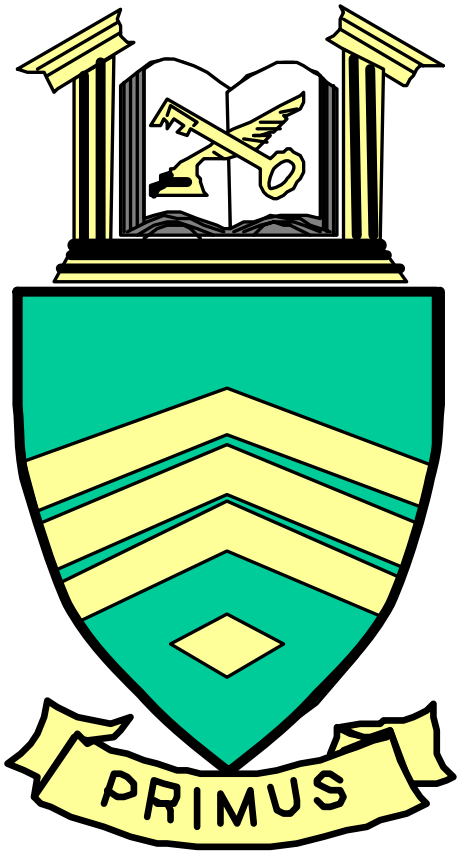
U.S. ARMY SERGEANTS MAJOR ACADEMY (FSC-TATS)

U660 OCT 04

ENLISTED SEPARATIONS

STUDENT HANDOUT



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PRACTICAL EXERCISE 1

Title	ENLISTED SEPARATIONS
Lesson Number/Title	U660 version 1 / ENLISTED SEPARATIONS
Introduction	As a first sergeant, you need to know how to determine the appropriate way to separate soldiers from military service.
Motivator	This practical exercise will reinforce your ability to determine appropriate requirements, for a variety of situations, to separate soldiers from military service.
Learning Step/Activity	**NOTE:** The instructor should inform the students of the following Learning Step/Activity requirements. (ELO E.1) At the completion of this lesson, you [the student] will: **Action:** Identify requirements for selected administrative separations
Safety Requirements	None
Risk Assessment Level	Low
Environmental Considerations	None
Evaluation	This is not a graded exercise. A review and discussion of the exercise will follow completion of the PE. You will receive a solution sheet at the completion of the discussion.
Instructional Lead-In	This practical exercise will give you the experience in determining the requirements for enlisted separation procedures.
Resource Requirements	**Instructor Materials:** None **Student Materials:** • AR 635-200 (SH-3). • AR 135-178 (SH-2). • Pen or pencil and writing paper.
Special Instructions	You will have 15 minutes to complete this practical exercise. You may use AR 635-200, (SH-3) or AR 135-178 (SH-2). On a blank sheet of paper write down the correct answer and the reference where you found the answer.

Procedures

Situation 1:

SGT Smith just returned from emergency leave granted because of the death of his father. He reports to you that the death of his father placed a tremendous burden upon his mother. He expresses a desire to separate from the Army before his ETS to support his mother. SGT Smith is an only child.

Using AR 635-200 (SH-3) or AR 135-178 (SH-2), determine the following:

a. Chapter that governs the separation.

b. Discharge authority.

c. Criteria for the separation.

d. Application requirements for the separation.

e. Evidence required.

f. Character of service.

Feedback Requirements

PRACTICAL EXERCISE 2

Title	ENLISTED SEPARATIONS
Lesson Number/Title	U660 version 1 / ENLISTED SEPARATIONS
Introduction	As a first sergeant, you need to know how to determine the appropriate way to separate soldiers from military service.
Motivator	This practical exercise will reinforce your ability to determine appropriate requirements, for a variety of situations, to separate soldiers from military service.
Learning Step/Activity	**NOTE:** The instructor should inform the students of the following Learning Step/Activity requirements. (ELO E.1) At the completion of this lesson, you [the student] will: **Action:** Identify requirements for selected administrative separations
Safety Requirements	None
Risk Assessment Level	Low
Environmental Considerations	None
Evaluation	This is not a graded exercise. A review and discussion of the exercise will follow completion of the PE. You will receive a solution sheet at the completion of the discussion.
Instructional Lead-In	This practical exercise will give you the experience in determining the requirements for enlisted separation procedures.
Resource Requirements	**Instructor Materials:** None **Student Materials:** • AR 635-200 (SH-3). • AR 135-178 (SH-2). • Pen or pencil and writing paper.
Special Instructions	You will have 15 minutes to complete this practical exercise. You may use AR 635-200 (SH-3) or AR 135-178 (SH-2). On a blank sheet of paper write down the correct answer and the reference where you found the answer.

Procedures

Situation 2:

The military police notified you that they had Sergeant Knight in custody. When you picked up SGT Knight from the MP Station, you learned that the MPs charged him with the purchase of illegal drugs.

Using AR 635-200 (SH-3) or AR 135-178 (SH-2), determine the following if separation is appropriate.

a. Chapter that governs the separation.

b. Discharge authority.

c. Notification requirements.

d. Character of service authorized.

Feedback Requirements

PRACTICAL EXERCISE 3

Title	ENLISTED SEPARATIONS
Lesson Number/Title	U660 version 1 / ENLISTED SEPARATIONS
Introduction	As a first sergeant, you need to know how to determine the appropriate way to separate soldiers from military service.
Motivator	This practical exercise will reinforce your ability to determine appropriate requirements, for a variety of situations, to separate soldiers from military service.
Learning Step/Activity	**NOTE:** The instructor should inform the students of the following Learning Step/Activity requirements. (ELO E.1) At the completion of this lesson, you [the student] will: **Action:** Identify requirements for selected administrative separations
Safety Requirements	None
Risk Assessment Level	Low
Environmental Considerations	None
Evaluation	This is not a graded exercise. A review and discussion of the exercise will follow completion of the PE. You will receive a solution sheet at the completion of the discussion.
Instructional Lead-In	This practical exercise will give you the experience in determining the requirements for enlisted separations procedures.
Resource Requirements	**Instructor Materials:** None. **Student Materials:** • AR 635-200 (SH-3). • AR 135-178 (SH-2). • Pen or pencil and writing paper.
Special Instructions	You will have 15 minutes to complete this practical exercise. You may use AR 635-200 (SH-3) or AR 135-178 (SH-2). On a blank sheet of paper write down the correct answer and the reference where you found the answer.

Procedures	**Situation 1:** PFC Smith was not at the 06:30 PT formation this morning. PFC Smith has a file full of counseling statements for failure to repair. He has three Article 15s; two for not being at his appointed place of duty at the appointed time and the last one for two days AWOL. PFC Smith has been in the unit for 14 months and has over 10 counseling statements for tardiness. Using AR 635-200 (SH-3) or AR 135-178 (SH-2), determine the following if separation is appropriate. a. Chapter that governs the separation. b. Separation authority. c. Counseling requirements. d. Actions required by the commander. e. Characterization of service.
Feedback Requirements	

SOLUTION TO
PRACTICAL EXERCISE 3

a. Chapter 13, Separation for Unsatisfactory Performance. Ref: AR 635-200, p SH-3-23, chap 13.

b. Commanders who are Special Court-martial Convening Authority (SPCMA) may order separation or release from active duty (AD) or active duty for training (ADT). Ref: AR 635-200, p SH-3-25, para 13-9.

c. See AR 635-200, p SH-3-24, para 13-4.

d. See AR 635-200, p SH-3-24, para 13-5.

e. Soldiers separated because of unsatisfactory performance will have their service characterized as honorable or under honorable conditions as warranted by their military record. Ref: AR 635-200, p SH-3-25, para 13-11.

Using AR 135-178, the solutions to Practical Exercise 3 are as follows:

a. Chapter 9, Unsatisfactory Performance. Ref: AR 135-178, p SH-2-27, chap 9.

b. For ARNGUS personnel – State Adjutants General, para 1-10a; For USAR personnel – Area Commanders, para 1-10b (2). Ref: AR 135-178, p SH-2-28, para 9-8.

c. See AR 135-178, p SH-2-28, para 9-3.

d. See AR 135-178, p SH-2-28, para 9-7.

e. Soldiers separated because of unsatisfactory performance will have their service characterized as honorable or general (under honorable conditions), as warranted by their military record.
Ref: AR 135-178, p SH-2-28, para 9-6.

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HANDOUTS FOR LESSON 1: U660 version 1

This Appendix contains the items listed in this table--

Synopsis/Item	Pages
SH-1, Advance Sheet	SH-1-1
SH-2, Extract AR 135-178	SH-2-1 to SH-2-31
SH-3, Extract AR 635-200	SH-3-1 to SH-3-30
SH-4, Student Notes	SH-4-1 to SH-4-6

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Student Handout 1

Advance Sheet for U660

Lesson Hours

This is a three-hour lesson.

Overview

This lesson provides an overview of what you need to know to recommend separation actions to your commander.

Learning Objectives

Terminal Learning Objective (TLO).

Action:	Identify administrative elimination actions for active duty and reserve component soldiers,
Conditions:	As a first sergeant, in a classroom environment, given AR 135-178 and AR 635-200, and student handouts.
Standard:	Identified administrative elimination actions for active duty and reserve component soldiers, pass a 40 question written examination with a score of 70 percent or better, IAW AR 135-178 and AR 635-200.

Enabling Learning Objectives (ELOs).

ELO A Identify the guidelines on separations.
ELO B Identify the general provisions for administrative eliminations.
ELO C Identify procedures for separation for the Army components.
ELO D Identify the types of characterization of service.
ELO E Identify requirements for selected administrative separations.

Assignment

The student assignments for this lesson are:

- Read SH-2, Extract of AR 135-178, chapters 1, 2, 3, 6, 9, and 12.
- Read SH-3, Extract of AR 635-200, chapters 1, 2, 3, 6, 11, 13, and 14.

Additional Subject Area Resources

None

Bring to Class

Not applicable.

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Student Handout 2

This Student Handout contains an extract of chapters 1, 2, 3, 6, 9, 11, and 13 from AR 135-178, dated 26 March 2004.

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Chapter 1
General Provisions

Section I
General

1-1. Purpose and scope

a. This regulation sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance. The separation policies in this regulation promote the readiness of the Army by providing an orderly means to:

(1) Judge the suitability of persons to serve in the Army on the basis of their conduct and their ability to meet required standards of duty performance and discipline.

(2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service.

(3) Achieve authorized force levels and grade distribution.

(4) Provide for the orderly administrative separation of enlisted soldiers in a variety of circumstances.

b. Department of the Army separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

(1) The acquisition of military status involves a commitment to the United States, the Army, fellow citizens, and soldiers to successfully complete a period of obligated service. Early separation for failure to meet required standards of performance or conduct represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Reserve Components of the Army. It is the policy of the Department of the Army to provide soldiers with the training, motivation, and professional leadership that inspires the dedicated soldier to emulate his or her predecessors and peers in meeting required standards of performance and conduct.

(3) The Army makes a substantial investment in training, time, equipment, and related expenses when persons enter into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Reserve Components of the Army. Reasonable efforts should be made to identify soldiers who are likely to be separated early, and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings. Soldiers who do not conform to required standards of conduct and performance and soldiers who do not demonstrate potential for further military service should be separated to avoid the high costs of continued service in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

c. This regulation provides—

(1) The authority for separation of soldiers upon expiration of their military service obligation.

(2) The authority and general provisions governing the separation of soldiers before the expiration of their service obligation to meet the needs of the Reserve components of the Army and its soldiers.

(3) The criteria for characterizing or describing military service as being honorable, general (under honorable conditions), or under other than honorable conditions, and when the service is not characterized.

Section II
Authority to Order and Accomplish Separation

1-10. Authority to order separation prior to expiration of service obligation

Except where approval by HQDA is required, the following officials are authorized to convene administrative separation boards as required, and to order separation under this regulation. The separation authority delegated to commanders by this regulation will not include the authority to discharge a soldier under court-martial sentence that includes an dishonorable or bad conduct discharge, prior to the completion of appellate review, unless the discharge is directed by HQDA.

a. For ARNGUS soldiers: State adjutants general.

b. For USAR soldiers:

(1) The Commander, U.S. Army Reserve Personnel Command (Cdr, AR-PERSCOM) for soldiers under his or her jurisdiction serving in the IMA program, or assigned to the Individual Ready Reserve (IRR), the Standby Reserve, or the Retired Reserve. (See para 1-13).

(2) Area commanders (see glossary), except Cdr, AR-PERSCOM, for soldiers attached or assigned to troop program units of the Selected Reserve within their jurisdiction. An area commander may delegate authority to order separations and convene administrative separation boards under this regulation to any subordinate general officer commander who has a Staff Judge Advocate or legal advisor for separation of soldiers subordinate to that command.

(3) When authorized by the State adjutant general, or the USAR officials cited in (1) or (2) above, unit commanders may order discharge per paragraph 5-3 for immediate reenlistment under the provisions of AR 140-111 or NGR 600-200, as appropriate.

(4) Commander, ROTC Cadet Command, for cadets enrolled in the Senior ROTC and assigned to Control Group (ROTC). Authority to separate cadets for purposes of appointment (para 5-5), or disenrollment from the ROTC program (para 5-6), may be delegated to Professors of Military Science.

(5) Commander, U.S. Army Human Resources Command (AHRC-OPD-R); Commander, U.S. Army Aviation Center and Fort Rucker; and Commander, U.S. Army Reserve Readiness Training Center, are authorized to order the discharge of a warrant officer candidate (WOC) concurrent with the candidate's appointment as a warrant officer (para 5-5).

(6) Commanding General, U.S. Army Recruiting Command (USAREC), or the commander of a U.S. Army Recruiting battalion (RBN), if delegated by CG, USAREC, for soldiers in the Delayed Entry Program (DEP) (chap 15, sec II). RBN Cdrs may also act to void enlistment cases (para 7-2c(2)(e)).

1-11. Authority to order separation of soldiers having more than 18, but less than 20, years of qualifying service for retired pay

a. A soldier having completed 18, but less than 20, years of qualifying service for retired pay (10 USC 12732) will not be involuntarily separated without the approval of the Secretary of the Army or his designated representative. All recommendations for involuntary separation of soldiers in this category will be sent to HQDA (para 1-12) for consideration.

b. Cases involving voluntary separation at the request of the soldier need not be referred to HQDA for approval.

1-12. Referrals to HQDA

Cases requiring approval by HQDA, to include the Army Secretariat, will be referred to the following:

a. For ARNGUS soldiers: HQDA, Office of the Chief, National Guard Bureau, ATTN: NGB-ARP, 2500 Army Pentagon, WASH DC 20310-2500.

b. For USAR soldiers: HQDA, Office of the Chief, Army Reserve, ATTN: DAAR-PE, 2400 Army Pentagon, WASH DC 203 10-2400.

Chapter 2
Guidelines on Separation and Characterization

Section I
Separation

2-1. Scope

This chapter provides general guidance, which applies when referenced under the reasons for separation in this regulation. Further guidance is set forth under the specific reasons for separation in chapters 4 through 16.

2-2. Guidance

a. There is a substantial investment in the training of soldiers enlisted into the Army. As a general matter, reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings.

b. Unless separation is mandatory, the potential for rehabilitation and further useful military service, will be considered by the separation authority, and where applicable, the administrative separation board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

c. Counseling and rehabilitative efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under the specific requirements for the separation. An alleged or established inadequacy in previous rehabilitation efforts does not bar separation.

d. The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(1) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the soldier's continued retention on military discipline, good order, and morale.(2)The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(2) The likelihood that the soldier will be a disruptive or undesirable influence in present or future duty assignments.

(3) The ability of the soldier to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(4) The soldier's rehabilitative potential.

(5) The soldier's entire military record. This includes—

(a) Past contributions to the Army, assignments, awards and decorations, evaluation ratings, and letters of commendation.

(b) Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities.

(c) Any other matter deemed relevant by the board or the separation authority. This may include specialized training, duties, and experience of persons entrusted by this regulation with making recommendations or decisions on separation or retention.

(d) Adverse information from a prior enlistment or period of military service only when such information would have a direct and strong probative value in determining whether separation is appropriate. This would include records of nonjudicial punishment and convictions by court-martial. Such information ordinarily will be used only in those cases involving conduct repeated over an extended time or in cases resulting from a bar to reenlistment. In unusual situations, conduct from a prior enlistment that does not constitute a pattern of conduct that is manifested over an extended period of time, may be considered in determining whether retention or separation is warranted. An example is where a single incident of misconduct occurring in the prior period of service, by itself, warrants separation and the officials in the soldier's chain of command neither knew, nor reasonably should have known, of the conduct at the time the soldier reenlisted.

(e) Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

(f) Criminal history information from personnel security investigative (PSI) reports requested within the first 90 days of a soldier's initial enlistment may be used to support separation proceedings initiated under Chapter 7 (Erroneous Enlistment) and (Fraudulent Entry). Use of PSI reports in connection with all other separation proceedings is prohibited unless specific authorization is granted in accordance with AR 3 80-67, paragraph 10-100. Requests for such authorization may be submitted on a case-by-case basis through command channels to HQDA, ARNGUS, NGR-ARP/OCAR, DAAR-PE (para 1-12).

(g) By order of release from custody and control of the Army by reason of void enlistment; or

(h) By being dropped from the rolls of the Army.

e. Any of the types of characterization or description of service listed in a above may be used in appropriate circumstances unless a limitation is set forth in this section or in chapters 4 through 16 of this regulation.

f. Characterization of service as a result of administrative action is governed by this regulation and the service of soldiers is either characterized or uncharacterized when they are separated from the ARNGUS or USAR. However, discharge certificates are issued only to those soldiers whose service is characterized as honorable or under honorable conditions per paragraph 2-19.

