chapter 61 and have been further fully advised that if I elect to be separated from active duty as scheduled I will not, after such separation or retirement be eligible for separation or retirement for physical disability.

Wherefore, in consideration of the above, I *(Do/Do not)* desire retention on active duty in the Army beyond the scheduled date of expiration of my term of service.

(Signature of officer)

(Grade and organization of officer administering oath)

(Signature of officer administering oath)

Figure 3–1. Sample format for retention affidavit

Subject: Release Date Under AR 635-100, Chapter 3, Section XV

1. I received official notification on *(date)* that I am to be involuntarily released from active duty under the provisions of AR 635-100, chapter 3, section XV, no later than the 90th day after the date of my notification.

2. I hereby consent to be released from active duty on *(date)*.

3. I understand that my release prior to the 90th day after I receive notification will have no bearing on my entitlement to separation pay.

(Signature of Officer)

(Typed Name, Grade and SSN)

Figure 3-2. Sample format for involuntary release from active duty notification

Pregnancy Counseling List

The officer will be informed of the following:

1. That the primary purpose of this counseling is to provide her with information to make certain decisions and that the counselor will not influence or direct her toward any particular entitlements/options.

2. The option to remain on active duty or request separation.

3. Entitlement to maternity care even if separated, as provided in paragraph 2-25.1, and AR 40-3, paragraph 4-16.

4. Provisions for maternity leave under AR 630-5, paragraph 8-5.

5. Provisions for the wear of maternity clothing (AR 670-30, para 1-6).

6. Policy governing availability for worldwide assignment, AR 614-30, paragraphs 3-2 and 3-3.

7. Local policies governing entitlement to BAQ or assignment to Government family quarters, BAS, when and how she would be eligible.

8. Policies governing assignment oversea, and if accompanied by dependent, requirement to make suitable arrangements for unaccompanied evacuation of the dependent in an emergency situation (e.g., mobilization).

9. On permanent change of station the Government will pay for transportation of the child only under the following circumstances:

a. If traveling to, from or between oversea permanent stations, officer serves or has been approved to serve a "with dependents" tour and her child is command-sponsored.

b. When traveling to an oversea station, member must have approval of the oversea commander for concurrent travel of the child.

10. Availability of legal assistance counseling concerning paternity laws governing child support, if applicable.

11. Necessity, if she remains on active duty, of careful planning as to how she will care for her child without sacrifice of her military responsibilities and that she should consider the following:

a. Who will care for the child during duty hours and alerts, field duty and roster duty. Consideration should be given to cost of nursery or babysitter care.

b. Plans for housing, access to duty, transportation arrangement, and availability of telephone.

c. Consideration of financial obligations that will accrue for child care, housing, transportation and other emergency needs and how these obligations will be met.

12. Provisions for submission of a dependent care statement of counseling on birth of child, if applicable. (Officers with less than three years service.)

13. Provisions authorizing separation under paragraph 3-50 or AR 635-100, chapter 5 of officers whose substandard performance of duty is not solely attributable to the condition of pregnancy.

Figure 3-3. Sample format for pregnancy counseling list

Statement of Counseling

(date)

I affirm that I have counseled *(name, grade and SSN)*, this date on all items on the attached counseling list, concerning her entitlements and responsibilities.

(Signature of counseling officer)

(Typed name, grade, SSN and organization of counseling officer)

Orig--Officer
1 copy--MPRJ

Figure 3–4. Sample Format for Pregnancy Statement of Counseling

Chapter 4
Retirement

Section I
General

4–1. Scope

a. This chapter establishes procedures for the implementation of laws and policies governing the retirement of officers, except for:

(1) Physical disability (AR 635–40).

(2) Retired pay for non-Regular service (AR 135–180).

b. This chapter, where applicable, will govern the retirement of:

(1) Commissioned and warrant officers, of the Regular and Reserve components of the Army.

(2) Warrant officers of the Army of the United States without component.

4–2. Statutory authority

a. Specific sections of Title 10, USC, and other provisions of law shown in sections II, III, and IV of this chapter.

b. Uniform Retirement Date Act, 5 USC 8301.

c. Title 37, United States Code and 10 USC 1405.

4–3. Computation of service

a. There are different types of service, each computed as specified in the applicable provisions of law cited in this chapter for the various types of retirement.

(1) Service for retirement may be only active Federal service; or, for mandatory retirement of RA commissioned officers, may include constructive service (for commission officers on active duty on 14 September 1981) and is computed to determine whether:

(a) A Regular or Reserve officer may be retired voluntarily.

(b) A Regular commissioned or warrant officer must be retired mandatorily.

(c) A warrant officer may be advanced to a higher commissioned grade.

(2) Service for basic pay is used as a factor to determine retired pay.

b. Authority for each type of computation indicated in *a* above is contained in separate laws. Service for determining retirement eligibility is computed as specific in the particular provision of law which an officer is retired. Retired pay is computed according to the pay formulas prescribed by 10 USC, chapter 71 and 371; provisions contained in the retirement law; and according to 37 USC.

c. Certain commissioned officers, on appointment in the RA, are credited with constructive service which is used to determine their RA grades and their places on the promotion list. This amount of service, credited on date of appointment, becomes mandatory retirement service (for commissioned officers on active duty before 15 September 1981). (See para 4–20 for service creditable for mandatory retirement.) Mandatory retirement service, which includes constructive service if greater than total service for basic pay, is used as the multiplier in determining the percentage in computing retired pay. No period of service subsequent to the date the officer meets the service requirements for mandatory retirement is creditable in the computation of retired pay, unless expected by the specific section of Title 10, USC which governs mandatory retirement.

d. When service has been computed in PERSCOM, for retirement or retired pay, and an officer claims additional service not shown in the current official United States Army Register, or Official Military Personnel File, the officer should send substantiating documents to Cdr, PERSCOM (TAPC–PDT–RR). These may be certified statements of service, discharge certificates, or other official evidence, and should be submitted well in advance of retirement date to allow time for verification and updating of records.

4–4. Retirement order

a. Orders announcing retirements will be issued by PERSCOM, at the earliest possible date.

b. On the day orders are issued, a letter of instructions, a statement of service, and copies of orders will be sent to the commander of the activity where the individual will be retired. After the 20th of the month, retirement orders will be verified by PERSCOM, by electrically transmitted message and letter.

c. Once an order has been issued and official notification of retirement approval has been dispatched, orders will not be amended or revoked except for extreme compassionate reasons or for the good of the service. Amendment or revocation must occur prior to the date of retirement.

4–5. Place of retirement

a. Except as provided in *b*, *c* and *d* below, officer personnel, regardless of where stationed, are required to be processed for retirement at the authorized and directed transfer activity specified in AR 635–10, paragraph 2–17.

b. Retirement at a location of personal choice, the provisions of AR 635–10, paragraph 2–18 and 2–19 apply. The retirement packets for officers stationed in CONUS will be forwarded to the military personnel office having custody of the officer's records. When an oversea returnee elects to be retired at a location of choice, PERSCOM will forward the retirement folder to the transfer activity of choice. If an officer who has elected to be retired at a location of choice subsequently elects, prior to his or her departure from the unit of assignment, to be retired at the authorized and directed place of retirement, adequate justification for this change will be submitted to the commander maintaining the personnel records. If the request is approved, that commander will immediately advise the transfer activity commander at the location of choice to mail the retirement folder to the authorized and directed transfer activity. Department of the Army retirement orders will not be amended in such case and AR 310–10, appendix A, format 434 will not be utilized. Once an officer has elected to be processed for retirement at a location of choice, the only change he or she may later make is to be processed at the authorized and directed transfer activity. A change from one location of choice to another location of choice is not authorized.

c. An individual serving on foreign service who desires retirement in his or her oversea area of assignment (subject to approval of the oversea commander) should indicate this in the application for voluntary retirement or with the pre-retirement report for mandatory retirement. If required, a passport should be obtained by the retiree from the nearest United States Consulate.

d. For absence from home station in a leave status on date of retirement, see AR 630–5.

4–6. Residence and travel abroad

Retired personnel may travel or reside in any area to which access is authorized United States Citizens by the United States Department of State. Permission for travel or residence is a Department of State matter and does not require approval from officials in HQDA.

Section II
Voluntary Retirement

4–7. Authority

a. The final authority to approve or disapprove an application for retirement is vested in the Secretary of the Army. Approval of applications for retirement may be mandatory or discretionary, dependent on the specific provision of law.

b. Applications which are disapproved will be returned through channels to the applicant.

4–8. Service for determining retirement eligibility

a. To determine whether an officer may be retired voluntarily, his or her years of active Federal service are computed by adding:

(1) All active service performed as an officer of the uniformed services, including:

(a) Service in full-time training or full-time duty in the service of the United States as a Reserve officer of the Army, Navy, or Air Force, as authorized in the National Defense Act, as amended; the Naval Reserve Act of 1938, as amended; or in other provisions of law, and

(b) Service in training exercises or duties as an officer of the ARNG provided by sections 5, 81, 92, 94, 97 and 99 of the National Defense Act, as amended.

(2) All service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement if not included in (1) above.

(3) All active service in the Army Nurse Corps or Navy Nurse Corps, including service as a contract nurse before 16 April 1947.

(4) All active service performed under Act of 22 December 1942 (chap 805, 56 Stat. 1072) or the act of 2 June 1944 (chap. 272, 58 Stat. 324).

(5) All active full-time service with the Army Medical Department as a civilian employee, except as a student or apprentice:

(a) In the dietetic or physical therapy categories, if the service was performed after 6 April 1917, and before 1 April 1943, or

(b) In the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps for the Army Medical Specialist Corps and before 1 January 1949.

(c) The restrictive dates imposed in *(a)* and *(b)* above are not applicable to officers who were entitled to credit such service prior to 25 August 1959.

(6) If an officer of the RA, all active service as an officer of the Philippine Constabulary.

(7) If a commissioned officer of the RA in the Medical Corps, all service as contract surgeon, acting assistant surgeon, or contract physician under a contract to serve full-time and to take and change station as ordered.

(8) If a commissioned officer of the RA in the Dental Corps, all service as a contract dental surgeon or acting dental surgeon (10 USC 3926).

b. Constructive service as defined in paragraph 4–3*c* is not creditable for voluntary retirement or for retired pay purposes after voluntary retirement.

4–9. Voluntary retirement in lieu of mandatory retirement or in conjunction with scheduled release from active duty

a. An RA officer who desires to retire voluntarily, in lieu of mandatory retirement as scheduled, for reasons specified in this chapter, section III, may request retirement and be retired voluntarily on the mandatory retirement date, or an earlier approved retirement date.

b. A Reserve officer who is scheduled for release from active duty under the provisions of chapter 3 and who is, or will be, eligible for voluntary retirement prior to scheduled date of release, is notified by CG, PERSCOM. Date of retirement eligibility is included in the letter.

4–10. Application for retirement

a. Preparation. Applications for voluntary retirement will be prepared as shown in figure 4–1. The reference to transfer to the Retired Reserve in paragraph 1 of the application is applicable only to officers in the Active Reserve. If paragraph 5–20*b*(3) applies, the following will be added after "AR 635–100" in line 1, paragraph 1 of the application "and in lieu of elimination proceedings".

b. Eligibility to apply for voluntary retirement.

(1) Officers who have 19 or more years of active Federal service, will have completed all service obligations on or before the date of retirement, and who are not in receipt of an assignment alert as defined in paragraph 4–10*c* below. These officers may request voluntary retirement provided the requested retirement date is within 12 months of the date of the application.

(2) Each application will be forwarded as early as possible by commanders specified in paragraph 3–3 through Cdr, PERSCOM (TAPC–(appropriate career management division)); HQDA (DAJA–PT); HQDA (DACH–PER); as applicable; to Cdr, PERSCOM (TAPC–PDT–RR). For general officers, applications will be forwarded through MACOM commander to HQDA (DAPE–GO) WASH DC 20310–0200. For USAR officer not on the active duty list (AR 624–100 and 10 USC 630), applications should be forwarded to Cdr, ARPERCEN (DARP–FSA), 9700 Page Boulevard, St. Louis, MO 63132–5260. A request for retirement will be submitted sufficiently in advance to ensure that it is received in PERSCOM not later than four months prior to the requested retirement date. Requests for exception to this four month advance period will include justification for the delay in the submission of the request (e.g. when requested retirement date coincides with the date of the return from oversea; to preclude extreme hardship to the officer or the officer's immediate family). In addition, each request must include a statement that the officer is aware that the delay in submission of the request shortens the processing time, and therefore, may preclude retirement on the date requested. Each request for exception will be considered on an individual basis.

c. Voluntary retirement in lieu of PCS.

(1) Officers who have at least 19 years and six months of Active Federal Service (AFS) and who receive an alert or orders for a PCS reassignment. These officers may request retirement in lieu of complying with such alert or orders. The retirement application must be submitted within 30 days of receipt of the alert or orders, whichever is earlier, and is subject to the conditions listed below:

(a) Assignment alert. Official notification to an officer of an impending assignment. An assignment is considered "firm" when an officer has been selected for fill of a command's requisition. Any one of the following notification actions sufficiently constitutes an assignment alert:

1. A firm "where/when" assignment notification to an officer from a career manager, or an installation point of contact, or the officer's commander/supervisor during an interview.

2. A telephone call with a firm "where/when" assignment notification to an officer from a career manager, an installation point of contact, or the officer's commander/supervisor.

3. Written correspondence stating a firm "where/when" assignment to an officer from a career manager, an installation point of contact, or the officer's commander/supervisor.

4. Receipt of a copy of the Request for Orders (RFO) generated by the career manager, and verified by the installation point of contact when the installation point of contact is part of the assignment process.

(b) Service obligations. All previously incurred service obligations must be completed or waived before the requested retirement date. Requests for waiver documented as required in paragraph 4–17 will be forwarded as part of the retirement request through channels to Cdr, PERSCOM (TAPC–PDT–RR). Applications that do not go through channels will be returned. Officers and PSC personnel should verify the existence of service obligations by contacting Personnel Actions Sections of the career management divisions, Officer Personnel Management Directorate, PERSCOM concerned before submitting the request for retirement.

(c) Stability. An officer who requests retirement in lieu of PCS will normally remain at the same duty station unless the needs of the service or other circumstances clearly dictate a move to properly utilize the officer because of deletion of position, reorganization, disciplinary problems, etc. Officers in such situations will be reassigned in the post, camp, or station where they can be properly used. Where this is not possible, officers will be reassigned to the closest military installation where they can be used. Officers will not be reassigned solely to move them to the installation nearest to their requested place of retirement.

(d) Finality. An approved retirement submitted in lieu of PCS will not be withdrawn nor will the retirement date be extended. Requests for change to effect earlier retirement will be considered on a case by case basis. A retirement application submitted in lieu of PCS is considered to be "approved" and is administratively binding when the application has been cleared by the career management specified in paragraph 4–10*b*(3) above.

(e) Date of retirement. Officers alerted for reassignment may request retirement for a date not more than six months from the date of their alert or on the first day of the month after the officer attains 20 years of AFS, whichever is later. For example, an officer alerted for PCS on 28 June 1988, may apply for retirement to be effective no later than 1 December 1988.

(2) *Deletion.* The PERSCOM career management division concerned will delete the officer from the PCS as a result of an approved retirement.

d. Voluntary retirement in lieu of elimination.

(1) Officers who have at least 19 years and six months of AFS, but less than 20 years AFS, may request retirement in lieu of elimination on receipt of memorandum of notification of impending elimination from the GOSCA as stated in paragraph 5–14. The effective date of retirement will be not later than 60 days from the date the officer attains 20 years AFS.

(2) Officers who have 20 or more years of AFS may request retirement in lieu of elimination on receipt of the memorandum of notification of impending elimination from the GOSCA as stated in paragraph 5–14. The effective date of retirement will be not later than 60-days from the date of the officer's election of retirement in lieu of elimination.

4–11. Action by commanders

a. Commanders having custody of applicants' personnel records or hospital commanders operating independent transfer activities will—

(1) Verify from available records and documents all information given in the application.

(2) Ensure that the officer has read this chapter, section V and is aware of his or her responsibility for obtaining a medical examination, if he or she wishes one prior to the retirement. Failure to complete the examination will not affect or delay the retirement under this chapter, but could affect subsequent claims for service connected medical problems.

(3) Ensure that the actions required by paragraph 4–36*b* are taken in a timely manner.

(4) Forward the application as specified in paragraph 4–10*b*(3).

(5) Ensure that prompt action has been taken to adjust and close any public property or financial accounts of applicant.

(6) When an application is submitted by an officer scheduled for mandatory release from active duty under chapter 3, include the following information in the forwarding endorsement:

(a) Scheduled release date.

(b) Specific release program (e.g., "AR 635–100, chapter 3, section V").

(c) File reference, subject, and date of the PERSCOM letter notifying the officer of the scheduled release date.

(7) When an application is submitted in lieu of elimination include pertinent facts and circumstances.

b. Intermediate commanders will review each application to ensure compliance with this chapter and forward, with recommendation of approval or disapproval, together with statement that action is or is not in contravention with AR 600–8–2. Recommendations for disapproval will state reasons.

4–12. Request for withdrawal of application or change in retirement date

a. Withdrawal of an application may be approved only by HQDA if it has been forwarded to PERSCOM by the commander authorized to do so (para 4–10*b*(3)).

(1) A request for withdrawal will not be approved except for extreme compassionate reasons or for definitely established convenience of the service.

(2) A request for change in the retirement date will not be approved unless extenuating circumstances arise which justify an exception to policy.

b. Requests from applicants for withdrawal of applications or change in retirement date, with statements attesting to reasons as indicated in *a* (1) or (2) above, will be forwarded through channels to Cdr, PERSCOM (TAPC–PDT–RR).

c. Each endorsement will recommend approval or disapproval and state the reasons.

d. A request for withdrawal of an application may be approved by an endorsing commander and the application returned to the officer who submitted it if it has not been forwarded to PERSCOM by the commander specified in paragraph 4–10*b*(3).

e. An officer who has an approved retirement pending, and who subsequently is selected for promotion, has the option to withdraw his or her retirement application and accept the promotion. The officer continues to be subject to worldwide assignment according to the needs of the Army. Requests will be forwarded through channels to Cdr, PERSCOM (TAPC–PDT–RR).

4–13. After 20 years of service

a. Commissioned officers.

(1) A Regular or Reserve commissioned officer of the Army who has at least 20 years of AFS, computed as in paragraph 4–8, at least 10 years which have been active service as a commissioned officer, may, on his or her application and, in the discretion of the Secretary of the Army, be retired (10 USC 3911).

(2) To be retired under this provision, it is not necessary for a Reserve commissioned officer to be serving on active duty in his or her commissioned status or to be in an active Reserve status at time of retirement (Comp Gen Dec B–83703, 20 May 1949 (28 Comp Gen 655)).

b. Warrant Officers.

(1) Any warrant officer who has at least 20 years of AFS, computed as in paragraph 4–8, may, on his or her application, and at the discretion of the Secretary of the Army, be retired (10 USC 1293).

(2) For a Reserve warrant officer to retire under this provision he or she must have a USAR status at time of retirement. It is not necessary for him or her to have served, or to be serving on active duty in his or her warrant officer status at time of retirement (JAGA 1954/8666, 17 Nov 1954).

c. Enlisted personnel. The provisions of *a* and *b* above apply to enlisted personnel on active duty who concurrently hold commissioned or warrant officer status in the USAR.

d. Computation of retired pay. References for computation of retired pay are—

(1) Commissioned officer—10 USC 3991.

