

PERSONNEL SEPARATIONS
EFFICIENCY AND PHYSICAL FITNESS BOARDS

This is a complete revision of NGR 635-101, which prescribes the criteria and procedures for determining the capacity and general fitness of commissioned and warrant officers for continued Federal recognition in the Army National Guard. The word "he" when used in this regulation represents both the masculine and the feminine genders, unless otherwise indicated.

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*This regulation supersedes NGR 635-101, 14 March 1969, including all changes.

SECTION I

GENERAL

1. Purpose. This regulation prescribes the criteria and procedures for determining the capacity and general fitness of commissioned and warrant officers for continued Federal recognition in the Army National Guard.

2. Policies. *a.* The provisions of AR 15-6 are applicable to the Army National Guard, except as modified herein.

b. Determination of fitness or unfitness will be without regard to race, color, religion, sex, or national origin.

3. Statutory authority. Subsection 323(b) of Title 32, United States Code.

4. Limitations on separation. *a.* The separation of an officer under the provisions of this regulation will be accomplished upon the approved recommendations of a board of officers convened by competent authority, except as provided in *b* below.

b. An officer will be separated from the Army National Guard and as a Reserve of the Army without board action when he—

(1) Submits a resignation in lieu of proceedings for the withdrawal of Federal recognition in accordance with paragraphs 23 and 24 and the resignation is accepted by the appropriate authorities of the State concerned, or—

(2) Has less than 3 years commissioned service and fails to meet standards of service school while participating in basic branch course due to disciplinary reasons or academic or leadership deficiencies.

c. An officer with 20 or more years of qualifying Federal service for retired pay when being considered for separation because of substandard performance of duty, will be given an opportunity to elect transfer to the Retired Reserve.

5. Previous action to withdraw Federal recognition. *a.* An officer who has been considered for withdrawal of Federal recognition and re-

tained may again be required to show cause for retention because of lack of capacity or general fitness that occurs after the earlier consideration, or because of an incapacity or unfitness not alleged in the earlier proceedings, which could not have been discovered by the exercise of due diligence.

(1) An officer who has been considered for withdrawal of Federal recognition for substandard performance of duty and is retained may not be considered again for withdrawal of Federal recognition for substandard performance of duty until at least 1 year after the preceding board action.

(2) An officer may be considered for withdrawal of Federal recognition for moral or professional dereliction, or in the interests of national security, at any time.

b. The grounds for withdrawal of Federal recognition in the earlier case may be joined with the grounds in the later case if both actions are based upon the same grounds (substandard performance, moral or professional dereliction, or national security) provided the earlier proceeding does not include a factual determination in favor of the officer on those grounds. If the grounds for withdrawal of Federal recognition in the earlier proceedings are joined, the additional grounds considered in the subsequent proceeding need not independently justify the withdrawal of Federal recognition, but must be sufficiently serious to raise a substantial question as to the officer's potential for further useful military service.

6. Discharge authority. *a.* The Chief, National Guard Bureau, acting for the Secretary of the Army, will review and approve the findings and recommendations of a board of officers convened by area commanders to determine whether the Federal recognition of officers of the ARNG should be withdrawn by reason of incapacity or general unfitness. The Chief of Staff, US Army, acting for the Secretary of the Army, will review and approve or disapprove the findings and recommendations of boards of officers convened in

the Department of the Army. If the approved findings and recommendations are against the officer, the Chief, National Guard Bureau will—

(1) Withdraw the officer's Federal recognition.

(2) Notify the appropriate State Adjutant General and the area commander concerned.

(3) Furnish one copy of the approved board proceedings and a copy of the order withdrawing

Federal recognition to the Commander, United States Army Reserve Components Personnel and Administration Center (Cdr, RCPAC), St. Louis, MO 63132.

b. Upon receipt of withdrawal of an officer's Federal recognition under the circumstances set forth in a above, the Cdr, RCPAC will accomplish discharge from Reserve of the Army status.

SECTION II

REASONS FOR ACTION TO WITHDRAW FEDERAL RECOGNITION

7. General. Officers substandard in performance of duty or conduct, deficient in character, below medical standards for retention, or otherwise unsuited for military service should have their Federal recognition withdrawn.