2-8. General considerations

a. The characterization of service upon separation is of great significance to the soldier. It must accurately reflect the nature of service performed. Eligibility for veterans' benefits provided by law, eligibility for reentry into the military service, and acceptability for employment in the civilian community may be affected by the service characterization. The type of discharge and character of service will be determined solely by the military record during the current enlistment or period of service, plus any extension thereof, from which the soldier is being separated. The soldier's performance of duty and conduct must be accurately evaluated. The evaluation must be based on the overall period of service and not on any isolated actions or entries on the DA Form 2-1. Separations where the service has been characterized as honorable or under honorable conditions entitle a soldier to Federal rights and benefits as provided by law. However, a separation characterized as under other than honorable conditions could deprive the soldier of veterans benefits administered by the Department of Veterans Affairs (DVA). A determination by that agency is required in each case.

b. Characterization at separation will be based upon the quality of the soldier's service, including the reason for separation and guidance set forth in paragraph 2-9, subject to the limitations under the various reasons for separations. The quality of service will be determined in accordance with standards of acceptable personal conduct and performance of duty for military personnel as found in the Uniform Code of Military Justice (UCMJ), Army regulations, and the time-honored customs and traditions of the Army.

c. The quality of service of a Reserve soldier in an active status is affected adversely by conduct that is of a nature to bring discredit on the Army or is prejudicial to good order and discipline, regardless of whether the conduct is subject to UCMJ jurisdiction. Characterization may be based upon conduct in the civilian community, and the burden is on the soldier to demonstrate that such conduct did not adversely affect his or her service.

d. The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization. As a general matter, characterization will be based on a pattern of behavior rather than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident, provides the basis for characterization.

e. Due consideration will be given to the soldier's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

2-9. Characterization of service

The following are characterizations of service authorized by this regulation.

a. Honorable. An honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(1) An honorable characterization may only be awarded a soldier upon completion of his or her service obligation, or where required under specific reasons for separation, unless an uncharacterized description is warranted.

(2) When a soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply:

(a) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(b) A soldier will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by court-martial or actions under the UCMJ Art 15.

(c) Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable characterization of service.

(d) An honorable characterization may be awarded when disqualifying entries in the soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(e) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(f) Unless otherwise ineligible, a soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

b. General, (under honorable conditions). If a soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the soldier's conduct or performance of duty outweighs positive aspects of the soldier's military record.

(1) When authorized, a characterization of under honorable conditions is awarded to a soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(2) A characterization of under honorable conditions may be issued only when the reason for the soldier's separation specifically allows such characterization. It will not be issued to soldiers upon separation for expiration of their service obligation.

c. Under other than honorable conditions. Service may be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons, and under the following circumstances:

(1) When the reason for discharge is based upon a pattern of behavior, or one or more acts or omissions, that constitutes a significant departure from the conduct expected of soldiers. Examples of factors that may be considered include the following:

(a) Use of force or violence to produce serious bodily injury or death.

(b) Abuse of position of trust.

(c) Disregard by a superior of customary superior-subordinate relationships.

(d) Acts or omissions that endanger the security of the United States or the health and welfare of other soldiers.

(e) Deliberate acts or omissions that seriously endanger the health and safety of other persons.

(2) A discharge where service is characterized as under other than honorable conditions will be directed only by a general officer in command who has a judge advocate or legal advisor available to the command, or a higher authority per paragraphs 1-9a and 1-9b(1) and (2).

(3) No soldier will be discharged per this regulation, with service characterized as under other than honorable conditions unless he or she is afforded the right to present his or her case before an administrative separation board. The soldier will be afforded the advice and assistance of counsel. Such discharge must be supported by approved board findings, and an approved board recommendation for discharge under other than honorable conditions.

(4) As an exception to (3) above, a discharge with service characterized as under other than honorable conditions may be issued without board action if the soldier waives his or her right to board action.

(5) When a soldier is to be discharged under other then honorable conditions, the separation authority will direct an immediate reduction to private E1 (PV1), per AR 140–158, chapter 7, and NGR 600–200.

2-10. Limitation on characterization of service

Characterization will be determined solely by the soldier's military record which includes the soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions of service prescribed by law or regulation or effected with the consent of the soldier. The exceptions are provided in this paragraph. In determining characterization or description of service, the following will be used as guidelines:

a. A soldier will receive an honorable characterization of service if limited use evidence (AR 600-85) is initially introduced by the Government in the separation proceedings, and the separation is based on those proceedings. (See f below and para 3-17f.) The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

b. The following will not be considered in determining the character of service:

(1) Pre-service activities, except in proceedings for fraudulent entry (chap 7, sec II) when misrepresentations, including omissions of facts which, if known, would have prevented, postponed, or otherwise affected the soldier's eligibility for enlistment.

(2) Prior service activities including but not limited to, records of conviction by courts-martial, records of non-judicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed. To the extent that such matters are considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization. As an exception, personal decorations received during prior service may be considered in characterizing the current period of service.

c. The limitations in paragraph 2-3 as to matters that may be considered on the issue of separation are applicable to matters that may be considered on the issue of characterization.

d. When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to but not imposing a punitive discharge, the soldier's service may not be characterized under other than honorable conditions unless such characterization is approved by HQDA, ARNGUS, NGR-ARP/OCAR, DAAR-PE. Requests for approval will be sent to the HQDA, AIRNGUS, NGR-ARP/OCAR, DAAR-PE addresses shown in paragraph 1-12.

e. The conduct of a soldier in the civilian community may form the basis for characterization under other than honorable conditions only if such conduct directly affects the performance of military duties. Such conduct may form the basis of characterization under honorable conditions only if such conduct has an adverse impact on the overall effectiveness of the Army, including military morale and efficiency.

f. A soldier's voluntary submission to a treatment and rehabilitation program (for personal use of drugs) and evidence provided voluntarily by the soldier concerning personal use of drugs as part of initial entry into such a program may not be used against the soldier on the issue of characterization. This limitation does not preclude the following actions:

(1) The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been first introduced by the soldier; and

(2) Taking action based on independently derived evidence, including evidence of drug abuse after initial entry into the treatment and rehabilitation program.

g. The results of mandatory urinalysis may be used on the issue of characterization unless prohibited by AR 600-85.

Chapter 3
Guidelines for Separation

Section I
Application

3-1. Scope
The procedures in this chapter are applicable only when required under a specific reason for separation cited in this regulation. These actions are subject to the requirements set forth in the specific reason for separation.

3-2. Guidance
When a soldier is processed on the basis of multiple reasons for separation, the following guidelines apply to procedural requirements (including procedural limitations on characterization or description of service):

a. The basis for each reason must be clearly established.

b. If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board Procedure, the entire matter will be processed under section III, of this chapter.

c. When there is any other clear conflict between a specific requirement applicable to one reason and a general requirement applicable to another reason, the specific requirement will be applied.

d. If a conflict in procedures cannot be resolved on the basis of the foregoing principles, the procedure most favorable to the soldier will be used.

Section II
Separation Using the Notification Procedure

3-4. Notice under the Notification Procedure
a. When the Notification Procedure is required under a reason for separation cited in this regulation, the commander ill notify the soldier, in writing, of the matter set forth in this section. (Use the memorandum format at figure 3-1, with the endorsement format at figure 3-2, for this purpose.)

(1) The basis of the proposed separation, including the circumstances upon which the action is based, and a reference to the applicable provisions of this regulation.

(2) Whether the proposed separation could result in a discharge from the Army, transfer from the ARNGUS to the USAR, or release from custody or control of the Army.

(3) The least favorable characterization or description of service authorized for the proposed separation.

(4) The right to obtain copies of documents that will be sent to the separation authority supporting the basis of the proposed separation. Classified documents may be summarized. For a separation under chapter 11 or chapter 12 based on a positive urinalysis, the soldier will be provided, on request, a copy of the laboratory documents (as described in AR 600-85).

(5) The soldier's right to submit statements.

(6) The soldier's right to consult with counsel. The soldier may also consult with civilian counsel retained at the soldier's own expense.

(7) If the soldier has 6 or more years of total active and reserve military service on the date of initiation of recommendation for separation, the soldier's right to request an Administrative Board (section III). (See para 3-6a.)

(8) The right to waive the rights in paragraphs (4) through (7) above, in writing (fig 3-2), after being afforded a reasonable opportunity to consult with counsel, and that failure to respond within 30 calendar days from the date of receipt of the notice will constitute a waiver of the right.

b. Reasonable effort should be made to furnish copies of the notice to the soldier through personal contact by a representative of the command. In such a case, a written acknowledgment of the notice will be obtained. If the soldier cannot be personally contacted or refuses to acknowledge receipt of the notice, the notice will be sent by registered or certified mail, return receipt requested, to the most recent address furnished by the soldier as an address for receipt or forwarding of official mail. The individual who mails the notification will prepare an Affidavit of Service by Mail (fig 1-1). This will be inserted in the soldier's personnel file together with PS Form 3800 (Receipt for Certified Mail).

3-5. Additional notice requirements

a. If separation processing is initiated on the basis of more than one reason, the soldier will be notified of the basis of each reason, including the circumstances on which the action is based, with reference to the specific provisions of this regulation that authorize separation.

b. If the soldier is in civil confinement the relevant notification procedures of paragraph 3-4b above apply.

c. If the separation action involves a transfer from the ARNGUS to the USAR the notification procedures in paragraph 1-25 are required.

d. When the soldier is processed for separation by reason of convenience of the Govermnent (chap 6) and characterization of service of general (under honorable conditions) is authorized, the soldier must be notified of the specific factors in the service record that warrant such a characterization.

e. The intermediate commander(s), in making recommendations on the characterization or description of service, may recommend any characterization or description of service authorized for the notified basis of separation, but will normally be limited to considering facts contained within the proposed action. If the intermediate commander(s) consider additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander(s) will state in writing the specific facts and incidents in the soldier's record that warrant such type of discharge and characterization or description. The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material. An explanation by the intermediate commander of the reasons for his or her recommendation that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

3-8. Response

The soldier will be provided a reasonable period of time (not less than 30 calendar days) to respond by endorsement to the notification memorandum (fig 3-2). An extension may be granted on a timely showing of good cause by the soldier. An extension will normally be granted until any documents requested by the

soldier pursuant to paragraph 3-4a(4) are provided to the soldier and the soldier has a reasonable opportunity to respond to such documents. The decision of the soldier on each of the rights set forth in paragraphs 3-4a(4) through (7), and applicable provisions referenced in paragraph 3-5, will be recorded and signed by the soldier and counsel (fig 3-2), subject to the following limitations:

a. If the soldier elects to exercise his or her right to a hearing before an administrative board (para 3-4a(7)), then the entire matter will be processed under the Administrative Board Procedure (sec III) commencing with paragraph 3-13. (Compliance with paras 3-10, 3-11, and 3-12 is not required in this situation.)

b. If the notification memorandum was mailed (para 3-4b) and the soldier fails to acknowledge receipt, or to submit a reply (fig 3-2) within 30 calendar days, that fact will constitute a waiver of the right to respond. An appropriate notation will be recorded on the retained copy of the memorandum of notification (fig 3-1).

c. If the soldier declines to respond as to the selection of rights, such declination will constitute a waiver of rights and an appropriate notation will be recorded on the retained copy of the memorandum of notification (fig 3-1). If the soldier indicates that one or more of the rights will be exercised, but declines to sign the receipt of notification (fig 3-2), the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

3-7. The initiating commander's report to the separation authority

The commander initiating the separation proceedings will forward a full report of the recommended proceedings through intermediate commanders, if any, to the appropriate separation authority (para 1-9) using the commanding officer's report in the format shown in figure 3-3.

3-8. Action by intermediate commanders

Intermediate commanders may take the following action:

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

b. Approve the commanding officer's recommendation and forward the report to the separation authority.

3-9. Action by separation authority

a. The separation authority for actions initiated under the Notification Procedure will be the authority cited in paragraph 10.

b. The action of the separation authority will be recorded.

c. On receipt of the commander's report (paras 3-7 or 3-13), the separation authority will determine if there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If an allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation. If there is not sufficient basis for separation, the separation authority will disapprove the recommendation and return the case to the originator for disposition by other means or take other appropriate action under this regulation. If the recommendation is disapproved, the return endorsement will cite reasons for disapproval.

d. If there is a sufficient factual basis for separation for the reason set forth in the notification, the separation authority will determine whether separation is warranted under the guidance in chapter 2, sections I and II. On the basis of that guidance, the separation authority will direct one of the following actions:

(1) Retention;

(a) In current assignment or pay category; or

(b) In the USAR with reassignment to the IRR under the MATP (chap 1, sec V), or per AR 140-10.

(2) Separation. If an ARNGUS soldier eligible for MATP (Para 1 -22a) is being separated for reasons cited in paragraph 1-21b and the separation authority determines the soldier has mobilization potential (para 1-24), the separation authority may direct the soldier be discharged from the Army National Guard (ARNG) per NGR 600-200 with concurrent transfer as a Reserve of the Army to the IRR of the USAR as a mobilization asset.

(3) Suspend separation in accordance with the guidance in chapter 2, section II.

e. If the separation authority directs separation or suspended separation on the basis of more than one reason authorized by this regulation, the separation authority will designate the most appropriate basis as the primary reason for reporting purposes (para 3-2).

f If separation or a suspended separation is directed, the separation authority will assign a characterization or description of service per chapter 2, section III.

Section III
Separation Using The Administrative Board Procedure

3-10. Notice under the Administrative Board Procedure

a. When the Administrative Board Procedure is required under a reason for separation cited in this regulation, the soldier will be notified in writing of the matters set forth in this section: (Use the memorandum format at figure 3-4, with the endorsement format at figure ***3-5,*** for this purpose.)

(1) The basis of the proposed separation, including the circumstances upon which the action is based, and a reference to the applicable provisions of this regulation.

(2) Whether the proposed separation could result in a discharge from the Army, transfer from the ARNGUS to the USAR, or release from custody and control of the Army.

(3) The least favorable characterization or description of service authorized for the proposed separation.

(4) The soldier's right to consult with counsel. The soldier may also consult with civilian counsel retained at the soldier's own expense.

(5) The right to obtain copies of documents that will be sent to the Separation Authority supporting the basis of the proposed separation. Classified documents may be summarized. For a separation under chapter 11 or chapter 12 based on a positive urinalysis, the soldier will be provided, on request, a copy of the laboratory documents (as described in AR 600-85).

(6) The soldier's right to request a hearing before an Administrative Board.

(7) The soldier's right to present written statements instead of board proceedings.

(8) The soldier's right to representation at the Administrative Board by military counsel designated according to AR 27-10, chapter 6. Request for military counsel of choice is not authorized (AR 15-6, para 5-6b(2)).

(9) The soldier's right to representation at the Administrative Board by civilian counsel at the soldier's own expense.

(10) Non lawyer counsel may not represent a soldier before an Administrative Board unless:

(a) The soldier expressly declines appointment of counsel qualified under Article 27(b)(1) of the UCMJ and requests a specific nonlawyer counsel; or

(b) The Separation Authority assigns nonlawyer counsel as assistant counsel.

(11) The soldier's right to submit a conditional waiver of the right to a hearing before an administrative board (para 3-1 5a).

(12) Unless prohibited by paragraph 3-ISe, the right to waive the rights in paragraphs (4) through (10) above, in writing (fig 3-5), after being afforded a reasonable opportunity to consult with counsel, and that failure to respond within 30 calendar days from the date of receipt of the notification memorandum (fig 3-1 or 3-4) will constitute a waiver of the right.

(13) The right to be present at the board hearing will be waived if the soldier fails to appear without good cause.

b. Reasonable effort should be made to furnish copies of the notification memorandum (fig 3-4) to the soldier through personal contact by a representative of the command. In such a case, a written acknowledgment of receipt of the notification will be obtained. If the soldier cannot be contacted or refuses to acknowledge receipt of the notification, the notification memorandum will be sent by registered or certified mail, return receipt requested, to the most recent address furnished by the soldier as an address for receipt or forwarding of official mail. The individual who mails the notification will prepare a Affidavit of Service by Mail (fig 1-1). This will be inserted in the soldier's personnel file together with PS Form 3800 (Receipt for Certified Mail).

3-11. Additional notice requirements

a. If separation processing is initiated on the basis of more than one reason, the soldier will be notified of the basis of each reason, including the circumstances on which the action is based, with reference to the specific provisions of this regulation that authorize separation.

b. If the soldier is in civil confinement the relevant notification procedures of paragraph 3-lOb above applies.

c. If the separation action involves a transfer from the ARNGUS to the USAR the notification procedures in paragraph 1-25 are required.

d. The intermediate commander(s), in making recommendations on the characterization or description of service, may recommend any characterization or description of service authorized for the notified basis of separation, but will normally be limited to considering facts contained within the proposed action. If the intermediate commander(s) consider additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander(s) will state in writing the specific facts and incidents in the soldier's record that warrant such type of discharge and characterization or description. The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material. An explanation by the intermediate commander of the reasons for his or her recommendation that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

3-12. Response

The soldier will be provided a reasonable period of time (not less than 30 calendar days) to respond by endorsement to the notification memorandum (fig 3-5). An extension may be granted on a timely showing of good cause by the soldier. An extension will normally be granted until any documents requested by the soldier pursuant to paragraph 3-l Oa(5) are provided to the soldier and the soldier has a reasonable opportunity to respond to such documents. The decision of the soldier on each of the rights set forth in paragraphs 3-lOa(l) through (10), and applicable provisions referenced in paragraph 3-11, will be recorded and signed by the soldier and counsel (fig 3-5), subject to the following limitations:

a. If the notification memorandum (fig 3-4) was mailed per paragraph 3-lob and the soldier fails to acknowledge receipt, or to submit a reply by endorsement (fig 3-5) within 30 calendar days, that fact will constitute a waiver of rights. An appropriate notation will be recorded on a retained copy of the notification memorandum (fig 3-4).

b. If the soldier declines to respond as to the selection of rights, such declination will constitute a waiver of rights and an appropriate notation will be made on the retained copy of the notification memorandum (fig 3-4).

c. If the soldier indicates that one or more of the rights will be exercised, but declines to sign the endorsement (fig 3-5), the selection of rights will be noted. An appropriate notation as to the failure to sign will be made on the retained copy of the endorsement (fig 3-5).

3-13. The initiating commander's report to the separation authority

The commander initiating the separation proceedings will forward a full report of the recommended proceedings through intermediate commanders, if any, to the appropriate separation authority (para 1-9) using the commanding officer's report in the format shown in figure 3-3.

3-14. Action by intermediate commanders

Except as may be prescribed in paragraph 10-7, intermediate commanders may take the following action:

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

b. Approve the commanding officer's recommendation and forward the report to the separation authority.

3-16. Action by the separation authority on commander's recommendation

Except as may be prescribed in paragraph 10-8, on receiving the commanding officer's report (paras 3-7 or 3-13), the separation authority may take one of the following actions—

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

b. Disapprove the recommendation relating to reason for separation and direct the soldier be processed for separation under another reason for separation. This may be done when the separation authority determines that an alternative basis for separation is more appropriate than the originating command's reason for separation. In this case the soldier must be so advised and new proceedings must be initiated using the Notification Procedure or Administrative Board Procedure, as required.

c. When the board hearing has been properly and effectively waived, approve the separation and direct characterization of service or description of separation per chapter 2, section III.

d. When the board hearing has been properly and effectively waived, approve the separation and direct characterization of service or description of separation per chapter 2, section III, and suspend execution of the separation (chap 2, sec II).

e. Convene an Administrative Board to conduct a hearing and provide recommendations as prescribed in paragraph 3-17.

f Direct that the case be processed through medical channels, if appropriate, as provided in paragraph 1-8.