(2) Warrant officers—10 USC 1401.

4–14. After 30 years of service

a. A commissioned officer of the RA who has at least 20 years of service, computed according to paragraph 4–8, may, on his or her application, and in the discretion of the President, be retired (10 USC 3918).

b. Reference for computation of retired pay is 10 USC 3991.

4–15. After 40 years of service

a. A commissioned or warrant officer of the RA, who has at least 40 years of service, computed according to paragraph 4–8, shall be retired on his or her request (10 USC 3924).

b. Reference for computation of retired pay is 10 USC 3991.

4–16. Policies

An application for voluntary retirement normally will be approved when the retirement is not contrary to the best interest of the service and if the following criteria are met:

a. Courses of instruction and the resulting active duty service obligations (ADSO's) must be completed on or before the date retirement is to be effective. Waivers may be granted by HQDA as provided in paragraph 4–17. OTRA officers who apply for voluntary retirement in lieu of involuntary release from active duty under the provisions of chapter 3 are not subject to this paragraph. Officers ADSO's are defined and explained in AR 350–100.

(1) *Civil schooling.* Officers who attend fully funded courses at civilian schools for more than 60 days incur an ADSO on completion or termination. The ADSO equals three times the length of schooling, computed in days, but not more than six years total. ADSO's incurred under AR 621–7 may exceed six years.

(2) *Military schooling.* Officers who attend any course of 60 days or more, which produces an academic evaluation report, incur an ADSO on completion or termination. The ADSO equals three times the length of schooling, computed in days, but not more than six years total. Exceptions include CSC and SSC level schooling, and the Warrant Officer Senior Course. The ADSO for these courses is two years.

(3) *Service.* The service required following receipt of Continuation Pay.

b. An officer (except as described in *c* below) who accepts an Army of the United States (AUS) or RA promotion (to pay grade W3 or W4) which changes his or her active duty pay grade, must serve a minimum of two years in the new grade. (If, at the time of the acceptance of the promotion which changes the active duty pay grade, the officer is already holding a permanent USAR grade equal to or higher than the grade to which promoted, 2-years active duty service in the new grade is not required.)

c. RA warrant officers scheduled for mandatory retirement may accept AUS or RA promotion to the above specified pay grades. Retention of these officers beyond their mandatory retirement date is not authorized.

d. Retirement eligible officers who report to a new CONUS duty station must serve a minimum of 12 months before being permitted to retire. Officers serving oversea on unaccompanied tours will be required to complete 5/6 of the prescribed "all other tour" or 12 months, whichever is longer, before being permitted to retire.

e. When dependents travel oversea at Government expense, the officer will be required to complete 5/6 of the prescribed tour before becoming eligible for retirement, or at least 12 months from the date of arrival of dependents, whichever is later.

f. The 12 months oversea restrictions are not applicable to non-Regular officers who apply for voluntary retirement in conjunction with their release from active duty under the provisions of chapter 3.

g. The retirement of applicants who are stationed oversea in critical positions may be deferred by HQDA, until a replacement can be made available through operation of the normal requisitioning cycle. Forwarding endorsements on request for retirement, when deferment is recommended, will contain justification for deferment.

4–17. Waivers

a. Service obligations may, at the discretion of the appropriate officials in HQDA, be waived:

(1) Under paragraph 4–16*a*, for the convenience of the service or if hardship arose after entry in the course.

(2) Under paragraph 4–16*b*, *c*, and *d* and paragraph 4–10*c* when in the best interest of the service or when substantial or undue hardship would result.

b. Requests must be documented and contain detailed justification when substantial or undue hardship would result. In processing applications, when the best interests of the service are involved, the following should be considered.

(1) Retirement in lieu of elimination under chapter 5 or in lieu of any other unfavorable personnel action justifying a waiver of the service obligation.

(2) Retirement of AUS and RA commissioned officers or warrant officers who fail selection for permanent promotion to grade 05, W3, or W4 and desire retirement.

4–18. Career recognition

When, in the opinion of the commander at the installation or duty station where the officer is serving, the retiring officer's career has been so exemplary as to merit special recognition, the commander is authorized to issue an additional extended retirement order. This citation should have the same number on it as the retirement order, plus the prefix EXT and should highlight the key events in the officer's career. The information can be gathered from field documents and by interview. This announcement may be placed on bulletin boards, included in the officer's file, read at ceremonies, and presented to the individual in an appropriate binder. A sample is at figure 4–3.

Section III
Mandatory Retirement

4–19. Scope

Retirement under the provisions of law cited in this section applies only to RA commissioned and warrant officers. Since mandatory retirement is required by law, it must be accomplished on the date established by the applicable statute, unless otherwise specifically provided by law, (e.g., 10 USC 640), regardless of the desire of the officer concerned or DA officials. An individual may request retirement and be retired voluntarily on the mandatory retirement date.

4–20. Service for mandatory retirement

Service for mandatory retirement for commissioned officers who did not serve on active duty prior to 15 September 1981 is active Federal commissioned service. Service for commissioned officers on active duty on 14 September 1981 is active commissioned service in the RA, on and after 15 September 1981 plus the amount of service creditable to the officer on 14 September 1981 for the purpose of determining whether the officer is subject to involuntary retirement (10 USC 3927 repealed by DOPMA).

4–21. Initiation of action and notification

a. Mandatory retirement of a commissioned or warrant officer of the RA is initiated at HQDA.

b. Approximately 9 months prior to scheduled retirement date (except for officers non-selected for promotion who are notified according to para 4–26) a letter is sent direct to the officer by PERSCOM advising him or her of the approaching retirement, expressing appreciation for his or her service, and suggesting that he or she contact the local examining facility concerning any medical defects which the officer is aware. The letter includes the officer's mandatory retirement date, the specific statutory authority for the retirement and pertinent service data. A copy of this letter is forwarded to the commander specified in paragraph 3–3 with instructions concerning pre-retirement data (para 4–22).

c. The servicing PSC will be provided a copy of the notification letter. On receipt, the PSC will take the following actions:

(1) Coordinate with the officer to ensure that the officer has received the letter of notification and give any assistance that can be provided.

(2) Control separation processing according to procedures in DA Pam 600–8–11, until retirement has been effected.

(3) On retirement, maintain the file for 30 days and then destroy.

4–22. Pre-retirement data

To avoid unnecessary delay in processing the retirement, each officer who is notified that he or she is scheduled for mandatory retirement will forward the pre-retirement information shown in figure 4–2. This information will be forwarded, through channels, as expeditiously as possible to HQDA (DAPE–GO), for general officers; and to Cdr, PERSCOM (TAPC–PDT–RR), for all other officers, to reach that office not later than 3 months prior to the scheduled retirement date.

4–23. Action by commanders

Immediate commanders will ensure that—

a. Each officer who is notified of his or her impending mandatory retirement forwards the pre-retirement information on time, as specified in paragraph 4–21.

b. Officers are aware of their responsibility for beginning their medical examination on time (when they request one) and that officers are available to medical personnel for examination, tests and/or treatment deemed necessary by the medical facility commander prior to their retirement date.

4–24. Retirement for age

a. RA commissioned officer (10 USC 1251).

(1) Except as provided in subparagraph (2) and (3) below, and unless retired or separated at an earlier date, each RA commissioned officer of the Army shall be retired on the first day of the month following the month which he or she becomes 62 years of age.

(2) An officer who is a permanent professor or the director of admissions at the USMA shall be retired on the first day of the month following the month he or she becomes 64 years of age.

(3) The President may defer the retirement of an officer serving in a position that carries a grade above Major General, but the deferment may not extend beyond the first day of the month following the month the officer becomes 64 years of age. Not more than ten deferments of this type may be in effect at any one time.

b. RA warrant officers (10 USC 1164 and 1263). Unless retired or separated at an earlier date, each warrant officer who has at least 20 years of active service will be retired not later than 60-days after he or she reaches 62 years of age.

4–25. Retirement for service in grade and/or years of service

a. Major generals. Each officer of the RA who holds the regular grade of major general shall, if not earlier retired, be retired on the later of the following dates:

(1) The first day of the first month beginning after the date of the fifth anniversary of his or her appointment to that grade, or

(2) The first day of the month after the month he or she completes 35 years of active commissioned service (10 USC 636).

b. Brigadier generals. Each officer of the RA who holds the regular grade of brigadier general, who is not on a list of officers recommended for promotion to the regular grade of major general, shall, if not earlier retired, be retired on the latter of the following dates:

(1) The first day of the first month beginning after the date of the fifth anniversary of his or her appointment to that grade, or

(2) The first day of the month after the month he or she completes 30 years of active commissioned service (10 USC 635).

c. Colonels.

(1) Each officer of the RA who holds the grade of colonel, who is not on a list of officers recommended for promotion to the regular grade of brigadier general, shall, if not earlier retired, be retired on the first day of the month after the month he or she completes 30-years of active commissioned service (10 USC 634).

(2) An officer of the RA who on 15 September 1981 holds the grade of colonel, or is on a list of officers recommended for promotion to that grade shall be retired on the later of the following dates if the date falls on the first of the month, and if not, retirement will be effective on the first day of the following month (5 USC 8301):

(a) The fifth anniversary of his or her appointment in that grade, or

(b) The first day of the month following the month he or she completes 30 years and 30 days of service as computed in paragraph 4–20 (10 USC 3921 as preserved by section 609, PL 96–513, 94 Stat. 2835, 12 Dec 80).

(3) Subparagraph (2) above does not apply to an officer who is either:

(a) Sooner retired or separated under another provision of law; or

(b) Promoted to the regular grade of brigadier general.

(4) The Secretary of the Army may defer the retirement of an officer who meets the criteria of subparagraph (2) above who holds the grade of colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or Chaplains, but not later than the date he or she becomes 60 years of age. The number of retentions in effect for any one promotion list may not be more than 10 percent of the number of colonels authorized for that list.

b. Lieutenant colonels. Each officer of the RA who holds the grade of lieutenant colonel, who is not on a list of officers recommended for promotion to the grade of colonel, shall, if not earlier retired, be retired on the first day of the month after the month he or she completes 28 years of active commissioned service (10 USC 633).

4–26. Retirement of officers

a. Majors, captains, and first lieutenants.

(1) Unless continued on active duty under the provisions of the Selective Continuation Program (10 USC 637(a) and AR 624–100) (applies to captains and majors only) each officer who holds the grade of first lieutenant, captain or major who has failed to be selected for promotion to the next higher grade for the second time, whose name is not on a list of officers recommended for promotion to the next higher regular grade, and who is eligible for retirement under any provision of law shall be retired under that law:

(a) On the first day of any month requested by the officer and approved by the Secretary of the Army, but

(b) Not later than the first day of the seventh calendar month beginning after the month the President approves the report of the board which considered him or her for the second time. (This provision does not apply to officers described in subparagraph (3) below.)

(2) If an officer discussed in paragraph (1) above is not eligible for retirement as of the date established in paragraph *(b)* above, but is within two years of qualifying for retirement under provisions of this regulation, paragraph 4–13*a*(1) as of that date, he or she will be retained on active duty until he or she is qualified for retirement and then be retired, unless sooner retired or discharged under another provision of law (10 USC 631 and 632).

b. RA warrant officers.

(1) An RA warrant officer who has twice failed to be selected for promotion to the next higher permanent warrant officer grade, will, on the date of his or her second failure of selection, if he or she has at least 18 but not more than 20 years of active service (computed under paragraph 4–8) be retired on the last day of the month in which the officer completes 20 years and 60 days of active service. If he or she holds a commission as an officer, it will be terminated on the date of his or her retirement (10 USC 564 (a)(2) and (d)).

(2) An RA warrant officer who has twice failed to be selected for promotion to the next higher permanent warrant officer grade will, if on the date of his or her second failure of selection for promotion the officer has completed more than 20 years of active service as computed under paragraph 4–8, be retired 60 days after the date of his or her second failure. Any commissioned grade he or she holds will be terminated (10 USC 564(a)(1) and (d)).

(3) If a permanent warrant officer serving on active duty as a commissioned officer elects to remain on active duty as a commissioned officer, retirement under (1) or (2) above may be deferred until such date as the Secretary may prescribe (10 USC 564(c)).

4–27. More than 30 years of service

a. Professors, USMA. The Secretary of the Army may retire any permanent professor of the USMA having more than 30 years of commissioned service (10 USC 3920).

b. Warrant officers. Each RA warrant officer who has completed 30 years of active service computed under paragraph 4–8 will be retired on the last day of the month he or she completed 30-years and 60 days of active service. However, on recommendation of a board of officers, the Secretary may defer the retirement of any warrant officer, with his or her consent, but not later than 60 days after the officer becomes 62-years of age (10 USC 1305).

4–28. Selective early retirement

a. Each officer of the RA who qualifies under subparagraph (1) through (4) below may be considered for early retirement by a duly appointed board of officers. Eligible officers include those who—

(1) Hold the grade of lieutenant colonel, have failed selection for promotion to the grade of colonel two or more times, and are not on a list of officers recommended for promotion, or

(2) Hold the grade of colonel, have served at least four years of active duty in that grade, and are not on a list of officers recommended for promotion, or

(3) Hold the regular grade of brigadier general, have served at least three and one-half years of active duty in that grade, and are not on a list of officers recommended for promotion, or

(4) Hold the regular grade of major general and have served at least three and one-half years of active duty in that grade.

b. An officer in the grade of lieutenant colonel or colonel whose retirement under paragraph *a* above is so recommended and is approved by the Secretary of the Army shall—

(1) Be retired (under any provision of retirement law which he or she is eligible) on the date requested by the officer and approved by the Secretary of the Army but not later than the first day of the seventh calendar month beginning after the month the Secretary of the Army approves the report of the board which recommended the officer for early retirement, or

(2) If not eligible for retirement (under any provision of law), be retained on active duty until he or she is qualified for retirement as a commissioned officer (10 USC 3911) and then be retired under that statute, unless sooner retired or discharged under some other provision of law (10 USC 638(b)(1)).

c. An officer in the grade of brigadier general or major general whose retirement under paragraph *a* above is recommended and is approved by the Secretary of the Army shall be retired (under any provision of law he or she is eligible) on the date requested by the officer and approved by the Secretary of the Army, but not later than the first day of the tenth calendar month beginning after the month the Secretary of the Army approves the report of the board which recommended the officer for early retirement (10 USC 638(b)(2)).

d. So long as an officer in a grade below brigadier general holds the same grade, he or she may not be considered for early retirement more than once in any five-year period (10 USC 638(c)).

4–29. Retirement of regular officers for substandard performance of duty or for certain other reasons

a. Commissioned officers. An RA officer who is to be removed from active duty under the provisions of chapter 60, Title 10, USC, and who on the date of removal is eligible for voluntary retirement under any provision of law will be retired in the grade and with the retired pay he or she would be eligible on his or her own application (10 USC 1186).

b. Warrant officers. When the records and reports of any permanent warrant officer of the RA establish his or her unfitness or unsatisfactory performance of duty, as determined by a promotion selection board convened under the provisions of 10 USC 558 or by other screening of his or her records by a board of officers and subject to the provision of chapter 5, he or she will be retired if eligible for retirement under any provision of law. Retired pay will be computed as if he or she had been retired under the provisions of law eligibility is established (10 USC 1166).

4–30. Continuation on active duty to complete disciplinary action

When any action has been commenced against a commissioned officer with a view to trying such officer by court-martial and officer is to be retired according to this chapter, the Secretary of the Army may delay the retirement of the officer, without prejudice to the action, until the completion of the action (10 USC 639).

Section IV
Retired Grade, Rank and Status

4–31. Retired grade

a. Commissioned officers.

(1) *General rule.* Unless entitled to a higher retired grade under some other provision of law, a commissioned officer of the Army who retires under the provisions of this chapter, except as provided in (3) below, is entitled to be retired in the highest grade he or she served on active duty satisfactorily, as determined by the Secretary of the Army, for not less than six months.

(2) *Mandatory retirements.*

(a) The requirement to serve three years on active duty in the grade of colonel (O6), in order to retire in that grade, does not apply to RA colonels who—

1. Were recommended for and promoted to O6 on or after 15 September 1981, and

2. Are being mandatorily retired after completing 30 years of active commissioned service (10 USC 634).

(b) However, the three year requirement does apply if an officer submits a request for voluntary retirement, with an effective date on or before the officer's mandatory retirement date (10 USC 3911 or 3918, as appropriate, and 10 USC 1370(a)(2)).

(3) *Exceptions.*

(a) Voluntary retirement. In order to be eligible for voluntary retirement, including retirement under paragraph 4–29 of this regulation, in a grade above major and below lieutenant general, a commissioned officer must have served on active duty in that grade for three years.

(b) Grade determination. The provisions of paragraph (3)*(a)* above do not apply to the retired grade of Reserve officers who apply for voluntary retirement on notification of their scheduled release from active duty without their consent (10 USC 1370(a)(3)). Grade determination for these officers will be according to paragraph 4–31*a*(1) above (e.g. the two/three year in grade requirement does not apply).

(c) Generals or lieutenant generals. On retirement, an officer who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by the officer while serving on active duty (10 USC 1370(c)).

(d) Professors, USMA. Any permanent professor of the USMA whose grade is below brigadier general, and whose service as a professor has been long and distinguished may, in the discretion of the President, be retired in the grade of brigadier general (10 USC 3962(b)).

b. Warrant officers. General rule; Unless entitled to a higher retired grade under some other provision of law, a warrant officer

retires in the RA or AUS grade, if any, that he or she held on the day before the date of the retirement, or in any higher warrant officer grade he or she served on active duty satisfactorily, as determined by the Secretary of the Army, for at least 31 days (10 USC 1371).

4–32. Advancement of warrant officers to higher grade

a. When his or her active service (plus service on the retired list) totals 30 years, any retired warrant officer of the Army is entitled to be advanced on the retired list to the highest commissioned grade he or she served satisfactorily on active duty as determined by the Secretary of the Army (10 USC 3964).

b. When a warrant officer becomes eligible for advancement, orders announcing his or her advancement are issued by the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAR–SCP, 9700 Page Boulevard, St. Louis, MO 63132–5200. Notification is sent to the officer; to Retired Pay Operations, US Army Finance and Accounting Center (USFAC), Indianapolis, IN 46249–0001; and to other appropriate agencies.

4–33. Restoration of Regular Army warrant officers to former grade

Any retired warrant officer of the RA who has been advanced to a higher commissioned grade under 10 USC 3964 and who applies to the Secretary of the Army within 3 months after his or her advancement, shall, if the Secretary approves, be restored on the retired list to his or her former warrant officer status (10 USC 3965).

4–34. Retired officer status

An RA officer placed on the retired list continues to be an officer of the United States Army (31 Ct. Cl.35) (16 Ct. Cl. 223); R.S. 1255).

4–35. Change in status after retirement

In the absence of any showing of fraud, the retirement of an officer under a particular statute exhausts the power of the President and the Secretary of the Army, and the record of executive action cannot be revoked or modified to make retirement relate to another statute, even though the case is one which more than one statute properly applied at the time of retirement. There is no authority for the restoration of a retired officer to the active list for the purpose of being again retired (sec. 326(1) Dig. OP. JAC 1912–40).