8. Substandard performance of duty. Existence of one of the following or similar conditions constitutes substandard performance of duty and requires the withdrawal of Federal recognition from an officer for incapacity unless the officer successfully proves that recognition should not be withdrawn:

a. Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service.

b. Failure to exercise necessary leadership or command required of an officer of his grade.

c. Failure to perform with the technical proficiency required of his grade.

d. Failure to meet standards for students in a course of instruction at a service school due to disciplinary reasons, or academic or leadership deficiencies.

e. Failure to discharge assignments in a manner to be expected of an officer of his grade and experience.

f. Apathy, defective attitudes, or other character disorders to include inability or unwillingness to expend effort.

9. Moral or professional dereliction. Existence of one of the following or similar conditions constitutes moral and professional dereliction and requires the withdrawal of Federal recognition from an officer for general unfitness unless the officer successfully proves that recognition should not be withdrawn:

a. Unjustified failure to meet personal financial obligations.

b. Mismanagement of personal affairs to the discredit of the Army National Guard.

c. Intentional omission or misstatement of facts in official statements or records for the purpose of misrepresentation.

d. Acts of intemperance or personal misconduct.

e. Commission or attempted commission of a homosexual act or existence of homosexual tendencies (AR 635-100).

f. Conduct unbecoming an officer.

g. Entry into a military service of a foreign government.

h. International neglect or failure to—

(1) Perform assigned duties.

(2) Participate satisfactorily in required Ready Reserve training as set forth in AR 135-90.

(3) Comply with directives to—

(*a*) Furnish current address of record, which results in inability to locate the officer.

(*b*) Accomplish medical examination or execute statement in lieu of medical examination required by NGR 40-501.

(*c*) Reply to official correspondence or to complete administrative forms required by regulations. When followup action fails to locate the officer or clearly evidences willful neglect to complete the required forms or to reply to official correspondence, the appropriate commander will initiate elimination action. Copies of communications remaining unanswered, or the substance thereof with the dates and addresses, will be included in the recommendation for elimination action together with a brief description of any other means used to locate or communicate with the officer concerned. These documents will be furnished to the board of officers and will be made a part of the completed board proceedings.

i. Conviction by a foreign court resulting in confinement or other restriction of the officer's freedom which significantly diminishes his usefulness to the service.

10. In the interest of national security. Existence of acts or behavior not clearly consistent with the interests of national security requires the elimination of an officer. (NGR 604-10 applies).

11. Medical, physical or mental condition. *a.* An individual with a medical, physical or mental condition that prevents him from performing his duties must have his Federal recognition withdrawn. Each case must be decided upon the relevant facts and a determination of fitness or unfitness must be dependent upon the abilities of the officer to perform the duties of his office, grade and branch. Further, an individual may be unfit because of physical disability resulting from the overall effect of two or more impairments even though no one of them alone would cause unfitness. An individual will not be de-

clared unfit for military service because of impairments that were known to exist at the time of his acceptance for military service, have remained essentially the same in degree of severity since acceptance, and have not interfered with his performance of effective military service.

b. The standards in chapter 3, AR 40-501, apply for retention purposes, except for an individual assigned to duties for which special medical fitness standards are prescribed (Army aviation, airborne, marine diving).

c. An individual who becomes unfit because of physical disability resulting from an injury incurred during a period of full time training duty of 30 days or less or inactive duty training will be processed as prescribed in NGR 600-3, AR 40-3 and chap 8, AR 635-40.

SECTION III

INITIATION AND PROCESSING OF ACTIONS TO WITHDRAW FEDERAL RECOGNITION

12. Recommendations for withdrawal of Federal recognition. Action may be originated by any commander with respect to an officer of his command or under his jurisdictional control, the State Adjutant General, the Chief, National Guard Bureau, or the Chief of Staff, US Army.

a. Commanders will forward their recommendations for withdrawal of Federal recognition through channels to the State Adjutant General.

b. The State Adjutant General will forward his recommendations, together with correspondence, statements, records, and similar related documents to the area commander in whose area the officer involved is currently residing (AR 135-175).

c. Recommendations will clearly state the reasons therefor and all be supported by all documentary and physical evidence available. With the exception of official records and reports, such as efficiency reports and health records, all statements submitted will be under oath or affirmation, unless the witness is dead, insane, missing, or exigencies preclude obtaining his statement in affidavit form. Documents must be legible and lend themselves to reproduction.

d. Recommendations from the Chief of Staff, US Army for action under this regulation will be forwarded to the Chief, National Guard Bureau for action prescribed in paragraph 17.