3-17. Hearing requirements

Except as otherwise provided herein, the procedures of AR 15-6 as they relate to boards of officers will also be used in these proceedings. If a soldier requests, or does not waive the right to, a hearing before an Administrative Board, the following actions are applicable.

a. Composition.

(1) The separation authority (para 1-9) will appoint to the Administrative Board at least three experienced commissioned, warrant or noncommissioned officers. At least one of the voting commissioned officers must be a Reserve officer.

(a) Enlisted soldiers appointed to the Board must be sergeants first class (SFC) or above, and must be senior to the respondent.

(b) At least one member of the Board must be a Major or higher, and a majority must be commissioned or warrant officers. However, all board members must be commissioned officers (includes warrant officers) if under other than honorable conditions character of service is authorized for the reason for separation.

(c) The senior member will be the president of the Board.

(d) The separation authority may appoint to the Board a nonvoting recorder.

(e) A nonvoting legal advisor may be appointed to assist the Board.

(2) Boards with ARNGUS respondents shall include at least one ARNGUS officer as a voting member. Boards with USAR respondents shall include at least one USAR officer as a voting member.

(3) The separation authority will ensure that the opportunity to serve on administrative boards is given to women and minorities. The mere appointment or failure to appoint a member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

(4) The respondent may challenge a voting member of the Board or the legal advisor, if any, for cause only.

b. Presiding officer. The president will preside and rule on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor will rule finally on all matters of evidence and challenges except challenges to the legal advisor. Military judges may be appointed as board members. If a military judge is appointed as the president of a board, a legal advisor to the board need not be appointed.

c. Witnesses.

(1) The soldier will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, on written request of the soldier, endeavor to arrange for the presence of any available witness the soldier desires to call. Pursuant to AR 15-6, paragraph 3-7c, expert medical and psychiatric testimony routinely may be provided in the form of affidavits.

(2) The respondent may submit a written request for TDY or invitational travel orders for witnesses. Such a request will contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(3) The convening authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) determines that—

(a) The testimony of a witness is not cumulative.

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization.

(c) Telephonic, written, or recorded testimony will not adequately accomplish the same objective.

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case, and

(e) The significance of the personal appearance of the witness when balanced against the practical difficulties in producing the witness favors production of the witness. Factors to be considered in relation to the balancing test include the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(4) If the convening authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued if necessary to permit the attendance of the witness.

(5) The hearing will be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required; or

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

(6) Paragraph (5)(c) above does not authorize a Federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

d. Record of proceedings. The proceedings of the board will be summarized as fairly and accurately as possible. The proceedings will contain a verbatim record of the findings and recommendations.

e. Presentation of evidence. Except as otherwise provided in this regulation, the procedures in AR 15-6 apply.

f. Introduction of limited use evidence. The Government may initially introduce limited use evidence (AR 600-85) into separation proceedings accomplished under this regulation or, at its option, may elect to proceed solely with independent evidence not subject to limited use. If limited use evidence is initially introduced by the Government and the separation proceedings result in separation, the soldier will receive an honorable characterization of service (para 2-I Qa). However, the proceedings may be reinitiated or a rehearing held in accordance with the following guidance. If limited use evidence is introduced by the Government before the board convenes, the separation proceedings may be reinitiated, excluding all references to limited use evidence. If limited use evidence is introduced by the Government after the board convenes, a general officer who is the separation authority may set aside the proceedings and refer the case to a new board for rehearing. (See AR 600-85.) The reason for the rehearing will not be disclosed to the new board and limited use information will not be initially introduced by the Government. Review and action in the case will be based only on the new record. If a rehearing is not deemed appropriate, the soldier may be separated with an honorable characterization of service (para 2-IQa). The servicing Judge Advocate will review completed board proceedings that contain limited use evidence and advise the separation authority whether a rehearing is appropriate.

g. Rights of the respondent.

(1) The respondent may testify in his or her own behalf. The provisions of Article 31(a), Uniform Code of Military Justice (UCMJ) will apply, as appropriate.

(2) At any time before the board convenes and during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the board. This includes submission of any answer deposition, sworn or unsworn statement, affidavit, certificate, or stipulation, or depositions of witnesses not reasonably available or witnesses unwilling to appear voluntarily.

(3) The respondent or counsel may call witnesses in his or her own behalf subject to the provisions of c above.

(4) The respondent or counsel may question any witness who appears before the board.

(5) The respondent or counsel may present argument before the board closes for deliberation on findings and recommendations.

(6) The respondent may appear in person with or without counsel at all open proceedings of the board. When a soldier appears before a board without counsel, the record will show that the president of the board counseled the respondent as to characterization or description of service that he or she may receive as a result of the board action, the effects of such characterization or description, and that he or she may request counsel. The record of the proceedings will reflect the respondent's response.

(7) The respondent or counsel may challenge any voting member of the board or the legal advisor, if any, for cause only. Furthermore, when the board is considering a case in which the respondent has exercised his or her right to revoke a previous waiver, the board membership will not be advised in any manner of such action by the respondent, or of the type of discharge which had been recommended in his or her case. When it has come to the attention of the respondent or his or her counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having such knowledge constitutes a waiver of the matter.

(8) Failure of the soldier to invoke any of the above rights after having been apprised of same is not a bar to the board proceedings, findings, or recommendations.

h. Findings and recommendations. Except as may be prescribed in paragraph 10-9—

(1) The board will determine its findings and make recommendations in closed session. Only voting members will be present.

(2) The board will determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence.

(3) The board will then determine under the guidance in chapter 2, section I, whether the findings warrant separation with respect to the reason for separation set forth in the notice. If more than one reason was contained in the notice, there will be a separate determination for each reason.

(4) The board will make recommendations on the following:

(a) Retention or separation. The board will recommend retention or separation. Should the board recommend retention, the recommendation must provide for the soldier to be retained in the component and status in which the soldier is currently serving, and no character of service will be recommended. A board will not recommend retention when recommending a characterization of service.

(b) Suspension of separation. If the board recommends separation, it may recommend that the separation be suspended in accordance with chapter 2, section II, but the recommendation of the board is not binding on the separation authority.

(c) Characterization of service or description of separation. If separation or suspended separation is recommended, the board will recommend a characterization of service or description of separation as authorized by the basis for separation (chaps 6 through 16) in accordance with the guidance in chapter 2, section III.

i. Report of proceedings. A complete report of proceedings will be forwarded to the Separation Authority for final determination and disposition.

3-18. Action by separation authority on board recommendations

Except as may be prescribed in paragraph 10-10—-

a. The Separation Authority for actions initiated under the Administrative Board Procedure will be the authority cited in paragraph 1 -9a and 1 -9b. This authority will not be further delegated.

b. The board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies. This officer determines whether the action meets the requirements of this regulation. However, in every case in which characterization of service under other than honorable conditions is recommended, or when limited use evidence was introduced in the board proceedings (para 3-17f), or when the soldier identifies specific legal issues for consideration by the separation authority, the proceedings will be reviewed by a member of the Judge Advocate General Corps.

c. The respondent will be provided a copy of the board's statement of facts and recommendations.

d. In cases where the separation authority recommends the separation of a soldier with 18, but less than 20, years of qualifying service for retired pay (10 USC 12732), the report of board proceedings and the separation authority recommendation will be sent to HQDA per paragraph 1-12 for consideration.

e. In cases where a board has recommended separation of a soldier based on a civil court conviction and the soldier is not incarcerated (para 12-2), approval and execution of the separation will normally be withheld only if the soldier has filed an appeal of the conviction or stated his or her intention to do so (para 1 2-2b). If the separation authority determines execution of the separation is appropriate without waiting for final action on the appeal, the soldier may be separated with the appropriate characterization of service upon the approval of HQDA , ARNGUS, NGR-ARP/OCAR, DAAR-PE (para 1-12), or at the request of the soldier

f. The separation authority will take action in accordance with this paragraph; the requirements of chapters 4 through 16 with respect to the reason for separation; and the guidance in chapter 2 on separation and characterization; and the guidance in chapter 1, section V, regarding the MATP.

(1) If the separation authority approves the recommendations of the board on the issue of separation or characterization (or both) this constitutes approval of the board's findings and recommendations under paragraph 3-1 7h, unless the separation authority expressly modifies such findings or recommendations. However, the Separation Authority cannot authorize a characterization of service less favorable than that recommended by the board.

(2) If the board recommends retention, the separation authority will not direct discharge. The Separation Authority may take one of the following actions:

(a) Approve the recommendation.

(b) If the Separation Authority believes that discharge is warranted and in the best interests of the Army, a request for separation under the provisions of chapter 14 may be sent to HQDA , ARNGUS, NGR-ARP/OCAR, DAAR-PE (para 1-12). The separation authority will personally sign the memorandum to HQDA, ARNGUS, NGR-ARP/OCAR, DAAR-PE which sets forth specific reasons justifying the soldier's discharge as being in the Army's interest. Prior to forwarding the case, the Notification Procedure (sec II) will be used. However, the procedure for requesting an administrative board (para 3-4a(7)) is not applicable. It is the policy of HQDA, ARNGUS, NGR-ARLP/OCAR, DAARPE to uphold the recommendations of a duly constituted board unless compelling justification is given to warrant separation under Secretarial authority, as being in the Army's best interest. Compelling justification warranting a separation might be such things as incomplete record available to the board, false testimony, or other defects in the proceedings. If separation is approved under chapter 14, the characterization or description of service will be in accordance with paragraph 14-2.

(3) If the board recommends separation, the separation authority may:

(a) Approve the board's recommendation;

(b) Approve the board's recommendations, but modify the recommendations by one or more of the following actions when appropriate:

1. Approve the separation but suspend execution as provided in chapter 2, section II.

2. Change the character of service or description of separation to a more favorable characterization or description. The separation authority cannot authorize a characterization of service less favorable than that recommended by the board.

(c) Disapprove the board's recommendation and direct retention.

(4) If the separation authority approves the board's findings and recommendations in whole or in part with respect to more than one reason for separation (chaps 6 through 16), the separation authority will designate the most appropriate basis as the primary reason for reporting purposes.

S: (Enter date of suspense)
(Office Symbol) *(Date)*

MEMORANDUM FOR *(Soldier's name, SSN, grade, and organization of assignment)*

SUBJECT: Notification of Separation Proceedings Under AR 135-178, Chapter *(Enter appropriate chapter)*

1. Under the provisions of AR 135-178, *(indicate specific chapter, section and paragraph),* I am initiating action to separate you from *(See note below)* for *(Indicate narrative reason).* The reasons for my proposed action are: *(State specific, factual details that constitute the basis for the proposed action).*

2. I am recommending that you receive a(n) *(Indicate one of the following: Honorable characterization of service, General (under honorable conditions) characterization of sep/ice, or Un characterized description of service).* My recommendation and your reply will be submitted through intermediate commanders (if any) to the Separation Authority, *(Enter the name, grade, and organization of the separation authority)* who will make the final decision in your case.

3. The intermediate commander(s) and the separation authority are not bound by my recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable or under honorable conditions, or you may receive an uncharacterized description of service if you are in an entry level status.

(Figure 3-1. Format for notification of separation proceedings when the Notification Procedure is used)

4. (Select and enter the appropriate paragraph from the following:)

(Use for ARNG)

4. If my recommendation is approved, the proposed separation could result in discharge from the Army National Guard and as a Reserve of the Army, discharge from the Army National Guard and transfer to the Individual Ready Reserve, or release from custody and control of the Army.

(Use for USAR)

4. If my recommendation is approved, the proposed separation could result in discharge from the U.S. Army Reserve, transfer or reassignment from your U.S. Army Reserve unit to the Individual Ready Reserve, or release from custody and control of the Army.

5. I am suspending separation action for 45 days to give you an opportunity to exercise the following rights:

a. You have the right to consult with an appointed counsel for consultation; or military counsel of your choice, if he or she is reasonably available, or civilian counsel at your own expense.

(1) If you desire an appointed counsel for consultation, notify this command *before completing the response* by endorsement and the name and phone number of the appointed counsel will be provided.

(2) If you desire a military counsel of your choice, provide this command with the officers name and rank *before completing the response* by endorsement and if the officer is reasonably available, he or she will be appointed counsel for consultation.

(Figure 3-1. Format for notification of separation proceedings when the Notification Procedure is used—continued)

(3) If you retain civilian counsel at no expense to the government, recommend the counsel be retained *before completing the response* by endorsement.

b. You have the right to obtain copies of documents that will be sent to the separation authority supporting the basis of the proposed separation. (Classified documents may be summarized.)

c. You have the right to request a hearing before an administrative separation board if you have 6 or more years of total active and/or reserve service on the date of this notification.

d. If you request a hearing before an administrative board, you have the right to representation at the administrative board by a military counsel.

e. You have the right to representation at the administrative board by civilian counsel at your own expense and at no expense to the Govemment.

f. You have the right to present written statements on your behalf instead of the administrative board proceedings.

g. You have the right to waive the rights listed above in paragraphs *a* through *f* in writing, and you may withdraw any such waiver at any time before the date the separation authority orders, directs, or approves your separation.

**(Insert this paragraph when required per paragraph 1-8 and renumber the following paragraphs.)*

6. You are required to undergo a medical evaluation in accordance with AR Arrangements have been made for this examination and you are to report to *(Location)* at *(Time)* on *(Date).* (See *para 1-8.)*

(Figure 3-1. Format for notification of separation proceedings when the Notification Procedure is used—continued)

**(Insert this paragraph when required per paragraph 1-8 and renumber the following paragraph.)*

6. You are required to undergo a mental status evaluation in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to *(location)* at *(time)* on *(date). (See para 1-8.)*

7. You must complete the attached endorsement acknowledging receipt of this memorandum and indicating the election of your rights. *A copy of this memorandum with the completed endorsement attached, must be delivered to the address shown on the endorsement within 30 days from the date of your receipt of this memorandum of notification.* Any statement or documents you desire to submit in your behalf must also reach me within 30 calendar days after you receive this memorandum, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to deliver the completed endorsement within 30 days of the date of your receipt of this memorandum will constitute a waiver of your rights in paragraphs Sa, b, c, d, a, and f above.

End Listing *(Commander's signature)*
(Typed name, grade, branch)

Note: Enter one of the following, as appropriate: the Army National Guard of the United States; the Army National Guard and Reserve of the Army; the U.S. Army Reserve; or, your USAR organization of assignment.

(NOTE: The commander issuing the notification memorandum (fig 3-1) will prepare and partially complete the following endorsement and enclose it with the notification memorandum. The soldier will complete the endorsement by making the appropriate entries where indicated and return the endorsement attached to a copy of the notification memorandum.)

(Insert Soldier's Last Name) (Insert Memo Office Symbol/Date) 1st End

(Insert Preparer's Name and Telephone Number)

(Figure 3-1. Format for notification of separation proceedings when the Notification Procedure is used—Continued)

SUBJECT: Notification of Separation Proceedings Under AR 135-178, Chapter *(Insert the appropriate chapter)*

(Insert the soldier's full name, SSN, address, and organization of assignment) (Soldier will enter date of response here)

FOR COMMANDER *(Insert the complete organization address shown on memorandum)*

1. I hereby acknowledge receipt of the Notification of Separation Proceedings Under AR 135-178, Chapter *(Insert the appropriate chapter)* dated *(Insert the date of memorandum).* I understand that I may expect to encounter substantial prejudice in civilian life if my service is characterized as general (under honorable conditions).

2. Before completing this response, I understand that *I have the right to consult* with an appointed counsel for consultation; or military counsel of my own choice, if he or she is reasonably available, or civilian counsel at my own expense. *(The soldier will exercise this right by initialing one of the following paragraphs:)*

a. (initial) I have *exercised my right* and I have consulted with counsel in preparation of this response to the notification memorandum. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for *(Enter the reason)* under AR 135-178, *(Enter appropriate chapter),* and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights. The counsel has confirmed this by entering and signing the statement at the end of this endorsement; or

b. (initial) I hereby *waive my right to consult* with an appointed counsel for consultation; or military counsel of my own choice, or civilian counsel at my own expense.

3. I understand I have the right to obtain copies of documents that will be sent to the separation authority supporting the basis of my proposed separation. *(The soldier will exercise this right by initialing one of the following paragraphs:)*

(Figure 3-2. Format for soldier's response by endorsement to notification of separation proceedings when the Notification Procedure is used)

a. (initial) I hereby *waive my right* to obtain copies of documents.

b. (initial) I hereby request copies of the documents.

4. I understand that if I have 6 or more years of total active and/or reserve service, on the date of this notification, *I have the right to a hearing* before an administrative separation board, unless I waive that right. *(The soldier will exercise this right by initialing one of the following paragraphs:)*

a. (initial) I have 6 or more years of total active and/or reserve service on the date of this notification and I hereby *exercise my right to a hearing* before an administrative separation board. I understand that after having requested appearance before the board, my willful failure to appear before the board will constitute a waiver of my rights to personal appearance before the board, unless I am in civil confinement.

(When requesting a board hearing the soldier must also initial one of the following subpara graphs:)

(1) (initial) I *request a counsel* for representation at the hearing be designated.

(2) (initial) I *waive my right* to a counsel for representation at the board hearing.

b. (initial) I have 6 or more years of total active and/or reserve service on the date of this notification and I hereby *waive my right to a hearing* before an administrative separation board.

5. I have the right to representation at the administrative board by civilian counsel at my own expense and at no expense to the Government. *(The soldier will initial the following if civilian counsel is retained)* (initial) I have retained, or will retain, civilian counsel.

6. I understand I have the right to present written statements in my behalf instead of the administrative board proceedings. *(The soldier will exercise this right by initialing one of the following paragraphs:)*

(Figure 3-2. Format for soldier's response by endorsement to notification of separation proceedings when the Notification Procedure Is used—continued)

a. (initial) I hereby *waive my right* to submit written statements.

b. (initial) Statements in my own behalf are submitted herewith and attached as enclosures.

7. I understand that I have the right, up until the date the separation authority orders, directs, or approves my separation, *to withdraw any waiver of my rights* that I may have submitted. If I had a right to a board hearing and waived that right, I can withdraw the waiver and request a hearing before an administrative board.

8. I understand that if I have been ordered to undergo a medical or mental status evaluation and refuse to comply with the order, or willfully fail to undergo such examination or evaluation, separation action will be taken without an examination or evaluation.

9. I understand that there is no automatic upgrading or review by any Government agency of any characterization of service that is less than honorable. After discharge, I may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my characterization of service. I realize that consideration by either board does not imply that my characterization of service will be upgraded.