Section V
Medical Examination

4–36. Medical examination requirement

a. The immediate commander of each officer undergoing retirement will ensure that procedures are followed pertaining to medical examination as stated in AR 40–501.

b. Medical examination prior to retirement is required. Examination must be scheduled not earlier than 4 months or later than one month before the approved retirement date.

4–37. Hospitalization/Physical Evaluation Board (PEB) Proceedings

a. If an officer who is scheduled for or who has requested retirement becomes hospitalized or has an identified medical problem, the commander of the medical treatment facility (MTF) or a senior medical officer who has detailed knowledge of medical fitness and unfitness standards, disposition of patients, and disability separation processing to whom he or she delegates such authority, will determine immediately whether the condition(s) will result in referral to a Physical Evaluation Board (PEB). If referral to a PEB will result, the MTF commander or designated representative will notify Cdr, PERSCOM (TAPC–PDT–RR) by mail or message as soon as possible.

b. If a PEB is not necessary, but additional medical care is, the retirement will be processed as a nondisability retirement and continuing medical problems treated up to and/or after the approved retirement date. Retirement dates will not be changed for the purpose of continued medical treatment that will extend past the approval retirement date.

(Letterhead)

Office Symbol (Marks Number) *(Date)*

MEMORANDUM THRU (Channels)

For Cdr, PERSCOM (TAPC-PDT-RR), 200 Stovall Street, Alexandria, Virginia 22332-0478

SUBJECT: Voluntary Retirement

1. Under the provisions of law cited in AR 635-100, paragraph *(number)*, I request that I be released from active duty and assignment on *(last day of the month which retirement would otherwise be effective)* and placed on the retired list on *(first day of the following month)*, or as soon thereafter as practicable, and that I be transferred to the Retired Reserve immediately on retirement (Regular Army officers omit last phrase). I will have completed over *(number)* years of active Federal service on the requested retirement date.

2. Assignment status: *(organization and station which currently assigned and duty station which attached, if any).*

Figure 4–1. Sample format for voluntary retirement application

3. Authorized place of retirement: *(Enter the authorized and directed transfer activity where required to be processed—AR 635-10, paragraph 2-18a. If applicable, identify the CONUS debarkation area.)*

4. Location of choice transfer activity: (Members electing to be processed for retirement at a transfer activity other than the one prescribed by AR 635-10, paragraph 2-18a--enter an appropriate transfer activity as provided by AR 635-10, paragraph 2-19; otherwise enter "Not applicable").

5. I have been counseled as specified by AR 635-10, paragraph 2-19. I fully understand the provisions of AR 635-10, chapter 2, section V, concerning entitlement to per diem, travel and transportation allowances based on retirement at a location of choice transfer activity.

6. I have read AR 635-100, chapter 4, section V. I am responsible for ensuring that a physical examination is completed not earlier than 4-months nor later than one month prior to my approved retirement date (subject physical to be arranged through coordination with my unit of assignment). I am aware that the purpose of this examination is to ensure that my medical records reflect as accurately as possible my state of health on retirement and to protect my interests and those of the Government. I also understand that my retirement will take effect on the requested date and that I will not be held on active duty to complete this examination.

7. In accordance with 10 USC, I understand that:

a. Enrollment in the Survivor Benefit Plan (SBP) is the only way that I may continue a portion of my retirement pay to my family at my death.

b. I must receive SBP counseling for myself and my spouse no less than 30-days before retirement.

c. I will be enrolled in full SBP coverage if I fail to elect otherwise in writing before my retirement.

d. I cannot elect less than full spouse SBP without my spouse's written agreement. I received a spousal concurrence for this purpose in conjunction with this application/letter. I realize there are other forms that must be completed during SBP counseling.

e. Failure to return the completed spousal concurrence statement to the proper officials prior to my retirement packet being sent to the US Army Finance & Accounting Center will result in my being irrevocably and irreversibly enrolled in SBP at full cost.

8. Address on retirement: *(a reliable forwarding address for mail).*

9. I am familiar with AR 635-100, paragraph 4-12 and understand that if this application for retirement is accepted by the Secretary of the Army it may not be withdrawn except for extreme compassionate reasons or for the definitely established convenience of the Government.

10. (If AR 635-100, para 4-16 is applicable; continue with the information required by para 4-18.)

11. As of the date of this application, I have *(number)* days accrued leave. I *(do/do not)* plan to take terminal leave. If applicable, complete the following: I plan to take *(number)* days leave.

12. (For officers serving in grades 05 through 08). I have read and understand the provisions of AR 635-100, paragraph 4-31 pertaining to determination of my retired grade. Considering those provisions, and after a review of my records, I believe that I am entitled to retire in the grade of *(grade),* I understand that final determination of my retired grade will be made by HQDA, and that I will be informed if I am not entitled to retire in the grade I have specified in this paragraph.

13. This application *(is/is not)* submitted in lieu of complying with PCS instructions.

14. I understand that if I participated in certain advanced education programs, I may be required to reimburse the United States government as stated in written agreement made by me with the United States government under law and regulations.

JOHN J. DOE
Colonel, IN
xxx-xx-xxxx

Note:
Enlisted personnel applying for retirement in an officer grade will include their active duty enlisted rank and primary military occupational specialty.

Figure 4-1. Sample format for voluntary retirement application—Continued

(Letterhead)

Office Symbol (Marks Number) *(Date)*

MEMORANDUM THRU (Channels)

For Cdr, PERSCOM (TAPC-PDT-RR), 200 Stovall Street, Alexandria, Virginia 22332-0478

SUBJECT: Pre-Retirement Information

1. The following information is submitted in compliance with AR 635-100, paragraph 4-22:

a. Assignment status: *(organization and station which currently assigned and duty station which attached, if any).*

b. Address on retirement: *(a reliable forwarding address for mail).*

c. Authorized place of retirement: *(Enter the authorized and directed transfer activity where required to be processed—AR 635-10, paragraph 2-17. If applicable, identify the CONUS debarkation area.)*

d. Location of choice transfer activity: *(Members electing to be processed for retirement at a transfer activity other than one prescribed by AR 635-10, paragraph 2-17—enter an appropriate transfer activity as provided by AR 635-10, paragraph 2-18; otherwise enter "Not applicable").*

e. I have been counseled as specified by AR 635-10, paragraph 2-18. I fully understand the provisions of AR 635-10, section V, chapter 2 concerning entitlement to per diem, travel and transportation allowances based on retirement at a location of choice transfer activity.

2. I have read AR 635-100, chapter 4, section V. I am responsible for completing the Medical Examination for Separation/Retirement Statement of option furnished by my unit of assignment, and I am responsible for ensuring that if a physical examination is desired that it is started not earlier than 4-months nor later than one month prior to my approved retirement date (subject physical to be arranged through coordination with my unit of assignment). I am aware that the purpose of this examination is to ensure that my medical records reflect as accurately as possible my state of health on retirement and to protect my interests and those of the Government. I also understand that my retirement will take effect on the scheduled date and that I will not be held on active duty to complete this examination.

3. In accordance with 10 USC, I understand that:

a. Enrollment in the Survivor Benefit Plan (SBP) is the only way that I may continue a portion of my retirement pay to my family at my death.

b. I must receive SBP counseling for myself and my spouse no less than 30-days before retirement.

c. I will be enrolled in full SBP coverage if I fail to elect otherwise in writing before my retirement.

d. I cannot elect less than full spouse SBP without my spouse's written agreement. I received a spousal concurrence for this purpose in conjunction with this application/letter. I realize there are other forms that must be completed during SBP counseling.

e. Failure to return the completed spousal concurrence statement to the proper officials prior to my retirement packet being sent to the US Army Finance & Accounting Center will result in my being irrevocably and irreversibly enrolled in SBP at full cost.

JOHN J. DOE
Colonel, IN
xxx-xx-xxxx

Figure 4-2. Sample format for pre-retirement information

(Letterhead)

EXT-ORDERS S121-23 *(DATE)*

Announcement of Retirement

The retirement of Colonel John J. Smith, *(duty position),* is announced with the deepest regret but with the greatest appreciation for his long and distinguished career of 30 years.

Colonel Smith was born in July 1937 in Fort Hayes, Ohio. Commissioned in the Field Artillery on graduation from the United States Military Academy in 1959, he attended Airborne School and was assigned to the 82d Airborne Division for two years. Colonel Smith subsequently served for three years in Panama, followed by a transfer to the 173d Airborne Brigade for a year of combat command and staff duty. Service in Vietnam was followed by a three year instructorship assignment at the United States Air Force Academy and subsequent return to Vietnam for duty with the 196th Infantry Brigade. Between troop duty assignments Colonel Smith graduated from the Armed Forces Staff College.

A two-year tour at Fort Benning, Georgia with the United States Army Combat Arms Training Board ended in 1974. Colonel Smith then joined the 101st Airborne Division (Air Assault) where he served as the Division Artillery operations officer and commanded the 1st Battalion, 321st Field Artillery. Colonel Smith was next posted to Headquarters, Department of the Army in the office of the Chief, Army National Guard Bureau. 1980 saw Colonel Smith deploy to the Republic of Korea for a four-year assignment as the Chief of the Operational Plans Divisions of both the Republic of Korea/United States Combined Forces Command and Headquarters United States Forces Korea. From 1984 to 1989, Colonel Smith was assigned to the Office of the Deputy Chief of Staff for Personnel and served in several top level management positions. Colonel Smith's last assignment found him as a member of the Headquarters, Department of the Army, Deputy Chief of Staff for Personnel Review Boards and as president of the Secretary of the Army's Conscientious Objector Review Board.

During his illustrious career, Colonel Smith has been honored for valor on the battlefield and for meritorious service in positions of great responsibility. His many awards and decorations include four Bronze Stars, two awards of the Meritorious Service Medal, three awards of the Air Medal and the Senior Parachutist's and Aircraft Crewmember's Badges. Colonel Smith's many friends and fellow soldiers join together on this day in wishing him the best of health and happiness in his well earned retirement.

PAUL A. DOE
Major General, USA
Commanding

Figure 4–3. Sample format for announcement of retirement

Chapter 5
Eliminations

Section I
General

5–1. Scope
This chapter prescribes the means and procedures to eliminate officers from the Army for substandard performance of duty, misconduct, moral or professional dereliction, or in the interest of national security. This chapter applies to all officers (commissioned and warrant) in the Active Army.

5–2. Statutory provisions
The provisions of law stated in *a* through *i* below (from Title 10, USC, unless otherwise indicated) pertain to the elimination of commissioned and warrant officers.

a. Section 266 provides that boards convened for the discharge of officers of the Reserve components will include at least one member of the Reserve (the exact number to be prescribed by the Secretary of the Army) and specifies seniority requirements for these officers.

b. Section 1162 provides for discharge of Reserve commissioned officers by the President and other Reserves under regulations promulgated by the Secretary of the Army.

c. Section 1163 provides for involuntary separation of officers of Reserve components with 3 or more years of commissioned service on the approved recommendation of a board of officers.

d. Section 1165 provides for termination of appointment of RA warrant officers within 3 years subsequent to acceptance of appointment.

e. Section 1166 provides for elimination of RA warrant officers under regulations prescribed by the Secretary of the Army.

f. Section 602 governs the temporary appointment of warrant officers by Secretary of the Army.

g. Section 1181 et seq., provides for separation of commissioned officers from the RA for substandard performance of duty, misconduct, moral or professional dereliction, or in the interest of national security.

h. Section 630 provides for the discharge of RA commissioned officers with less than five years of active commissioned service or found not qualified for promotion to first lieutenant.

i. Section 3820 and Title 32, USC, section 323, provide for withdrawal of Federal recognition and discharge of ARNG officers from appointment as Reserve officers.

Section II
Considerations

5–3. Double jeopardy

a. No officer will be considered for elimination pursuant to paragraph 5–10 or 5–11 because of conduct which has been the subject of judicial proceedings resulting in an acquittal based on the merits or an action having the effect.

b. Except as expressly provided in *d* below, no officer will be considered for elimination for the reasons stated in paragraph 5–10 and 5–11, because of conduct which has been the subject of administrative elimination proceedings which resulted in a final determination that the officer should be retained in the service. For purposes of this paragraph, an officer will be considered to have been the subject of elimination proceedings only if the allegations against the officer were acted on by a Board of Inquiry or a DA Selection Board convened under this chapter.

c. No officer who has been the subject of a DAADB action under paragraph 3–49*a* resulting in a determination that the member should be retained in the service will be considered for elimination for reasons stated in paragraph 5–10 and 5–11 because of the same conduct. However, an officer may be considered for elimination when additional substantial evidence is discovered which warrants considering the officer for elimination pursuant to this chapter under the following circumstances:

(1) For substandard performance of duty at any time one year after the date the officer was retained by the DAADB.

(2) For misconduct, moral or professional dereliction or in the interest of national security at anytime subsequent to the date the officer was retained by the DAADB.

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

(1) Substantial new evidence is discovered, which was not known at the time of the original proceedings despite the exercise of due diligence, which would probably produce a result significantly less favorable for the officer at a new hearing.

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

(3) An express exemption has been granted by HQDA on a determination that, due to the unusual circumstances of the case, administrative separation should be effected.

e. Under the following circumstances an officer who has been considered for elimination and retained on active duty may be required to again show cause for retention because of lack of proficiency or recurrent misconduct subsequent to the earlier consideration, or because of misconduct which occurred prior to that alleged in the earlier proceedings but was not sooner discovered despite the exercise of due diligence:

(1) An officer who has been considered for elimination for substandard performance of duty and retained may again be considered for elimination for substandard performance of duty at any time after the prior case has been closed.

(2) An officer may be considered for elimination for misconduct, moral or professional dereliction, or in the interests of national security, at any time subsequent to the closing of the prior case, which resulted in the officer's retention on active duty. However, an officer may not again be required to show cause for retention on active duty solely because of conduct which was the subject of the previous proceedings, unless the findings and recommendations of the Board of Inquiry or Board of Review that considered the case are determined to have been obtained by fraud or collusion. The grounds for elimination in the earlier case may be joined with new grounds in the later case provided the earlier elimination proceedings does not include a factual determination specifically absolving the officer of the allegations then under consideration. If the grounds for elimination in the earlier proceedings are joined, the additional grounds considered in the subsequent proceeding need not independently justify the officer's discharge, but must be sufficiently serious to raise a substantial question as to the officer's potential for further useful military service.

f. Punishment resulting from trial by court-martial or under the provisions of Article 15, UCMJ, for misconduct and subsequent use of this fact in support of elimination under this regulation does not constitute double jeopardy.

5–4. Assignment of officer while elimination action is pending

When elimination action is initiated, the officer concerned will remain in his or her current major command until the case is closed, unless specific instructions to the contrary are issued by PERSCOM. See AR 600–8–2.

5–5. Second failure of selection for promotion

Separation of RA and USAR officers for second failure of selection for promotion is governed by this regulation, chapters 3 and 4 and AR 635–120.

5–6. Reporting requirements of AR 190–10

When separation action is taken under the provisions of this chapter, the case file of the individual will be reviewed by CG, PERSCOM to determine whether the reporting requirements set forth in AR 190–10 are applicable. When conditions exist in any officer's case file, the report required by AR 190–10 will be submitted.

Section III
Medical Processing

5–7. Medical condition

Officers will not be processed under this regulation if, at the time of the conduct which is the basis of the proceedings, they were not so far free from mental defect, disease, or derangement with respect to the conduct in question as to be able to distinguish right from wrong, or entertain the specific intent which may be required by the conduct at issue, and additionally, to adhere to the right. If appropriate, they will be processed through medical channels. Further, officers recommended for elimination for substandard performance of duty will be processed through medical channels rather than under this regulation if the conduct which their elimination would be based is the product of a physical condition, or mental condition less than insanity, which is deemed to medically incapacitate them for further military duty. An officer will not be required to appear before a board of inquiry if, at the time, he or she does not possess sufficient mental capacity to understand the nature of the proceedings against them, and intelligently conduct or cooperate in their own defense. In such circumstances proceedings will be delayed until the officer recovers, or he or she will be processed through medical channels. Should a physical or mental condition develop subsequent to the forwarding of a recommendation that an officer be eliminated, or the completion of the proceedings of a board of inquiry, the appropriate commander will immediately notify Cdr, PERSCOM (TAPC–OPP–M). When it is considered that the officer's mental condition has contributed to his or her military inefficiency or unsuitability as specified, the medical evaluation will include a psychiatric study of the officer, when appropriate. When a psychiatric report is included, it will indicate whether the officer was able to distinguish right from wrong and adhere to the right at the time of the conduct under investigation, and whether he or she currently has the mental capacity to understand board and judicial proceedings and participate in

his or her own defense. If it is determined that the officer is suffering from an incapacitating mental illness, the examiner should indicate whether that illness was probably the cause of the conduct under investigation.

5–8. Medical evaluation when homosexuality is involved

a. Medical evaluation of officers considered for separation under paragraph 5–11*a* (6) will include a mental status evaluation, to be accomplished by the examining physician. DA Form 3822–R (Report of Mental Status Evaluation) will be used for this purpose. A psychiatric study of the officer is not required unless:

(1) Specifically requested by the officer.

(2) Deemed appropriate by the examining physician.

(3) Specifically requested by the commander who recommended separation or by the selection board or board of inquiry, as applicable.

(4) Psychiatric diagnosis, including an opinion whether the officer was able to distinguish right from wrong and adhere to the right at the time of the conduct under investigation, and whether he or she currently has the mental capacity to understand board and judicial proceedings and participate in his or her own defense. If it is determined that the officer is suffering from an incapacitating mental illness, the examiner should indicate whether the illness was probably the cause of the homosexual conduct under investigation.

b. A copy of the medical evaluation, to include the psychiatric study (if any), will be filed with the individual's health record. The medical treatment facility commander will forward the original of this evaluation report to the unit commander.

Section IV
Reasons which Authorize Elimination

5–9. General

Retention of officers who are substandard in performance of duty or conduct, deficient in character, wanting in professional qualifications or status, or otherwise unsuited for military service cannot be justified in peace or war. The same standards of efficiency and conduct are applicable to officers regardless of component.

5–10. Substandard performance of duty

While not all-inclusive, existence of one of the following or similar conditions, unless successfully rebutted, authorizes elimination of an officer due to substandard performance of duty.

a. Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service.

b. Failure to keep pace or to progress with contemporaries as demonstrated by a low record of efficiency when compared with other officers of the same grade, and competitive category (AR 624–100). An officer who is identified by an active duty list promotion board (convened according to 10 USC 611a) as "not fully qualified" for promotion will be recommended for elimination under this paragraph, as provided for by the Secretary of the Army in the memorandum of instructions to the promotion board.

c. Failure to exercise necessary leadership or command expected of an officer of his or her grade.

d. Failure to assimilate technical proficiency required of his or her grade and competitive category (AR 624–100).

e. Failure to discharge properly assignments commensurate with his or her grade and experience.

f. Apathy, defective attitudes, or other character disorders to include inability or unwillingness to expend effort.

g. Failure to respond to rehabilitation efforts regarding an alcohol or other drug problem in a reasonable length of time.

h. Failure to conform to prescribed standard of dress, personal appearance, and military deportment.