13. Initial action by Army area commander. The following actions may be taken by the area commander:

a. The case may be returned for further evidence or a recommendation as to further action.

b. He may disapprove the recommendation, close the case, and return it to the State Adjutant General.

c. He may appoint or direct the appointment of an investigating officer in accordance with AR 15-6. Upon receipt of the investigating officer's report, he may disapprove the recommendation,

close the case, and return it to the State Adjutant General.

14. Initiating action for withdrawal of Federal recognition. *a.* If the area commander determines that sufficient basis exists to initiate action for withdrawal of Federal recognition, he will, if the whereabouts of the officer is known or may be ascertained by reasonable procedures, notify the officer concerned setting forth the reasons therefor, and inform him that he must acknowledge receipt of the above notification, and elect one of the following options within 15 days of receipt of notification:

(1) Show cause for retention before a board of officers convened for that purpose.

(2) Submit a resignation in lieu of withdrawal of Federal recognition. (see V), or—

(3) Elect transfer to the Retired Service (para 4c).

b. Upon acknowledgement of receipt by the officer, the area commander will—

(1) If the officer submits a resignation in lieu of withdrawal of Federal recognition, forward the resignation and related correspondence to the State Adjutant General.

(2) If the officer elects transfer to the Retired Reserve and is otherwise eligible, process his request by referring it to the State Adjutant General.

(3) If the officer elects appearance before a board of officers, take necessary action to appoint such a board as required by this regulation.

c. If the whereabouts of the officer is unknown and unascertained after reasonable attempts to locate him, or if the officer refuses to accept or respond to the notification required by *a* above, the area commander will take necessary steps to appoint a board of officers as required by this regulation, which board may proceed in the absence of the officer without according him the privileges set out in paragraph 15.

15. Privileges of the officer. Except in those cases provided for in paragraph 14c, the officer concerned will be entitled to the following privileges (and he will be so notified by the area commander convening the board):

a. Appear in person before the board at his own expense. If the officer is unable to appear because of imprisonment or other restriction resulting from his own misconduct, board action will not be delayed solely because of the inability of the officer to appear, provided he is allowed the privileges listed in b through e below.

b. Be furnished copies of the records that will be submitted to the board and other pertinent releasable documents.

c. Submit statements in his own behalf.

d. Be represented by appointed military counsel who, if reasonably available should be a lawyer; by military counsel of his own choice (if reasonably available); or by civilian counsel at his own expense (AR 15-6).

e. Be allowed a reasonable time to prepare his own case. In no instance will he have less than 30 days from date of notification by the area commander.

16. Action on board recommendations. Board proceedings will be prepared in triplicate and forwarded through the appropriate State Adjutant General to the area commander who convened the board. The following actions may be taken on recommendations of boards of officers:

a. If the area commander notes a substantial defect in the proceedings in which withdrawal of Federal recognition has been recommended, he will take the action as follows:

(1) If the board has failed to make findings and recommendations as required by this regulation, he will return the case to the same board for compliance with this regulation.

(2) If there is an apparent error or omission in the record that may be corrected without reconsideration of the findings and recommendations of the board, he will return the case to the same board for corrective action.

(3) If the board committed an error that materially prejudiced a substantial right of the officer, he may close the case favorably to the respondent (b(2) below), or he may convene a

new board to hear the case. No more than one rehearing may be directed without approval of the Chief, National Guard Bureau. The new board may—

(a) Be furnished the evidence properly considered by the first board, including extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the hearing.

(b) Call additional witnesses.

(c) Consider additional allegations, provided the respondent is advised accordingly.

(d) Not make recommendations that are less favorable to the officer than those made by the initial board, unless additional allegations are considered by the subsequent board.

(4) He will indicate his recommendations for approval or disapproval and forward all copies of the proceedings involving efficiency and medical fitness to NGB-ARP-O, Wash DC 20310. When disapproval is recommended, reasons therefor will be indicated.

b. When a board recommends elimination of the officer concerned, the Chief, National Guard Bureau, will, as appropriate—

(1) Approve the recommendations of the board and effect actions indicated in paragraph 6a.