(Insert the following as paragraph 10 if the soldier is considered for separation based on fraudulent entry. Renumber later paragraphs if this paragraph is used.)

10. I understand that if I am being considered for separation for fraudulent entry my enlistment may be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.

11. I have retained a copy of the Notification Memorandum and a copy of this completed endorsement and I submit the following statement of understanding:

(**Figure 3-2. Format for soldier's response by endorsement to notification of separation proceedings when the Notification Procedure is used—continued)**

UNDERSTANDING: I have read and understand each of the statements above and understand that they are intended to constitute all promises whatsoever concerning my waiver options. Any other promise, representation, or commitment made to me in connection with my separation is written below in my own handwriting or is hereby waived *(If none, write* "NONE').

End *(Signature of individual)*
(Typed name, SSN, grade)

(Entries will be made in the following statement, where indicated, by the counsel for consultation if the soldier elects to consult with consulting counsel.) Having been advised by me of the basis for *(His) (Her)* contemplated separation and its effects, the rights available to *(Him) (Her),* and the effect of a waiver of *(His) (Her)* those rights, *(Soldier's name)* in the foregoing endorsement.

(Signature of counsel)
(Typed name, SSN, grade, branch)
(Date counsel signed statement)

(Figure 3-2. Format for soldier's response by endorsement to notification of separation proceedings when the Notification Procedure is used—continued)

Chapter 6
Convenience of the Government

6-1. Basis
A soldier may be separated for the convenience of the Government on the basis of the reasons set forth in this chapter.

6-2. Dependency or hardship
Upon the request of a soldier and approval of the separation authority, separation may be directed when it is considered that continued membership and service on AD, FTNGD, or ADT, would result in genuine dependency or undue hardship.

a. Criteria for separation. Separation may be approved when all of the following circumstances exist:

(1) The hardship or dependency is not temporary;

(2) Conditions have arisen or have been aggravated to an excessive degree since entry in the Army, and the soldier has made every reasonable effort to remedy the situation;

(3) The administrative separation will eliminate or materially alleviate the condition; and

(4) There are no other means of alleviation reasonably available.

b. Limitation of criteria for separation. The following circumstances do not justify separation because of dependency or hardship. However, the existence of these circumstances does not preclude separation because of dependency or hardship provided the application meets the criteria in a above.

(1) Normal pregnancy of a soldier's wife is not a condition for which his separation is justified.

(2) Undue hardship does not necessarily exist solely because of altered income, separation from family, or the inconvenience normally incident to military service.

c. Conditions of dependency or hardship.

(1) *Dependency.* Dependency exists when, because of death or disability of a member of a soldier's family, other members of his or her family become principally dependent on him or her for care or support to the extent that continued membership and service on AD, FTNGD, or ADT, would result in undue hardship.

(2) *Hardship.* Hardship exists when, in circumstances not involving death or disability of a member of a soldier's family, separation from the service would materially affect the care or support of the soldier's family by materially alleviating undue hardship.

(a) Parenthood. A married soldier who becomes a parent by birth, adoption, or marriage (stepparent) and whose children under 18 years of age reside within the household, may apply for separation under hardship. The soldier must submit evidence per paragraph e below that the roles of parent and soldier are incompatible and that he or she cannot fulfill his or her military obligation on AD, FTNGD, or ADT, without neglecting the children.

(b) Sole parents. Soldiers who are sole parents and whose children under 18 years of age reside within the household may apply for separation under hardship. A "sole parent" is a parent who is single by reason of never being married, or is divorced or legally separated and has been awarded child custody by judicial decree or court order, or is a widow or widower. Basis for separation is as prescribed in paragraph 6-2c(2)(a) above.

(c) Intent. It is not the intent of the Army to arbitrarily allow the separation of an enlisted woman who remained in the service during her pregnancy and then requests release immediately after receiving the medical and monetary benefits related to her prenatal and postnatal absence and delivery.

(d) Supporting evidence. Supporting evidence will be provided as per paragraph e below. Paragraph 6-4e(2) below minimizes the supporting evidence when the basis is parenthood of either a sole parent or a married soldier. However, soldiers must meet the application criteria in paragraph d below, in addition to the requirement that there be unexpected circumstances beyond the soldier's control justifying separation. An example of these circumstances is the birth of a child with a serious birth defect requiring constant care. Inability to obtain an approved Family Care Plan (AR 600-20) does not qualify the soldier for separation under this provision.

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

d. Application for separation. A soldier must submit a written application to be separated because of dependency or hardship. A request for separation will be submitted as follows:

(1) An ARNGUS soldier, or USAR soldier assigned to a TPU or IMA duty position, must submit a written application to the unit commander who will immediately forward it with recommendations and soldier's records through channels to the separation authority (para 1-10) for final action.

(2) A soldier assigned to the IRR, Standby Reserve, or Retired Reserve, must submit a written application to the Commander, U.S. Army Personnel Command, ATTN: ARPC-PSR, 1 Reserve Way, St. Louis, MO 63 132-5200. The Chief, Regional Personnel Actions Division, will immediately forward it with recommendations and soldier's records through the Director, Personnel Actions and Services Directorate, and Director, Enlisted Personnel Management Directorate, to the Commander, AR-PERSCOM (para 1-1 Ob(1)) for final action.

e. Evidence required. The evidence required for dependency or hardship separation will normally be in affidavit form. The evidence must substantiate dependency or hardship conditions on which the application for separation is based.

(1) The evidence will include affidavits or statements submitted by or in behalf of the soldier's dependents and by at least two disinterested persons or agencies having firsthand knowledge of the circumstances. If dependency or hardship is the result of disability of a member of the individual's family, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and prognosis for recovery. There also will be furnished the names, ages, occupations, home addresses, and monthly incomes of other members of the applicant's family. The affidavits of disinterested individuals and agencies should include reasons within their knowledge that these members of the family can or cannot aid in the financial or physical care of the dependents concerned for the period the soldier is to continue membership or is ordered to AD, FTNGD, or ADT. When the basis for the application is the death of a member of the soldier's family, a death certificate or other proof of death should be furnished.

(2) If the basis for the application is parenthood of either a sole parent or a married soldier, the supporting evidence will be in affidavit form and will substantiate the applicant's claim that unexpected circumstances or circumstances beyond his or her control have occurred. These circumstances prevent fulfillment of military obligations without resultant neglect of the child. Affidavits from the soldier's immediate commander and officer who is the job supervisor will be considered sufficient. Evidence in (1) above is not required for these applications; however, sole parenthood resulting from divorce or legal separation will be substantiated by a judicial decree or court order awarding child custody to the soldier.

f. Procedures. On receipt of a written application with required supporting evidence, the separation authority will—

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

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

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

6-4. Surviving sons or daughters

a. Criteria. A soldier who becomes a surviving son or daughter after having enlisted or reenlisted, may apply for and promptly will be discharged. For the purpose of this paragraph, a surviving son or daughter is any son or daughter in a family in which the father or mother or one or more of the sons or daughters:

(1) Have been killed in action or have died when serving in the U.S. Armed Forces from wounds, accident, or disease.

(2) Are in a captured or missing-in-action status.

(3) Have a permanent 100 percent service-related disability (including 100 percent mental disability), as determined by the Director of Veterans Affairs or one of the military services, and are not gainfully employed because of the disability.

b. Ineligible. A soldier may not apply for discharge as a surviving son or daughter under any of the following circumstances:

(1) When the soldier has court-martial charges pending against him or her.

(2) When the soldier has been convicted by court-martial with appellate review in process.

(3) When the soldier is serving a sentence to confinement, or is otherwise undergoing punishment, imposed by a court-martial.

(4) When the soldier is being processed for involuntary administrative separation for cause.

(5) During a period of war or National emergency declared by the Congress.

c. Waiver. A soldier who—

(1) After having been advised of the provisions in paragraph a above, enlists, reenlists, or voluntarily extends his or her term of service after having been notified of the family casualty on which the surviving status is based, will be considered as having waived his or her rights to request separation based on the determination that he/she is a surviving son or daughter.

(2) Has waived his or her right to discharge as a surviving son or daughter, per (1) above, may request reinstatement of that status at any time. However, a request for reinstatement shall not be granted automatically, but shall be considered on the merits of the individual case. Approval for reinstatement rests with the separation authority per paragraph 1-10.

d. Application. A soldier who meets the criteria in a above may submit a written application to be discharged as a surviving son or daughter.

(1) The application will include the following information:

(a) Name, grade, service number (when appropriate), social security number, branch of service (i.e., Army), relationship, and date of death or disability of the family member on which request is based.

(b) DVA Claim Number, if appropriate.

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

(2) The application will be submitted as follows:

(a) An ARNGUS soldier, or USAR soldier assigned to a TPU or IMA duty position, may submit a written application to the unit commander who will immediately forward it with recommendations and soldier's records through channels to the separation authority (para 1-10) for final action.

(b) A soldier assigned to the IRR or Standby Reserve may submit a written application to the Commander, U.S. Army Reserve Personnel Command, ATTN: ARPC-PSR, I Reserve Way, St. Louis, MO 63132-5200. The Chief, Regional Personnel Actions Division, will immediately forward it with recommendations and soldier's records through the Director, Personnel Actions and Services Directorate, and Director, Enlisted Personnel Management Directorate, to the Commander, AR-PERSCOM (para 1-1 Ob(1)) for final action.

e. Verification. Commanders authorized to approve discharge are also authorized to verify status of deceased or disabled family members by forwarding a request, including name, grade, service number (when appropriate), social security number, approximate inclusive dates of service, and branch of the Armed Forces to the National Personnel Records Administration, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132-5200.

6-7. Other designated physical or mental conditions

a. Criteria. The separation authority (para 1-10) may approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 63 5-40) that potentially interfere with assignment to or performance of military duty. Such conditions may include, but are not limited to, chronic airsickness or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, personality disorder, and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the soldier's ability to perform military duties effectively is significantly impaired.

b. Personality disorder. In cases of personality disorder, the diagnosis must be made by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for DOD components. This condition is a deeply ingrained, maladaptive pattern of behavior of long duration, which interferes with the soldier's ability to perform his or her duty. Exceptions are combat exhaustion and other acute situational maladjustment. Separation on the basis of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the soldier's ability to function effectively in the military environment is significantly impaired.

c. Counseling. Discharge processing may not be initiated until the soldier has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

d. Limitation. Discharge for personality disorder is not appropriate when discharge is warranted under other chapters of this regulation. For example, if discharge is warranted on the basis of unsatisfactory performance (chap 9), the soldier should not be discharged under this paragraph regardless of the existence of a personality disorder. Nothing in this paragraph precludes separation of a soldier having a condition as described in a above under any other reason authorized by this regulation.

e. Medical evaluation. When a commander determines that a soldier may have a medical or mental condition that interferes with the soldier's performance of duty and contemplates initiation of separation under this paragraph, the commander will refer the soldier for a medical or mental health evaluation (or both). Commanders referring soldiers for a mental status evaluation must comply with the provisions of DoD Directive 6490.1 and AR 600-20.

6-8. Characterization of service

The service of a soldier separated under this chapter will be characterized as honorable unless an uncharacterized description of service is required by paragraph 2-1 1, or a characterization of general (under honorable conditions) is warranted under chapter 2, section III.

6-9. Procedures.

a. For separations under paragraphs 6-2, 6-3, and 6-4, prior to characterization of service of general (under honorable conditions), the soldier will be notified of the specific factors in the service record that warrant such a characterization, and the Notification Procedure (chap 3, section II) will be used.

b. For separations under paragraphs 6-5, 6-6, and 6-7, the Notification Procedure (chap 3, section II) will be used.

c. For separation under paragraph 6-3 the MATP policy prescribed by chapter 1, section V, will govern whether the soldier will be discharged from the Army, or retained in, or transferred/reassigned to the IRR.

6-10. Separation authority

a. The authorities cited in paragraph 1-10 may order separation under this chapter.

b. The involuntary separation of a soldier with more than 18, but less than 20, years of qualifying service for retired pay requires the approval of HQDA (para 1-1 1).

Chapter 9
Unsatisfactory Performance

9-1. Basis

A soldier may be discharged when it is determined under the guidance set forth in chapter 2, section I, the soldier is unqualified for further military service by reason of unsatisfactory performance.

9-2. Criteria

a. Commanders will take action to discharge a soldier for unsatisfactory performance when it is clearly established that—

(1) In the commander's judgment—

(a) A soldier will not develop sufficiently to participate satisfactorily in further training or become a satisfactory soldier; or

(b) The seriousness of the circumstances forming the basis for initiation of discharge proceedings is such that the soldier's retention would have an adverse impact on military discipline, good order, and morale.

(2) There is a likelihood that the soldier will be a disruptive influence in present or future duty assignments.

(3) There is a likelihood that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(4) The ability of the soldier to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(5) The soldier meets retention medical standards (AR 40-501). See paragraph 1-8.

b. Commanders will initiate discharge action only when the soldier is under military control. As an exception, commanders may initiate this action when a soldier is confined by civil authorities and his or her military record indicates that he or she should be processed for separation by reason of unsatisfactory performance.

c. When a soldier has committed serious acts of misconduct, commanders will not take action prescribed in this chapter in lieu of discharge for misconduct under chapter 12 solely to spare him or her penalties.

d. This chapter applies also to soldiers who are pregnant and whose substandard duty performance is not attributable solely to the condition of pregnancy, such as, failure to report to duty without medical or military authorization.

e. Initiation of discharge proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test (APFT), or who are eliminated for cause from Noncommissioned Officer Education System (NCOES) courses, unless the responsible commander chooses to impose a bar to reenlistment per AR 140-III, or NGR 600-200.

9-3. Counseling and rehabilitation
Discharge processing may not be initiated under this chapter until the soldier has been formally counseled under the procedures prescribed by paragraph 2-4.

9-4. Suspension of favorable personnel action
Favorable personnel action will be suspended per AR 600-8-2 upon initiation of discharge proceedings under this chapter.

9-5. Medical processing and evaluation
See paragraph 1-8.

9-6. Characterization of service
The service of soldiers discharged because of unsatisfactory performance will be characterized as honorable or general (under honorable conditions) in accordance with chapter 2, section III).

9-7. Procedures

a. The Notification Procedure (chap 3, sec II) will be used, except under b below.

b. The Administrative Board Procedure (chap 3, sec III) will be used if the soldier has 18, but less than 20, years of qualifying service for retired pay.

9-8. Separation authority

a. The authority cited in paragraph 1-10 may order discharge under this chapter.

b. The discharge of a soldier with more than 18, but less than 20, years of qualifying service for retired pay requires the approval of HQDA (para 1-1 1).

Chapter 11
Drug or Alcohol Abuse Rehabilitation Failure

11-1. Basis

a. Initiation of discharge proceedings is required in the case of a soldier who has been referred to a program of rehabilitation for personal drug and alcohol abuse under the provisions of AR 600-85 and who fails through inability or refusal to participate in, cooperate in, or successfully complete the program in the following circumstances:

(1) There is a lack of potential for continued military service; or

(2) Long-term rehabilitation in a civilian medical facility is determined necessary.

b. A soldier may be discharged when the commander, in consultation with an Alcohol and Drug Abuse Prevention Control Program (ADAPCP) official (AR 600-85), determines that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure, and discharge is in the best interest of the Army.

c. Nothing in this chapter precludes discharge of a soldier who has been referred to such a program under any other provision of this regulation in appropriate cases.

11-2. Characterization or description
When a soldier is discharged under this chapter, characterization of service as honorable or general (under honorable conditions) is authorized except when service is uncharacterized for soldiers in entry level status.

a. The relationship between voluntary submission for treatment and the evidence that may be considered on the issue of characterization is set forth in paragraph 2-1 of.

b. On the issue of whether mandatory urinalysis results may be considered on the issue of characterization of service, see para 2-lOg and AR 600-85.

11-3. Procedures

a. The Notification Procedure (chap 3, sec II) will be used, except under b below.

b. The Administrative Board Procedure (chap 3, sec III) will be used if the soldier has 18, but less than 20, years of qualifying service for retired pay.

11-4. Separation authority

a. The authorities cited in paragraph 1-10 may order discharge under this chapter.

b. The discharge of a soldier with more than 18, but less than 20, years of qualifying service for retired pay requires the approval of HQDA (para 1-11).

Chapter 12
Misconduct

12–1. Basis

A soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2, section I, that the soldier is unqualified for further military service by reason of one or more of the following circumstances.

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a soldier in entry level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under Entry Level Performance and Conduct (chap 8).

b. A pattern of misconduct. A pattern of misconduct consisting of discreditable involvement with civil or military

authorities or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

c. Commission of a serious offense. Commission of a serious military or civilian offense, if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ.

d. Abuse of illegal drugs. Abuse of illegal drugs is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more disciplinary infractions or incidents of other misconduct and processed for discharge under a or b above, as appropriate.

(1) All soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge, or against whom separation action will not be initiated per chapter 11, will be processed for discharge under *a, b*, or *c* above, as applicable.

(2) “Processed for discharge” means that discharge actions will be initiated and processed through the chain of command to the separation authority for appropriate action.

(3) Voluntary (self) identification/referral per AR 600-85 does not require initiation of discharge proceedings under this paragraph.

e. Civil conviction. See paragraph 12-2.

12-2. Conviction by civil court

A soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2, section I, that the soldier is unqualified for further military service by reason of a civil conviction.

a. Conditions which subject soldier to discharge.

(1) Discharge action may be initiated against soldiers under the following circumstances:

(a) When initially convicted by civil authorities, or action is taken that is tantamount to a finding of guilty (to include a similar adjudication in juvenile proceedings).

(b) When a punitive discharge would be authorized for the same or a closely related offense under the UCMJ, or the sentence by civil authorities includes confinement for 6 months or more without regard to suspension or probation.

(c) When specific circumstances of the offense warrant discharge.

(2) The immediate commander will consider whether to initiate discharge action against a soldier when the criteria of a above are satisfied.

(3) Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

(4) If no discharge action is undertaken on a soldier's final civil conviction after the passage of 2 years, it is presumed that the soldier's commanding officer has determined that retention of the soldier is in the best interest of the Army. However, this presumption may be rebutted and discharge action initiated when it is established by a preponderance of the evidence that the soldier's commanding officer did not make such a determination.

b. Appeals. A soldier will be considered as having been convicted or adjudged a juvenile offender even though an appeal is pending or is subsequently filed. A respondent subject to discharge under this regulation will be considered and processed for discharge even though he or she has filed an appeal or has stated his or her intention to do so. However, execution of the approved discharge will be withheld until the soldier has indicated in writing that he or she does not intend to appeal the conviction or adjudication as a juvenile offender, or until the time an appeal may be made has expired, whichever is earlier; or if an appeal has been made, until final action has been taken. On request of the soldier or when the soldier is present for duty and the commander believes his or her presence is detrimental to good order and discipline or the soldier presents a threat to the safety and welfare of other members of the organization, it may be appropriate to discharge a soldier prior to final action on an appeal. In such cases, the entire file will be forwarded to HQDA (para 1-12) for a final decision. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances on which the recommendation is based.

c. Retention action. Cases often arise that warrant consideration with a view toward retention of the soldier in the Army.