5–11. Misconduct, moral or professional dereliction or in interests of national security

a. While not all inclusive, existence of one of the following or similar conditions, unless successfully rebutted, authorizes elimination of an officer due to misconduct, moral or professional dereliction or in the interest of national security:

(1) Discreditable or intentional failure to meet personal financial obligation.

(2) Mismanagement of personal affairs detrimentally affecting the performance of duty of the officer concerned.

(3) Mismanagement of personal affairs to the discredit of the service.

(4) Intentional omission or misstatement of fact in official statements or records, for the purpose of misrepresentation.

(5) Acts of personal misconduct (including, but not limited to, acts committed while in a drunken or drug intoxicated state).

(6) Homosexuality (see sec XIV).

(7) Intentional neglect of or failure to perform duties.

(8) Conduct unbecoming an officer.

(9) Conduct or actions resulting in the loss of a professional status, such as withdrawal, suspension of abandonment of professional license, endorsement, or certification which is directly or indirectly connected with the performance of one's military duties and necessary for the performance, including withdrawal of clinical privileges for Army Medical Department (AMEDD) officers.

(10) Acts or behavior not clearly consistent with the interest of national security (see AR 604–10 for substantive criteria).

(11) Conduct or actions by a warrant officer resulting in the loss of special qualifications (such as withdrawal/revocation of CID accreditation, revocation of marine qualification license, removal from the Personnel Reliability Program (PRP), withdrawal of clinical privileges or loss of flying status) which directly or indirectly precludes a warrant officer from performing in his or her MOS and is necessary for the performance. Elimination based on the reasons may not be utilized if reclassification action is feasible and in the best interest of the service or if loss of special qualifications was due to medical reasons beyond the control of the warrant officer.

(12) Failure to respond to rehabilitation efforts regarding repeated acts of child/spouse maltreatment or abuse and/or other acts of family violence in a reasonable length of time.

b. When one or more of the reasons enumerated in a (1) through (7) above is alleged, if the circumstances which form the basis indicate that the reason in item (8) also is involved, it will constitute additional reason for requiring elimination.

5–12. Derogatory information

a. Any one of the following or similar reasons gives rise to serious doubt as to the advisability of permitting the officer concerned to retain a commission or warrant and requires a review of his or her overall record. This is to determine if such derogatory information, when viewed in conjunction with other aspects of his or her record, warrants recommendation for elimination.

(1) Punishment under Uniform Code of Military Justice, Article 15.

(2) Conviction by court-martial.

(3) Denial of security clearance (see para 5–33*b*).

(4) An officer evaluation report (OER) under AR 623–105, paragraph 5–18 or 5–25.

(5) Adverse information filed in the OMPF according to AR 600–37.

(6) Failure by a RA officer of a course at a service school. For failure by a Reserve Component officer, see chapter 3, section II.

b. Standing alone, one of these conditions may not support elimination. On the other hand, it may combine with other known deficiencies to form a pattern which, when viewed in relation to an individual's overall record, requires elimination.

Section V
Initiation of Elimination Action for Nonprobationary Officers

5–13. Initiation of elimination

a. Elimination action may be initiated by—

(1) CG, PERSCOM.

(2) A GOSCA for an officer assigned or attached to his or her command (para 1–3) (Unless specifically withheld by HQDA).

(3) The Deputy Chief of Staff for Personnel, U.S. Army (DCSPER), when recommendations are made by HQDA promotion, school, or command selection boards that an officer should be required to show cause for retention on active duty. The DA, DCSPER, or his or her designated representative in the grade of MG or above, will review such names and decide if referral to a board of inquiry is appropriate. If referral is appropriate, the action will be processed under paragraph 5–14.

(4) Secretary of the Army, Chief of Staff, U.S. Army and officials in their offices as are designated by them. Actions will be processed under paragraph 5–14.

b. Unless precluded by paragraph 5–13*d*(4), elimination action will be initiated against an officer who is—

(1) Medically diagnosed as drug dependent.

(2) Identified as having committed an act of personal misconduct involving drugs (see para 5–10 and 5–11).

c. Any subordinate commander may recommend the initiation of elimination proceedings under this chapter for an officer in his or her command to the GOSCA for that officer.

d. Commanders have the discretion to initiate disciplinary action under the Uniform Code of Military Justice (UCMJ) or to recommend or initiate elimination proceedings under the provisions of this regulation.

(1) The fact that elimination proceedings were initiated when disciplinary action could have been taken will not affect the validity of the elimination proceedings.

(2) Elimination action will not be used in lieu of disciplinary action solely to spare an officer, who may have committed serious misconduct, the harsher penalties which may be imposed under the UCMJ.

(3) Conduct which was the subject of judicial or nonjudicial punishment may be the basis for elimination proceedings under this regulation (but see para 5–3*a*).

(4) Elimination proceedings, however, will not be initiated with respect to conduct which is the subject of UCMJ charges unless the charges are dismissed or appellate review has been completed.

e. Regardless of who initiates a recommendation for elimination, the GOSCA will ascertain the identity and whereabouts of Government witnesses and make reasonable efforts to ensure their availability to appear before a board of inquiry.

5–14. Initial administrative processing

CG, PERSCOM (for cases initiated under para 5–13*a* (1), (3) or (4)) and GOSCA (for cases initiated under para 5–13*a* (2)) will take the following actions prior to the elimination of an officer under this chapter:

a. Notify the officer in writing that elimination has been initiated and that the officer is required to show cause for retention on active duty.

b. Advise the officer of the reasons supporting the elimination and the factual allegations supporting the reasons (fig 5–1). Only applicable reasons as outlined in paragraph 5–10 and/or 5–11 which can be supported by specific factual allegations and evidence may be the basis for elimination. Evidence to support the elimination must be able to stand on its own merits. Prior coordination with the servicing judge advocate or legal adviser is required for actions initiated by the GOSCA.

c. Advise the officer that he or she may—

(1) Tender resignation in lieu of elimination (AR 635–120, chap 4).

(2) Request discharge in lieu of elimination (RA commissioned officers only) (AR 635–120, chap 8).

(3) Apply for retirement in lieu of elimination, if otherwise eligible for voluntary retirement as stated in paragraph 4–10*d* (1) and (2), (format for voluntary retirement (fig 4–1) will be amended to specifically state that the application is submitted in lieu of elimination).

(4) Appear before a board of inquiry to show cause for retention.

d. Advise the officer that he or she has 30 days to acknowledge receipt in writing, to prepare a written statement, and to elect one of the options (para c above). The statement—

(1) May be prepared with the assistance of an officer of the Judge Advocate General's Corps (JAGC) or civilian counsel obtained by the officer at no expense to the Government.

(2) Should contain any pertinent facts or submission of any rebuttal bearing on the question of the officer's elimination. Documents submitted in rebuttal must be legible and reproducible.

(3) May be sworn or unsworn.

e. Advise the officer of the least favorable discharge that the officer may receive. (Officers separated solely for substandard performance (para 5–11) will receive an honorable discharge. All other officers may receive an under other than honorable discharge.)

f. Advise the officer that he or she may consult with the local finance and accounting officer concerning possible entitlement to separation pay.

g. Personally sign the memorandum (applicable only to separations initiated by a GOSCA).

h. Furnish a copy of the notification memorandum directly to Cdr, PERSCOM (TAPC–OPP–M).

i. Initiate a Suspension of Favorable Personnel Action (DA Form 268) according to AR 600–8–2.

j. If the officer elects one of the options in *c* (1) through (3) above, the officer will:

(1) Submit the appropriate application for separation in lieu of elimination under paragraph 4–10*d* or AR 635–120, Chapter 4 or 8.

(2) Attach his or her acknowledgement (fig 5–2).

(3) Undergo a separation physical examination within five days from the date the option is chosen.

k. Advise the officer that if the officer requests resignation or discharge in lieu of elimination action, he or she will be separated no later than:

(1) Fourteen days after receipt of notification that the request for resignation/discharge was approved, if stationed CONUS.

(2) Twenty-one days after receipt of notification that the request for resignation/discharge was approved, if stationed OCONUS.

5–15. Action by CG, PERSCOM and GOSCA.

a. On receipt of the officer's statement and/or option selection, the CG, PERSCOM or GOSCA will—

(1) Close the case (see para 5–55 for homosexuality cases); (Prior to closing cases initiated under para 5–13*a*(3) or (4), CG, PERSCOM will coordinate with the initiating official.)

(2) If the officer elects one of the options in paragraph 5–14c (1) through (3) above, expeditiously forward the appropriate application and all elimination papers directly to Cdr, PERSCOM (TAPC–OPP–M). (When the GOSCA is not the GCM convening authority, furnish a copy to the GCM convening authority.) The forwarding endorsement will include the direct point of contact for the elimination action to include name and telephone number. Inform the major commander of this action.

(3) If the officer declines to elect the option of resignation, discharge, or retirement in lieu of elimination, refer the case to a board of inquiry. (In those cases initiated under para 5–13*a* (1), (3) or (4), CG, PERSCOM will direct the appropriate GOSCA to appoint the board of inquiry.)

b. Prior to forwarding the case to the board of inquiry, the CG, PERSCOM or GOSCA (as appropriate) will ensure that:

(1) With the exception of business entries and official records and reports (e.g., evaluation reports, health records, and CID investigation reports), all statements submitted, including reports of

the investigation, are under oath or affirmation. This does not apply when the witness is dead, mentally incompetent, or missing, or when the exigencies of the service preclude obtaining the officer's statement in affidavit form.

(2) Documents are legible and reproducible.

(3) The statement submitted by the officer is made a part of the record.

5–16. Investigation of homosexuality

a. A commanding officer receiving information that an individual under his or her command may require separation under criteria contained in paragraph 5–51, will inquire thoroughly and comprehensively in the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. Any investigation required, normally should be referred to the local provost marshal for investigation and recording on CID Report of Investigation. The facts and circumstances of each case will govern the commander's decision as the appropriate agency of investigation. If the information available is of sufficient stature to warrant investigation the commander will take necessary action to protect the security of his or her command to include 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 the allegations, the commanding officer will refer the officer for medical evaluation, revoke the security clearance, if any, and prepare a letter report outlining action taken and forward it with the officer's revoked DA Form 873 (Certificate of Clearance and/or Security Determination Under EO 10450) to the Cdr, U.S. Army Central Personnel Security Clearance Facility (CCF) ATTN: PCCF–MCO, Fort George G. Meade, MD 20755–5250. Revocation of security will be according to AR 604–5, chapter 4.

b. It is essential that all facts indicating homosexuality be recorded properly. The file will consist of the following documents in addition to that required by AR 635–120.

(1) Report of investigation will include but not be limited to:

(a) Statement of date and place of birth.

(b) Amount of active service.

(c) Date and current period of service.

(2) Statements of witnesses (see UCMJ, Art 31).

(3) Medical evaluation reports as specified in paragraph 5–8.

(4) An individual's statement in his or her own behalf, if it is desired.

5–17. Prompt action

Subsequent to original initiation of elimination action, succeeding actions required to dispose of the case will be attended to vigorously. Except for delays required to protect the rights of respondents, prompt attention and expeditious handling will be given to elimination cases.

Section VI
Actions Prior to the Board of Inquiry

5–18. Cases referred to DA Selection Boards

Cases referred to DA Selection Boards (as defined in the glossary) before 2 July 1988 will be processed under this regulation (e.g., para 5–13g(3), 5–18, and 5–56) as in effect before 2 July 1988.

5–19. Appointment of boards of inquiry

Boards of inquiry are appointed by the appropriate GOSCA. The GOSCA may use any eligible Army officer (10 USC 1187) on duty in the geographic limits of their command to compose the board (see table 5–1). Concurrence must be obtained from the appropriate commander when officers assigned to a different command are used on a board of inquiry. The local installation convening the board of inquiry will fund the travel of board members from other installations. The GOSCA will advise members of a board of inquiry that duty on the board takes priority over all other duties, unless properly excused by the appointing authority. (Functions and composition of boards of inquiry are contained in this chap, sec X through XIII).

5–20. Action by GOSCA

The GOSCA will:

a. Notify the officer in writing that the officer's appearance before the board of inquiry represents the only opportunity for the officer to appear personally in their own behalf prior to final action by the Assistant Secretary of the Army (Manpower and Reserve Affairs).

b. Notify the officer in writing of his or her rights as stated in paragraph 5–21.

5–21. Rights

Each officer electing to appear before a board of inquiry, either because of substandard performance of duty, misconduct, moral or professional dereliction, or in the interest of national security, in addition to the other rights provided (e.g., para 5–39*b* below) will be—

a. Provided with a counsel who is an officer of The Judge Advocate General's Corps; or allowed to obtain civilian counsel of his or her own selection without expenses to the Government, provided that procurement of his or her own counsel does not result in unreasonable delay (para 5–37*j*). If provided with a counsel who is a member of The Judge Advocate General's Corps, the counsel may be an individual requested by the officer if reasonably available, as determined by the major commander of the requested counsel.

b. Allowed reasonable time, as determined by the board of inquiry, to prepare his or her case. The officer may submit a written request for continuance to the Board of Inquiry citing specific reasons. In no instance will the officers have less than 30 days from date of receipt of notification of his or her requirement to show cause for retention on active duty.

c. Allowed to appear in person and be represented by counsel, before a board of inquiry.

d. Allowed full access to and furnished copies of records relevant to his or her case at all stages of the proceedings, except that a board or other authority shall withhold any records that the Secretary of the Army determines should be withheld in the interest of national security. In any case when records are withheld, the officer shall, to the extend that national security permits, be furnished a summary of the records withheld.

e. Allowed to submit a statement or brief within seven days after receipt of the board of inquiry report.

5–22. Options

Options stated in paragraph 5–14*c* (1) through (3) may be elected by the officer at any time prior to final elimination action. If one of these options is elected, elimination proceedings will be suspended pending final action on the option elected by the officer.

a. On receipt of the request for resignation or discharge, or application for retirement, the GOSCA will immediately notify Cdr, PERSCOM (TAPC–OPP–M) (by written correspondence) with an information copy to the MACOM commander and the GCM convening authority (if different from the GOSCA) concerned.

b. The resignation, request for discharge, or application for retirement will be processed promptly through the GOSCA who will forward it directly to Cdr, PERSCOM (TAPC–OPP–M). An information copy will be furnished to the MACOM.

(1) If the officer has elected to retire in lieu of elimination (para 4–10*d*), and the elimination involved misconduct, moral or professional dereliction, PERSCOM will forward the following to the Army Grade Determination Review Board for recommendation of the highest grade that the officer has served on active duty satisfactorily (para 4–31):

(a) The application for retirement in lieu of elimination.

(b) The memorandum of notification for elimination with all supporting documentation, to include any comment or rebuttal by officer.

(c) The officer's official military personnel file.

(2) Officers who retire in lieu of elimination for substandard performance of duty may be referred to the Army Grade Determination Review Board.

Section VII
Actions after Board of Inquiry

5–23. Post-board action

a. The GOSCA will forward the board of inquiry proceedings to the appropriate MACOM no later than 30 days after the board of inquiry adjournment. The MACOM will forward the board of inquiry proceedings to Cdr, PERSCOM (TAPC–OPP–M), no later than 60 days after the board of inquiry adjournment.

b. When a board of inquiry recommends retention, the GOSCA will close the case, notify the officer in writing, and notify Cdr, PERSCOM (TAPC–OPP–M) that the officer has been retained by the board of inquiry and the date of the officer's notification. The GOSCA will forward the board proceedings (original copy only, either verbatim or summarized transcript, see para 5–48) with a copy of the officer's notification memorandum, through the MACOM, to Cdr PERSCOM (TAPC–OPP–M).

c. When a board of inquiry recommends elimination, the GOSCA will:

(1) Close the case, if retention is appropriate (only applicable for elimination initiated under para 5–13*a*(2)), and comply with paragraph 5–23*b*.

(2) Complete the following administrative actions if elimination is appropriate, or if elimination was initiated under paragraph 5–13*a* (1) (3) or (4).

(a) Furnish the officer a copy of the board of inquiry report and obtain a receipt of acknowledgement.

(b) Give the officer the options listed in paragraph 5–13*c*(1) through (3).

(c) Advise the officer:

1. He or she may submit an appellate brief and statement within seven days after receipt of the board of inquiry report or proceedings.

2. The entire case will be considered by a board of review, and the officer will be entitled to a copy of the board of review, if the officer so desires.

3. If the board of review determines that the officer should not be retained, the case will be referred to the Secretary of the Army for final action.

4. If the board of review determines that the officer should be retained in the Army, the case will be closed.

5. In either event (*3* or *4* above), the officer will be notified by the CG, PERSCOM at the earliest practicable date.

(d) Personally sign the forwarding endorsement.

(e) Have the officer undergo a separation physical examination as prescribed in AR 635–120, paragraph 2–1.

(f) If an Officer Evaluation Report (OER) has not been prepared during the 180-days immediately preceeding the date the completed board of inquiry report is forwarded by the MACOM to PERSCOM, ensure that an OER is prepared according to AR 623–105, paragraph 5–10*a*.

1. The reason for submission of the OER will be stated as "Elimination (AR 623–105, para 5–10*a*)."

2. The OER "thru" date will be the date the completed board of inquiry report was forwarded by the MACOM to PERSCOM.

3. Forward the OER separately to Cdr, PERSCOM (TAPC–MSE–R), ALEX, VA 22332–0442.

(g) Establish internal suspense control to ensure expeditious processing of the separation physical examination and OER.

d. When a board of inquiry recommends elimination, after completing the administrative actions required in paragraph *c*(2) above, the GOSCA will forward, by personal endorsement, the original report of the board of inquiry proceedings to the MACOM commander.

(1) Recommendation of approval or disapproval of the board of inquiry's recommendation. (State reason(s) when disapproval is recommended.) The GOSCA may recommend retention when elimination is recommended by the board.

(2) A statement that the officer was furnished a copy of the board of inquiry report, and whether the officer desires a copy of the board of review report.

(3) A recommendation of the type of discharge to be issued. (Only applicable where the officer was required to show cause for retention for reasons indicated in para 5–11 and provided the officer is not eligible for retirement under chap 4.) This recommendation of the type of discharge may be more favorable, but not less favorable, than that recommended by the board.

(4) The officer's appellate brief (if submitted). The GOSCA must include a statement in the forwarding memorandum that the brief was reviewed and may submit any other appropriate comments concerning the brief. Derogatory information which has not been previously provided to the respondent will not be added to the forwarding memorandum.

e. When a board of inquiry recommends elimination, the MACOM commander will—

(1) Close the case if retention is appropriate (only applicable to eliminations initiated under paragraph 5–13*a*(2) and comply with the requirements of paragraph 5–23*b*.

(2) If elimination is appropriate or if elimination was initiated under paragraph 5–13*a* (1) (3) or (4)—

(a) Forward the board of inquiry proceedings to Cdr, PERSCOM (TAPC–OPP–M) recommending approval or disapproval of the board of inquiry recommendations. (State the reasons when disapproval is recommended.) The MACOM may recommend retention when elimination is recommended by the board of inquiry.

(b) Recommend the type of discharge to be issued. (Only applicable where the officer was required to show cause for retention for the reasons stated in para 5–11 and provided the officer is not eligible for retirement under chap 4). This recommendation of the type of discharge may be more favorable, but not less favorable, than that recommended by the board.