(2) Disapprove the recommendations of the board, close the case, and notify the officer concerned. A copy of the letter of notification to the officer will be included in the board proceedings. The commander making the recommendation for withdrawal of Federal recognition will be furnished a copy of the board proceedings together with final action taken.

17. Action on recommendations of Chief, National Guard Bureau, or Chief of Staff, US Army.

a. The Chief, National Guard Bureau will notify the officer concerned setting forth the reasons for withdrawal of Federal recognition and will inform him that he must acknowledge receipt of the above notification, and elect one of the options listed in paragraph 14a within 15 days of receipt of notification.

b. If the officer elects appearance before a board of officers, the Chief, National Guard Bureau, will request the Chief of Staff, US

Army, to appoint such a board as required by this regulation. The officer will be entitled to privileges specified in paragraph 15. Action will be taken by the Chief of Staff, US Army, on recommendations of such a board of officers in the manner provided in paragraphs 16*a* and *b* for the area commander and the Chief, National Guard Bureau.

c. If the officer submits a resignation in lieu of board proceedings, the Chief, National Guard Bureau, will withdraw Federal recognition and forward the resignation to Commander, US Army Personnel and Administration Center, St

Louis, MO 63132 for discharge of the officer from the Reserve of the Army.

d. If the officer elects transfer to the Retired Reserve (para 4*c*), the Chief, National Guard Bureau, will withdraw Federal recognition and forward the election to Commander, US Army Personnel and Administration Center for transfer action.

e. The Chief, National Guard Bureau may advise the appropriate State official of developments.

SECTION IV

BOARDS OF OFFICERS

18. General. *a.* This section prescribes the general provisions governing boards of officers convened under the provisions of this regulation to afford the officer a fair and impartial hearing to determine whether he should be retained in the Army National Guard. The burden of proof rests with the officer to produce convincing evidence that his Federal recognition should not be withdrawn. In the absence of such a showing by the officer, the board must recommend withdrawal of Federal recognition.

b. Except as indicated in this regulation, investigating officers and boards of officers will be governed by the provisions of AR 15-6 and, where appropriate, the guidance furnished in AR 635-100.

19. Composition. The board will be composed of not less than four commissioned officers with vote, with an equal number from the Regular Army and the Army National Guard of the United States.

a. When the capacity or general fitness of the officer is under investigation, all voting members of the board must be senior to him. A medical or legal officer may be appointed to serve without vote. Unless the officer under investigation is a member of the same branch, the medical or legal officer may be junior to him.

b. When the physical fitness of an officer is under investigation, at least one voting member of the board will be a medical officer. All voting members of the board, except the medical officer, will be senior in rank to the officer under investigation. If the officer under investigation is a member of the Medical Corps, the medical member or members of the board must be senior to him. A legal officer may serve as a member without vote. Unless the officer under investigation is a member of the same branch, the legal officer may be junior to him.

c. In the case of female officers being considered for withdrawal of Federal recognition, one member of the board must be a female officer of

the same basic branch of service as the officer being considered.

d. A commissioned or warrant officer may be designated as recorder by the orders appointing the board, and shall be without vote. Where a recorder is not designated in the appointing orders, the junior member of the board shall act as recorder and shall have a vote.

20. Findings. *a.* The board will make separate findings with respect to each allegation. A brief statement of the reason(s) (including the factual data when considered necessary for clarification) for each finding will be included. Each finding must be a clear and concise statement of the facts evidenced in the record or a conclusion that can be readily deduced from the evidence in the record.

b. Each finding must be supported by substantial evidence.

21. Recommendations. *a.* Recommendations of the board must be appropriate to and warranted by the findings.

b. Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army National Guard in consonance with this regulation and other appropriate regulations, and are guided by their conception of justice both to the Government and to the officer concerned.

c. Recommendations will be limited to retention or withdrawal of Federal recognition.

22. Report of proceedings. The board report will be an accurate account of its proceedings, prepared in accordance with AR 15-6. Each report will contain—

a. A record of testimony presented and heard and all other formal conversation that took place during all open sessions of the board.

b. A record of any closed sessions which required the presence of the legal advisor and the recorder.

