

INFORMATION PAPER

DAJA-AL
30 March 2016

SUBJECT: New AR 15-6, *Procedures for Administrative Investigations and Boards of Officers*

1. Purpose: To provide a summary of the changes made in the major draft revision of AR 15-6.

2. In General: The upcoming revision of AR 15-6 includes both major and minor revisions. The new regulation replaces the “formal” and “informal” categories of investigation with preliminary investigations, administrative investigations and boards of officers; provides guidance on imposing flags on subjects of investigation; outlines new appointing authorities for “serious incidents;” expands the pool of personnel available for appointment; broadens responsibilities of the legal advisor and the legal reviewer; and creates filing requirements for investigations concerning adverse information on field grade officers and “high profile cases.” The paragraphs below refer to the numbering of the new AR 15-6.

3. Major Revisions. The new AR 15-6 contains the following significant procedural and structural changes:

a. *Paragraph 1-6. Types of Procedures*. The following types of fact-finding or evidence gathering procedures replace the old “informal” and “formal” procedures:

(1) *Preliminary Inquiries*. This procedure may be used to assess the nature and size of a particular problem, to identify witnesses and summarize initial statements and to determine the necessity and scope of follow-up investigations. Important details include the following:

(a) The appointing authority may conduct the inquiry in person, or appoint an inquiry officer either orally or in writing.

(b) The findings must be reduced to writing and evidence preserved if the appointing authority is contemplating further action. If a further investigation is required, the findings should be forwarded to the subsequent investigator.

(c) If an inquiry contains adverse information regarding a field grade officer, an additional administrative investigation must be conducted. The preliminary inquiry does not have to be referred to the officer.

(d) A preliminary inquiry may satisfy the “commander’s inquiry” requirement in RCM 303. Appointing authorities must consult with a legal advisor prior to conducting an inquiry and taking adverse administrative action based on a preliminary inquiry.

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(2) *Administrative Investigations*. These procedures are largely unchanged from the informal procedures of the old regulation. New details include the following:

(a) The new regulation allows for the IO to have appointed assistant IOs to provide special technical knowledge, or to help question witnesses and gather evidence under the IO's direction.

(b) No respondents are designated in an administrative investigation. However, field grade officers may have the right to respond (see below) under paragraphs 2-8c and 5-4 to any adverse information contained in the final report, regardless of whether further adverse action is intended.

(3) *Boards of Officers*. Board procedures are largely the same as the previous regulation, except where affected by the revisions to membership and to the general conduct of investigations discussed below.

b. *Paragraph 2-1. Appointing Authority*. The new regulation makes the following changes to who may appoint AR 15-6 investigations:

(1) *Paragraph 2-1a(3)*. The new regulation explicitly allows a principal staff officer in the rank of LTC to appoint a board of officers if the LTC is assigned to a slot authorized to a COL.

(2) *Paragraph 2-1a(6)*. Principal Deputies, Assistant Deputy Chiefs of Staff, and Assistant Secretaries of the Army are authorized to serve as appointing authorities for boards of officers at HQDA.

(3) *Paragraph 2-1c. Serious incident investigations*. This is the most significant change. Previously, GCMCAs were the appointment authorities for investigations into incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, the death of one or more persons, and the death of one or more persons by fratricide/friendly fire. The changes are as follows:

(a) "GCMCAs" is expanded to "GCMCA, or a general/flag officer assigned to a command billet with a servicing SJA." The specific types of investigations listed are summarized as "Class A accidents." However, the regulation then provides the following examples: "incidents resulting in property damage of \$2 million or more, or the loss or destruction of an Army aircraft or *an unmanned aircraft system with a replacement or repair cost of \$2 million or more*; an injury and/or illness resulting in, or likely to result in, the permanent total disability or death of one or more persons." The emphasis is added to highlight changes.