(c) Submit any appropriate comments concerning the contents of the brief submitted by the officer, to include a statement that the brief was reviewed.

(d) Personally sign the forwarding endorsement.

f. If the GOSCA or the MACOM commander, in their review of a case which elimination has been recommended by the board of inquiry, notes a substantial defect in the proceedings, action will be taken as follows:

(1) Retention of the member may be directed (only applicable to eliminations initiated under para 5–13*a*(2)).

(2) If the board has failed to make findings and recommendations as required by this regulation, return the case to the same board for compliance with this regulation.

(3) If there is an apparent procedural error or omission in the record 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 of inquiry committed an error which materially prejudiced a substantial right of the member, convene (or in the case of the MACOM commander, direct the GOSCA to convene) a new board to hear the case. 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 reasonable available to testify at the rehearing. The new board may call additional witnesses. New allegations of substandard performance or misconduct may be presented to the board of inquiry on due notice to the member. The new board will not be advised of the findings and recommendations of the previous board. However, findings and recommendations of the second board which are less favorable to the respondent may not be approved unless additional allegations of substandard performance or misconduct were considered and found substantiated by the board of inquiry. No more than one rehearing may be directed without approval from HQDA.

Section VIII
Review and Final Action by Department of the Army

5–24. Actions concerning defects

At any time after receipt of a case in PERSCOM, the following actions may be taken with respect to substantial defects which may be noted:

a. The retention of the officer may be directed.

b. If the board of inquiry has failed to make findings or recommendations required by the applicable regulations, the case may be returned to the same board for compliance with the regulations concerned.

c. 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, the case may be returned to the same board for corrective action.

d. If the board of inquiry committed error, other than as indicated in *b* or *c* above, which substantially prejudiced a substantial right of the officer, the case may be returned for a rehearing by a new board. The new board may be furnished the evidence properly considered by the previous board, including extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The new board may call additional witnesses. New allegations, which could form the basis for an elimination action under paragraph 5–10 and 5–11, may be presented to the new board of inquiry. First, however, the officer will be given notice of the new allegations and provided an opportunity to respond. The case will then be processed as stated in paragraph 5–14. The new board will not be advised of the findings and recommendations of the previous board. However, only so much of the new board's findings and recommendations as are not less favorable than the findings and recommendations of the previous board or any action or recommendation of the appointing authority based on may be approved, unless additional allegations are considered by the subsequent board.

e. When a case is returned to the board pursuant to *b* or *c* above and one or more members of that board are unavailable (e.g., death or transfer), new members may be appointed. The case may proceed (opportunity to challenge having been (given)) after the substance of all proceedings shall have been made known to the new member(s) and the recorded testimony of each witness previously examined has been read by him or her.

5–25. Action by CG, PERSCOM prior to board of review

On receipt of elimination actions from the MACOM commander, the CG, PERSCOM may—

a. Close the case (prior coordination with initiating official required for eliminations initiated under para 5–13*a* (3) and (4)) and comply with the requirements of paragraph 5–23*b*.

b. Forward the case to a board of review.

5–26. Board of review

a. When a board of inquiry recommends elimination, the proceedings will be referred to an appropriate board of review. The Secretary of the Army will appoint the boards of review, which will furnish recommendations for his or her disposition of cases, after thorough review of the records of cases and determination whether or not officer should be retained in the Army.

b. No officer will sit as a member of the board of review who—

(1) Has been called as a witness.

(2) Sat as a member of the selection board in the particular case.

(3) Appeared as a witness before or sat as a member on any previous board of inquiry, board of review, or board of officers with respect to the respondent.

(4) Sat as a member of or was the reviewing authority in a court-martial before which the respondent was the accused.

(5) Previously has recommended or participated in recommending elimination, or release from active duty.

(6) Rendered a derogatory evaluation report on an officer being considered.

(7) Otherwise has considered the case of such respondent.

(8) Does not meet the requirements of table 5–1.

c. Review will be limited to the record of proceeding of the board of inquiry and briefs filed with the case. No appearance in person or by counsel is authorized.

d. The board of review will, if requested, furnish the respondent a copy of its proceedings.

e. The board of review will refer to paragraph 5–55 for homosexuality cases.

5–27. Action by the board of review

a. The board of review will recommend either—

(1) Retention in the Army (with or without reassignment), in which case the proceedings will be forwarded to Cdr, PERSCOM and the case closed.

(2) Elimination from the Army (and type of discharge for cases referred to in paragraph 5–11), in which case the recommendation will be transmitted to the Secretary of the Army for approval or disapproval.

b. When the board of review recommends elimination, it may also recommend clemency, stating reasons. Only the Secretary of the Army may grant clemency.

5–28. Secretary of the Army

a. Action by the Secretary of the Army on a board of review recommendation is final and conclusive.

b. Officers discharged solely for substandard performance of duty will receive an honorable discharge (para 1–4). Officers otherwise discharged under this regulation will not receive a discharge of less favorable character than that recommended by a board of inquiry. Additionally, if the case has been returned to a board of inquiry for a rehearing, either by the major commander or PERSCOM, the discharge will not be characterized in a manner less favorable than that recommended by the initial board of inquiry unless additional allegations are considered by the subsequent board.

5–29. Action by CG, PERSCOM

a. When a board of review or the Secretary of the Army determines that an officer has established that he or she should be retained in the Army, the CG, PERSCOM will close the case and notify the commander or headquarters agency who recommended elimination.

b. When the Secretary of the Army determines that an officer will be eliminated, the CG, PERSCOM will take necessary administrative action to effect the officer's elimination. Separation will occur not earlier than 5-days nor later than 14 days after receipt by the command of notification that the officer is to be separated.

c. Notification of final action on each homosexuality case will be forwarded to the Cdr, U.S. Army Central Personnel Security Clearance Facility (CCF) ATTN: PCCF–MCO, Fort George G. Meade, MD 20755–5250. Notification will include the name, grade, SSN, date and place of birth, and action taken on the case.

Section IX
Elimination of Probationary Officers

5–30. Applicability

The section is applicable to the following probationary officers:

a. RA commissioned officers with less than five years of active commissioned service (10 USC 630).

b. USAR officers who have less than three years commissioned service.

c. Warrant officers who have less than three years service since original (10 USC 101(35)) appointment in their present component.

5–31. Additional reasons which authorize elimination

In addition to the reasons authorizing elimination stated in paragraphs 5–10 and 5–11, and reasons which require review of an officer's overall record (para 5–12), the following additional reasons are applicable for officers described in this section:

a. Failure by an RA officer of a course at a service school. (For failure by a USAR officer, see chap 3, sec II.)

b. Failure of an officer to resign under AR 635–120, chapter 14 when his or her commander determines the best interest of the Government and the individual can be served by his or her discharge.

c. The discovery of any other conditions, which, if they had been known at the time of appointment, would have precluded appointment.

d. The discovery of any other condition which evidences that the officer's retention in the Army would not be in the best interest of the United States.

5–32. Elimination procedures

a. Initiation of action. Unless precluded by paragraph 5–13*d*(4), elimination action must be initiated against a probationary officer:

(1) Who is medically diagnosed as drug dependent.

(2) Who is identified as having committed an act of personal misconduct involving drugs.

b. Processing.

(1) If, at any time during the processing of the recommendation, the officer no longer meets the applicable criteria stated in paragraph 5–30, the case will be processed under paragraph 5–14. Processing of recommendations for elimination of officers under this section does not require referral to a board of inquiry or a board of review, except under paragraph 5–32*b*(3)*(d)* below.

(2) When the officer is recommended for elimination, the GOSCA or CG, PERSCOM will take the actions required in paragraph 5–14 (except para 5–14*(c)*(4) does not apply). In addition, the GOSCA or the CG, PERSCOM will notify the officer:

(a) Of the character of discharge recommended (para 1–4).

(b) That if an honorable or general (under honorable conditions) discharge is recommended, there will be no board of inquiry held before the officer's case is forwarded to the ASA (M&RA) (see fig 5–1, para 5).

(3) On receipt of the officer's statement and/or option selection, the GOSCA or CG, PERSCOM will—

(a) Close the case (see para 5–55 for homosexuality cases).

(b) If the officer elects one of the options listed in paragraph 5–14*c*(1) through (3), forward the appropriate application and all elimination documents directly and expeditiously to Cdr, PERSCOM (TAPC–OPP–M). Recommend approval or disapproval of the application and include the point of contact (name and telephone number), and inform the MACOM of this action.

(c) If the officer declines to elect one of the options listed in paragraph 5–14*c*(1) through (3), and an honorable or general (under honorable conditions) discharge is recommended, forward the case directly to Cdr, PERSCOM (TAPC–OPP–M). Include the point of contact (name and telephone number) and inform the MACOM of this action.

(d) If the officer declines to elect one of the options listed in paragraph 5–14*c*(1) through (3), and an other than honorable discharge is recommended, the GOSCA or CG, PERSCOM will follow the procedures for nonprobationary officers provided in this chapter, section VI.

c. Final determination.

(1) If the officer declines to elect one of the options listed in paragraph 5–14c(1) through (3), and an honorable or general (under honorable conditions) discharge is recommended, CG, PERSCOM will send the case to the ASA (M&RA) for final decision.

(2) The ASA (M&RA) may direct—

(a) Retention.

(b) Discharge.

(c) Referral to a board of inquiry. The case will be processed under this chapter, Section VI.

(3) Action by the ASA (M&RA), acting for the Secretary of the Army, is final.

Section X
Guidance for Field Commanders and Boards of Inquiry

5–33. When elimination action is appropriate

a. No person has an inherent right to continue service as an officer. The privilege of service is the officer's as long as he or she performs in a satisfactory manner. Responsibility for leadership and example requires that an officer accomplish his or her duty effectively and conduct themselves in an exemplary manner at all times. The Army has no place for officers who cannot meet these requirements, and their elimination is essential. In view of the rapidity with which hostilities can now occur and the attendant likelihood that many officers may be called to active duty on short notice, the same standards of efficiency and conduct apply to officers of all components of the Army of the United States.

(1) Every officer deserves a fair chance to demonstrate his or her capabilities. In cases where an officer shows ineffective tendencies, especially, if he or she is inexperienced, the officer, when practicable, be given another chance under another commander. But at the same time, his or her ineffectiveness should be systematically recorded in documents which are specific as to the period each covers, the duties observed, and the defects noted. Any officer who has been given a fair chance and failed to become an effective officer must be eliminated, lest his or her weakness be paid for with the lives of others.

(2) Recommendation for elimination under this regulation cannot be based on empty generalities and vague impressions. It is necessary to establish with some precision the reasons why an officer is considered ineffective. Basically, he or she is one who does not get acceptable results. Inefficiency is a relative matter, hence a finite definition of the ineffective officer can never be reached. Many ineffective officers are attractive, handsome, decent, gentleman-like, gentlemanly, educated, honorable, intelligent, and generous, and yet ineffective. It is perfectly proper to give an officer credit for his or her good qualities in the same letter or efficiency report which reveals his or her ineffectiveness as an officer. Specific reasons for failure should be documented with concrete examples in support.

(3) Section XIV provides guidance on homosexuality.

b. An officer whose security clearance is withdrawn or withheld because of unfavorable information concerning loyalty, subversion, or security may be processed for elimination under AR 604–10 except for non-probationary (see para 5–30*a* above) RA commissioned officer who by statute can be eliminated only under the procedures prescribed by this regulation. However, the administrative procedures prescribed by AR 604–10 will be followed on this excepted category of personnel until the time as the case is referred to Cdr, PERSCOM (TAPC–OPP–M) for processing under this regulation. (See AR 604–10.)

c. An officer whose security clearance is withdrawn or withheld because of derogatory information of a suitability nature is processed for elimination under this regulation. (See AR 600–37.)

Section XI
Boards of Inquiry

5–34. Mission of board of inquiry

The purpose of a board of inquiry is to afford the respondent a fair and impartial hearing to determine whether he or she should be retained in the Army. It is the responsibility of the Government to establish by a preponderance of evidence that the officer has failed to maintain the standard desired for his or her grade and branch or that he or she has conducted themselves in a manner prejudicial to national security. In the absence of such a showing by the Government, the board must find for retention. The respondent, however, is not relieved of the responsibility to come forward with evidence to refute the Government's position.

5–35. President of the board

The president of the board—

a. Ensures that the respondent is granted the time as is reasonably necessary to prepare and present the case. Undue delay will

not be permitted, and the case will be conducted as expeditiously as possible. (See para 5–21*b* above.)

b. Makes necessary arrangements for securing a proper location with an atmosphere which is consistent with the spirit and seriousness of the proceedings, and determines the date for the board to convene (not earlier than 30 days from date of respondent's receipt of notification to show cause by CG, PERSCOM or the GOSCA).

5–36. Recorder

The recorder—

a. Notifies the respondent in writing of the time and place that the board of inquiry will be convened. The notice will be given not less than 10 days prior to the date fixed by the president for the board to convene.

b. Ensures that all records and documents referred to the board with the case are furnished to the members. Allows respondent access to the releaseable records (para 5–21*d* above) and furnishes copies, if desired, at the time in advance of the hearings as is reasonably necessary to enable the respondent to prepare and present his or her case.

c. Will, as soon as appointed, request two copies of the officer's OMPF (in microfiche) from Cdr, PERSCOM (TAPC–MSR).

5–37. Composition of boards of inquiry

a. General. Boards of inquiry appointed for the purpose of considering officers for elimination will be composed as indicated in table 5–1.

(1) Board will consist of not less than three voting members, and a recorder, legal adviser, and respondent's counsel without vote (*e, f,* and *g* below).

(2) Voting members serving on a board must—

(a) Be serving on active duty in the Army (except as stated in (3) below), in the grade of colonel or above.

(b) Be senior in grade and rank to the officer being considered for elimination.

(3) Voting members will be members of the RA on the active duty list, except when the case pertains to a Reserve component officer. In such a case, one or more of the voting members will be a member of the Reserve components. If a Reserve component officer on active duty is not reasonably available, MACOM commanders will send a message to Cdr, PERSCOM, ALEX, VA// TAPC–OPP–M// containing the following information:

(a) That a Reserve component officer on active duty is not reasonably available to serve on the board of inquiry.

(b) Request that a retired Reserve component officer, in the grade of colonel or above, be ordered to active duty to serve on the board of inquiry.

(c) The grade and date of rank of the officer being considered for elimination.

(d) The approximate date that the board of inquiry is to convene.

(e) If an eligible and qualified retired USAR officer(s) (10 USC 1187) is known to be located in the MACOM commander's area of responsibility, furnish the name, grade, date of rank, and address of the officer(s). HQDA will make the final selection of the officer(s) and will furnish instructions to the CG, ARPERCEN to issue the active duty orders. Cdr, PERSCOM (TAPC–OPP–M) will notify the MACOM commander by message of the officer(s) selected, and the date of entry on active duty.

(4) The recorder of a board of inquiry will be permanently assigned, and service on the board will constitute his or her primary duty. The assignment will not preclude utilization on other duties when workload permits.

b. Control of number of board. Normally, one board of inquiry will be established in an Army area or oversea command unless geographic location, personnel population, or budgetary consideration make such centralization impracticable. Consonant with the above, the minimum number of boards will be established. The CG, U.S. Army, Military District of Washington, will have jurisdiction over all officers, except those in First U.S. Army, stationed in the vicinity of Washington, DC, on whom elimination action has been initiated.

c. Provisions applicable to all boards of inquiry.

(1) *Orders Appointing Boards.* GOSCA will issue orders appointing boards of inquiry.

(2) *Oath administered.* Board members and recorders will be sworn.

(3) *Voting members of boards of inquiry.*

(a) If the hearing involves a minority, female or special branch (10 USC 3064) officer, the board will, on the written request of that officer, include as a voting member an officer of that same category, if reasonably available. When the officer being considered comes within more than one of the above categories, and he or she requests, in writing, members from all or some of those categories, this membership requirement can be met by one or more officers, if reasonably available.

(b) Membership of the board will include an officer of the same branch as the respondent when the reasons for elimination include substandard performance of duty (para 5–10, except 5–10*i*), if the officer is reasonably available.

(c) Chaplains or Medical, Dental, or Veterinary Corps officers normally will not serve as board members, except as required under *(b)* above.

(d) No hearing will be conducted with less than three voting members present.

(e) Only voting members may attend closed session, except as provided in paragraph 5–46 below.

(f) A voting member is subject to challenge for cause. The challenge will be determined by the senior unchallenged member on the board.

(4) *Ineligible officers.* No officer will sit as a voting member of a board of inquiry who—

(a) Is a witness in the case before the board.

(b) Sat as a member of the selection board in the particular case.

(c) Appeared as a witness before or sat as a member on any previous board of inquiry, board of review, or other board of officers with respect to the respondent.

(d) Sat as a member of or was the reviewing authority in a court-martial before which the respondent was the accused.

(e) Previously recommended or participated in recommendation for elimination or release from active duty of the respondent.

(f) Rendered a derogatory efficiency/evaluation report on the respondent.

(g) Otherwise has considered the case of the respondent.

d. Challenges for cause. In addition to the reasons in *e*(4) above, a member may be challenged for cause for any reason which indicated that he or she cannot participate in the case in a fair and impartial manner. The legal and the female adviser, if any, may also be challenged for any reason in *e*(4) above or for any other reason which indicates that he or she cannot participate in the case in a fair and impartial manner.

e. Recorder of boards of inquiry.

(1) The recorder of each board of inquiry will be an officer of the Judge Advocate General's Corps. That recorder will be responsible for the proper presentation and handling of the Government case to include development of new evidence pertinent to the factual allegations in the case. His or her duties are not discharged by a perfunctory entering in the record of evidence provided by the Department of the Army. The recorder will make the investigation of the case as is indicated, seek new evidence which may be locally available, and become thoroughly familiar with the respondent's history and the deficiencies or conduct, as appropriate, which led the selection board, CG, PERSCOM or GOSCA to conclude that the officer fails to meet prescribed standards or has been derelict in his or her moral or professional duties. The recorder will also be able to place evidence offered by the respondent in perspective with the remainder of his or her military record.

(2) Alternate or assistant recorders may be detailed to the board.

(3) In case of RA commissioned officers when the reason for elimination is based on acts or behavior which is not clearly consistent with the interest of national security, the appointing authority will make available for appointment to the Board of Inquiry a legal adviser, who will perform in connection with the board proceedings the duties prescribed in AR 604–10, chapter 6. The recorder and assistant recorder ((1) and (2) above) will perform the duties prescribed in this chapter and AR 604–10, chapter 6.

f. Legal adviser. Appointing authority will be responsible for assigning an officer of the Judge Advocate General's Corps as legal adviser to each board of inquiry. The legal adviser will not be a voting member and will serve as adviser only. (See para 5–44 below.)

g. Respondent's counsel.

(1) An officer of the Judge Advocate General's Corps will be assigned to each board of inquiry as counsel for the respondent. On electing a board of inquiry hearing, the respondent will be advised that he or she is entitled to counsel of his or her own choice. Military counsel of the officer's choice will be provided if reasonably available. Otherwise, military counsel will be assigned. The respondent is also entitled to retain civilian counsel at his or her own expense. If civilian counsel is retained, the assigned counsel will be released of all duties and responsibilities in connection with the case, except to the extent that respondent elects to utilize his or her services. If other military counsel is furnished the respondent, assigned counsel will be released of all duties and responsibilities in connection with the case. (See para 5–21*a* above.)