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c. True copies or true extract copies of any and all documents used as a basis for requiring the officer to show cause and all other docu-

ments that were accepted as evidence in the case. *These documents must be legible and lend themselves to reproduction.*

SECTION V

RESIGNATION IN LIEU OF WITHDRAWAL OF FEDERAL RECOGNITION

23. General. *a.* When an officer has been notified that he is being considered for withdrawal of Federal recognition, he may submit a resignation at any time prior to final action on the board proceedings.

b. Commanders will insure that there is no element of coercion in connection with a resignation in lieu of withdrawal of Federal recognition and that the officer concerned is allowed at least 10 days after notification of impending elimination to make a decision in cases wherein resignation is contemplated. A resignation may be withdrawn by the officer at any time prior to final acceptance.

c. The resignation of an officer under consideration for withdrawal of Federal recognition for moral or professional derelictions (para 9) will be submitted in the format prescribed in appendix A.

d. The resignation of an officer whose case falls within the purview of NGR 604-10 (interest of national security) will be processed in accordance with that regulation.

e. The resignation of an officer under consideration as a Class II or III homosexual will be submitted in the format prescribed in appendix A.

f. The resignation of an officer under consideration for elimination for substandard performance of duty (para 8) will be submitted in the format indicated in appendix B.

24. Procedures. *a.* Resignation will be prepared in accordance with the appropriate format prescribed in appendixes A and B. Letters forwarding resignations will include the following:

(1) Officer's present assignment and attachment, if any.

(2) Reason(s) for submission of resignation.

(3) Documentary evidence, when appropriate, to substantiate given reason(s) for submission of resignation.

b. Resignations will be submitted through channels to the State Adjutant General for action. A copy of the resignation will be appended to the separation orders issued by the State Adjutant General and forwarded to the Chief, National Guard Bureau.

c. The Army area commander will be furnished a copy of the resignation in those cases where the officer has been recommended for withdrawal of Federal recognition and board action has been requested.

APPENDIX A

**FORMAT FOR RESIGNATION IN LIEU OF PROCEEDINGS
FOR WITHDRAWAL OF FEDERAL RECOGNITION FOR MORAL
OR PROFESSIONAL DERELICTION OR IN THE INTEREST
OF NATIONAL SECURITY**

SUBJECT: Resignation in Lieu of Proceedings for Withdrawal of Federal Recognition.
(Appropriate commander)

1. I, John Doe, Captain, Infantry, 000-00-000, having been informed that proceedings have been initiated to withdraw my Federal recognition, do hereby voluntarily tender my resignation as an officer of the _____ Army National Guard and as a Reserve Officer of the Army under the provisions of

(State)
section V, NGR 635-101.

2. I have been advised of the reasons for initiation of action to withdraw my Federal recognition, of my rights to appear before a board of officers, to be represented by counsel, to submit a brief in my behalf, and any other statements, to present witnesses in my behalf, and to have a reasonable time (at least 30 days) to prepare my case.

3. I hereby waive these rights with the understanding that if my resignation is accepted I may be separated either under honorable conditions or under conditions other than honorable. I also understand that I may be furnished an honorable, general, or other than honorable discharge certificate, as determined by the Commander, US Army Reserve Component Personnel and Administration Center.

APPENDIX B

**FORMAT FOR RESIGNATION IN LIEU OF PROCEEDINGS
FOR WITHDRAWAL OF FEDERAL RECOGNITION
FOR SUBSTANDARD PERFORMANCE OF DUTY**

SUBJECT: Resignation in Lieu of Proceedings for Withdrawal of Federal Recognition for Substandard Performance of Duty

(Appropriate commander)

1. I, John Doe, Captain, Infantry, 000-00-0000, having been informed that proceedings have been initiated to withdraw my Federal recognition, do hereby voluntarily tender my resignation as an officer of the _____ Army National Guard and as a Reserve officer of the Army under the provisions of section V, NGR 635-101.

(State)

2. I have been advised of the reasons for initiation of action to withdraw my Federal recognition, of my right to appear before a board of officers, to be represented by counsel, to submit a brief in my behalf, and any other statements, to present witnesses in my behalf, and to have a reasonable time (at least 30 days) to prepare my case.

3. I hereby waive these rights with the understanding that if my resignation is accepted, I will be separated under honorable conditions and will be furnished either an honorable or general discharge certificate as determined by the Commander, US Army Reserve Component Personnel and Administration Center.

Users of this regulation are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to NGB-ARP-O, Washington DC 20310.

By Order of the Secretary of the Army:

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