(b) The next superior authority to the GCMCA or general/flag officer is the appointing authority for “Class A *training* [emphasis added] accidents resulting in, or likely to result in, the permanent total disability or death of one or more persons; or combat-related deaths involving non-DOD personnel or an insider (green on blue) attack.” For example, a training death within a division requires the corps GCMCA or higher to appoint the investigation.

(c) The combatant commander, or delegee, is the appointing authority for investigations into friendly fire incidents, in accordance with DoDI 6055.07.

(d) Appointing authorities may delegate appointing/approval authority for investigations into the deaths of deployed U.S. forces due to hostile fire only down to a subordinate general/flag officer or a SPCMCA.

c. Paragraph 2-3. Who may be appointed. The new regulation expands the pool of personnel available for appointment as IOs and board members. The graded position of eligible civilians has been lowered from GS-13 to GS-11. NCOs in the rank of E-7 or above may serve as voting members of boards. NCOs in the rank of E-7 or above may serve as IOs in “military exigencies” and if no commissioned officers, warrant officers, or eligible civilians are “readily available.”

d. Paragraph 2-7. Legal Review. The scope of the legal review is broadened into a “comprehensive review” which should ensure “the investigation does not raise questions that it leaves unanswered; anticipates future uses of the investigation; resolves internal inconsistencies; makes appropriate findings; and makes recommendations that are feasible, acceptable, and suitable.”

e. Paragraph 2-8c. Referral of adverse information. Investigations containing adverse information regarding a field grade officer must be referred to that officer. Only the portion and supporting evidence relevant to the specific adverse finding is to be provided. Other notable requirements include that:

(1) A redacted copy of the relevant portions of the investigation must be referred by memorandum (a template is provided at figure 2-6 in the new regulation) notifying the officer of the general nature of the adverse information and advising the officer of:

(a) the right to remain silent;

(b) the adverse information must be provided to promotion boards for a grade above colonel (10 USC 615), and may be provided to other types of selection boards; and

(c) the approving authority will fully consider the response and may use it to alter the findings, or as evidence in other actions resulting from the investigation.

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(2) Paragraph 2-8c(1) refers the reader to paragraph 5-4 for the following details concerning any response to the notification:

(a) Field grade officers have the right to respond to any adverse finding that the authority intends to approve. The officer has at least 10 business days to respond.

(b) The officer's response may include anything the officer deems relevant, including a rebuttal memo, additional evidence, and letters of support. The entire response must be included as an exhibit in the report.

(c) An approval authority may grant these rights to any other individual subject to an adverse finding regardless of rank.

f. *Paragraph 2-9. Request for reconsideration.* The new regulation establishes a procedure for correcting the findings of an investigation upon discovery of new evidence, mistake of law, mistake of fact, or administrative error.

g. *Paragraph 3-10. Findings.* The new regulation incorporates the following revisions:

(1) Findings should now directly address wider issues "encountered during the investigation that are related to policies, procedures, resources, or leadership" relevant to the specific subjects under investigation.

(2) The standard of proof language is clarified to "a preponderance of the evidence."

(3) The new regulation requires a statement explaining why a finding is "more credible or probable than other reasonable conclusions" when the evidence could support an alternative finding.

h. *Paragraph 3-19. Filing and record keeping of the report.* The regulation establishes new filing requirements for completed investigations. In general, approval authorities will keep the original and a digital copy of the final report for not less than 5 years. However, special rules exist for investigations featuring adverse information regarding field grade officers and "high-profile" cases:

(1) *Field grade officers.* The approval authority keeps the original and a digital copy for not less than 10 years regardless of whether the investigation resulted in actual adverse action.

(a) The officer is provided a version of the file redacted in accordance with the referral rules in paragraph 2-8c.

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(b) The servicing SJA or legal advisor also provides a synopsis of the adverse finding and the filing location of the investigation to OTJAG by email to “*USARMY Pentagon HQDA OTJAG Mailbox AL Adverse*” found on the Global Address List.