(2) Respondent may request, personally or by counsel, copies of documents contained in his or her Official Military Personnel File and/or efficiency report files to assist in the preparation of the case. The requests will be addressed to the CG, PERSCOM and normally will be made by electrically transmitted message. Requests will be limited to documents that are relevant to the issue being considered and will be specific in the identification of the documents desired. The CG, PERSCOM will provide copies of documents desired. (The CG, PERSCOM will provide copies of documents in triplicate only, and request for additional copies will not be honored.)

Section XII
Conduct of Hearings

5–38. Members of the board

a. The members of the board will be asked if they are aware of any grounds which might be the basis for challenge for cause.

b. All members of the board (voting and non-voting) will be sworn.

c. The members of the board will refresh their memories as to the contents of the records, documents, and reports which were furnished with the case.

5–39. President of the board

a. The president of the board will call each session to order formally. (At each session, the time, place, and station will be entered on the record.)

b. The president will explain to the respondent, the respondent's responsibilities, rights, and privileges as follows:

(1) *Personal appearance and representation.* He or she may present evidence and represent themselves, or be represented by counsel (see para 5–21*a* above), at all open proceedings of the board of inquiry. He or she will not be reimbursed for expenses incident to the appearance or assistance of civilian counsel.

(2) *Request separation.* At any time prior to final action in the case, he or she may—

(a) Apply for voluntary retirement, if eligible.

(b) Tender resignation.

(c) Request discharge pursuant to 10 USC 1186 (RA commissioned officers only). If officer is separated under *(b)* and *(c)* above, he or she will receive an honorable discharge certificate, unless misconduct, moral or professional dereliction or national security is involved. In these instances, type of discharge certificate will be determined in HQDA. (See AR 635–120, chap 8.).

(3) *Challenge members.* He or she may challenge for cause any member of the board. (The convening authority shall appoint additional members, if necessary to ensure that the board membership is not reduced to fewer than 3 officers.)

(4) *Request appearance of witnesses.* He or she may request appearance as witnesses before a board of inquiry of members or civilian employees of the Army whose testimony he or she believes to be pertinent to the case. The personal appearance of witnesses should be obtained whenever practicable in preference to the use of depositions, affidavits, or written statements. Accordingly, such requests will be honored by the board if the requested witness is considered reasonably available and his or her testimony will add materially to the case. Requests for witnesses will include a statement setting forth the substance of expected testimony. The question of availability is a matter for determination by the witness' commander. If the latter determines that a requested witness is not reasonably available, the reasons will be furnished to the president of the board who will cause such determination to be appended to the record of proceedings. Military members and civilian employees of the Army, when called as witnesses in behalf of the United States and required to perform travel, are entitled to the temporary duty allowance as prescribed in Joint Travel Regulation (JTR) Volume 1 or 2. (see AR 37–106, chap 13.) Other witnesses desired by the respondent will not be reimbursed for expenses incident to their appearance before the board unless they qualify for invitational travel orders under JTR, paragraph C6000.11.

(5) *Question witnesses.* The officer or his or her counsel may question any witness brought before the board.

(6) *Have access to records.* At all stages of the proceedings he or she will be allowed full access to the records of the hearing, including all documentary evidence referred to the board, except when protection of classified documents is clearly consistent with the interest of national security. In such cases, the respondent will, to the extent that the national security permits, as determined by the Secretary of the Army, be furnished a summary of the information contained in the documents withheld.

(7) *Have knowledge of his or her past performance of duty.* The officer has the right to have knowledge of his or her past performance of duty as reflected in the efficiency reports.

(8) *Copy of board proceedings.* He or she will be furnished a copy of the proceedings, less classified documents, if requested.

(9) *Present the case.* The respondent may, at any time after the appointment of the board and before the close of the proceedings, submit documents to the board of inquiry from the record of service, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily. The officer will be allowed to present his or her case without undue interference by the board. However, unreasonable delay will not be tolerated. The presentations may include any evidence relevant to the respondent's rehabilitation or reformation as well as any matter in extenuation or mitigation respondent desires to present.

(10) *Testify or remain silent.* The officer may testify in person or elect to remain silent; but should the officer elect to testify, he or she may be required to submit to examination by the board as to any matter concerning which he or she testified; but not in contravention of the UCMJ, Article 31. On electing to testify, respondent is entitled to an explanation of his or her rights regarding self-incrimination and degradation under UMCJ, Article 31, and a Privacy Act statement will be prepared and signed (see AR 15–6, app C).

(11) *Request a continuance.* (see para 5–21*b* above.)

c. The president will administer the oath to the recorder.

d. The president will ensure that the board members are completely familiar with elimination policy expressed in this regulation and have examined and studied available documents pertaining to the hearing concerned.

5–40. Recorder

The recorder is responsible for the actions shown below. He or she will not assist the board in drafting its findings and recommendations.

a. For the proper pursuit and handling of the Government's case.

b. At the initial session, for reading the order appointing the board.

c. At each session for—

(1) Entering in the record, the time, date, place, and station.

(2) Noting for the record, the presence of the members of the board, the respondent, and the counsel, if any.

d. For verbally presenting to the board of inquiry a resume of the entire case; when appropriate.

e. For administering the oath to members of the board (including the legal adviser), witnesses, and reporter.

f. For cross-examining the witnesses called by the respondent or the counsel.

5–41. Respondent

a. Respondent will be present at all open sessions of the board unless he or she is excused by the President of the board and expressly waives his or her right to attend. Respondent's counsel will be present unless his or her absence is expressly excused by the President.

b. Before the hearing is terminated, the respondent will be asked to state for the record whether he or she has presented all available evidence in his or her behalf. If answered in the negative, the respondent will be required to make a concise statement of the substance of the expected evidence. The statement and any documentary evidence referred to will be included in the record of the hearing. Then the board will determine whether the respondent will be granted additional time to procure and present the evidence.

5–42. Spectators

Spectators will not be allowed to be present during the proceedings except those specifically requested by the respondent or authorized by the appointing authority. No person who is to be called as a witness will be present as a spectator.

5–43. Witnesses

Witnesses appearing before the board will be sworn. Boards of inquiry may call witnesses on own motion.

5–44. Legal adviser

The legal adviser is prohibited from taking part in presenting the case or cross-examining witnesses. He or she will be present at all open sessions and may be called on to advise on admissibility of evidence, arguments, motions or any other matter determined appropriate by the president of the board. The legal adviser will not, under any circumstances, give ex parte advice, except as provided in paragraph 5–46*b*, in a closed session of the board inquiry. The legal adviser may not dismiss any factual allegation, reason for elimination, or recommendation for elimination against the respondent, but will advise the board as to the proper form of such, paying special attention to paragraph 5–47 below.

5–45. Additional evidence

a. If during the course of the recorder's investigation of the case, (as indicated in para 5–37*e*(1)), the recorder finds additional evidence, similar in nature to that previously presented to the officer under paragraph 5–14, that evidence is admissible. This additional evidence may be considered by the board of inquiry as proof of an amended or new factual allegation in support of a reason for elimination (para 5–10 or 5–11).

b. Only in those instances where the newly discovered evidence results in the addition of a reason for elimination (not included in the officer's notification memorandum (para 5–14)) is it necessary to return the case to the CG, PERSCOM or GOSCA for issuance of a new notification memorandum.

c. The fact that the additional evidence may support the stated reason of conduct unbecoming an officer (para 5–11*a*(10)) does not in itself allow its consideration, unless it can also be related to another enumerated reason for elimination in paragraph 5–11*a*(1) through (9), which was included in the officer's notification memorandum.

d. If such additional evidence is considered, and the board determines that the officer has not had a reasonable period of time to prepare a response to the evidence, a reasonable delay must be granted on the officer's request.

Section XIII
Conclusion of Hearings

5–46. Deliberation

a. After presentation of closing arguments, the board of inquiry will meet in closed session. Except as provided in *b* below, only the voting members of the board will be present in closed sessions.

b. Advice of the legal adviser may be sought whenever necessary, but the board will be opened and the advice will be obtained in open session in the presence of the recorder, respondent, and his or her counsel. The proceedings will be made a part of the record. However, after the board has determined its findings and recommendations, the board may request the presence of the legal adviser and the reporter in its closed session for the purpose of assisting the board in putting its findings and recommendations in acceptable format, and such proceedings will be transcribed verbatim and made a part of the record.

5–47. Findings and recommendations

a. The board will determine its findings and recommendations by secret written ballot in closed session; a majority vote will decide any issue.

(1) Based on the evidence presented at the hearing, the board will make separate findings with respect to each factual allegation and each reason for elimination (para 5–10 and 5–11 above). A brief statement of the reason(s) (including factual data when considered necessary for clarification) for each finding will be included. The board may, based on the evidence, render findings which amend old or specify new allegations of fact so long as such allegations support a reason for elimination included in the findings of the selection board or in the notification memorandum to the officer under paragraph 5–14.

(2) When the findings have been determined, the board will determine appropriate recommendation. The board will refer to paragraph 5–56 for homosexuality cases. Recommendation is limited to one of the following: retention (with or without reassignment); or elimination.

(3) When the board recommends elimination because of misconduct, moral or professional dereliction or in the interest of national security, the recommendation will include type of discharge certificate to be issued, if the member is not retirement eligible under the provisions of 10 USC, section 3911. Paragraph 1–5 contains a list of the types of discharge certificates.

b. The findings and recommendation of the board will be announced to the respondent when determined.

5–48. Report of proceedings

a. The record of proceedings shall be kept in summarized form unless a verbatim record is required by the appointing authority after consultation with the servicing judge advocate or legal adviser concerning the availability of verbatim reporters. The summarized transcript will include—

(1) A copy of the order appointing the board of inquiry and amending orders (if any).

(2) A copy of the documents showing initiation of the elimination action and the decision to refer the case to a board of inquiry.

(3) Names of witnesses called before the board.

(4) A verbatim transcript of the findings and recommendations of the board of inquiry.

(5) Other information as deemed appropriate by the appointing authority. The board president, legal adviser, recorder, or respondent's counsel may recommend other information for inclusion.

(6) An accurate account of the board's proceedings, insofar as practicable, will be prepared according to the general instructions set forth in AR 15–6, chapter 3, section III.

(7) A summarized record of testimony presented and heard, and all other formal conversations which took place during all open sessions of the board of inquiry.

(8) A summarized record of any closed session which required the presence of the legal adviser and the reporter.

(9) True copies or true extract copies of all documents used as a basis for requiring the respondent to show cause; and all other documents which are accepted as evidence in the case.

(a) These documents must be legible and reproducible.

(b) Copies which are illegible will not be used.

(10) A statement that the findings and recommendations were determined by secret written ballot in closed session. The members of the board of inquiry who did not concur in the findings and/or recommendations of the board of inquiry may file a statement of their nonconcurrence, and the reasons, for inclusion in the record.

b. A guide for the preparation of verbatim reports of boards of inquiry is contained in appendix B. This text should be modified freely when preparing a summarized transcript.

c. A board of inquiry data sheet (app C) will be used as a final check of the report of proceedings only as it is consistent with the elimination procedures established by this change. Appendix C is not intended to prescribe required procedures.

d. Clemency may not be concurrently recommended by a board of inquiry when the board has concluded that an officer should be involuntarily separated. The exercise of clemency is a prerogative of the Secretary of the Army only.

Section XIV
Separation for Homosexuality

5–49. Purpose

This section establishes policy and provides procedures and guidance for separation of officer personnel for homosexuality.

5–50. Policy

a. 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 these officers adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among officers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of officers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain officers of the Armed Forces; to maintain the public acceptability of military service; and to prevent breaches of security.

b. Nothing in this section precludes separation in appropriate circumstances for another reason.

c. The provisions of this section do not preclude trial by court-martial in appropriate cases.

5–51. Criteria

The basis for separation may include preservice, prior service, or current service conduct or statements. An officer shall be separated under the provisions of this section if one of the following approved findings is made:

a. The officer 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 officer's usual and customary behavior:

(2) Such conduct under all circumstances is unlikely to recur because it was solely the 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 officer during a period of military service.

(4) Under the particular circumstances of the case, the officer's continued presence in the service as an officer of the Army is consistent with the interest of the Army in proper discipline, good order, and morale.

(5) The officer does not desire to engage in or intend to engage in homosexual acts.

b. The officer has stated that he or she is a homosexual or bisexual unless there is a further finding that the officer is not a homosexual or bisexual.

c. The officer has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the officer 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).

5–52. Type of discharge

a. A discharge under other than honorable conditions may be issued if there is a finding that during the current term of service the officer 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.

(7) In another location subject to military control pursuant to a finding that the conduct had, or was likely to have had, for reasons indicated in the findings, an adverse impact on discipline, good order, or morale due to the close proximity of other officers of the Armed Forces under circumstances in which privacy cannot reasonably be expected.

b. In all other cases, the type of discharge will reflect the character of the officer's service, according to chapter 1.

5–53. Action by unit commander

If there is any creditable evidence to believe that a basis for separation exists under paragraph 5–51, the unit commander of the officer will—

a. Initiate an investigation according to paragraph 5–14.

b. Ensure that an appropriate medical examination and mental status evaluation are obtained as prescribed in paragraph 5–8, when an officer is to be processed for separation.

c. Recommend elimination according to paragraph 5–13 or 5–32, if appropriate.

5–54. Action by intermediate commanders

The intermediate commanders may take one of the following actions:

a. Recommend disapproval of the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 5–51 has occurred.

b. Recommend approval of the commander's recommendations and forward the report of investigation to the GOSCA.

5–55. Action by CG, PERSCOM or GOSCA

On receiving a recommendation for separation for homosexuality, the CG, PERSCOM or GOSCA may take one of the following actions:

a. Disapprove the recommendation, close the case, and return it to the originator because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 5–51 has occurred.

b. Approve the recommendation and proceed as indicated in paragraph 5–14.

5–56. Recommendations of Boards of Inquiry and Boards of Review

A board convened to determine whether an officer should be separated for homosexuality will follow the procedures authorized in appropriate paragraphs of this regulation, except:

a. If a board of inquiry or review finds that one or more of the circumstances authorizing separation under paragraph 5–51 is supported by the evidence, the board shall recommend elimination as appropriate, unless the board finds that retention is required under the limited circumstances described in paragraph 5–51 (see *d* below).

b. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph 5–51 has occurred, the board shall recommend retention unless the case involves another basis for separation of which the officer has been duly notified.

c. The burden of proving that retention is required under the limited circumstances described in paragraph 5–51 rests with the officer except in cases where the officer's conduct was solely the result of a desire to avoid or terminate military service.

d. Specific findings regarding the existence of the limited circumstances requiring an officer's retention set forth in paragraph 5–51 are required to be made by a board of inquiry or review only if—

(1) The officer clearly and specifically raises the limited circumstances.

(2) The board relies on such circumstances to justify the officer's retention.

Table 5–1
Elimination boards

Officer	Board of: Inquiry	Board of: Review	Membership for Boards of: Inquiry*	Membership for Boards of: Review
Probationary Officers (para 5–30)	YES, if: (1) Selection Bd; GOSCA; CG, PERSCOM recommends discharge under "other than honorable" conditions. (2) Sec Army directs; otherwise NO.	When Board of inquiry recommends elimination.	(When employed, membership as specified below, depending on the component of the officer.)	
Non-Probationary RA officers	YES (10 USC 1182)	YES (10 USC 1182)	Three or more eligible officers (10 USC 1187) Members must be on the active duty list of the Army (10 USC 620) serving in a grade above LTC and is senior in grade and rank of the officer being considered.	
All other officers	YES	YES	3 or more eligible officers (Members must be serving on active duty in the grade of colonel or above, and must be senior in grade and rank to the officer being considered for elimination. If a Reserve component officer on active duty is not reasonably available, see para 5–37*a*(3)). (Membership will include at least one officer of the Reserve Component.)	
(10 USC 1163a prohibits elimination of a Reserve officer who has at least 3-years of commissioned service unless pursuant to an approved recommendation of a board of officers.)				

*Note:
See paragraph 5–37*c*(3)*(a)* in cases involving a minority, female, or special branch (10 USC 3084) officer.

(Letterhead)

Office Symbol (Marks Number) *(Date)*

MEMORANDUM THRU (Channels)

FOR *(Individual Officer)*

SUBJECT: Initiation of Elimination

1. You are required to show cause for retention on active duty under the provisions of *(insert as appropriate: AR 635–100, para 5–10, 5–11, and/or 5–31)* because of *(insert appropriate reasons(s); i.e., substandard performance of duty; and/or misconduct; and/or moral or professional dereliction).*

2. My action is based on the following specific reasons for elimination: *(List only applicable reasons as outlined in AR 635–100, para 5–10, 5–11, and/or 5–31, which can be supported by specific factual allegations and evidence.* Examples are listed in a and b below):

a. Failure to exercise necessary leadership required of an officer of your grade. Specifically, as a result of the following incidents, you were relieved from command as evidenced by your relief for cause OER for the period 871202–880314 *(encl xx):*

(1) *(State factual allegations)*

(2) *(State factual allegations)*

b. Intentional neglect of performance of duties. Specifically, your neglect to properly secure weapons assigned to your custody as evidenced by OER for the period 871202–880314 *(encl xx)* and Letter of Reprimand, dated 10 April 1988 *(encl xx).*

3. In conjunction with this action, a DA Form 268 (Suspension of Favorable Personnel Actions), has been initiated according to AR 600–8–2 *(encl xx).*

4. You may have either the assistance of an officer of the Judge Advocate General's Corps appointed as counsel, or seek civilian counsel of your own selection (obtained by you at no expense to the Government) to prepare a written statement indicating any pertinent facts or any rebuttal bearing on the question of your elimination.

a. This statement may be sworn or unsworn.

b. Documents submitted in rebuttal must be legible and reproducible.

c. You may also confer with your counsel for legal advice concerning your options stated in paragraph 7.

5. (FOR PROBATIONARY OFFICERS ONLY) I am recommending you be discharged with an/a *(specify discharge)* Discharge. (For officers recommended for an honorable or general discharge add) "If an Honorable or General Discharge is recommended, your case will be forwarded directly to PERSCOM for submission to the Assistant Secretary of the Army (Manpower and Reserve Affairs), without referral to a board of inquiry." (For officers recommended for misconduct or moral or professional dereliction add) "The least favorable discharge you may receive is an Under Other Than Honorable Conditions Discharge." The least favorable characterization of service you may receive is an under other than honorable conditions (include when an officer is recommended for misconduct or moral or professional dereliction). "The final decision on the type of discharge will be determined by HQDA" (include for all officers).

(FOR A NONPROBATIONARY OFFICER) If you are eliminated for substandard performance of duty only, you will receive an Honorable Discharge. If you are eliminated for misconduct, moral or professional dereliction, the least favorable discharge you may receive is an Under Other Than Honorable Conditions Discharge. The final decision on the type of discharge will be determined by HQDA (include for all officers).

6. Before taking further action, I will consider all written comments or rebuttal that you may submit with your acknowledgement.