(1) In determining whether retention should be recommended or approved, full consideration should be given to the gravity of the offense involved, the circumstances related to it and any matters in extenuation. Also, the military record of the soldier prior to the commission of the offense should be considered as well as prospects for rehabilitation.

(2) If retention in the Army is desired and a form of civil custody exists, such as parole or probation, the nature of which would interfere with the soldier's normal performance of military duties, the civil authorities will be requested to relinquish such custody during the soldier's term of military service. If the civil authorities decline to relinquish custody or if the conditions placed on relinquishment of custody are unduly burdensome to the Army, as a general rule, the soldier will not be considered for retention, but will be discharged under this regulation.

d. Action following disposition by civil courts.

(1) When discharge is contemplated, while a soldier is under military control, the unit commander will take action as specified in the Administrative Board Procedure (chap 3, sec III). Where the soldier is confined, the provisions of paragraph 2-18 and chapter 3, section IV, are applicable.

(2) If the sole basis for discharge is conviction of a civil offense, counseling and rehabilitative efforts are not required prior to initiation of discharge action.

(3) When a board hearing has been properly waived, the case will be processed under the Notification Procedure and the separation authority will take action under paragraph 3-9.

12-4. Related separations

Homosexual conduct shall be processed under chapter 10. Misconduct involving a fraudulent enlistment is considered under paragraph 7-4.

12-5. Counseling and rehabilitation

a. Separation processing for minor disciplinary infractions or a pattern of misconduct (paras 12-la and b) will not be initiated under this chapter until the soldier has been formally counseled under the requirements prescribed by paragraph 2-4.

b. If the sole basis for discharge is a single offense (paras 12-ic and d) or a civilian conviction or a juvenile adjudication (para 12-2), the counseling and rehabilitation requirements of paragraph 2-4 are not applicable.

12-6. Suspension of favorable personnel action
Favorable personnel action will be suspended per AR 600-8-2 upon initiation of separation processing under this chapter.

12-7. Medical processing and evaluation
See paragraph 1-8.

12-8. Characterization of service
a. Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in chapter 2, section III.
b. For soldiers who have completed entry level status, characterization of service as Honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. In such cases, separations for misconduct with an Honorable characterization will be approved by the separation authority (para 1-10). As an exception, the separation authority will approve separations with service characterized as Honorable when the sole evidence of misconduct is command-directed urinalysis results, which cannot be used for characterization of service, or when an administrative discharge board has recommended separation with an Honorable characterization of service.
c. When characterization of service Under Other Than Honorable Conditions is not warranted for a soldier in entry level status under chapter 2, section III, the service will be described as uncharacterized.

12-9. Procedures
a. The Administrative Board Procedure (chap 3, sec III) will be used, except under b below.
b. The use of the notification procedure is authorized provided characterization of service under other than honorable conditions is unwarranted.

12-10. Separation authority
a. The authority cited in paragraph 1-10 may order discharge under this chapter.
b. The discharge of a soldier with more than 18, but less than 20, years of qualifying service for retired pay requires the approval of HQDA (para 1-11).

Student Handout 3

This Student Handout contains an extract of chapters 1, 2, 3, 6, 13, and 14 from AR 635-200, dated 15 July 2004.

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Chapter 1
General Provisions
Section I
General

1–1. Purpose

a. This regulation sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

b. The separation policies in this regulation promote the readiness of the U.S. Army by providing an orderly means to—

(1) Judge the suitability of persons to serve in the Army on the basis of their conduct and their ability to meet required standards of duty performance and discipline.

(2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service.

(3) Achieve authorized force levels and grade distribution.

(4) Provide for the orderly administrative separation of soldiers in a variety of circumstances.

c. Department of the Army separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

(1) The acquisition of military status involves a commitment to the United States, the Army, one's fellow citizens, and soldiers, to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Army. It is the policy of the Department of the Army to provide soldiers with the training, motivation, and professional leadership that inspires the dedicated soldier to emulate his/her predecessors and peers in meeting required standards of performance and discipline.

(3) The Army makes a substantial investment in training, time, equipment, and related expenses when persons enter into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Army.

(a) Diligent efforts will be made to identify soldiers who exhibit a likelihood for early separation and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings.

(b) Soldiers who do not conform to required standards of discipline and performance and soldiers who do not demonstrate potential for further military service should be separated in order to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

d. This regulation provides—

(1) The authority for separation of soldiers upon expiration of term of service (ETS) or fulfillment of active duty obligation.

(2) The authority and general provisions governing the separation of soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its soldiers.

(3) The procedures to implement laws and policies governing voluntary retirement of soldiers of the Army for length of service.

(4) The criteria governing uncharacterized separations and the issuance of honorable, general, and under other-than honorable-conditions discharges.

Section II
Guidelines on Separation

1-15. Guidance

A substantial investment is made in training persons enlisted or inducted into the Army; therefore, this general guidance will be considered when initiating separation action.

a. Unless separation is mandatory, the potential for rehabilitation and further useful military service will be considered by the separation authority; where applicable, the administrative separation board will also consider these factors. If separation is warranted despite the potential for rehabilitation, consider suspending the separation, if authorized.

b. Adequate counseling and rehabilitation measures will be taken before initiating separation action against a soldier when the reason for separation so specifies. An alleged or established inadequacy in previous rehabilitation efforts does not provide a legal bar to separation.

c. When deciding retention or separation in a case, consider the following factors:

(1) The seriousness of the events or conditions that form the basis for initiation of separation proceedings. Also consider the effect of the soldier's continued retention on military discipline, good order, and morale.

(2) The likelihood that the events or conditions that led to separation proceedings will continue or recur.

(3) The likelihood that the soldier will be a disruptive or undesirable influence in present or future duty assignments.

(4) The soldier's ability to perform duties effectively now and in the future, including potential for advancement or leadership.

(5) The soldier's rehabilitative potential.

(6) The soldier's entire military record, including—

(a) Past contributions to the Army, assignments, awards and decorations, evaluation ratings, and letters of commendation.

(b) Memoranda of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities.

(c) Any other matter deemed relevant by the board or the separation authority, including specialized training, duties, and experience of persons entrusted by this regulation with making recommendations or decisions on separation or retention.

(d) Adverse information from a prior enlistment or period of military service only when such information would have a direct and strong probative value in determining whether separation is appropriate.

1. This includes records of nonjudicial punishment and convictions by court-martial. Such information ordinarily will be used only in those cases involving conduct repeated over an extended period of time.

2. In unusual situations, conduct from a prior enlistment that does not constitute a pattern of conduct manifested over an extended period of time may be considered in determining whether retention or separation is warranted. For example, a single incident of misconduct occurring in the prior period of service that, by itself, would warrant separation may be considered if the officials in the soldier's chain of command neither knew, nor reasonably should have known of, at the time the soldier re-enlisted.

3. Commanders who believe that a soldier's case represents an unusual situation within the meaning of this paragraph should request guidance from the Commanding General (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

(e) Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

Section III
Separation Authority

1–19. Authority to approve or disapprove separation

a. Except for Secretarial plenary authority (see para 5–3); separation due to reduction in force, strength limitations, or budgetary constraints (see para 16–7); the Qualitative Management Program (see chap 19); voluntary separation of soldiers serving indefinite enlistments (see para 4–4); conviction by a foreign court (see paras 14–1*a* and *d* and 14–9*a*); and the early release from active duty of RC personnel serving Active Guard Reserve (AGR) tours under 10 USC 12301(d) (see para 5–15), commanders who are general court-martial convening authorities (GCMCA) and their superior commanders are authorized to approve or disapprove separation per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. (See *l*, below, for delegation of authority to approve discharge in chapter 10 AWOL offense cases.) (See also para 3–7*d*.)

b. A general officer in command who has a judge advocate or legal advisor available is authorized to approve or disapprove the separation or release from AD or ADT of soldiers per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. This general officer, unless also the GCMCA, cannot order separation or release for lack of jurisdiction (see para 5–9) or discharge in lieu of trial by court-martial. (See chap 10.)

c. Commanders who are special court-martial-convening authorities are authorized to approve or disapprove separation under the following chapters:

(1) Chapters 5 (except for para 5–9), 6, 7 (except for the issuance of a discharge under other than honorable conditions based on fraudulent entry), 8, 9, 11, 13, 16, and 18.

(2) Chapter 14 when—

(a) Discharge under other than honorable conditions is not warranted under paragraph 3–7*c* and the notification procedure is used. An Honorable Discharge may be ordered only when the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

(b) An administrative separation board recommends an entry-level separation or discharge with a General Discharge certificate.

(c) An administrative board recommends discharge with an Honorable Discharge and the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

(3) Chapter 15 when-

(a) Discharge under other than honorable conditions is not warranted under paragraph 15–4 based on the facts known before convening an administrative separation board.

(b) An administrative separation board recommends entry-level separation or separation with honorable or under honorable conditions characterization.

(4) This includes the authority to convene an administrative board when required by this regulation for actions either initiated under the notification procedure (see chap 2, sec I) or based upon homosexual conduct in which a characterization of service under other than honorable conditions is not authorized under paragraph 15–4 based upon the facts known before convening an administrative separation board.

(a) A board convened by a special court-martial convening authority is not authorized to recommend discharge under other than honorable conditions.

(b) A special court-martial convening authority is not authorized to convene administrative separation boards in misconduct actions when a characterization of service under other than honorable conditions is contemplated because such actions must be initiated under the administrative board procedure. (See chap 2, sec II.)

(5) Chapter 10 when authority to approve requests for discharge has been delegated per *l*, below.

(a) This authority is limited to cases in which the soldier—

1. Has been AWOL for more than 30 days.

2. Has been dropped from the rolls of his/her or her unit as absent in desertion.

3. Has been returned to military control.

4. Is currently at the personnel control facility (PCF).

5. Is charged only with AWOL for more than 30 days.

(b) This authority does not include cases involving any other charged offense, including desertion.

(c) This special court-martial convening authority cannot disapprove a request for discharge in lieu of trial by court martial. The request for discharge must be approved prior to trial. (See the initial Article 39(a) session for general and special courts-martial, the initial convening of a summary court-martial.)

(d) A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this paragraph.

d. The following commanders who have a judge advocate or legal advisor available are authorized to approve or disapprove separation under paragraph 5–11 and chapters 8, 11, and 16; and under chapters 9, 13, and 18 in those cases in which the notification procedures (see chap 2, sec I) are used. This includes all chapter 9, 13, and 18 cases that are not processed by the administrative board procedures (see chap 2, sec II.):

(1) Commanders in the grade of lieutenant colonel or above.

(2) Commanders in the grade of major, who are on an approved recommended list for promotion to lieutenant colonel and who are assigned to command any unit authorized a commander in the grade of lieutenant colonel, or above. This authority does not include officers in the grade of major, who are acting commanders, even if on an approved recommended list for promotion to lieutenant colonel.

Chapter 2
Procedures for Separation

Section I
Notification Procedure

2-1. Application

a. The procedures in this chapter will be followed when required by the specific reason or reasons for separation. (See figs 2-1, 2-2, 2-3, 2-4, 2-5, and app B.)

b. When a soldier is subject to separation for more than one reason, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

(1) The basis for each reason must be clearly established.

(2) If a reason for separation set forth in the notice of proposed action requires processing under the administrative board procedure, the entire matter will be processed under section III of this chapter.

(3) If more than one reason for separation is approved, the guidance on characterization that provides the greatest latitude may be applied.

(4) When there is any other conflict between a specific requirement for one reason and a general requirement for another reason, the specific requirement will be applied.

(5) If a conflict in procedures cannot be resolved based on the above, the requirement most favorable to the soldier will be used.

2-2. Notice

When the reason for separation requires the notification procedure, the commander will notify the soldier in writing that his/her separation has been recommended per this regulation. (See fig 2–1 and app B.)

a. The commander will cite specific allegations on which the proposed action is based and will also include the specific provisions of this regulation authorizing separation.

b. The soldier will be advised of—

(1) Whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army.

(2) The least favorable characterization of service or description of separation he/she could receive.

(3) The type of discharge and character of service recommended by the initiating commander and that the intermediate commander/s may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

c. The separation authority is not bound by the recommendations of the initiating or intermediate commander and has complete discretion to direct any type of discharge and characterization of service authorized by applicable provisions of this regulation. (See para 2–4*d*(4).) Chapter 3 provides guidance on the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved. The soldier will be further advised of the following rights:

(1) To consult with military counsel within a reasonable time (not less than 3 duty days). Soldiers may also consult with civilian counsel at their own expense.

(2) To submit statements in his/her own behalf.

(3) To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 9 or 14 based upon a positive urinalysis, the soldier will be provided, upon request, a copy of the supporting laboratory documents (as described in AR 600–85). Classified documents may be summarized.

(4) To a hearing before an administrative separation board under section III of this chapter if he/she had 6 or more years of total active and reserve service on the date of initiation of recommendation for separation. This includes creditable service in any U.S. military component, for example, RA, ARNGUS, USAR (including IRR), USN, USAF, and so forth.

(5) To waive the above rights in writing, including the right to submit a conditional waiver of the right to have the case heard before an administrative separation board. (See para 2–5*b* and fig 2–2.) Failure to respond (including failure to submit matters under (3), above) within 7 duty days will constitute a waiver of the rights in (1) through (5), above. An extension will normally be granted until any documents requested by the soldiers pursuant to (4), above, are provided to the soldier, and the soldier has a reasonable opportunity to respond to such documents.

d. The following additional notice requirements will be satisfied, as appropriate:

(1) If separation processing is initiated for more than one reason, the soldier will be notified of the basis for each reason, including the circumstances upon which the action is based, per this regulation.

(2) If the respondent is in civil confinement or absent without leave, the relevant notification procedures apply.

(3) Additional notification requirements are set forth in chapter 5 when characterization of service as General (under honorable conditions) is authorized, and the soldier is processed for separation by reason of convenience of the Government.

(4) The intermediate commander/s, in making recommendations on the type of discharge and characterization of service, may recommend any type of discharge and characterization of service authorized for the notified basis of separation but will normally be limited to considering facts contained within the proposed action.

(5) If the intermediate commander/s considers additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state, in writing, the specific facts and incidents in the soldier's record that warrant such type of discharge and characterization.

(a) The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander.

(b) Military legal counsel will be made available to assist in preparation of rebuttal of the additional material.

(c) An explanation by the intermediate commander/s of the reasons for his/her recommendations that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

e. An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause by the soldier.

(1) If the soldier elects to waive his/her rights, the soldier will personally sign a waiver.

(2) The soldier's consulting counsel will advise the soldier and will sign the written waiver as witness, indicating that he/she is a commissioned officer of the Judge Advocate General's Corps. (See para 2–5 and app B.)

(3) If the soldier refuses to consult with counsel and/or declines to respond as to the waiver of rights, such declination will constitute a waiver of rights. An appropriate notation will be made on the form provided for the soldier's reply.

(4) If the soldier indicates that one or more of the rights will be exercised but declines to sign the appropriate form, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

f. The soldier's commander or other designated individual will personally serve the soldier with the memorandum of notification. The soldier is required to sign an acknowledgment of receipt. The acknowledgment of receipt will be signed and dated on the date it is served.

g. If notice by mail is authorized and the soldier fails to acknowledge receipt or submit a timely reply, that fact will constitute a waiver of rights. An appropriate notation will be recorded on a retained copy of the appropriate form.

h. The soldier may withdraw his/her waiver of rights listed in *c*(1) through (5), above, at any time prior to the date the separation authority orders, directs, or approves the separation.

2-3. Action by separation authority

The action of the separation authority will be recorded.

a. Upon receipt of the recommended action (see fig 2–5 and app B), the separation authority will determine if there is sufficient evidence to verify the allegations. If no sufficient basis for separation exists, the separation authority will disapprove the recommendation or take other appropriate action under this regulation. If the recommendation is disapproved, the return endorsement will cite reasons for disapproval.

b. If sufficient factual basis for separation exists, the separation authority will determine whether separation is warranted per chapter 1, section II, and will take one of the following actions:

(1) Direct retention.

(2) Direct separation for a specific reason. (If there is more than one basis for separation, the separation authority will designate the most appropriate basis as the primary reason for reporting purposes.)

(3) Suspend separation per paragraph 1–18.

c. The separation authority will determine the type of discharge certificate and character of service per chapter 3. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved.

d. The criteria in chapter 1, section VII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1–11 for additional instructions on ARNGUS and USAR personnel.)

Section II
Administrative Board Procedure

2–4. Notice

a. When the reason for separation requires the administrative board procedure, the commander will notify the soldier in writing that his/her separation has been recommended per this regulation. (See fig 2–3 and app B.)

(1) The commander will cite the specific allegations on which the proposed action is based.

(2) The commander will include the specific provisions of this regulation authorizing separation.

(3) The commander will advise whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army.

(4) The soldier will be advised of the least favorable characterization of service or description of separation he/she could receive.

(5) The soldier will be advised of the type of discharge and the characterization of service recommended by the initiating commander and that the intermediate commander/s may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

b. The separation authority is not bound by the recommendations of the initiating or intermediate commander/s. (See *d*(4), below.) However, the separation authority will not authorize the issuance of a type of discharge or character of service less favorable than that recommended by the board. (See para 2–6*d*.) Chapter 3 provides guidance and criteria as to the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved. The soldier will be further advised of the following rights:

(1) To confer with consulting counsel. Soldiers may also consult with a civilian counsel at their own expense.

(2) To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 9 or chapter 14 of this regulation, based on a positive urinalysis, the soldier will be provided, upon request, a copy of the supporting laboratory documents (as prescribed in AR 600–85). Classified documents may be summarized.

(3) To a hearing before an administrative separation board.

(4) To present written statements instead of board proceedings.

(5) To request appointment of a military counsel for representation.

(6) To retain civilian counsel at no expense to the Government. If the respondent is absent, the counsel may present the case before an administrative discharge board.

