

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chapter CC23--Staffing
Subchapter CC23.7--Separation
Personnel INSTRUCTION 1--Involuntary Separation During the Probationary Period
Served by Officers on Active Duty in the Reserve Corps

CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
A.	Purpose and Scope	1
B.	Authority	1
C.	Background	2
D.	Policy and General Requirements	2
E.	Procedures	4
F.	Privacy Act Provisions	6

Section A. Purpose and Scope

This INSTRUCTION sets forth the policies and procedures concerning involuntary separation during the 3-year probationary period which officers called to active duty in the reserve corps of the Commissioned Corps of the Public Health Service (PHS) are required to serve.

This INSTRUCTION does not apply to the involuntary separation of officers due to the expiration of a limited tour of duty during the probationary period.

Section B. Authority

1. The statutory authorities for appointment, call to active duty, and separation of reserve corps officers of the PHS Commissioned Corps are contained in sections 203 and 207(a)(2) of the PHS Act (42 U.S.C. 204 and 209(a)(2)).

2. Regulations which establish the 3-year probationary period for reserve corps officers are set forth in Subchapter CC43.7, INSTRUCTION 1, "Separation of Officers in the Regular and Reserve Corps Without Consent of the Officers Involved," of this Manual. These regulations were issued under authority of section 215(a) of the PHS Act (42 U.S.C. 216(a)).
3. Authority to terminate commissions of reserve corps officers as provided in this INSTRUCTION has been delegated to the Director, Division of Commissioned Personnel (DCP).

Section C. Background

The PHS Commissioned Corps consists of both a regular and reserve corps. The regular corps comprises career-oriented officers who have completed the probationary period and have expressed long-term commitments to the mission and goals of the Department of Health and Human Services (DHHS), and whose requests for regular corps appointment have been favorably considered by their professional category and confirmed by the U.S. Senate. The active reserve corps serves as an adjunct to the regular corps and expands and contracts according to the needs of DHHS. Newly commissioned officers enter on active duty in the reserve corps.

Section D. Policy and General Requirements

1. Reasons for Separation. All individuals called to active duty in the PHS reserve corps are required to serve a 3-year probationary period. During this period, the officer's performance, conduct, dedication to duty, professionalism as a member of a Uniformed Service, flexibility, and willingness to accept new assignments will be monitored closely. Moreover, in certain categories and grade levels, there are diminishing needs for career officers and only a percentage can be retained beyond a 3-year commitment. At any time during the probationary period, an officer may be separated from active duty for reasons including, but not limited to, the following:
 - a. Abolishment of an officer's position as a result of personnel or budgetary limitations; nonavailability of an assignment in the officer's grade, category, occupation, or specialty;
 - b. Unsuitability, i.e., the officer demonstrates general character traits that make him/her unsuitable for continued service;
 - c. Failure to demonstrate the level of performance, conduct, dedication to duty, or professional attitude and attributes expected of an officer in the Uniformed Services;

- d. Refusal to accept reassignment; or
- e. Unsatisfactory conduct before call to active duty which is discovered subsequent to entry on duty. This includes making a defective application for appointment by failing to disclose or by misstating any information requested during the application process.
2. Subsequent Tours of Duty. The requirement to serve a probationary period applies not only to the first tour of active duty, but to any subsequent tour of active duty as a reserve corps officer. During the first 3 years of each tour of active duty, the officer may be separated as stated in Section D.1., above.
3. Assimilation into Regular Corps. An officer may apply for assimilation into the regular corps pursuant to the policies and procedures set forth in Subchapter CC23.3, INSTRUCTION 7, "Regular Corps Assimilation Program," of this Manual; however, an officer is not eligible for regular corps appointment until after successful completion of the 3-year probationary period in the reserve corps.
4. Board Review. An officer who is separated under the provisions of this INSTRUCTION is not entitled to a review by a board of officers. However, the Director, DCP, will review and consider all available information supplied by the OPDIVs or Programs on the officer(s) who are serving in the probationary period.
5. Timing of Separation. An officer's separation under the provisions of this INSTRUCTION must be effected before the officer completes the probationary period. Otherwise, procedures applicable to involuntary separation after completion of the probationary period must be applied.
6. Advance Notice and Duty Status. An officer separated under the provisions of this INSTRUCTION will be given at least 30 days advance notice of separation, and ordinarily may be placed in non-duty with pay status until the date of separation. Under extraordinary conditions, an officer may be returned to duty while awaiting separation.
7. Divestment of Entitlements. If separation under the provisions of this INSTRUCTION is a consequence of the officer's conduct or refusal to accept a reassignment, the Director, DCP, may divest the officer of any unused annual leave.
8. Indebtedness to the Government. Separation under this INSTRUCTION may not absolve an officer of indebtedness to the Federal Government, including a financial obligation for training received under a scholarship or similar training program which obligated the officer to serve for a specified period or, as a penalty, to pay a financial obligation for failure to complete the required period of service under a special pay contract.