Figure 5–1. Sample format for initiation of elimination

7. In accordance with AR 635-100, paragraph 5-14, you may--

a. Submit your resignation in lieu of elimination according to AR 635-100, chapter 5, and AR 635-120, chapter 4. You may not request an effective date. The effective separation date will be no later than *(use applicable—14 days, if assigned CONUS and 21 days, if assigned outside of CONUS)* after receipt of written notification of the approved resignation.

b. Request discharge in lieu of elimination (RA commissioned officers only) according to AR 635-100, chapter 5 and AR 635-120, chapter 8. You may not request an effective date. The effective date will be no later than *(use applicable—14 days, if assigned CONUS and 21 days, if assigned outside of CONUS)* after receipt of written notification of the approved discharge.

c. Apply for retirement in lieu of elimination, if otherwise eligible, according to AR 635-100, chapters 4 and 5. The effective date for retirement will be *(use applicable—officers who have at least 19 years and six months of AFS, but less than 20 years AFS, the effective date will not be later than 60 days from the date he or she attains 20 years AFS. Officers who have 20 or more years AFS, the effective date will be no later than 60 days from the date he or she elects retirement in lieu of elimination).* You must specifically state that your application for retirement is submitted in lieu of elimination.

d. (FOR A NONPROBATIONARY OFFICER) In lieu of resignation, discharge, or retirement, submit a rebuttal and/or a declination statement and request appearance before a board of inquiry. (OR)

(FOR A PROBATIONARY OFFICER) In lieu of resignation or discharge, submit a rebuttal statement and, if a discharge Under Other Than Honorable Conditions is recommended, request appearance before a board of inquiry.

8. If you elect to submit your resignation or request discharge in lieu of elimination, you may be eligible to receive separation pay. You may consult with your legal adviser and your finance and accounting office concerning your possible entitlement to separation pay.

9. You have 30 days from the date you receive this notification to acknowledge receipt in writing and exercise one of the options in paragraph 7.

10. Your acknowledgement should be in the format provided at enclosure *(number).* If you elect an option in paragraph 7 a through c, you will include your tender of resignation, request for discharge, or application for retirement in lieu of elimination as an enclosure to your acknowledgement.

FOR THE COMMANDER:

(GOSCA Signature)

Encls *(as appropriate)*
list supporting documents
(OERs, LOR, Art 15, etc)
Format *(acknowledgement)*

CF:
TAPC-OPP-M
CDR *(appropriate MACOM)*

Note:
The OMPF and ORB will not be forwarded with the memorandum initiating the elimination action. If the officer elects a board of inquiry, an updated OMPF and ORB will be provided at that time.

Figure 5-1. Sample format for initiation of elimination—Continued

(Letterhead)

OFFICE SYMBOL (MARKS NUMBER)

MEMORANDUM THRU (Channels)

FOR (GOSCA)

SUBJECT: Recommendation for Elimination

1. I have received your memorandum stating that I am required to show cause for retention on active duty.

2. I *(wish/do not wish)* to make a statement or submit a rebuttal in my behalf. *(My statement/rebuttal is enclosed.)*

3. I select *(add selected option from para 7 of memorandum, Subject: Recommendation for Elimination).*

4. (If appropriate: *My tender of resignation in lieu of elimination is enclosed,* OR *My request for discharge in lieu of elimination is enclosed* (RA commissioned officer only), OR *My request for retirement in lieu of elimination is enclosed.)*

Encl *(if appropriate)*

(SIGNATURE)
(NAME)
(RANK, SSN)

Figure 5–2. Sample format for officer's elimination acknowledgement

Chapter 6
Lack of Jurisdiction

6–1. Scope

a. The release of an individual from the Army may be ordered by a U.S. Court or judge.

b. This chapter applies to all officers and warrant officers on active duty or active duty for training.

6–2. Procedure

a. The officer on whom such an order or writ is served will report it immediately to The Judge Advocate General, as directed in AR 27–40, paragraph 2–3*d*, and will notify Cdr, PERSCOM (TAPC–OPP–M). The CG, PERSCOM will take appropriate action to direct the release from military control of the officer concerned. The notification to Cdr, PERSCOM (TAPC–OPP–M) will be by electrical message and will consist of the information contained in the Advisory Report furnished The Judge Advocate General according to AR 27–40.

b. Similar action will be taken on the final determination of a convening authority of a general or special court-martial, a military judge, a president of a special court-martial, or a military appellate court that an individual is not currently a member of the Army.

6–3. Authority

This chapter and SPD shown in AR 635–5–1 will be cited as the authority for separation.

Appendix A
References

Section I
Required Publications

AR 350–100
Officer Active Duty Service Obligations. (Cited in paras 3–64, 4–16.)

AR 600–37
Unfavorable Information. (Cited in paras 3–5, 3–50, 5–12, 5–33.)

AR 624–100
Promotion of Officers on Active Duty. (Cited in paras 3–53, 3–56, 3–57, 3–58, 3–98, 3–99, 3–100, 4–10, 4–26, 5–10.)

AR 630–5
Leaves and Passes. (Cited in paras 3–14, 3–59, 3–89, 4–5.)

AR 635–5
Personnel Separations—Separation Documents. (Cited in para 1–7.)

AR 635–5–1
Separation Program Designators (SPD). (Cited in paras 3–20, 3–23, 3–27, 3–32, 3–34, 3–37, 3–40, 3–43, 3–45, 3–48, 3–51, 3–54, 3–60, 3–65, 3–68, 3–74, 3–77, 3–80, 3–83, 3–94, 3–96, 3–99, 3–104, 6–3.)

AR 635–10
Processing Personnel for Separations. (Cited in paras 2–4, 3–15, 3–17, 3–20, 3–23, 3–27, 3–34, 3–37, 3–38, 3–40, 3–43, 3–48, 3–54, 3–60, 3–61, 3–104, 4–5, 4–10, 4–11.)

AR 635–120
Personnel Separations—Officer Personnel. (Cited in paras 3–62, 5–5, 5–14, 5–16, 5–23, 5–31, 5–39.)

Section II
Related publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 37–104–3
Military Pay and Allowances Procedures, Joint Uniformed Military Pay System—Army (JUMPS–Army)

AR 40–3
Medical, Dental, and Veterinary Care

AR 40–501
Standards of Medical Fitness

AR 135–91
Army National Guard and Army Reserve—Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures

AR 135–100
Appointment of Commissioned and Warrant Officers of the Army

AR 190–47
The US Army Correctional System

AR 210–10
Administration

AR 310–10
Military Orders

AR 601–10
Mobilization of Retired Members of the Army

AR 601–210
Regular Army and Army Reserve Enlistment Program

AR 601–280
Army Reenlistment Program

AR 614–30
Oversea Service

Section III
Referenced forms

DA Form 201
Military Personnel Records Jacket

DD Form 214
Certificate of Release or Discharge from Active Duty

DD Form 214WS
Worksheet for Certificate of Release for Discharge from Active Duty

DD Form 256A
Honorable Discharge Certificate

DD Form 257A
General Discharge Certificate

DA Form 268
Report of Suspension of Favorable Personnel Actions

DA Form 873
Certificate of Clearance and/or Security Determination Under EO 10450

DA Form 2339
Application for retirement

DA Form 3822–R
Report of Mental Status Evaluation

Appendix B
Record of Board Proceedings

Proper

re

(Last, first name, middle initial) (SSN and Grade)

By

Board of Inquiry Under

Appointed by (Title of appointing authority)

Held at

(Place(s) of hearings) on (Date(s) of hearings)

Index	Record
Introduction to counsel	R
Challenges	R
Explanation of rights to respondent	R
Findings	R
Recommendation	R

Testimony

Name of witness	Direct and redirect/Cross/Recross
FOR GOVERNMENT	
FOR RESPONDENT	

Exhibits Admitted in Evidence

Number or letter	Description	Page where Offered	Page where Admitted

Copies of Record

One copy of record furnished to the respondent.

(Number) copy(ies) of record forwarded herewith.

Abbreviations: The following abbreviations are used herein:

PRES	President
REC	Recorder
RC	Respondent's Counsel
RESP	Respondent
WIT	Witness
REPT	Reporter

Where either the RC or RESP may be commenting, the abbreviation RC is shown in the example; however, the report should show the appropriate abbreviation (RC OR RESP).

Proceedings of a Board of Inquiry

which met at (location), at (time)hours, (date), pursuant to the following orders:

(Note: The orders appointing the board of inquiry, as well as amendments, will be described by the recorder at this point by headquarters of issuance, date, and subject.)

PRES: The board will come to order. Has the respondent specifically requested that certain persons be admitted to attend these proceedings as spectators?

REC: No such request has been made.

PRES: The appointing authority has not specifically authorized the presence of any spectators during the proceedings and none will be permitted.

REC: This board of inquiry is appointed by (name), (as amended by (name)) a copy has been furnished to each member of the board, the respondent, the appointed respondent's counsel, and to the reporter for incorporation in the record at this point as Government Exhibit No. 1. I shall now read the orders appointing the board. The recorder then reads the orders.

REC: The following persons named in the appointing orders are present: The following persons named in the appointing orders are absent: The respondent concerned, (name), is present.

REC: The mission of this board of inquiry is to afford the respondent a fair and impartial hearing with regard to the requirement that the officer show cause why he or she should not be eliminated from the Army, and to determine from the evidence presented the course of action which will best serve the interests of the Government without jeopardizing the rights of the respondent.

REC: (Name), a reporter, has been made available to make a verbatim transcript of these proceedings and will now be sworn.

(Note: The reporter rises and stands with right hand raised; the recorder or president rises, faces the reporter, and administers the oath.)

REC: You swear (or affirm) that you will faithfully perform the duties of reporter to this board? So help you God?

REPT: I do.

PRES: (Name), as the respondent in these proceedings, you may represent yourself, or be represented (by the appointed respondent's counsel) or (by individual military counsel of your own selection, if reasonably available, or civilian counsel obtained by you at no expense to the Government). I now ask you whether you will represent yourself or will you be represented?

RC: The respondent (is represented by ((name), the appointed respondent's counsel) and/or (introduces as individual respondent's counsel).

PRES: Will the respondent's counsel call any member of the board as a witness in these proceedings?

RC: No.

PRES: No member of the board has sat on any other board of inquiry in considering the case of the respondent. No member of the board will be or has been called as a witness and no member has previously recommended, or has been called as a witness and no member has previously recommended, or has been a member of any board which recommended elimination or relief from active duty of the respondent. No member of the board has been a member of reviewing authority of a court-martial which this respondent was the accused; nor has any member of the board otherwise considered the case of the respondent or was a member of the selection board which found that the respondent should show cause for his or her retention in the Army.

PRES: I now ask the respondent to state his or her date of rank or grade which serving.

RESP:

PRES: If any member is junior to the respondent in date of rank, he or she will now state.

All members of the board indicated they were senior.

If the respondent is female and by the order appointing the board a female officer of the same corps has not been included as adviser without vote, the president will ask the following questions:

PRES: Has the respondent waived the inclusion of a female officer of the same corps as an adviser to this board?

REC: She did so waive as is shown by this signed statement.

PRES: This statement signed by the individual concerned, dated (date), will be incorporated in the record as Government Exhibit (No. XX). (Note: If no formal written waiver has been obtained, but the respondent is willing to waive the requirement, the respondent's counsel should state for the record.)

PRES: (Name), as the respondent in these proceedings you have the following rights and privileges: (Note: The president will read the pertinent portions of para 5–39*b*, of this regulation which will be recorded verbatim by the reporter.)

PRES: The records in this case disclose (no grounds for challenging any member for cause) (grounds for the challenge of (name), for the following reasons: (reason(s))). If any member of the board or recorder is aware of any facts which he or she believes may be a ground for challenge of any member by the respondent, he or she should now state those facts. In this connection, may I remind the members of the board that they have seen certain records, documents, and reports which were furnished to the board prior to this meeting. Notwithstanding this fact, do you know of any reason why you would not be able to hear the evidence submitted by the respondent and make a fair and impartial determination in this case? (Note: If the member state no such facts, the president should recite for the record. "Apparently, no such facts are known.")

REC: The Government (has no challenge) (challenges (name) for the reason (reason)). (Note: The board is responsible to ensure that no member is ineligible.)

PRES: Does the respondent desire to challenge any member of the board for cause?

RESP: The respondent (has no challenges) (challenges (name) for cause on the ground (reason(s))). (Note: The respondent and recorder may present arguments for or against sustaining the challenge. The challenged member may be called on to testify concerning the grounds for challenge. The senior unchallenged member of the board determines whether a challenge will be sustained. Challenges will be disposed of individually in the order presented.)

PRES: The board will be closed.

The board was closed at (time)hours, (date).

The board opened at (time)hours, (date).

PRES: The board is open.

REC: All members present when the board closed, the respondent, counsel, recorder, and reporter are again present.

PRES: The challenge is (sustained) (overruled). (Note: If a challenge is sustained, the recorder should recite for the record, "The challenged member withdrew from the board and from the hearing room". If, as a result of sustained challenges, the membership of the board is reduced below the three required, it will recess pending the appointment of replacement by the appointing authority.)

REC: The board will be sworn. (Note: All persons in the hearing room will stand while the oath is being administered to the board, the legal adviser, and the recorder. Each member of the board raises his or her right hand as the name is called by the recorder in administering the following oath.)

REC: You, General(name), Colonel(name), (name) do swear (or affirm) that you will faithfully perform all duties imposed on you as a member of this board of inquiry; that you will faithfully and impartially examine, inquire in and hear, according to the evidence, your conscience, and applicable regulation, the matter now before you involving (name), the respondent; and that you will not disclose the opinion or vote, if known to you, of any particular member of the board on a challenge or on the findings and recommendations, unless required to do so before a court of justice in the due course of law. So help you God.

EACH MEMBER: I do. (Note: The members lower their hands, but remain standing while the recorder administers the oath to the legal adviser, who raised his or her right hand.)

REC: You, (name), do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for hearings of this nature, all duties incumbent on you as legal adviser for this board; and that you will not disclose the findings or recommendations of the board in this case until they shall have been announced by the board. So help you God.

LEGAL ADVISER: I do. (Note: The legal adviser lowers his or her hand and remains standing along with the board members while the President administers the oath to the recorder who raised his or her right hand.)

PRES: You, (name), do swear (or affirm) that you will faithfully execute all the orders of this board of inquiry; and that you will faithfully supervise the accurate recording of the evidence received in, and the proceedings had in, the matter now before this board. So help you God.

REC: I do.

PRES: The board is now convened. (Note: If it is desired to orient the board in open session, it should be done at this point.) I am familiar with the contents of the records, documents, and reports which were furnished to the board with this case. (Note: If there is to be a verbal presentation of the case it should be done at this point.)

PRES: Does any member desire a recess at this time to make further study? (Note: If no recess is requested, the reporter should note that fact for the record.)

PRES: (name), as the respondent in these proceedings, you may present such evidence as is pertinent to your case. I now ask you whether you desire a copy of the record of these proceedings?

REC: He or she (does/does not).

PRES: The recorder, in lieu of and under the direction and supervision of myself as president of the board, will now proceed with the presentation of the evidence on behalf of the Government.

REC: I request that the reporter mark this exhibit for identification. (Note: The reporter is responsible for keeping a list of exhibits marked for identification, and also as finally accepted in evidence. Government exhibits should be numbered consecutively; defense exhibits should be lettered consecutively. To clarify the proceedings in regard to exhibits, they should be admitted by the same number or letter they bore "for identification", even though omissions appear in the sequence of numbers or letters of exhibits finally admitted. Ordinarily, the words "for identification" are simply lined out when an exhibit is admitted in evidence. The reporter will mark on the exhibit (or affix the tag) the appropriate number or letter and state, e.g.:)

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Government Exhibit (No. XX) for identification is a letter (describe by date, subject, file number, name of author, and name of addressee) together with (number) endorsement, which the individual concerned, (name and grade of respondent), was notified that he or she would be required to show cause why he or she should remain in the Army. I offer it in evidence as Government Exhibit (No. XX). (Note: At the time an exhibit is offered in evidence respondent's counsel should be afforded the opportunity to examine same and object.)

PRES: Government Exhibit (No. XX) for identification is admitted in evidence as Government Exhibit (No. XX).

REC: I offer the exhibit in evidence to show that respondent was notified in writing of the charges against him or her at least 30 days before the convening board.

REC: I invite the board's attention to the fact that, by the (number) endorsement, dated (date), forming a part of Government Exhibit (No. XX) the respondent elected to appear before a board of inquiry.

REC: I ask that the reporter mark this exhibit for identification.

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Government Exhibit (No. XX) for identification is a letter by (describe the letter in detail, including headquarters of issuance, date, subject, file number, and addressee) notifying the respondent of this hearing. By endorsement (number), dated (date), attached to and forming a part of the exhibit, the respondent acknowledged receipt. I offer the exhibit in evidence as Government Exhibit (No. XX) to show that he or she was given not less than 10 days notice of the time and place of the convening of this board.

PRES: Government Exhibit (No. XX) for identification is admitted in evidence as Government Exhibit (No. XX).

REC: I ask that the reporter mark this exhibit for identification.

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Government Exhibit (No. XX) for identification is a letter directed by the appointing authority to the president of the board (describe the letter in detail, including headquarters of issuance, date, subject, file number, and addressee) comprised of the basic communication and (number) endorsements, attached which are (number) enclosures, the findings of the selection board and all documentary evidence identified by it in support. I offer the exhibit in evidence as Government Exhibit (No. XX) as constituting all the records and documents referred to the board.

PRES: Government Exhibit (No. XX) for identification is admitted in evidence as Government Exhibit (No. XX).

REC: I ask that the reporter mark this exhibit for identification.

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Was respondent furnished copies of all pertinent records on (date) when notified of requirement to show cause? Government Exhibit (No. XX) for identification is a receipt signed by him or her dated (date). I offer it in evidence as Government Exhibit (No. XX).

PRES: Government Exhibit (No. XX) for identification is admitted in evidence as Government Exhibit (No. XX).

REC: With the concurrence of the president and the consent of the respondent, the recorder and respondent's counsel stipulate as follows:

PRES: The stipulation is accepted.

REC: The Government calls as a witness (name). (Note: When the witness is sworn he or she raises the hand and the president or recorder administers the oath.)

REC: You swear (or affirm) that the evidence you shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth? So help you God?

WIT: I do.

REC: State your full name (grade, organization, station, and Armed Forces (occupation and residence.)

WIT:

REC: Do you know the respondent in these proceedings?

WIT: Yes.

REC: Will you state the respondent's name and point to him or her.

WIT:

REC: Let the record show that the witness pointed to the respondent. (Note: The recorder will ask like preliminary qualifying questions of witnesses called by the respondent. After the Government has completed the direct examination of the witness, the defense cross-examines or declines to cross-examine the witness.)

REC: The Government has no (further) questions.

RC: The respondent has no (further) questions. (Note: If the defense cross-examines the witness, the recorder may conduct redirect examination. After he or she has concluded, the defense may similarly conduct a recross-examination. When both the defense and the recorder have concluded their questions, the recorder gives the board an opportunity to ask questions. Any board member wishing to question the witness first secures the permission of the president.)

REC: Are there any questions by the board?

PRES: The witness is excused. The witness withdrew from the room.

REC: I ask that the reporter mark this exhibit for identification.

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Government Exhibit (No. XX) for identification is (the original) (a copy) of (describe in detail) which relates (describe in detail) and indicates (describe in detail), I offer the same evidence as Government Exhibit (No. XX).