(7) To waive the above rights in writing. This includes the right to submit a conditional waiver of the right to have a case heard before an administrative separation board. (See para 2–5*b*, fig 2–2, and app B.) Failure to respond within 7 duty days will constitute a waiver of the rights in (1) through (7). An extension of the period in which to reply may be granted upon a timely showing of good cause by the soldier. An extension will normally be granted until any documents requested by the soldier (pursuant to *b*(2), above) are provided to the soldier, and the soldier has a reasonable opportunity to respond to such documents.

(8) To withdraw a waiver of the rights listed in *b*(1) through (7), above, anytime before the date the separation authority orders, directs, or approves the separation and to request that the case be presented before a board of officers.

c. The soldier will be given a reasonable time (not less than 3 duty days) to consult with counsel before waiving the rights listed in *b*(1) through (7), above.

(1) An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause.

(2) The soldier must personally sign a waiver when electing to waive rights. Consulting counsel will advise the soldier and will sign the written waiver as witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. (See figs 2–1, 2–4, and app B.)

(3) If the soldier refuses to consult with a counsel, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the soldier had consulted with counsel.

(4) If the soldier indicates that one or more of the rights will be exercised but declines to sign the appropriate form, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

(5) If a soldier elects to present his/her case before an administrative separation board, the soldier will be advised that willful failure to appear before the board of officers without good cause will constitute a waiver of rights to personal appearance before the board.

(6) If a soldier waives his/her right to an administrative separation board, the separation authority may disapprove the waiver. The separation authority will then refer the case to an administrative separation board, or direct retention on active duty.

d. The following additional notice requirements will be satisfied as appropriate:

(1) If separation processing is initiated for more than one reason, the soldier will be notified of the basis for each reason.

(2) If the respondent is in civilian confinement, absent without leave, or is transferred to the IRR, the relevant notification procedures apply.

(3) Additional notification requirements are set forth in chapter 5 when characterization of service as General (under honorable conditions) is authorized, and the soldier is processed for separation for convenience of the Government.

(4) The intermediate commander/s, in making recommendations on the type of discharge and characterization of service, may recommend any type of discharge and characterization of service authorized for the notified basis of separation but will normally be limited to considering facts contained within the proposed action.

(a) If the intermediate commander/s considers additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state in writing the specific facts and incidents in the soldiers record that warrant such type of discharge and characterization.

(b) The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material.

(c) An explanation by the intermediate commander of the reasons for his/her recommendation that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

e. The soldier's commander or other designated individual will personally serve the soldier with the memorandum of notification. The soldier is required to sign and date the acknowledgment of receipt on the date it is served.

f. If notice by mail is authorized and the soldier fails to acknowledge receipt or submit a timely reply, that fact will constitute a waiver of rights. An appropriate notation will be recorded on a retained copy of the appropriate form.

2-7. Composition of the board

a. A board convened to determine whether a soldier should be separated under the administrative board procedure will consist of at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted soldiers appointed to the board will be in grade sergeant first class (SFC) or above, and senior to the respondent. At least one member of the board will be serving in the grade of major or higher, and a majority will be commissioned or warrant officers. The senior member will be president of the board. The convening authority will appoint a non-voting recorder. The convening authority may also appoint a non-voting legal adviser.

b. Care will be exercised to ensure that—

(1) The board is composed of experienced, unbiased officers. The officers should be fully aware of applicable regulations and policies pertaining to cases for which the board is convened.

(2) In the case of a Reserve Component soldier, the membership of the board will include at least one Reserve Component member.

(a) Voting members will be senior to the respondent's reserve grade.

(b) Enlisted soldiers will not be appointed as members of boards in cases of ARNGUS or USAR soldiers when a discharge under other than honorable conditions could result.

(c) Enlisted soldiers may be appointed as members of boards considering Reserve Component soldiers when only an honorable or general discharge may be issued.

(3) In the case of a female soldier, the board will, upon the written request of the respondent, include a female member as a voting member, if reasonably available. In the event of non-availability, the reason will be stated in the record of proceedings.

(4) In the case of a soldier who holds a Reserve commission or warrant, the board will be composed of an uneven number of officers. The officers will be senior in permanent grade to the Reserve grade held by the soldier. One member of the board will be a Regular Army officer and the remainder Reserve Component officers of the Army who are serving on AD.

(5) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member a member who is also a minority group member, if reasonably available.

(a) When requested, the appointed board member should be of the same minority group as the respondent. However, non-availability of a member of the same minority group will not prevent convening the board.

(b) In the event of non-availability, the reason will be stated in the record of proceedings.

(6) The board is provided a competent stenographer or clerk.

(7) The officer initiating the action prescribed in this regulation, or any intervening officer who had direct knowledge of the case, is not a member of the board.

c. The president will preside and rule finally on all matters of procedure and evidence. The rulings of the president may be overruled by a majority of the board. If appointed, the legal advisor will rule finally on all matters of evidence and challenges except to himself/herself. The appointed legal advisor will pay particular attention to cases that involve limited use evidence. (See para 3–8*g.*)

(Letterhead)

(Office Symbol) (Date)

MEMORANDUM FOR (Soldier's name, SSN. grade, unit)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

1. Under the provisions of AR 635-200, (indicate specific chapter, section, and paragraph), I am initiating action to separate you for (indicate narrative reason). The reasons for my proposed action are: (state specific, factual details that constitute the basis for the proposed action).

2. I am recommending that you receive a(n) (characterization of service) (entry-level separation). My recommendation and your reply will be submitted to the Commander, (cite unit designation of separation authority), who is the separation authority and will make the final decision in your case.

3. The intermediate commander/s and the separation authority are not bound by my recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable or under honorable conditions, or you may receive an entry-level separation (uncharacterized) if in an entry-level status.

4. If my recommendation is approved, the proposed separation could result in discharge, release from active duty to a Reserve component (See para 1-34.), or release from custody and control of the Army.

5. You have the right to consult with consulting counsel and/or civilian counsel at no expense to the Government within a reasonable time (not less than 3 duty days).

6. You may submit written statements in your behalf.

7. You may obtain copies of documents that will be sent to the separation authority supporting the proposed separation. (Classified documents may be summarized.)

8. You are entitled to a hearing before an administrative board if you have 6 or more years of active and reserve military service at the time of separation.

9. You may waive the rights listed above in paragraphs 5, 6, 7, and 8 in writing, and you may withdraw any such waiver at any time prior to the date the separation authority orders, directs, or approves your separation.

10. If entitled to have your case heard by an administrative separation board, you may submit a conditional waiver of that right.

11. You are required to undergo a complete medical examination in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to (location) at (time) on (date). (See para 1-32.)'

12. You are required to undergo a mental status evaluation in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to (location) at (time) on (date). (See para I-32.)1

13. Execute the attached acknowledgment (See fig 2-4.1 and return it within 7 duty days from the date of your receipt of this memorandum. Any statement you desire to submit in your behalf must reach me within 7 duty days after you receive this letter, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 5, 6, 7, and 8.

Encl Listing

(Commander's signature)
(Typed name, grade, branch)

(Figure 2-1. Sample format for notification of separation when the notification procedure is used.)

Note: To be used when required by paragraph 1-32.

Data Required by the Privacy Act of 1974

(5 USC 552a)

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: Information provided is used by processing activities and the approval authority to determine if the member meets the requirements for recommended separation action.

ROUTINE USES: Upon completion of processing actions, the statement is filed in the MPRJ. As long as filed in the MPRJ, this personal information may be used by other appropriate Federal agencies and State and local government authorities, where the use of the information is compatible with the purpose for which, the information is collected. Release of any information from this form is subject to the restrictions of 42 USC 290dd-2 and 42 USC 290dd-3. Under these statutes and regulations, disclosure of information that would identify the client as an abuser of alcohol or other drugs is authorized within the Armed Forces or those components of the Department of Veterans Affairs furnishing health care to veterans. AR 600-85 further limits disclosure within the Armed Forces to those individuals having an official need to know (for example, the physician or the client's unit commander). All other disclosures require the written consent of the client except disclosures (2.) to medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency, (2) to qualified personnel conducting scientific research, management for financial audits, or program evaluation, or (3) upon the order of a court of competent jurisdiction.

Submission of a statement for consideration is voluntary. If a statement is not submitted, the Army will determine separation or retention based on the available information.

(Figure 2-1. Sample format for notification of separation when the notification procedure is used—Continued)

(Office Symbol) *(Datel*

SUBJECT: Separation Under AR 635-200, Chapter *(enter appropriate chapter)*

(Address of *endorsing office)*

FOR: *(Appropriate commander in basic memorandum)*

1. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for (reason/s) under AR 635-2O0, (chapter number) and its effects; of the rights available to me; and of the effect of any action taken by me in waiving my rights. I understand that if I have 6 years of total active and reserve military service at the time of separation, under AR 635-200, chapter (enter appropriate chapter) (or I have been notified that I am subject to a characterization of service under other than honorable conditions), I am entitled to have my case considered by an administrative separation board. (I understand that if I have less than 6 years of total active and reserve service at the time of separation, I am not entitled to have my case heard by an administrative separation board unless I am being considered under other than honorable conditions.) (I understand that if I am being considered for separation under AR 635-200, chapter 15 (homosexual conduct), I am entitled to have my case heard by an administrative separation board.)

2. I (request) (waive) consideration of my case by an administrative separation board.

3. I have been advised of my right to submit a conditional waiver of my right to have my case considered by an administrative separation board.[2]

4. I (request) (waive) personal appearance before an administrative separation board.

5. Statements in my own behalf (are) (are not) submitted herewith (End).

6. I (request) (waive) consulting counsel and representation by military counsel (and) (or) civilian counsel at no expense to the Government.

7. I understand that my willful failure to appear before the administrative separation board by absenting myself without leave will constitute a waiver of my rights to personal appearance before the board.

8. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. I further understand that as the result of issuance of a discharge under other than honorable conditions I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.[3] I understand that if I receive a discharge/character of service that is less than honorable, I may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

9. I understand that I nay, until the date the separation authority orders, directs, or approves my separation, withdraw this waiver and request that an administration separation board hear my case.

10. I understand that if I am being considered for separation for fraudulent entry, my enlistment nay be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.)

I have retained a copy of this statement.

(Signature off *individual)*
(Typed name, SSN, and grade)

Having been advised by me of the basis for his/her contemplated separation and its effects, the rights available to him/her, the right to waive of his/her rights (name of soldier), personally made the choices indicated in the foregoing statement.

(Signature of counsel)
(Typed name, SSN, grade, branch)

(Figure 2-4. Sample format for receipt of notification of separation/acknowledgement/election or rights)

Notes:
1. If the soldier declines to consult with consulting counsel prior to waiving his/her rights, he/she will be advised to do so by his/her commander. If he/she persists in his/her refusal, insert as first sentence of paragraph 2, the following statement: "Before completing this format, I have been afforded the opportunity to consult 'with appointed counsel for consultation, or military counsel of my own choice, if he/she is reasonably available; or civilian counsel at my own expense. I decline the opportunity." Separation action will then proceed as if the soldier had consulted with counsel. In all cases, except the above, consulting counsel will witness their statement and indicate that he/she is a commissioned officer of the Judge Advocate General's Corps.
2. If the soldier desires to submit a conditional waiver of the right to have his/her case considered by an administrative separation board, use figure 2-2.
3. To be used if the soldier has been recommended for discharge for fraudulent entry, misconduct, or homosexual conduct.
4. To be used if the soldier is considered for separation for fraudulent entry. Renumber later paragraphs if this paragraph is used.

Data Required by the Privacy Act of 1974

(5 USC 552a)

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: To be used by the commander exercising separation authority over you to determine approval or disapproval of the separation action.

ROUTINE USES: Information provided in the statement is used by processing activities and the approval authority to determine what rights soldier desires to exercise and the offering of such rights as indicated. Upon completion of processing actions, the statement is filed in the MPRJ. So long as filed in the MPRJ, the personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information compatible with the purpose for which the information is collected.

Disclosure is voluntary. If the information is not provided, the Army will complete the processing using information available.

(Figure 2-4. Sample format for receipt of notification of separation/acknowledgement/election or rights - Continued)

3-7. Types of administrative discharges/character of service

a. Honorable discharge: An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(1) Only the honorable characterization may be awarded a soldier upon completion of his/her period of enlistment or period for which called or ordered to AD or ADT or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted. (See para 3–9*a* and chap 11.)

(2) When a soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply:

(a) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(b) A soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the UCMJ Art 15. Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge.

(c) An honorable discharge may be furnished when disqualifying entries in the soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

(d) Unless otherwise ineligible, a soldier may receive an honorable discharge if he/she has, during his/her current enlistment, period of obligated service, or any extensions thereof, received a personal decoration.

(3) In the case of an honorable discharge, a DD Form 256A will be awarded and notation will be made on the appropriate copies of the DD Form 214 or DD Form 215.

b. General discharge:

(1) A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(2) A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. Under other-than-honorable-conditions discharge: A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances:

(1) When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of soldiers of the Army.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of soldiers of the Army. Examples of factors that may be considered include the following:

(a) Use of force or violence to produce serious bodily injury or death.

(b) Abuse of a position of trust.

(c) Disregard by a superior of customary superior-subordinate relationships.

(d) Acts or omissions that endanger the security of the United States or the health and welfare of other soldiers of the Army.

(e) Deliberate acts or omissions that seriously endanger the health and safety of other persons.

d. An under-other-than-honorable-conditions discharge will be directed only by one of the following:

(1) A commander exercising general court-martial authority.

(2) A general officer in command who has a judge advocate or legal advisor available to his/her command.

(3) Higher authority.

(4) The commander exercising special court-martial convening authority over the soldier who submitted a request for discharge in lieu of court-martial (see chap 10) when delegated authority to approve such requests for discharge per paragraph 1–19*l*. (See para 1–19*c*(5).)

e. No soldier will be discharged per this regulation under other than honorable conditions unless afforded the right to present his/her case before an administrative discharge board.

(1) The soldier will be offered the advice and assistance of counsel.

(2) Approved board findings and an approved board recommendation for a discharge under other than honorable conditions must support such discharge.

(3) As prescribed in chapter 13, an under-other-than-honorable-conditions discharge is not authorized in case of discharge for unsatisfactory performance.

f. As an exception to *e*, above, a discharge under other than honorable conditions may be issued without board action if one of the following apply. The soldier—

(1) Is beyond military control by reason of prolonged unauthorized absence.

(2) Requests discharge in lieu of trial by court-martial.

(3) Waives his/her right to board action.

g. A soldier beyond military control by reason of unauthorized absence may be issued an under-other-than honorable-conditions discharge in absentia only as provided for in paragraph 2–15 or chapter 14, except when directed by HQDA.

h. A soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the soldier will state that the right to counsel has been waived.

i. Consideration required. Members of boards that recommend discharges to be furnished and commanders that determine the types of discharges to be issued, are urged to consider all facets of a case involving discharge so a fair decision will result.

3-8. Limitations on characterization

Characterization will be determined solely by the soldier's military record which includes the soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions prescribed by law or regulation or effected with the consent of the soldier. Exceptions are provided in this paragraph. In determining the character of service, the following will be used as guidelines:

a. A soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600–85, chap 6) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. (See para *c*(1), below, as well as AR 600–85, paras 6–4*a* and 6–5*d*.) The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

b. The following will not be considered in determining the characterization of service:

(1) Pre-service activities except in a proceedings for fraudulent entry, when misrepresentations, including omissions of facts which, if known, would have prevented, postponed, or otherwise affected the soldier's eligibility for enlistment.

(2) Prior service activities including, but not limited to, records of convictions by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed.

(a) To the extent that such matters are considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization.

(b) As an exception, personal decorations received during prior service may be considered in characterizing the current period of service. (See para 3–7*i*.)

(3) Mental status evaluation or other similar medical evaluation given during the period of service that is being characterized.

c. In the case of an ARNGUS or USAR soldier on AD or ADT who is to be discharged, the character of the period of service from which he/she is discharged will be based solely on military behavior and performance of duty during the current period of service while actually performing AD or ADT.

d. The limitations in chapter 1 as to matters that may be considered on the issue of separation apply to matters that may be considered on characterization.

e. When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to impose, but not imposing, a punitive discharge, the soldier's service may not be characterized as under other than honorable conditions unless such characterization is approved by HQDA (AHRC–EPR–F).

f. A soldier's current enlistment record or current period of service, only, will be carefully screened for data that might affect the final decision as to type of discharge to be awarded. A checklist will be prepared to assist in the overall evaluation. The checklist will include the following data:

(1) Length of time served in the enlistment or period of service.

(2) Promotions and dates thereof.

(3) Reductions, if any, and dates thereof. (When there has been a reduction, the specific reason should be listed.)

(4) Whether there is a record of time lost; if so, whether it was (AWOL, confinement, or other reasons.

(5) Whether there has been disciplinary action under UCMJ, Article 15; if so, a list of the specific offenses that resulted in such action.

(6) Whether there have been any convictions by court-martial; if so, the offenses, findings, and sentence and any subsequent actions in the case.

(7) Favorable communications or recommendations for the soldier.

(8) Any derogatory data, other than Article 15 actions and courts-martial.

(9) Any citations and awards.

(10) Where derogatory data has been revealed, whether there is evidence or other indication of successful rehabilitation.

(11) Any medical or other data meriting consideration in the overall evaluation. (See *b*(3), above.)

g. The following information cannot be used against a soldier on the issue of characterization:

(1) The results of mandatory urinalysis or alcohol-breath tests when such use is prohibited by AR 600–85.

(2) A soldier's voluntary submission to a treatment and rehabilitation program (self-referral).

(3) Admissions and other evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use occurring prior to initial referral to a treatment and rehabilitation program provided voluntarily by a soldier either as part of initial entry or at a scheduled interview when enrolled in such a program.

(4) Evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use obtained as a result of a soldier's emergency medical care for an actual or possible drug or alcohol overdose when such use is prohibited by AR 600–85.

h. The limitations in *g*, above, do not preclude the following actions:

(1) The introduction of evidence for impeachment or rebuttal purposes in any proceeding where the evidence of drug or alcohol abuse, or the lack thereof, has been first introduced by the soldier.

(2) Taking action based on independently derived evidence, including evidence of drug or alcohol abuse after initial entry into the treatment and rehabilitation program.

Chapter 6
Separation Because of Dependency or Hardship

6-1. General
Separation under this chapter is for the convenience of the Government.

6-2. Separation authority
See paragraph 1-19.

6-3. Criteria
Soldiers on active duty may be discharged or released (see para 6-10) because of genuine dependency or hardship.

a. Dependency. Dependency exists when death or disability of a member of a soldier's (or spouse's) immediate family causes that member to rely upon the soldier for principal care or support. (See para 6–5 for definition of soldier's "immediate family.")

b. Hardship. Hardship exists when in circumstances not involving death or disability of a member of the soldier's (or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship. (See para 6–5 for definition of soldier's "immediate family.")