(2) *High-profile cases.* These cases are those that “result in national media interest, Congressional investigation, and/or substantive changes in Army policies or procedures.” The approval authority keeps the original and a digital copy on file for not less than 10 years.

(a) The approval authority submits a copy of these reports through the U.S. Army Records Management and Declassification Agency (USARMDA) (AHRC-PDD-RR), 7701 Telegraph Road, Alexandria, VA 22315-3800, to the National Archives Records Administration (NARA).

(b) The approval authority also submits simultaneously a copy of the report through command channels to OTJAG and HRC, and before the next of kin is notified of the results of the investigation pursuant to AR 600-8-1, for Class A training accidents resulting in, or likely to result in, the permanent total disability or death of one or more persons, and for combat-related deaths involving friendly fire, non-DOD personnel, or an insider (green on blue) attack.

(3) Additionally, a new paragraph requires a copy of any completed investigation conducted in a deployed environment pertaining to deployed operations to be passed to the successor unit prior to the investigating unit’s redeployment.

4. Minor Revisions. The following changes are either minor revisions or explicit incorporations of rules already in force under other authorities:

a. *Paragraph 1-7. Allegations against senior officials.* A new paragraph restricts the authority to investigate general officers, promotable colonels and members of the civilian Senior Executive Service. The provision directs IOs and boards to forward these allegations to the Investigations Branch, DAIG.

b. *Paragraph 1-11. Requirement to initiate a suspension of favorable personnel action in preliminary inquiries and administrative investigations.* A new paragraph requires the initiation of a flag, in accordance with AR 600-8-2, when the investigation may result in disciplinary action or the loss of the Soldier’s rank, pay, or other privileges.

c. *Paragraph 2-1f. Conflict of interest.* A new paragraph is added providing basic guidance on preventing bias and conflicts of interest in the appointment and conduct of investigations.

d. *Paragraph 3-7. Rules of Evidence and proof of facts.* The new regulation incorporates the following revisions:

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(1) *Paragraph 3-7b. Access to documents, records, evidence, and other data.* The new regulation includes a new paragraph explicitly prohibiting DA personnel from denying an IO or a board access to records, documents and other evidence stored by the DA, except when permitted by law and other regulations.

(2) *Paragraph 3-7d(1). Relevance.* The new regulation explicitly incorporates the MRE definitions of “relevant evidence.”

(3) *Paragraph 3-7d(3). Investigations related to sex offense cases.* The new regulation explicitly incorporates MRE 412 and its exceptions for cases which are not investigated by CID.

(4) *Paragraph 3-7d(7)(c).* The new regulation replaces the board president with the legal advisor as the decision authority on whether a witness may be ordered to testify after invocation of the protections of Art. 31, UCMJ and the Fifth Amendment.

(5) *Paragraphs 3-7d(11) and (12).* IOs are required to consult with legal advisors when in possession of recorded conversations and electronic communications to ensure any use is in compliance with statute and local policy.

e. *PII protections.* The new regulation incorporates in numerous paragraphs explicit warnings to IOs, boards and legal advisors to protect any collected or disclosed PII and to ensure compliance with FOIA, the Privacy Act, HIPAA, AR 340-21 and AR 25-55.

f. *Paragraph 3-13. Enclosures.* “High-profile” cases require additional enclosures including an executive summary and a chronology of the investigation.

g. *Paragraph 3-16. Compliance with applicable information security laws and regulations.* A new paragraph is included reminding IOs and boards to comply with required classification markings and handling procedures.

i. *Chapter 6. Collateral Investigations.* A new chapter is included providing basic guidance on the coordination and priority of potential investigations conducted in conjunction with an AR 15-6 investigation.

h. *Paragraph 7-8. Presentation of evidence.* A respondent may provide an unsworn statement as in RCM 1001(c)(2)(A).

i. *Paragraphs 7-11 and 7-12.* New paragraphs are added to provide basic guidance on deliberation and voting procedures.

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