PRES: Does the defense object to receipt of this document in evidence?

RC: The defense (has no objection) (objects because (reason)).

PRES: The objection is (sustained) (overruled) and the document, marked as Government Exhibit (No. XX) for identification, is admitted in evidence as Government Exhibit (No. XX) (and a description (true Copy) may be substituted). (Note: If there is a psychiatric report concerning the respondent (see para 5–7 and 5–8) the following will ensure:)

REC: I ask the reporter mark this exhibit for identification.

REPT: This will be Government Exhibit (No. XX) for identification.

REC: Government Exhibit (No. XX) for identification is (a copy of) a psychiatric report (describe the report in detail, including medical facilities of issuance, date, subject, file number, and addressee) indicating that the mental (or physical) condition of the respondent (has not) (has) contributed to the reasons which he or she has been required to show cause. I offer it in evidence as Government Exhibit (No. XX).

PRES: Does the defense object to receipt of this report in evidence?

RC: The defense (has no objection) (objects because (reason)).

PRES: The objection is (sustained) (overruled) and the report, marked as Government Exhibit (No. XX) for identification is admitted in evidence as Government Exhibit (No. XX). (Note: If the psychiatric report indicated that the mental (or physical) condition of the respondent has contributed to the reason which has been required to show cause, the following will ensure:)

PRES: Government Exhibit (No. XX) indicated that the mental (or physical) condition of the respondent contributed to the reason which he or she has been required to show cause. Subject to objection by any member of this board, the respondent will be hospitalized for observation or treatment. (Note: If a member of the board objects to the ruling of the president, the issue will be disposed of in a fashion similar to that of challenges. If no objection is interposed, the proceedings will be suspended in the following manner.)

PRES: These proceedings will be suspended pending final medical disposition in the case of the respondent. The board was closed at (time)hours, (date). (Note: Depending on the circumstances, the following action may be appropriate.)

PRES: It appears, from the objection made by the respondent's counsel to the receipt in evidence of Government Exhibit (No. XX) constitutes new evidence which was not contained in the records, documents, and reports furnished with this case. Consequently, I now advise the respondent that he or she may present evidence in reply, and on a request, will be granted additional time to prepare the same as is reasonably necessary. (Note: New evidence other than that material to the reasons which "show cause" action is based, may not be received, except to the extent necessary to rebut evidence offered by the respondent.)

REC: Subject to the president being of the contrary view, the Government has no further evidence to present.

PRES: (Name), you are advised that you may now present your case. You may call witnesses and submit evidence in your own behalf. You may make a statement orally, or in writing or both, and/or you appear as a witness in your own behalf. I now turn over the conduct of the proceedings to you and your counsel. (Note: The respondent's counsel proceeds to present the case for the respondent. Should the respondent testify as a witness, he or she should be advised of the rights under the Uniform Code of Military Justice, Article 31, and he or she should execute a Privacy Act statement (see AR 15–6, app C). After the Government and the respondent have apparently completed their cases, the president should inquire as follows.)

PRES: (Name), as respondent in these proceedings, I ask you to state for the record whether you have presented all available evidence in your behalf.

RC:

(Note: If the response is in the negative, the president should proceed as indicated below.)

PRES: The respondent, or counsel on their behalf, will make a concise statement of the substance of the expected evidence which has not been presented and, in so doing, describe with such particularly as the circumstances permit any documentary evidence which may be involved.

RC:

(Note: Any documentary evidence involved must be included, if available, as exhibits in the record.)

PRES: Inasmuch as the evidence described by the defense appears to be pertinent and may have a vital bearing on the case of the respondent the board stands adjourned until (time)hours, (date). The board was adjourned at (time)hours, (date). The board was reconvened at (time)hours, (date) at (location).

PRES: The board is open.

REC: The reporter, recorder, respondent, counsel, and all members of the board present when it was closed except for (name) are again present.

REC: Colonel (name) is now present and has been appointed to this board of inquiry by (name) a copy of which order will be incorporated in the record. The orders were incorporated in the record as Government Exhibit (No. XX).

REC: Does the respondent desire to challenge the new member for cause? (Note: The procedure concerning inquiring of the new member whether he or she knows of facts which would form the basis of grounds for challenge, and swearing of a new member are substantially as for original members.)

RC: He or she (does not) (challenges (name) for cause on the ground (reason)).

REC: (Name) will now be sworn. The new member was sworn by the recorder.

PRES: The record of the proceedings so far had in this matter will now be read to the new member by the recorder. The record of the proceedings so far had was then read to the new member.

(Note: The president should grant a recess, if the new members desires it for further study of the case.)

PRES: The proceedings have been read to date, the hearing may proceed. (Note: The respondent's counsel then proceeds to complete the case for the respondent, following which the recorder or the president presents any available evidence in rebuttal.)

RC: The respondent has no further evidence to present in his or her behalf.

REC: The Government has no further evidence to present.

PRES: The board will be closed. The board was closed at (time) hours, (date). (Note: The findings will be stated as specified in para 5–47*a*(1)).

Findings and Recommendation

The board opened at (time) hours, (date).

PRES: The board is open.

REC: Let the record show that all members present when the board was closed, the respondent, counsel, recorder, and reporter are again present.

PRES: (Name), it is my duty as president of this board of inquiry to inform you that the board in closed session and on secret ballot, a majority of the members present at the time the vote was taken concurring, has made the following findings and recommendations:

Findings:

The board having carefully considered the evidence before it finds:

(A brief statement of the reason(s) (including factual data when considered necessary for clarification) for each finding will be included.) In view of such findings, the board recommends:

PRES: The matter before this board of inquiry having been determined, the proceedings are ended. The proceedings were completed at (time) hours, (date).

Authentication of Record of Board of Inquiry

In re the matter of (respondent).

(President)

(Member)

(Member)

(Recorder)

I have examined the record of the board of inquiry hearing.

(Respondent's counsel)

Appendix C
Board of Inquiry Data Sheet

All items are applicable to records of proceedings under this regulation before boards of inquiry. The recorder of the board and the appointing authority (or his or her designated representative) will answer the following questions with a yes or no response, and attest to the response by entering the date, their signature (including rank) at the completion of the questions.

The board, through its president, is completely responsible for all aspects of the proceedings. It is the responsibility of the recorder to ensure throughout the hearing, that the Government's case is presented fully. The recorder will be alert to develop new evidence in its favor to support the allegations made by the Government, including the procurement and presentation, and to examine witnesses. Unless otherwise indicated, all cited references are from this regulation. A copy of this data sheet will be furnished each board member, for his or her use, at the time of appointment.

1. Was respondent served with a notice to show cause together with a copy of the findings and statement of facts by the selection board (para 5–20*a*)?

2. If respondent made an election other than to appear, was appropriate action taken (para 5–22*b*)?

3. Were the orders appointing the board issued by the GOSCA (para 5–19)?

4. Did the order appointing the board designate a respondent's counsel (para 5–37*g*)?

5. Is the board comprised of three or more officers of proper grade and one or more recorders and is each qualified (para 5–37)?

6. If the respondent is a non-Regular Army officer, was one or more members of the board a Reserve component officer (para 5–37*a*(3))?

7. Do the appointing orders clearly specify the matter to be investigated and cited specifically the regulations which the board is convened (AR 15–6, para 3*a*)?

8. Was an officer of the Judge Advocate General's Corps designated as recorder (para 5–37*e*)?

9. Was a civilian court reporter erroneously employed (AR 15–6, para 7)?

10. Does the record show at the outset of each session the time, date, place and station; and does it also show the time of each closing (para 5–40*c*(1))?

11. Were all orders appointing board and appointing personnel read by the recorder at the initial session and are they attached to the records as exhibits (para 5–40*b*)?

12. Were at least three members, or such larger number as constitutes a majority of those detailed as members, present at all hearings (para 5–37*c*(3)(*d*))?

13. At the opening of each session, did the recorder note for the record the presence of members of the board the respondent and his or her counsel, if any (para 5–40*c*(2))?

14. If a member was absent, or a new member was appointed, was the record read by and were all prior proceedings made known to him or her before the proceedings continued (AR 15–6, para 3c(2))?

15. Does the record show that the officer concerned was notified by the GOSCA of show cause action and furnished substance of the grounds at least 30 days prior to convening of a board (paras 5–20, 5–21 and 5–36*b*)?

16. Does the record show that the officer concerned was given at least 10–days notice of the time and place of the convening of the board (para 5–36*a*)?

17. Does the record show that, at a sufficiently early date, the respondent had access to and was furnished copies, if desired, of all releaseable records and documents referred to the board (para 5–36*b*)?

18. Was the respondent advised by the president of his or her rights and privileges as prescribed by paragraph 5–39*b*?

19. a. Did the president ask the members of the board to state any facts known to them which they believe might be grounds for challenge for cause (para 5–38*a*)?

b. Was the respondent extended the right to challenge any member of the board for cause (para 5–39*b*(3))?

20. Was action of the board on challenges proper (para 5–37*d*)?

21. Were the members of the board sworn by the recorder and was the recorder sworn by the president (para 5–38*b* and 5–40*e*)?

22. Does the record show that at the outset of the proceedings the members refreshed their memories as to the contents of the records, documents, and reports furnished with the case (para 5–38*c*)?

23. Was the respondent permitted counsel of his or her own selection under the conditions set forth in paragraphs 5–21*a*, 5–37*g*(1) and 5–39*b*(1))?

24. Did the president advise the respondent of his or her right to present pertinent evidence (para 5–39*b*(1))?

25. Did the president ask the respondent to state for the record whether he or she desired a copy (para 5–39*b*(8))?

26. Were spectators, other than those specifically requested by the respondent or as authorized by the appointing authority, present, during the proceedings (para 5–42)?

27. a. Was the respondent at all open sessions of the board, unless the respondent was excused by the President of the Board and expressly waived his or her right to attend (para 5–41*a*)?

b. Was the respondent at all open sessions of the board, unless his or her absence was expressly excused by the respondent (para 5–41*a*)?

28. a. Were all witnesses, including the respondent if he or she elected to testify, sworn (para 5–39*b*(10) and 5–43)?

b. Were they sworn by the president or recorder (para 5–39*b* and AR 15–6, para 12)?

29. Was the respondent advised of his or her rights under the Uniform Code of Military Justice, Article 31, where appropriate (para 5–39*b*(10); and AR 15–6, para 13)?

30. Is a copy of the psychiatric report made part of the record (para 5–7 or 5–8, as appropriate)?

31. If hospitalization for observation or treatment was directed by the board, were the proceedings suspended pending final medical disposition (para 5–7)?

32. If evidence was submitted through a deposition (para 5–37*b*(4)) was it taken as provided in the Uniform Code of Military Justice, Article 49 (AR 15–6, para 13b)?

33. If evidence on behalf of the Government was procured by affidavit or correspondence, was the respondent given reasonable notice and afforded an opportunity to meet adverse allegations (para 5–39*b*(6) and AR 15–6, para 14)?

34. Did the board insist on the highest quality of evidence reasonably obtainable and available (AR 15–6, para 9)?

35. Are all exhibits properly identified in and bound with the record (AR 15–6, para 24d and e)?

36. Was the respondent afforded reasonable opportunity to present his or her case (para 5–21*b*, d; 5–35*a*; 5–36*a*&*b*; 5–39*b*(9) and 5–41*b*)?

37. Before the hearing was terminated and near the end, was the respondent asked by the president to state for record whether he or she had presented all evidence available in his or her own behalf (para 5–41*b*)?

38. If answered in the negative, did the president require him or her to make a concise statement for the record of the substance of the expected evidence and was all documentary evidence referred to in the statement included in the record (5–41*b*)?

39. Was the action of the board on requests by the respondent for additional time to procure and present evidence appropriate (para 5–41*b*)?

40. Did the board make proper findings and include data required by paragraph 5–47*a*(1)?

41. Are the findings supported by substantial evidence (AR 15–6, para 20)?

42. Does the recommendation conform to and is it limited to one of the permissible prescribed forms (para 5–47*a*(2))?

43. Were the findings and recommendation of the board determined in closed session by secret ballot, a majority of the members present at the time the vote was taken concurring in each (para 5–47*a)*?

44. Were the findings and recommendation announced to the respondent as soon as they were finally determined (para 5–47*b*)?

45. Was the record prepared by the recorder or under his or her supervision (AR 15–6, para 6c)?

46. Were the requirements of AR 15–6, paragraph 24a through d complied with in preparing the record?

47. a. Is the record authenticated by the signatures of all members present at the deliberations on the findings and recommendation and also by that of the recorder (AR 15–6, para 24d)?

b. If any of the foregoing persons were unable to authenticate the record because of death, disability or absence, is the reason stated following the authentication by the officers (AR 15–6, para 24d)?

48. Is the record prepared in duplicate, each complete with all exhibits appended (para 5–48*a*)?

49. Has the respondent's counsel examined the record of the board of inquiry hearing and so indicated by his or her signature following the authentication?

(Signature and grade of recorder)

(Signature and grade of appointing
authority (or designated representative))

Glossary

Section I
Abbreviations

ADL
active duty list

ADT
active duty training

AGR
Active Guard/Reserve Status

AMEDD
Army Medical Department

ANC
Army Nurse Corps

ARNGUS
Army National Guard of the United States

AT
annual training

ATCAR
Active Transfer/Conversion—Army Reserve Program

CG
commanding general

CONUS
continental United States

DAADB
Department of the Army Active Duty Board

DC
Dental Corps

DODPM
Department of Defense Military Pay and Allowances Entitlements Manual

FTTD
full time training duty

HQDA
Headquarters, Department of the Army

JAGC
Judge Advocate General's Corps

MC
Medical Corps

MSC
Medical Services Corps

OBV
obligated voluntary

OMPF
Official Military Personnel File

OTRA
Other Than Regular Army

PERSCOM
Total Army Personnel Command

PL
public law

RA
Regular Army

REFRAD
Release from Active Duty

ROTC
Reserve Officer's Training Corps

SADT
special active duty for Training

SPD
separation program designator

USAR
United States Army Reserve

USC
United States Code

VC
Veterinary Corps

Section II
Terms

Active duty for training
Full-time duty in the active military service of the United States for training purposes.

Active Federal commissioned service
Full-time duty in the active military service of the United States. it includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned (Title 10, USC, section 101).

Army retired lists
a. United States Army Retired List consists of the names of all retired commissioned and warrant officers of the Regular Army and is published in the official United States Army Register, Volume III.
b. Army of the United States Retired List consists of the names of all retired commissioned officers of the Army, other than Regular Army, and the names of all retired Regular Army and other than Regular Army warrant officers and advanced to commissioned grades; and is published in the official United States Army Register, Volume III.

Bisexual
A person who engages in, desires to engage in, or intends to engage in homosexual acts.

Boards of inquiry
Boards of officers convened to give fair and impartial hearing to evidence concerning the fitness of an officer who has been required to show cause for retention and make findings and recommendation whether he or she will be retained or eliminated.

Boards of review
Boards of officers convened to review cases of officers recommended for elimination by boards of inquiry to determine whether elimination or retention is warranted.

Current tour
The tour of duty that commenced on the date last entered on active duty, regardless of current service commitment or extensions.

Date of retirement
The date the officer's name is placed on the appropriate retired list. For all officers retired under the provisions of chapter 4, the date of retirement is the first day of a month (5 USC 8301) and, with the exception of the provisions of paragraph 4–13*a*(2), is the day following the date the officer is released from active duty.

Dual status officer
A commissioned officer of a Reserve component, serving on active duty, who holds a Regular Army warrant officer appointment.

Elimination
Removal from commissioned or warrant officer status in the Army and removal from active duty, and, in the case of commissioned officers, the active duty list.

Factual allegation
A brief description of a specific incident which supports a reason for elimination.

General Officer Show Cause Authority (GOSCA)
General officers in command on active duty (other than for training) who have a judge advocate or legal adviser available. Does not include colonels who are frocked to the rank of brigadier general.

Home (or "home of record")
a. For officers ordered to active duty from civilian status, the place recorded as the home of record when ordered to active duty.
b. For officers discharged from an active duty enlisted status for the convenience of the Government to accept duty as an officer, the place recorded as the home of record at the time he or she entered the service in an enlisted status in the relevant tour of active duty.

Homosexual
A person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.

Homosexual acts
Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

Major commanders for the purpose of Chapter 5
Commanders of U.S. Army, Europe; Eighth U.S. Army; U.S. Army Japan; U.S. Army Forces Command; U.S. Army Training and Doctrine Command; U.S. Army Materiel Command; U.S. Army Health Services Command; U.S. Army Military District of Washington; U.S. Army Security Agency; Military Traffic Management Command; and U.S. Army Information Systems Command. HQDA will designate commanders to process elimination actions for personnel in the jurisdiction of U.S. Army Intelligence Agency and U.S. Army Criminal Investigation Command and in other instances as warranted.

Mandatory Retirement
A retirement which is required by law, subject to certain contingencies as outlined in the law, and must be effected regardless of the desire of the officer or HQDA, unless otherwise specifically provided by the law. (Applies to RA and warrant officers only.)

Misconduct, moral or professional dereliction
(See para 5–11*a* for examples.) Conduct in the control of the officer concerned which

a. Tends to bring the officer or the Army into disrepute; or

b. Results in the loss or abandonment of or suspension from his or her professional status when lack of status adversely affects the member's ability to perform the duties; or

c. Includes, but is not limited to drug abuse, alcohol abuse, criminal conduct, and civil confinement.

National Security
See definition contained in AR 604–10.

Officer
Unless otherwise indicated, means male or female commissioned and warrant officers.

Qualifying Service
Service creditable for retired pay under AR 135–180.

Reason for elimination
A short generic statement of the types of conduct which may serve as the basis for eliminating an officer (see para 5–10 and 5–11).

Recommended for Promotion

a. Officers in the ARNG who have been selected for promotion to the next higher Reserve grade by action of a promotion selection board, are considered to be recommended for promotion in the meaning of 10 USC, subsections 3848b and 3851b, on the date the promotion selection board adjourns.

b. Officers in the ARNG who have been appointed in a general officer grade in the ARNG are considered to be recommended for promotion in the meaning of the statutes cited above on the date of the General Officer Federal Recognition Board adjourns.

Recoupment
Officers who participate in certain advanced education programs and who fail to complete their educational requirements, or active duty or Reserve Component obligations, are subject to the recoupment provisions of AR 37–104–3 and must be accomplished prior to the separation of an officer who has not fulfilled the service obligation incurred as a result of participation in that advanced education program (10 USC 2005).

Reserve Components
The Army National Guard of the United States and the United States Army Reserve.

Selection Boards
Prior to 2 July 1988, boards of officers convened at PERSCOM to review the records of officers. These boards select those who will be required to show cause for retention in the Army or recommend probationary officers described in paragraph 5–30, below, for discharge. "Selection boards" as defined by this paragraph are not required and will not be convened for eliminations initiated under chapter 5 on or after 2 July 1988.

Substandard Performance of Duty
Performance of duty which has fallen below standards prescribed by the Secretary of the Army based on regulations of the Secretary of Defense (10 USC 1181). (Para 5–10 lists some deficiencies which indicate an officer does not meet required standards.)

Voluntary Retirement
Any type of retirement in a commissioned or warrant officer status which is optional with the officer.