(1) *Parenthood of married soldiers.* A married soldier who becomes a parent by birth, adoption, or marriage (stepparent) and whose child (or children) is less than 18 years of age and resides within the household, may apply for separation under hardship. The soldier must submit evidence (see para 6–7*b*(5)) that the roles of parent and soldier are incompatible and that the soldier cannot fulfill his/her military obligation without neglecting the child or children.

(2) *Sole parents.* Soldiers who are sole parents and whose children are under 18 years of age and reside within the household, may apply for separation under hardship. A "sole parent" is defined as a parent who is single by reason of never having been married, or who is divorced or legally separated and has been awarded child custody by judicial decree or court order, or who is a widow/widower.

(3) *Intent.* It is not the intent of the Army's policy regarding married soldiers who are parents or soldiers who become sole parents, to arbitrarily allow the separation of an enlisted woman who remained in the Service during her pregnancy and then requested release immediately after receiving the medical and monetary benefits related to prenatal and postnatal absence and delivery.

(4) *Supporting evidence.* Supporting evidence will be provided as per paragraph 6–7*b*(5). Paragraph 6–7*b*(5) minimizes the supporting evidence for these two policies. However, soldiers must meet the application criteria in paragraph 6–4 in addition to the requirement that there be unexpected circumstances beyond the soldier's control justifying separation. An example of unexpected circumstances beyond the soldier's control is the birth of a child with a serious birth defect requiring constant care. Inability to obtain an approved dependent care plan does not qualify the soldier for separation under this provision.

6-4. Application of criteria
a. Separation from the service of soldiers because of dependency will be granted when all the following circumstances exist:

(1) Conditions have arisen or have been aggravated to an excessive degree since entry on AD or ADT.

(2) Conditions are not of a temporary nature.

(3) Every reasonable effort has been made by the soldier to alleviate the dependency or hardship conditions without success.

(4) Separation from active military service of the soldier is the only readily available means of eliminating or materially alleviating the dependency or hardship conditions.

b. Circumstances outlined in (1) and (2), below, do not justify separation because of dependency or hardship. However, the existence of these circumstances does not prevent separation because of dependency or hardship, provided the application meets the criteria in *a*, above.

(1) Pregnancy of an enlisted man's wife is not considered a condition for which his/her separation is justified. However, this does not prevent separation because of a permanent medical disability resulting from pregnancy.

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

6-5. Conditions affecting determination regarding separation for dependency or hardship

a. In determining eligibility for separation, "members of the immediate family" include only—

(1) Spouse.

(2) Children.

(3) Father.

(4) Mother.

(5) Brothers.

(6) Sisters.

(7) Only living blood relative.

(8) Any person who stood "in loco parentis" to the soldier (or spouse) before entry into the Service. "In loco parentis" is any person who has stood in the place of a parent to the soldier (or spouse) for a continuous period of at least 5 years before he/she reached 21 years of age.

b. When a soldier is eligible for separation per this chapter, separation will not be disapproved because of the soldier's indebtedness to the Government or to an individual.

c. When soldiers are eligible for separation, their separation will not be disapproved because their services are needed by their organization.

d. Soldiers will not be separated because of dependency or hardship until proper disposition is made of the case if they are—

(1) Under charges.

(2) In confinement.

(3) Being processed for involuntary separation under this regulation.

(4) Being investigated under the military personnel security program.

(5) Being processed for discharge or retirement for physical disability; however, the application will be accepted and processed to final decision.

e. A sentence to confinement (not including dishonorable or bad conduct discharge) will be fully served unless terminated by proper authority before a separation for dependency or hardship may be given.

f. A soldier may request withdrawal of application at any time before the effective date. The separation authority, based on the evidence provided by the soldier, may withdraw approval of separation before its effective date.

g. Commanders authorized to approve separation under this chapter will withdraw approval before its effective date when—

(1) The separation is being achieved by fraud by the soldier.

(2) An error is discovered that would have prevented approval.

(3) The soldier who has been approved for separation based on sole parenthood later marries.

(4) The soldier submits evidence that a hardship no longer exists.

h. The separation authority will ensure that this chapter is not used solely to procure a reassignment, a curtailment of assignment, or an avoidance of an assignment. A soldier whose separation is not approved and requires a new PCS assignment will be reported immediately available for assignment per AR 614–200, paragraph 3–15.

6-6. Application for separation

The soldier must request, in writing, separation from the Service because of dependency or hardship.

a. Submitting the application.

(1) A person serving in the United States or stationed overseas will submit an application to his/her commanding officer. The evidence required in paragraph 6–7 must support the application.

(2) A person assigned to an overseas unit who is temporarily in the United States on leave or TDY will submit an application to the commander of the Army installation (except MEPSs and recruiting main stations) nearest the soldier's leave address or the installation to which temporarily assigned. In addition, no attachments to Army Medical Centers are authorized for personnel unless the applicant is a patient or is being treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant.

(3) A person assigned to a unit or installation within the United States who is temporarily in an overseas command on leave or TDY will submit an application to the commander for the area in which he/she is located. The commander specified in paragraph 1–19 will specify the unit to which the soldier will be attached while the application is being considered. However, attachment to the nonpermanent party element of transfer points or stations is not authorized.

(4) Soldiers on orders for overseas shipment, either as individuals or as members of units, who apply for dependency or hardship separation before departure from unit of assignment will be held at the losing station pending final disposition of the application. (See AR 614–30.)

(5) Soldiers on orders for reassignment from one CONUS installation to another CONUS installation (either as individuals or as members of units) who apply for dependency or hardship separation before departure from unit of assignment will comply with reassignment orders if considered appropriate by the losing commander. The soldier will be held at the losing installation if the application reflects sufficient grounds for approval. If not, the soldier will be advised to submit the application upon arrival at the gaining installation.

(6) Applications for dependency or hardship separation from personnel en route overseas may be accepted at the Army installation (except MEPSs) and recruiting main stations) nearest the soldier's leave address, if an interview reveals information that may justify separation.

(a) The soldier will be attached at that installation until a final decision is made on the application.

(b) No attachments are authorized to Army medical centers for personnel unless the applicant is a patient or is being treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant.

(c) The losing commander, and the U.S. Army Military Personnel and Transportation Assistance Office at the aerial port of embarkation (APOE) through which the soldier is scheduled to travel, will be notified of the attachment and any later decision.

(d) The U.S. Army Military Personnel and Transportation Assistance Office will notify the gaining commander and the Passenger Liaison Office, MTMC.

(e) The soldier en route overseas who arrives at the APOE and has not been previously attached to another installation for the same purpose may be referred to the U.S. Army Military Personnel and Transportation Assistance Office at the APOE, and to the Army installation nearest the port, for consideration of the application, if an interview reveals information that may justify separation for dependency or hardship. The soldier will be attached to the installation nearest the aerial port until final determination is reached on the application.

(7) The soldier assigned to a CONUS unit who is on leave within CONUS normally will submit an application for separation to his/her commanding officer per (1), above. However, when exceptional circumstances require the soldier's continued presence, and if the commanders concerned agree, attachment to an installation to submit an application for separation is authorized. Attachment to the nonpermanent party element at transition centers is not authorized.

b. Forwarding to the separation authority. Forwarding endorsements prepared by commanders having custody of the applicant's records will contain the following information if it does not appear elsewhere in the enclosures:

(1) Amount and type of allotments the soldier has in effect, along with the name and relationship of each allottee.

(2) A statement whether a determination of dependency for benefits has been requested and the decision of the Allotments and Deposits Operations, Defense Finance and Accounting Center.

(3) Date of current enlistment, entry on AD, and ETS.

(4) Whether the applicant is under charges, in confinement, or under investigation or consideration for involuntary separation per AR 635–40, AR 380–67, or this regulation.

6-7. Evidence required

The supporting evidence for an application for separation because of dependency or hardship normally will be in affidavit form. The evidence must substantiate the dependency or hardship conditions.

a. The evidence required will depend upon the nature of the claimed hardship. The application should include, as a minimum, the following affidavits:

(1) A personal request for separation explaining the nature of the hardship condition and what the soldier intends to do to alleviate it.

(2) An affidavit or statement by, or on behalf of, the soldier's dependents substantiating the dependency or hardship claim.

(3) Affidavits by at least two agencies or individuals, other than members of the soldier's family, substantiating the dependency or hardship claim.

b. Additional evidence may be required as follows:

(1) When the basis for the application is financial difficulty, a detailed statement is required to establish the monthly income and expenses of the family.

(2) When the basis for the application is death of a member of the soldier's family, a death certificate or other valid proof of death should be furnished.

(3) When the basis for the application is disability of a member of the soldier's family, a physician's certificate should be furnished showing the diagnosis, prognosis, and date of disability.

(a) Preprinted medical statement forms, which require only a physician's signature, will not be issued or used for hardship applications.

(b) The physician will prepare medical statements and certificates.

(4) When the soldier requests separation to support members of his/her family, other than spouse or children, the application should show the names and addresses of other members of the family, and proof that they cannot aid in the care of their family should be furnished.

(5) When the basis for separation is the soldier's parenthood, supporting evidence will be in affidavit form.

(a) Evidence will support the applicant's claim that unexpected circumstances, or circumstances beyond his/her control, have occurred since acquired parenthood that prevent fulfillment of military obligations without neglect of the child.

(b) Affidavits from the soldier's immediate commander or officer who is the job supervisor, as appropriate, will be considered sufficient to substantiate the applicant's claim.

(c) Evidence in *a*(2) and (3), above, is not required for these applications. However, a judicial decree or court order awarding child custody to the soldier will substantiate sole parenthood resulting from divorce or legal separation.

6-8. Procedure

The separation authority (see para 1–19) will consider the facts upon which the request is based. Any additional information required to determine the validity of the reason for separation will be requested from the soldier, or the American Red Cross. (See para 6–9.) The specific reason/s for denial of an application will be included in the return endorsement.

a. The personnel officer of an Army installation (see para 6–6*a*(2) and (3)), except MEPS and recruiting main stations, will give all assistance required to any soldier desiring to apply for separation. In addition, no attachments to Army Medical Centers are authorized for personnel unless the applicant is a patient or is being treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant.

Assistance will consist of—

(1) Explaining the requirements of this chapter.

(2) Assisting in preparing evidence.

(3) Notifying the soldier's parent unit.

(a) The commander who authorized leave or TDY will be notified by electrically transmitted message of the date and reason for the attachment and will be requested to reply by message whether or not AR 600–8–2 is applicable to the soldier.

(b) If MINIMIZE is in effect, messages will be dispatched by mail.

(c) No attachments are authorized for soldiers on leave from or en route to other CONUS installations without prior approval of the individual's commander. In these cases the coordination will be between the commanders concerned, without referral to USA HRC.

b. If the application is approved, the separation authority will—

(1) With the exception of United States Army Europe (USAREUR), Eighth United States Army (EUSA), and Pacific Command (PACOM), notify the commander who authorized leave or TDY of approval by electrically-transmitted message within 24 hours of the approval of hardship separation and request reassignment orders and personnel and financial records be forwarded by MOM/First Class/Priority mail (only after application is approved).

(2) Request expeditious shipment of personal property. When applicable, the message will contain the name of an individual, if other than unit commander or first sergeant (1SG), with whom the soldier may have left any personal property.

(a) The soldier will remain attached pending receipt of reassignment orders.

(b) If MINIMIZE is in effect, the message will be dispatched by mail. If a tracer message is required, the MACOM will be included as an information addressee. In all cases involving soldiers of USAREUR, EUSA, or PACOM, notification and request for reassignment orders, records, and shipment of personal property will be made by electrically-transmitted message to the following:

1. USAREUR. Commander, 1st Personnel Command, Schwetzingen, Germany (AEUPE-PSSD-PAD). (APO AE 09081 to be included if dispatched by mail.)

2. EUSA. Commander, 8th Personnel Command, Yongson, Korea (EAPCMP). (FPO AA 96301 to be included if dispatched by mail.)

3. PACOM. Commander, PACOM, Honolulu, HI (APAG). (Fort Shafter, HI 96858 to be included if dispatched by mail.)

(3) Accomplish the preprocessing procedures (see AR 635–10), including the medical examination. If possible, the separation interview and the processing and completion of DD Form 214WS (Certificate of Release or Discharge from Active Duty (Worksheet)) will also be accomplished.

(4) Authorize the soldier to proceed home on ordinary and/or excess leave (AR 600–8–10), provided the soldier so desires. The soldier will be advised that separation documents and final pay will be mailed to the address furnished. The partially completed records will be suspended pending receipt of the original records.

(5) Upon receipt of the original records, reassign the soldier to the USA transition center installation for separation processing.

c. If the application is disapproved, the soldier will be notified in writing of the specific reason/s for denial. The soldier will then be released from attachment to revert to emergency or ordinary leave for return to his/her assignment. The commander will be notified by electrically transmitted message of the date of departure and the disapproved application will be forwarded to the commander for inclusion in the personnel file as a temporary document. If MINIMIZE is in effect, the message will be dispatched by mail.

d. The USA transition point or military personnel office commander or chief will—

(1) Upon reassignment, report the soldier as assigned and upon separation, submit the Standard Installation/Division Personnel Reporting System (SIDPERS) separation transaction.

(2) Complete and mail the separation documents to the address furnished by the soldier.

(3) Dispose of records per AR 635–10.

e. The overseas or CONUS commander will respond immediately to any messages received per *a* and *b*, above.

f. DA Pam 600–8–11, procedure 1–1, establishes detailed instructions for processing applications.

6-9. Service of the American Red Cross

a. Requests for supplemental factual information pertaining to applications for separation of soldiers because of dependency or hardship may be made to the American Red Cross. Such requests originating within military agencies will be restricted to specific information when probable separation is warranted.

b. The following procedures will be followed when a military agency requests assistance from the American Red Cross:

(1) The military agency requesting assistance will prepare a brief containing sufficient information to identify the applicant for separation. The brief will also include the name, address, and relationship of the dependent/s on whom the information is desired.

(2) If the American Red Cross representative is serving the organization or installation concerned, the brief, together with a request for the specific information, will be forwarded to the representative.

(3) If no American Red Cross representative is serving the organization or installation, the request will be sent to The American Red Cross, Emergency Communications, 8111 Gatehouse Road, Falls Church, VA 22042.

(4) Contents of reports furnished by the American Red Cross will be disclosed only per AR 25–55 and AR 340–21.

c. Soldiers or their dependents may request local chapters of the American Red Cross to assist in obtaining necessary evidence to substantiate applications for separation. The American Red Cross does not, however, make formal reports to military agencies unless requested by appropriate military commanders.

6-10. Type of separation

The criteria in chapter 1, section VII, will govern whether soldiers separated for dependency, hardship, or parenthood of married soldiers or sole parents, will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1—11 for additional instructions on ARNGUS and USAR personnel.)

6-11. Characterization or description of service

a. If the soldier is still in entry-level status, service will be described as uncharacterized.

b. If the soldier is beyond entry-level status, service will be characterized as honorable or under honorable conditions as set forth in chapter 3, section II.

c. Before service is characterized as under honorable conditions, the soldier will be notified of the specific factors in the service record that warrant such characterization. The notification procedure (see chap 2, sec I) will be used.

Chapter 11
Entry Level Performance and Conduct

11-1. General

This chapter sets policy and provides guidance for the separation of soldiers because of unsatisfactory performance and/or conduct while in entry-level status.

11-2. Basis for separation

Separation of a soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by—

a. Inability.

b. Lack of reasonable effort.

c. Failure to adapt to the military environment.

d. Minor disciplinary infractions.

11-3. Separation policy

a. This policy applies to soldiers who—

(1) Enlisted in the Regular Army, ARNG, or USAR.

(2) Are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous AD or IADT or no more than 90 days of Phase II under a split or alternate training option. (See the glossary for precise definition of entry-level status.)

(3) Have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct and/or performance that disqualify soldiers for retention:

(a) Cannot or will not adapt socially or emotionally to military life.

(b) Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline.

(c) Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

(4) Have failed to respond to counseling (DA Form 4856–R).

b. Enlisted women who become pregnant while still in entry-level status—

(1) Will be involuntarily separated under this chapter when the training activity commander with separation authority, in conjunction with the medical officer (obstetrician), determines that they cannot fully participate in the required training for the MOS concerned because of their physical condition.

(a) The training commander will furnish the training requirements to the obstetrician.

(b) Soldiers separated for pregnancy that occurred after entry on AD or IADT are entitled to maternity care in a military medical facility only per AR 40–3.

(2) Will be retained when they can fully participate unless they request separation per chapter 8.

c. Nothing in this chapter precludes separation under another provision of this regulation when such separation is warranted. For example, if homosexual conduct is involved, the case will be processed under chapter 15. However, if separation of a soldier in entry-level status is warranted by reason of unsatisfactory performance (see chap 13) or misconduct (minor disciplinary infractions (see para 14–12*a*)), separation processing will be accomplished under this chapter. As an exception, soldiers with less than 181 days of continuous active service who have completed IET, been awarded an MOS, and been assigned to a follow-on unit for duty will be processed for discharge under the appropriate chapter (chap 13 or 14 or another appropriate chapter).

11-5. Separation authority

Commanders specified in paragraph 1–19 are authorized to order separation. Separation will be accomplished within 3 duty days following approval by the separation authority.

11-6. Type of separation

The criteria in chapter 1, section VII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR or be discharged. (See paragraph 1–11 for additional instructions on ARNGUS and USAR personnel.)

11-7. Procedures

The commander will take action as specified in the notification procedure. (See chap 2, sec I.)

11-8. Description of service

Service will be described as uncharacterized under the provisions of this chapter.

Chapter 13
Separation for Unsatisfactory Performance

Section I
General

13-1. Policy

A soldier may be separated per this chapter when it is determined that he/she is unqualified for further military service because of unsatisfactory performance. (See chap 1, sec II.) This reason will not be used if the soldier is in entry-level status, except as provided in paragraph 11–3*c*.

13-2. Criteria

a. Commanders will separate a soldier for unsatisfactory performance when it is clearly established that

(1) In the commander's judgment, the soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier.

(2) The seriousness of the circumstances is such that the soldier's retention will have an adverse impact on military discipline, good order, and morale.

(3) The soldier will likely be a disruptive influence in duty assignments.

(4) The circumstances forming the basis for initiation of separation proceedings will likely continue or recur.