Section E. Procedures

1. Personnel Orders. Each personnel order calling an applicant or an inactive reserve corps officer to active duty will include the remark: "All reserve corps officers are in probationary status for 3 years following each call to duty (Subchapter CC23.7, INSTRUCTION 1)."
2. Unsatisfactory Performance or Conduct. The procedures stated in this subsection apply to separation for unsatisfactory performance or conduct after entrance on active duty. Procedures in this subsection fall into two categories: individual cases initiated by the OPDIV or Program, and group probationary reviews initiated by DCP.

Group probationary reviews are based on automated listings of all officers falling within selected call-to-duty dates. It is possible that an officer could be in some stage of the group review process when an individual case is initiated by the OPDIV or Program. If an individual case is under consideration while a group review is in process, the individual case will take precedence, and the group review for that particular officer need not be continued.

- a. Individual Cases. The OPDIVs or programs to which an officer may be assigned, or their representatives are responsible for initiating separation action whenever it becomes apparent during the probationary period that the officer's performance or conduct is below a level desirable for continued service.

A request for separation must include a justification of the type described in subsections 5.c and 5.d, below, and the officer must be notified when the final justification has been sent to DCP, as described in subsection 5.d, below. However, the time periods described in subsections 5.c and 5.d do not apply; draft and final justifications should be prepared as expeditiously as possible.

- b. Group Probationary Reviews. DCP will periodically notify the OPDIVs or Programs of officers that are entering the last year of their probationary status. During that year, a review of those officers will be conducted as described in subsection 5, below. Supervisors of commissioned officers must insure that their ratings of officers' performance and conduct during the probationary period are consistent with the recommendations which they will make regarding retention beyond the probationary period.
- c. Action by DCP. If the Director, DCP, approves a recommendation for separation, the officer will be provided written notification describing, in general terms, the reason(s) that his/her commission is being terminated and the effective date of the action. The decision of the Director, DCP, is final.

3. For Unsatisfactory Conduct Before Call to Duty. The Director, DCP, will inform the officer and the OPDIV or Program to which the officer is assigned, in writing, of the reasons for termination and the effective date (see Section D.6, above). The decision of the Director, DCP, is final.
4. For Abolishment of Position. Requests for separation must describe the circumstances surrounding the abolishment of the officer's position, such as budget cuts, reorganizations, transfer of functions, and reduction-in-strength. Actions taken to place the officer in another assignment within DHHS or other organization to which an officer may be assigned also must be described. Determinations of nonavailability of assignments in other organizations will be made by the Director, DCP, on the basis of vacancies reported to DCP.

This subsection also applies when an officer in the probationary period is on detail to a non-DHHS organization under a Memorandum of Agreement or Memorandum of Understanding, and that organization cancels the detail agreement for that officer.

5. Status Review Upon Completion of Probation. Prior to completion of the 3-year probationary period, each officer will be reviewed pursuant to the procedures set forth below.
 - a. DCP will notify each OPDIV or Program to which officers are assigned, of officers who are entering their last year of probation. This notice will be issued approximately 12 months prior to the end of probation.
 - b. The OPDIV or Program will review the performance and conduct of officers covered by the notice, and will make a recommendation to DCP regarding each officer's retention beyond probation. This recommendation is due in DCP in time to allow at least nine full months before the end of probation.
 - c. During the next 3-month period (i.e., between 6 and 9 months prior to the end of probation), the OPDIV or Program will prepare and send to DCP, a draft justification for those officers who were recommended for termination. The justification will describe the conduct and/or performance which is unsatisfactory, how that performance or conduct fails to meet requirements, and what actions have been taken to attempt to improve the performance or conduct. The justification should include all available documentation of the performance and/or conduct and a description of any discussions held with the officer.
 - d. During the next 2-month period (i.e., between 4 and 6 months prior to the end of probation), the OPDIV or Program will prepare and send to DCP, the final justification for those officers recommended for termination. The OPDIV or Program should notify the officer in writing that it has officially requested the termination of the officer's

commission under the provisions of this INSTRUCTION. This notice will be delivered to the officer as soon as practicable after the final justification has been sent to DCP. The OPDIV or Program will make a copy of the final justification available to the officer upon request.

- e. During the next 2-month period (i.e., between 2 and 4 months prior to the end of probation), the Director, DCP, will review the termination request and render a decision to retain on duty or to terminate the commission.
- f. If circumstances allow, the actions specified in this procedure may be conducted on a more rapid timeframe than specified above; the timeframe provides optimum processing speed needed to insure timely action within the probationary period.
- g. The review process described in this subsection applies to officers reviewed as a group upon entering their last year of probation. When it becomes apparent before the last year of probation that an officer should be separated under probation, the OPDIV or Program should begin the process under the individual case procedures as soon as practicable, as described in subsection 2.a, above.
- h. A recommendation for retention under this subsection does not preclude a subsequent request for termination. If circumstances that warrant separation of an officer become apparent after the officer has been recommended for retention, the OPDIV or Program should notify DCP as soon as practicable and immediately provide the necessary justification.

Section F. Privacy Act Provisions

Personnel records are subject to the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG," and 09-37-0006, "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files."