(5) The soldier's ability to perform duties effectively is unlikely.
(6) The soldier's potential for advancement or leadership is unlikely.

b. Commanders will initiate separation action only when the soldier is under military control. As an exception, commanders may initiate this action when a soldier is confined by civil authorities and his/her military record indicates that he/she should be processed for separation by reason of unsatisfactory performance. (See chap 2, sec III for completing proceedings initiated before a soldier departs absent without leave.)

c. This provision applies to soldiers who are pregnant and whose substandard duty performance is not caused solely by pregnancy. Substandard duty might include failure to report to duty without medical or military authorization or refusal of CONUS reassignment during the first 6 months of pregnancy.

d. Commanders will consider a soldier meeting the criteria of *a*, above, and convicted by court-martial but not sentenced to a punitive discharge, for administrative separation under this chapter when the underlying misconduct and the soldier's performance warrant separation. When appropriate, commanders may start separation action while the soldier is serving a sentence to confinement at the installation detention facility.

e. Initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army physical fitness test per AR 350–1 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment per AR 601–280 (RA soldiers) or AR 140–111 (USAR AGR soldiers).

13-3. Separation authority

The commanders specified in paragraph 1—19 are authorized to take final action in cases processed under this chapter.

13-4. Counseling and rehabilitation requirements

Before initiating separation action against a soldier, commanders will ensure that the soldier has received adequate counseling and rehabilitation. Because military service is a calling different from any civilian occupation, a soldier should not be separated when unsatisfactory performance is the sole reason for separation unless there have been efforts at rehabilitation. Paragraph 1–16 prescribes the counseling and rehabilitation requirements.

Section II
Procedures

13-5. Action by unit commander when soldier is under military control

When separation for unsatisfactory performance is appropriate, the unit commander will—

a. Take action specified in the notification procedure. (See chap 2 and fig 2–4.)

b. Forward the case recommending separation for unsatisfactory performance.

c. Ensure that a medical examination and mental status evaluation is obtained per paragraph 1–32.

d. When appropriate, forward the case recommending that the soldier be processed through medical channels. This is required when UCMJ action is not initiated and when the soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which separation action is being considered.

13-6. Commanding officer's report

When the immediate commander determines that separation for unsatisfactory performance is in the best interest of the Service, he/she will report the fact, by memorandum (see fig 2—5), to the separation authority specified in paragraph 1—19 through the intermediate commander.

13-7. Action by intermediate commander

a. The intermediate commander may disapprove the recommendation and either—

(1) Direct reassignment of the soldier to another organization.
(2) Direct disposition by other means.
(3) In case of reassignment, forward the commanding officer's report to the new organization commander for information.

b. The intermediate commander may also forward the report recommending approval. Recommendation will be made as to characterization of service. (See para 2—2d(4) and (5).)

13-8. Action by the separation authority
On receiving a recommendation for separation for unsatisfactory performance, the separation authority (see para 1–19) will take one of the following actions:
a. Disapprove the recommendation and direct reassignment of the soldier to another organization. In this case the commanding officer's report will be forwarded to the new organization commander for information.
b. Disapprove the recommendation and return the case to the originator for disposition by other means. The return endorsement will include reasons for considering separation for unsatisfactory performance inappropriate.
c. Take other appropriate action under this regulation.
d. If the soldier has less than 6 years of total active and/or reserve military service, or has properly waived his/her right to consideration by a board—
(1) Approve separation for unsatisfactory performance.
(2) Approve separation for unsatisfactory performance and suspend execution of the separation. (See para 1–18.)
e. If the soldier has 6 or more years of total active and/or reserve military service and has not executed a waiver, convene a board of officers, as prescribed in chapter 2, to determine whether the soldier should be separated for unsatisfactory performance.

13-9. Separation authority action after board hearings
See chapter 2.

13-10. Characterization of service
The service of soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records. (See paras 3-*5* and 3-7.) An honorable characterization of service generally is required when the Government initially introduces limited use evidence. (See para 3-8a and g.)

13-11. Type of separation
Soldiers separated under this chapter will be discharged. (See para 1–11 for additional instructions on ARNGUS and USAR personnel.)

Chapter 14
Separation for Misconduct

Section I
General Provisions

14-1. General
This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14-2. Policy
a. Action will be taken to separate a soldier for misconduct when it is clearly established that—
(1) Despite attempts to rehabilitate or develop him/her as a satisfactory soldier, further effort is unlikely to succeed.
(2) Rehabilitation is impracticable or the soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).
(3) The provisions of paragraph 1–33 have been complied with, if applicable.
b. Separation action may be taken when a soldier is not under military control. (See chap 2, sec III.)
c. Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.
d. Before taking action against a soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the soldier has received adequate counseling and rehabilitation. (See para 1–16.)

e. Misconduct involving fraudulent entry will be considered under chapter 7. Misconduct involving homosexual conduct will be processed under chapter 15.

f. Commanders will consider soldiers meeting the criteria of section III of this chapter and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the soldier is serving a sentence to confinement at the installation detention facility.

14-3. Characterization of service or description of separation

a. A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record. (See chap 3, sec II.)

b. When the sole basis for separation is a serious offense resulting in a conviction by court-martial that did not impose a punitive discharge, the soldier's service may not be characterized as under other than honorable conditions unless approved by HQDA (AHRC–EPR–F).

c. When a soldier has completed entry-level status, or paragraph 11–3*c* applies, characterization of service as honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

(1) A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated per paragraph 1–19*c*(2).

(2) A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is urinalysis results, which cannot be used for characterization of service as specified in AR 600–85, chapter 6, or when an administrative discharge board has recommended separation with an honorable discharge. (See para 2–12*b*(1).)

d. If characterization of service under other than honorable conditions is not warranted for a soldier in entry-level status (see chap 3, sec II), service will be described as uncharacterized, except as provided in paragraph 3–9*a*(3). (Also see para 11–3*c*.)

e. An honorable characterization of service is generally required when the Government initially introduces limited use evidence. (See para 3–8*a* and *g*.)

14-4. Authority for discharge or retention

a. The separation authority is authorized to order discharge or direct retention in military service when disposition of a soldier has been made by a domestic court of the United States or its territorial possessions.

b. Upon determination that a soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority. (See AR 600–8–19.)

c. The separation authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving soldier a probationary period not to exceed 12 months to demonstrate successful rehabilitation. (See paragraph 1–19 for delegation of authority.)

Section II
Conviction by Civil Court

14-5. Conditions that subject a soldier to discharge and reduction in grade

a. A soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings:

(1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended.

(2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Initiation of separation action is not mandatory. Although the conditions established in *a*(1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. (See paragraph 14–7 for guidance on retention.)

c. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action.

d. A soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction. (See AR 600–8–19.)

14-6. Appeals

a. A soldier will be considered as having been convicted or adjudged a juvenile offender even though an appeal is pending or is later filed.

b. A soldier subject to discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so.

(1) However, execution of the approved discharge will be withheld until one of the following circumstances occurs, whichever is earlier:

(a) The soldier has indicated, in writing, that he/she does not intend to appeal the conviction or adjudication as a juvenile offender.

(b) The time in which an appeal may be made has expired.

(c) The soldier's current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)

(2) If an appeal has been made, discharge will be withheld until formal action has been taken or until the soldier's current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)

(3) Upon request of the soldier, or when the commander believes it appropriate, a soldier may be discharged prior to final action on an appeal. In such cases, the entire file will be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for final decision.

c. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances and the recommendation.

14-7. Retention action

Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army.

a. In deciding whether retention should be recommended or approved, the gravity of the offense, related events, and any matters in extenuation, will be considered. The military record of the soldier before the offense should be considered, as well as prospects for rehabilitation.

b. If retention is desired and civil custody exists, such as parole or probation, that would interfere with the soldier's military duties, the civil authorities will be requested to relinquish such custody during the soldier's term of military service.

(1) If the civil authorities decline to relinquish custody, as a general rule, the soldier will be discharged.

(2) The soldier will also be discharged if the conditions for relinquishment of custody will cause an undue burden to the Army.

14-8. Action following disposition by domestic courts

a. When discharge is contemplated.

(1) When a soldier is under military control, the unit commander will take action as specified in the administrative board procedure (see chap 2, sec II), except that the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7*c*.

(2) Chapter 2, section III, prescribes additional actions to be taken when a soldier is confined and the administrative board procedure will be used, except that the use of the notification procedure is authorized if characterization of service under other than honorable conditions is not warranted.

b. When board hearing is waived or completed. The separation authority may

(1) Disapprove a recommendation for discharge and direct retention.

(2) Approve a recommendation for retention.

(3) Approve a recommendation for discharge and approve the type discharge certificate recommended by the board or a more favorable one than that recommended. He/she may not direct a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined per paragraph 14–3.

(4) Approve a recommendation for discharge and suspend execution of the discharge.

14-9. Procedure for civil court cases in foreign countries

a. Major overseas commanders may approve discharge of soldiers convicted by a foreign tribunal. This authority may be delegated to a general officer with a judge advocate (JA) on his/her staff. Every action taken in such delegation will state the authority.

(1) When a soldier is convicted by a foreign tribunal, and the soldier returns to the United States before initiation or completion of discharge proceedings per this paragraph, discharge proceedings will be initiated or completed per paragraph 14–5. The proceedings will be completed as if the soldier had been convicted by the domestic court of the United States or its territorial possession. (See paras 14–4 and 14–8.)

(2) The recommendation for discharge will include the items specified in *b*(1) through (4), below. In such cases, the authorities specified in paragraph 1–19 may approve and order discharge under this paragraph if the soldier has been assigned to their command.

(3) HQDA authorization is required before soldiers who have completed 18 or more years of active Federal service may be discharged.

(4) This provision is not intended to relieve overseas commanders of their responsibility to promptly initiate and process civil court cases on soldiers of their command.

b. Commanders will forward the board proceedings, or waiver, through channels to the major overseas commander. Cases will be processed through the chain of command to the commander in the United States authorized to approve discharge. In both situations, the recommendation regarding discharge will include—

(1) Information concerning the civil record and military service of the soldier.

(2) A statement from the court indicating that the soldier has been initially convicted.

(3) A statement as to the character of discharge desired, including a statement as to whether paragraph 2–4 has been complied with.

(4) A report of the trial proceedings submitted by the official U.S. observer, if any, attending the trial or a transcript of the record of trial, if obtainable.

c. Army personnel confined in foreign prisons will not be discharged from military service until the term of imprisonment is completed and they return to the United States.

(1) Normally, soldiers who are disposed of by a foreign tribunal, but not confined, or who are confined but whose release from confinement is imminent, will be returned to the United States or its territorial possessions for discharge. It is general policy that the soldier will be returned to CONUS.

(2) Very unusual cases may be forwarded through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, with supporting reasons as to why a soldier should be authorized discharge in a foreign country. Only most unusual situations will be considered. If discharge in a foreign country is desired, either by the commander or the soldier concerned, this paragraph and chapter 1, section IX will be complied with before such requests are submitted to HQDA.

d. If HQDA authorizes discharge in a foreign country, the overseas commander accomplishing the discharge will inform the nearest U.S. diplomatic or consular mission of such action.

e. A soldier may not be retained in the Service beyond ETS without his/her consent (see para 1–27) to complete board action under chapter 2, section II.

(1) When the soldier has not requested retention per paragraph 1–27 and it appears that compliance with chapter 2, section II, cannot be accomplished before the soldier's ETS, the case with full details, will be submitted through channels to Headquarters, Department of the Army (AHRC–EPR–F) 200 Stovall Street, Alexandria, VA 22332–0478.

(2) The case will be submitted in time to permit appropriate consideration before the soldier's ETS. There is no authorization to begin last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

Section III
Acts or Patterns of Misconduct

14-12. Conditions that subject soldiers to discharge

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. Except as provided in paragraph 11–3*c*, if separation of a soldier in entry-level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under chapter 11.

b. A pattern of misconduct. A pattern of misconduct consisting of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM.

(1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See para 1–43 for civil offenses under investigation by foreign authorities.)

(2) Abuse of illegal drugs is serious misconduct.

(a) However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under *a* or *b*, above, as appropriate.

(b) All soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge or against whom separation action will not be initiated under the provisions of chapter 9 or section II of this chapter will be processed for separation under *a*, *b*, or *c*, above, as applicable.

1. “Processed for separation” means that separation action will be initiated and processed through the chain of command to the separation authority for appropriate action.

2. The immediate and intermediate commanders will recommend separation or retention. Recommendations will be made as to characterization of service. (See para 2–2 or 2–4.)

3. The separation reason in all separations authorized by this paragraph will be “misconduct-abuse of illegal drugs.” Voluntary (self) identification/referral in accordance with AR 600–85, paragraph 3–2, does not require initiation of separation proceedings under this section.

14-13. Procedures

The administrative board procedures (see chap 2, sec II) will be used; however, the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3-7c.

14-14. Separation authority

Commanders specified in paragraph 1-19 are authorized to convene boards and order separation under this chapter.

14-15. Commanding officer’s report

When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service he/she will report the fact in memorandum form (see fig 2-5) to the separation authority specified in paragraph 1-19 through the intermediate commander.

14-16. Action by intermediate commanders

Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer’s report will be sent to the new organization commander for information.

b. Approve the commanding officer's recommendation and send the report to the separation authority.

(1) Recommendation will be made as to characterization of service. (See para 2–2 or 2–4.)

(2) Disposition through medical channels is required if the soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which action prescribed in this regulation is being considered, and action under the UCMJ will not be initiated.

c. Recommend separation for unsatisfactory performance if the reason for separation is determined to be a pattern of misconduct caused by the conditions in paragraph 13–2*a*, and unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

14-17. Action by the separation authority

On receiving a recommendation for separation for misconduct, the separation authority may take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means. Include the reasons for considering separation for misconduct inappropriate, or take other appropriate action under this regulation.

c. Disapprove the recommendation relating to misconduct and take action himself/herself.

(1) The case can be referred to the appropriate separation authority (see para 1–19*c* or *d*) to determine whether the soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2*a*, and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate.

(2) Unless unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

d. Convene a board of officers as prescribed in chapter 2, section II, to determine whether the soldier should be separated for misconduct.

e. When the board hearing has been properly waived, direct separation of the soldier for misconduct.

f. When the board hearing has been properly waived, approve separation of the soldier for misconduct and suspend execution of the separation. (See para 1–18.)

g. Direct that the case be processed through medical channels, if appropriate.

(1) Such disposition is required if the soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct, and action under the UCMJ is not initiated. A copy of the signed decision by the GCMCA will be included with the records.

(2) Authority to determine that a case will be referred for disability processing instead of other administrative processing will not be delegated.

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Student Handout 4

This Student Handout contains copies of the VGTs with space for students to take notes.

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TERMINAL LEARNING OBJECTIVE

Identify administrative elimination actions for active duty and reserve component soldiers

U660/OCT04/VGT-1

SEPARATION GUIDELINES

- Potential for rehabilitation
- Provide adequate counseling before initiating a separation action
- Consider seriousness of events/ conditions
- Will the events/conditions that led to proceedings continue
- Will soldier continue being a disruptive or undesirable influence

U660/OCT04/VGT-2

SEPARATION GUIDELINES (cont)

- Soldier's ability to perform duties effectively.
- Soldier's potential for leadership.
- Soldier's entire military record --
  - Past contributions.
  - Awards and decorations.
  - Evaluation ratings.
  - Letters of commendation.
  - Letters of reprimand/admonition.
  - Counseling records.

U660/OCT04/VGT-3

REASONS FOR ADMINISTRATIVE SEPARATIONS

- To meet required standards of duty performance and discipline.
- To achieve authorized force levels and grade distribution.
- (RC) For the convenience of the government.

U660/OCT04/VGT-4

SEPARATION FOR MORE THAN ONE REASON

- *When a soldier is subject to separation for more than one reason. The following guidelines apply:*
- The commander must clearly establish the basis for each reason
- If one of the reasons for separation requires processing under the administrative board procedure, the administrative board will process all the reasons for discharge

U660/OCT04/VGT-5

SEPARATION FOR MORE THAN ONE REASON (cont)

- When separating a soldier for more than one reason, consider applying the guidance on characterization that provides the greatest latitude
- When there is a conflict between a specific requirement for one reason and a general requirement for another reason, the specific requirement applies.

– *If you cannot resolve a conflict based on the above, use the requirement most favorable to the soldier.*

U660/OCT04/VGT-6

NOTIFICATION LETTER

– *THE SOLDIER WILL RECEIVE A LETTER OF NOTIFICATION CONTAINING:*

- *SPECIFIC ALLEGATION(S)*
- PROVISIONS OF THE REGULATION THAT AUTHORIZE SEPARATION.
- TYPE OF DISCHARGE AND CHARACTERIZATION OF SERVICE RECOMMENDED.
- LEAST FAVORABLE CHARACTERIZATION OF SERVICE THE SOLDIER COULD RECEIVE.
- SOLDIER'S RIGHTS.

U660/OCT04/VGT-7

AUTHORITY TO APPROVE SEPARATIONS- AA

- General Court-Martial Convening Authorities (GCMCA)
- A General Officer
- Special Court-Martial Convening Authorities (SCMCA)
- Commanders (LTC or higher)
- Unit commanders

U660/OCT04/VGT-8

AUTHORITY TO APPROVE SEPARATIONS (cont)

- (ARNG) State Adjutants General (USAR)
- CDR, AR-PERSCOM
- Area commanders (except Cdr, AR-PERSCOM)
- Area commander may further delegate (with no further delegation)

-- CDR ARCOM, COGOM, 1st GO in Command (within COC), etc.

U660/OCT04/VGT-9

ACTION BY SEPARATION AUTHORITY

Refer to AR 635-200, chapter 2, or AR 135-178, Chapter 3, then direct one of the following actions:

- Retention
- Separation
- Suspension of separation

U660/OCT04/VGT-10

ADMINISTRATIVE BOARD COMPOSITION--AA & RC

- At least three commissioned, warrant or noncommissioned officers.
- Be SFC or above and senior to the respondent for enlisted board members.
- At least one member will be a major or higher and commissioned or warrant officers are a majority of the board.
- A nonvoting member.
- A nonvoting legal advisor.

U660/OCT04/VGT-11

ADMINISTRATIVE BOARD COMPOSITION (cont)

- Include experienced, unbiased officers.
- For A reserve component soldier, include at least one RC member.
- For a female soldier, board will include a female voting member, if requested by respondent.
- For a minority member, board will include a minority voting member, if requested by respondent.

U660/OCT04/VGT-12

TYPES OF ADMINISTRATIVE DISCHARGE/CHARACTERIZATION OF SERVICE

- Honorable discharge.
- General discharge.
  (under honorable conditions)
- Discharge under other than honorable conditions.

U660/OCT04/VGT-13

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